Federal Register

6–25–04 Friday
Vol. 69 No. 122 June 25, 2004

United States Government Printing Office
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U.S. Government Printing Office
(ISSN 0097-6326)

Federal Register

6–25–04
Vol. 69 No. 122

Friday
June 25, 2004

Pages 35503–36006

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Presidential Documents

Title 3—

The President

Proclamation 7798 of June 22, 2004

Black Music Month, 2004

By the President of the United States of America

A Proclamation

The creativity and variety of African-American composers, singers, and musicians have shaped America's artistic and cultural landscape. During Black Music Month, we celebrate and honor the extraordinary impact of African-American music on our Nation's musical heritage.

The artistry of black musicians changes as each generation brings new talent and trends. Yet, there is a continuous theme. From the profound spirituality of African indigenous faith that influenced gospel, through the development of blues and jazz, to the emergence of rhythm and blues and rock and roll, we hear the richness of the African-American experience, past and present.

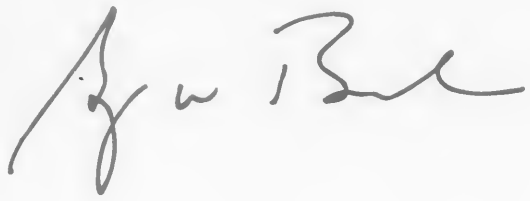
The earliest African-American music echoed the struggle of the oppressed, the trust of the faithful, and the endurance of the weary. We hear the voice of hope in work songs, hymns, psalms, and spirituals. The musical expression that captured the struggle for freedom and equality formed the foundation for gospel, blues, and jazz. African-American churchgoers transformed early spirituals into gospel music, giving voice to praises that still move listeners today. In the early 20th century, performers like Ida Cox and Tommy Johnson gave life to the improvised performances and style of the blues. As artists migrated to cities, the blues developed into an urban phenomenon and evolved into a major force in contemporary music.

During the same period, early pioneers such as Duke Ellington and Jelly Roll Morton were merging African musical roots with popular and church music to create a distinctively American sound: jazz. Songs first played in clubs in New Orleans, Memphis, and Chicago are now recognized and loved around the world. As jazz has expanded beyond its acoustic roots, African-American dreams, hopes, and joys have remained at the music's core.

The brilliance of new musical expressions emerged with rhythm and blues in the 1940s and rock and roll in the 1950s. Songs from great artists performing today embody the enduring appeal of this music. As black music continues to bring enjoyment to us all, the commemoration of this month expresses our Nation's recognition of its influence and our pride in its legacy.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim June 2004 as Black Music Month. I encourage all Americans to learn more about the history of black music and to enjoy the great contributions of African-American musicians.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of June, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-eighth.



[FR Doc. 04–14644
Filed 6–24–04; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
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FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Regulation CC; Docket No. R–1204]

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; technical amendment.

SUMMARY: The Board of Governors is amending appendix A of Regulation CC to delete the reference to the Columbia check processing office of the Federal Reserve Bank of Richmond and reassign the Federal Reserve routing symbols currently listed under that office to that Reserve Bank's Charlotte office and delete the reference to the Louisville check processing office of the Federal Reserve Bank of St. Louis and reassign the Federal Reserve routing symbols currently listed under that office to the Cincinnati office of the Federal Reserve Bank of Cleveland. These amendments reflect the restructuring of check processing operations within the Federal Reserve System.

DATES: The final rule will become effective on August 28, 2004.

FOR FURTHER INFORMATION CONTACT: Jack K. Walton II, Assistant Director (202/452–2660), or Joseph P. Baressi, Senior Financial Services Analyst (202/452–3959), Division of Reserve Bank Operations and Payment Systems; or Adrianne G. Threatt, Counsel (202/452–3554), Legal Division. For users of Telecommunications Devices for the Deaf (TDD) only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION: Regulation CC establishes the maximum period a depositary bank may wait between receiving a deposit and making the deposited funds available for withdrawal.[1] A depositary bank generally must provide faster availability for funds deposited by a "local check" than by a "nonlocal check." A check drawn on a bank is considered local if it is payable by or at a bank located in the same Federal Reserve check processing region as the depositary bank. A check drawn on a nonbank is considered local if it is payable through a bank located in the same Federal Reserve check processing region as the depositary bank. Checks that do not meet the requirements for "local" checks are considered "nonlocal."

Appendix A to Regulation CC contains a routing number guide that assists banks in identifying local and nonlocal banks and thereby determining the maximum permissible hold periods for most deposited checks. The appendix includes a list of each Federal Reserve check processing office and the first four digits of the routing number, known as the Federal Reserve routing symbol, of each bank that is served by that office for check processing purposes. Banks whose Federal Reserve routing symbols are grouped under the same office are in the same check processing region and thus are local to one another.

As explained in detail in the Board's final rule published in the **Federal Register** on May 28, 2003, the Federal Reserve Banks decided in early 2003 to reduce the number of locations at which they process checks.[2] As part of this restructuring process, the Columbia office of the Federal Reserve Bank of Richmond will cease processing checks on August 28, 2004, and banks with routing symbols currently assigned to that office for check processing purposes will be reassigned to that Reserve Bank's Charlotte office. The Louisville office of the Federal Reserve Bank of St. Louis will also cease processing checks on August 28, 2004, and banks with routing symbols currently assigned to that office for check processing purposes will be reassigned to the Cincinnati office of the Federal Reserve Bank of Cleveland. As a result of these changes, some checks that are drawn on and deposited at banks located in the affected check processing regions and that currently are nonlocal checks will become local checks subject to faster availability schedules. The Cincinnati office will serve banks located in the Fourth and Fifth Federal Reserve Districts as of June 26, 2004, when banks currently assigned to the Charleston office are reassigned to the Cincinnati office.[3] The Cincinnati office also will serve banks located in the Eighth Federal Reserve District as of August 28, 2004, when banks currently assigned to the Louisville office are reassigned to the Cincinnati office. After these changes take effect, banks located in the Cincinnati check processing region no longer will be able to determine that a check is nonlocal solely because the paying bank for that check is located in another Federal Reserve District.

To assist banks in identifying local and nonlocal banks, the Board accordingly is amending the lists of routing symbols associated with the Federal Reserve Banks of Cleveland, Richmond, and St. Louis to reflect the transfer of operations (1) from the Richmond Reserve Bank's Columbia office to that Reserve Bank's Charlotte office and (2) from the St. Louis Reserve Bank's Louisville office to the Cleveland Reserve Bank's Cincinnati office. To coincide with the effective date of the underlying check processing changes, the amendments are effective August 28, 2004. The Board is providing advance notice of these amendments to give affected banks ample time to make any needed processing changes. The advance notice will also enable affected banks to amend their availability schedules and related disclosures, if necessary, and provide their customers with notice of these changes.[4] The Federal Reserve routing symbols assigned to all other Federal Reserve branches and offices will remain the same at this time. The Board of

[1] For purposes of Regulation CC, the term "bank" refers to any depository institution, including commercial banks, savings institutions, and credit unions.

[2] *See* 68 FR 31592, May 28, 2003. In addition to the general advance notice of future amendments previously provided by the Board, as well as the Board's notices of final amendments, the Reserve Banks are striving to inform affected depository institutions of the exact date of each office transition at least 120 days in advance. The Reserve Banks' communications to affected depository institutions are available at *http://www.frbservices.org*.

[3] *See* 69 FR 19921, April 15, 2004.

[4] Section 229.18(e) of Regulation CC requires that banks notify account holders who are consumers within 30 days after implementing a change that improves the availability of funds.

Governors, however, intends to issue similar notices at least 60 days prior to the elimination of check operations at some other Reserve Bank offices, as described in the May 2003 **Federal Register** document.

Administrative Procedure Act

The Board has not followed the provisions of 5 U.S.C. 553(b) relating to notice and public participation in connection with the adoption of this final rule. The revisions to the appendix are technical in nature, and the routing symbol revisions are required by the statutory and regulatory definitions of "check-processing region." Because there is no substantive change on which to seek public input, the Board has determined that the § 553(b) notice and comment procedures are unnecessary.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board has reviewed the final rule under authority delegated to the Board by the Office of Management and Budget. This technical amendment to appendix A of Regulation CC will (1) delete the reference to the Columbia office of the Federal Reserve Bank of Richmond and reassign the routing symbols listed under that office to that Reserve Bank's Charlotte office and (2) delete the reference to the Louisville office of the Federal Reserve Bank of St. Louis and reassign the routing symbols listed under that office to the Cincinnati office of the Federal Reserve Bank of Cleveland. The depository institutions that are located in the affected check processing regions and that include the routing numbers in their disclosure statements would be required to notify customers of the resulting change in availability under § 229.18(e). However, because all paperwork collection procedures associated with Regulation CC already are in place, the Board anticipates that no additional burden will be imposed as a result of this rulemaking.

12 CFR Chapter II

List of Subjects in 12 CFR Part 229

Banks, Banking, Reporting and recordkeeping requirements.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board is amending 12 CFR part 229 to read as follows:

PART 229—AVAILABILITY OF FUNDS AND COLLECTION OF CHECKS (REGULATION CC)

■ 1. The authority citation for part 229 continues to read as follows:

Authority: 12 U.S.C. 4001 *et seq.*

■ 2. The Fourth, Fifth, and Eighth Federal Reserve District routing symbol lists in appendix A are revised to read as follows:

Appendix A to Part 229—Routing Number Guide to Next-Day Availability Checks and Local Checks

* * * * *

Fourth Federal Reserve District

[Federal Reserve Bank of Cleveland]

Head Office

0410	2410
0412	2412
0430	2430
0432	2432
0433	2433
0434	2434

Cincinnati Branch

0420	2420
0421	2421
0422	2422
0423	2423
0515	2515
0519	2519
0813	2813
0830	2830
0839	2839
0863	2863

Columbus Office

0440	2440
0441	2441
0442	2442

Fifth Federal Reserve District

[Federal Reserve Bank of Richmond]

Baltimore Branch

0510	2510
0514	2514
0520	2520
0521	2521
0522	2522
0540	2540
0550	2550
0560	2560
0570	2570

Charlotte Branch

0530	2530
0531	2531
0532	2532
0539	2539

* * * * *

Eighth Federal Reserve District

[Federal Reserve Bank of St. Louis]

Head Office

0810	2810
0812	2812
0815	2815
0819	2819
0865	2865

Memphis Branch

0820	2820
0829	2829
0840	2840
0841	2841
0842	2842
0843	2843

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, June 22, 2004.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 04–14505 Filed 6–24–04; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–SW–38–AD; Amendment 39–13686; AD 2004–13–05]

RIN 2120–AA64

Airworthiness Directives; Eurocopter Deutschland Model MBB–BK 117 A–1, A–3, A–4, B–1, B–2, and C–1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Eurocopter Deutschland (ECD) model helicopters that requires inspecting the vertical fin skin paneling to determine if it was manufactured with the correct wall thickness. This amendment is prompted by a report from the manufacturer that some vertical fins may have been produced with the wrong vertical fin skin thickness. The actions specified by this AD are intended to prevent failure of the vertical fin and subsequent loss of control of the helicopter.

DATES: Effective July 30, 2004.

FOR FURTHER INFORMATION CONTACT: Richard Monschke, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5116, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for the specified model helicopters was published in the **Federal Register** on February 10, 2004 (69 FR 6214). That action proposed to require inspecting the vertical fin skin paneling to determine if it was manufactured with the correct wall thickness.

The Luftfahrt-Bundesamt (LBA), the airworthiness authority for the Federal Republic of Germany, notified the FAA that an unsafe condition may exist on ECD Model MBB–BK117 helicopters, Model A–1 up to B–2, serial number (S/N) all, and Model C–1, S/N 7500 up to 7545. The LBA advises that during tail boom production, metal sheeting of 0.6-millimeter (mm) thickness was found instead of the specified 0.8-mm thickness for the skin paneling of several tail booms.

ECD has issued Alert Service Bulletin No. ASB–MBB–BK117–30–109, Revision 1, dated July 3, 2003, which specifies measuring the wall thickness of the skin paneling of the vertical fin to determine the thickness. The LBA classified this service bulletin as mandatory and issued AD No. 2003–219, dated August 21, 2003, to ensure the continued airworthiness of these helicopters in the Federal Republic of Germany.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that this AD will affect 132 helicopters of U.S. registry. The required actions will take about 1 hour per helicopter to do at an average labor rate of $65 per work hour. Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be $8580 assuming no vertical fins will need to be replaced.

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 is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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 a new airworthiness directive to read as follows:

2004–13–05 Eurocopter Deutschland: Amendment 39–13686. Docket No. 2003–SW–38–AD.

Applicability: Model MBB–BK 117 A–1, A–3, A–4, B–1, and B–2, all serial numbers (S/N), and Model C–1, S/N 7500 through 7545, certificated in any category.

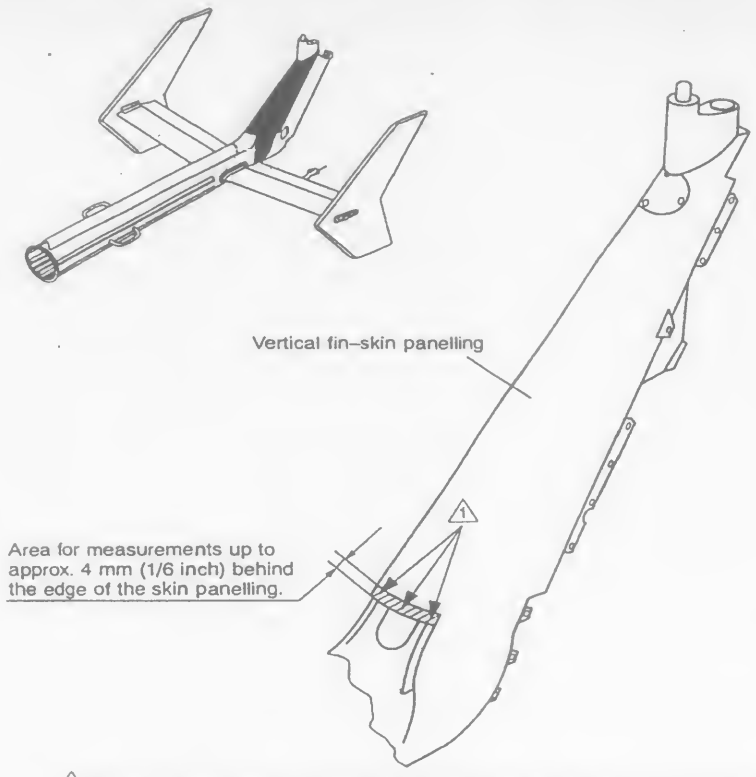
Compliance: Required within 100 hours time in service, unless accomplished previously.

To prevent failure of the vertical fin and subsequent loss of control of the helicopter, do the following:

(a) Using external calipers, measure the wall thickness, including primer coating, of the skin paneling of the vertical fin at the locations shown in Figure 1 of this AD.

Note 1: Eurocopter Deutschland (ECD) Alert Service Bulletin No. ASB–MBB–BK117–30–109, Revision 1, dated July 3, 2003, pertains to the subject of this AD.

BILLING CODE 4910–13–P



1 Measurements are to be taken at at least three locations on the skin panel of the vertical fin. Care has to be taken that the external calipers are held squarely to the skin panel wall while measurements are being taken, since tilting of the calipers can lead to false results. If the panel thickness, including the primer coating, is at least 0.778 mm (0.03063 inch) at every measured location, no further action is necessary.

Vertical Fin–Skin Panelling
Figure 1

(b) If the wall thickness, including the primer coating, of the paneling is less than 0.778 millimeter (0.03063 inch) at any of the measured locations, replace the vertical fin with an airworthy part before further flight.

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

(d) This amendment becomes effective on July 30, 2004.

Note 2: The subject of this AD is addressed in Luftfahrt-Bundesamt (Federal Republic of Germany) AD 2003–219, dated August 21, 2003.

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

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 04–14318 Filed 6–24–04; 8:45 am]

BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration [TM]

14 CFR Part 39

[Docket No. 2002–NE–19–AD; Amendment 39–13693; AD 2004–13–11]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211 Trent 875–17, Trent 877–17, Trent 884–17, Trent 884B–17, Trent 892–17, Trent 892B–17, and Trent 895–17 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Rolls-Royce plc (RR) RB211 Trent 875–17,

Trent 877–17, Trent 884–17, Trent 892–17, Trent 892B–17, and Trent 895–17 series turbofan engines that have not incorporated RR Service Bulletin (SB) No. RB.211–72–D495, dated February 7, 2003. This AD requires initial and repetitive visual inspections or ultrasonic inspections of the intermediate pressure (IP) compressor rear stubshaft and IP turbine shaft for load-bearing spline flank wear, and replacement of these shafts if necessary. This AD results from reports of load-bearing spline flank wear of the IP compressor rear stubshaft and IP turbine shaft, revealed at inspection during overhaul. We are issuing this AD to prevent the loss of drive between the IP turbine and the IP compressor, which could result in a turbine rotor overspeed condition, possible uncontained engine failure, and damage to the airplane.

DATES: This AD becomes effective July 30, 2004.

ADDRESSES: You can get the service information identified in this AD from Rolls-Royce plc, P.O. Box 31 Derby, DE24 8BJ, United Kingdom; telephone 011–44–1332–242424; fax 011–44–1332–249936.

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299, telephone (781) 238–7175; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed airworthiness directive (AD). The proposed AD applies to RR RB211 Trent 875–17, Trent 877–17, Trent 884–17, Trent 892–17, Trent 892B–17, and Trent 895–17 series turbofan engines. We published the proposed AD in the **Federal Register** on January 27, 2003 (68 FR 3836). That action proposed to require initial and repetitive visual inspections for load-bearing spline flank wear of the IP compressor rear stubshaft and IP turbine shaft, and replacement of these shafts if necessary.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Request To Use an Alternate Ultrasonic Inspection

Three commenters request that we incorporate the intent of the latest issue of RR Mandatory Service Bulletin (MSB) No. RB.211–72–D339, Revision 1, dated March 28, 2003. The commenters ask that they be allowed to use an alternate ultrasonic inspection of the IP compressor-IP turbine shaft spline wear with a reduced repeat inspection time interval, introduced by the revised MSB.

We agree. We have reviewed the latest revision of RR MSB No. RB.211–72–D339, Revision 2, dated June 20, 2003, with RR and the Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (U.K.), and we have approved the alternate ultrasonic inspection in this AD. Also, because that MSB adds the Trent 884B–17 engine to the applicability, we have added that engine to this AD applicability. We have concluded that since the proposal already applies to the Trent 884–17, adding the Trent 884B–17 engine would not require us to issue a supplemental notice of proposed rulemaking. Currently, there are no Trent 884B–17 engines installed on airplanes of U.S. registry.

Request To Change Compliance Intervals to Cycles Accumulated on Component

One commenter requests that we change compliance intervals from cycles accumulated on the engine, to cycles accumulated on the component. The commenter states that components are sometimes switched between engines, making cycle counting difficult.

We agree. Cycle counting on the component is a more precise way to set the inspection intervals and is introduced in this proposal. Also, this AD corrects an error in the NPRM where the initial inspection interval was 4,500 cycles from the effective date of the AD, and should have been 4,500 cycles-since-new (CSN).

Initial Inspection Drawdown Added

We have added an initial inspection drawdown of 100 cycles for engines that have not had an initial inspection, but are over the initial inspection threshold. We are not aware of any engines over the initial threshold and that have not had the initial inspection.

Clarification of Engine Applicability

We have clarified the wording in the engine applicability, to state that the AD applies to engines that have not incorporated RR SB No. RB.211–72–D495, dated February 7, 2003. That SB incorporates a modification for positive lubrication of the IP compressor rear stubshaft and IP turbine shaft.

Conclusion

We have carefully reviewed the available data, including the comments received, 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. The assigned paragraph letters in the regulatory section have been changed from what appeared in the proposal, as we are continuing our introduction of plain language into our documents.

Costs of Compliance

There are about 350 RR RB211 Trent 875–17, Trent 877–17, Trent 884–17, Trent 892–17, Trent 892B–17, and Trent 895–17 series turbofan engines of the affected design in the worldwide fleet. We estimate that 90 engines installed on airplanes of U.S. registry would be affected by this AD. We also estimate that it would take about 0.5 work hours per engine to perform the proposed inspections, and that the average labor rate is $65 per work hour. Based on these figures, we estimate the total cost to U.S. operators for performing one inspection to be $2,925.

Regulatory Findings

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

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

(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.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "AD Docket No. 2002–NE–19–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–13–11 Rolls-Royce plc: Amendment 39–13693. Docket No. 2002–NE–19–AD.

Effective Date

(a) This AD becomes effective July 30, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Rolls-Royce plc (RR) RB211 Trent 875–17, Trent 877–17, Trent 884–17, Trent 892–17, Trent 892B–17, and Trent 895–17 series turbofan engines that have not incorporated RR SB No. RB.211–72–D495, dated February 7, 2003. These engines are installed on, but not limited to, Boeing 777 series airplanes.

Unsafe Condition

(d) This AD results from reports of load-bearing spline flank wear of intermediate pressure (IP) compressor rear stubshaft and intermediate pressure (IP) turbine shaft, revealed at inspection during overhaul. We are issuing this AD to prevent the loss of drive between the IP turbine and the IP compressor, which could result in a turbine rotor overspeed condition, possible uncontained engine failure, and damage to the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

Initial Visual Inspection of the IP Turbine Shaft and IP Compressor Stubshaft

(f) At the next accessibility of the IP turbine shaft, not to exceed the later of 4,500 cycles-since-new (CSN) or 100 cycles after the effective date of this AD on the IP turbine shaft, do the following:

(1) Inspect the IP turbine shaft splines for wear. Information on inspecting IP turbine shaft splines can be found in RR Mandatory Service Bulletin (MSB) No. RB.211–72–D339, Revision 2, dated June 20, 2003.

(2) If the IP turbine shaft spline wear measured in paragraph (f)(1) of this AD is greater than 0.005 inch, remove the IP turbine shaft from service.

(3) If the IP turbine shaft spline wear measured in paragraph (f)(1) of this AD is greater than 0.001 inch, inspect IP compressor stubshaft splines for wear. Information on inspecting IP compressor stubshaft splines can be found in RR MSB No. RB.211–72–D339, Revision 2, dated June 20, 2003.

(4) If the IP compressor stubshaft spline wear measured in paragraph (f)(3) of this AD is greater than 0.005 inch, remove the IP compressor stubshaft from service.

(5) For the purposes of this AD, accessibility of the IP turbine shaft is defined as removal of the IP turbine module from the engine.

Repetitive Visual Inspections of the IP Turbine Shaft and IP Compressor Stubshaft

(g) Perform repetitive visual inspections of the IP turbine shaft and IP compressor stubshaft using the procedures specified in paragraph (f)(1) through (f)(4) of this AD, at each accessibility, not to exceed the applicable repetitive inspection intervals in the following Table 1:

TABLE 1.—REPETITIVE VISUAL INSPECTION INTERVALS

Results of last inspection	Reinspection interval
(1) If wear was less than 0.001 inch on IPT shaft splines and IPC stubshaft splines.	Reinspect within 4,500 cycles-since-last visual inspection (CSLI) of the IPT shaft splines.
(2) If wear was 0.001 inch or greater on IPT shaft splines or on the IPC stubshaft splines.	Reinspect within 2,000 CSLI of the IPT shaft splines or IPC stubshaft, whichever occurs first.
(3) If an ultrasonic measurement of wear was less than 0.013 inch	Reinspect within 3,000 cycles since last ultrasonic inspection.

Optional Initial Ultrasonic Inspection of the IPT Shaft and IPC Stubshaft

(h) As an option to the initial visual inspection specified in paragraph (f) of this AD, do the following:

(1) At the later of 4,400 CSN or 100 cycles after the effective date of this AD on the IPT shaft, ultrasonically inspect the IP compressor stubshaft. Information on the ultrasonic inspection can be found in RR MSB No. RB.211–72–D339, Revision 2, dated June 20, 2003.

(2) If wear is greater than 0.013 inch, remove engine from service within an additional 100 cycles-in-service.

Optional Repetitive Ultrasonic Inspections of the IP Turbine Shaft and IP Compressor Stubshaft

(i) As an option to the repetitive visual inspections specified in paragraph (g) of this AD, do the following:

(1) Ultrasonically inspect the IP compressor stubshaft, using the repetitive inspection intervals in Table 2 of this AD. Information on the ultrasonic inspection can be found in RR MSB No. RB.211–72–D339, Revision 2, dated June 20, 2003.

TABLE 2.—REPETITIVE ULTRASONIC INSPECTION INTERVALS

Results of last inspection	Reinspection interval
(i) If visually inspected wear was less than 0.001 inch on IPT shaft splines and IPC stubshaft splines.	Reinspect within 4,400 cycles-since-last visual inspection (CSLVI) of the IPT shaft splines.
(ii) If visually inspected wear was 0.001 inch or greater on IPT shaft splines or on the IPC stubshaft splines.	Reinspect within 2,000 CSLVI of the IPT shaft splines or IPC stubshaft, whichever occurs first.
(iii) If ultrasonically inspected wear was less than 0.013 inch	Reinspect within 3;000 since last ultrasonic inspection.

(2) If wear is greater than 0.013 inch, remove engine from service within an additional 100 cycles-in-service.

Alternative Methods of Compliance

(j) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(k) None.

Related Information

(l) Rolls-Royce plc MSB No. RB.211–72–D339, Revision 2, dated June 20, 2003, pertains to the subject of this AD.

Issued in Burlington, Massachusetts, on June 18, 2004.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 04–14317 Filed 6–24–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–15–AD; Amendment 39–13687; AD 2001–24–07 R1]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. Model A109C, A109E, and A109K2 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), for the Agusta S.p.A. (Agusta) Model A109C, A109E, and A109K2 helicopters, that currently requires inspecting the main rotor blade (blade) tip cap for bonding separation and a crack, and also requires a tap inspection of the tip cap for bonding separation in the blade bond area and a dye-penetrant inspection of the tip cap leading edge along the welded joint line of the upper and lower tip cap skin shells for a crack. This amendment requires those same actions, but corrects a blade part number (P/N) that was stated incorrectly in the Applicability section of the existing AD. This amendment is prompted by the need to correct a blade P/N. The actions specified by this AD are intended to prevent failure of a blade tip cap, excessive vibration, and subsequent loss of control of the helicopter.

DATES: Effective July 30, 2004.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of January 7, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Agusta, 21017 Cascina Costa di Samarate (VA) Italy, Via Giovanni Agusta 520, telephone 39 (0331) 229111, fax 39 (0331) 229605–222595. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; 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: Richard Monschke, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, For' Worth, Texas 76193–0110, telephone (817) 222–5116, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 by revising AD 2001–24–07, Amendment 39–12523 (66 FR 60144, December 3, 2001), for the specified Agusta helicopters, was published in the **Federal Register** on January 27, 2004 (69 FR 3859). The action proposed to correct a P/N that was stated incorrectly in the previous AD, and to require:

- A tap inspection of the upper and lower sides of the tip cap for bonding separation and in the tip cap to blade bond area;
- A visual inspection of the upper and lower side of the blade tip cap for swelling or deformation; and
- A dye-penetrant inspection of the tip cap leading edge along the welded joint line of the upper and lower tip cap skin shells for a crack.

AD 2001–24–07 superseded AD 98–19–04, Amendment 39–11039 (64 FR 7494, February 16, 1999), Docket No. 98–SW–40–AD. AD 98–19–04 required inspecting between the metal shells and honeycomb core for bonding separation, visually inspecting the blade tip for swelling or deformation, and visually inspecting the welded bead along the leading edge of the blade tip cap for a crack. AD 2001–24–07 retained those requirements, and added a requirement for a tap inspection of the tip cap for bonding separation in the blade bond area, and a dye-penetrant inspection of the tip cap leading edge along the welded joint line of the upper and lower tip cap skin shells for a crack. Installing a tip cap, P/N 709–0103–29–109, on an affected blade is a terminating action for the requirements of the existing AD for that blade.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that this AD will affect 44 helicopters of U.S. registry, and the actions will take approximately 6 work hours per helicopter to accomplish the initial and repetitive inspection at an average labor rate of $65 per work hour. Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be $17,160, assuming that no blade will need to be replaced as a result of these inspections.

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 removing Amendment 39–12523 (66 FR 60144), and by adding a new airworthiness directive (AD), Amendment 39–13687, to read as follows:

2001–24–07 R1 Agusta S.p.A.: Amendment 39–13687. Docket No. 2001–SW–15–AD. Revises AD 2001–24–07, Amendment 39–12523.

Applicability: Model A109C, A109E, and A109K2 helicopters, with main rotor blade

(blade), part number (P/N) 709–0103–01—all dash numbers, having a serial number (S/N) up to and including S/N 1428 with a prefix of either "EM–" or "A5–" installed, certificated in any category.

Compliance: Required within 10 hours time-in-service (TIS), unless accomplished previously, and thereafter at intervals not to exceed 25 hours TIS.

To prevent failure of a blade tip cap, excessive vibration, and subsequent loss of control of the helicopter, accomplish the following:

(a) Tap inspect the upper and lower sides of each tip cap for bonding separation between the metal shells and the honeycomb core using a steel hammer, P/N 109–3101–58–1, or a coin (quarter) in the area indicated as honeycomb core on Figure 1 of Alert Bollettino Tecnico Nos. 109–106, 109K–22, or 109EP–1, all Revision B, and dated December 19, 2000 (ABT), as applicable. Also, tap inspect for bonding separation in the tip cap to blade bond area (no bonding voids are permitted in this area).

(b) Visually inspect the upper and lower sides of each blade tip cap for swelling or deformation.

(c) Dye-penetrant inspect the tip cap leading edge along the welded joint line of the upper and lower tip cap skin shells for a crack in accordance with the Compliance Instructions, paragraph 3, of the applicable ABT.

(d) If any swelling, deformation, crack, or bonding separation that exceeds the prescribed limits in the applicable maintenance manual is found, replace the blade with an airworthy blade.

(e) Replacement blades affected by this AD must comply with the repetitive inspection requirements of this AD. Replacing an affected blade with a blade having an airworthy blade tip cap, P/N 709–0103–29–109, is terminating action for the requirements of this AD for that blade.

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

(g) The tap inspection and dye-penetrant inspection shall be done in accordance with Agusta Alert Bollettino Tecnico Nos. 109–106, 109K–22, or 109EP–1, all Revision B, and all dated December 19, 2000, as applicable. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of January 7, 2002 (66 FR 60144, December 3, 2001). Copies may be obtained from Agusta, 21017 Cascina Costa di Samarate (VA) Italy, Via Giovanni Agusta 520, telephone 39 (0331) 229111, fax 39 (0331) 229605–222595. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; 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.*

(h) This amendment becomes effective on July 30, 2004.

Note: The subject of this AD is addressed in Ente Nazionale per l'Aviazionne Civile (Italy) AD Nos. 2000–571, 2000–572, and 2000–573, all dated December 22, 2000.

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

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 04–14316 Filed 6–24–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; N-Butylscopolammonium Bromide

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Boehringer Ingelheim Vetmedica, Inc. The NADA provides for the veterinary prescription use of a solution of N-butylscopolammonium bromide by intravenous injection for the control of abdominal pain (colic) associated with spasmodic colic, flatulent colic, and simple impactions in horses.

DATES: This rule is effective June 25, 2004.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7543, e-mail: *mberson@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION: Boehringer Ingelheim Vetmedica. Inc., 2621 North Belt Highway, St. Joseph, MO 64506–2002, filed NADA 141–228 for the veterinary prescription use of BUSCOPAN (N-butylscopolammonium bromide) Injectable Solution by intravenous injection for the control of abdominal pain (colic) associated with spasmodic colic, flatulent colic, and simple impactions in horses. The NADA is approved as of May 3, 2004, and 21 CFR part 522 is amended by adding § 522.275 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(i)), this approval qualifies for 5 years of marketing exclusivity beginning May 3, 2004.

The agency has determined under 21 CFR 25.33(d)(1) that this 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 is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Section 522.275 is added to read as follows:

§ 522.275 N-Butylscopolammonium bromide.

(a) *Specifications.* Each milliliter of solution contains 20 milligrams (mg) N-butylscopolammonium bromide.

(b) *Sponsor.* See No. 000010 in § 510.600(c) of this chapter.

(c) *Conditions of use in horses*—(1) *Amount.* 0.3 mg per kilogram of body weight (0.14 mg per pound) slowly intravenously.

(2) *Indications for use.* For the control of abdominal pain (colic) associated with spasmodic colic, flatulent colic, and simple impactions.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: June 14, 2004.

Linda Tollefson,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 04–14438 Filed 6–24–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9133]

RIN 1545–BB06

Depreciation of Vans and Light Trucks

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains regulations relating to the definition of passenger automobile for purposes of the dollar limits on depreciation deductions for passenger automobiles. These regulations affect certain taxpayers that use vans and light trucks in their trade or business.

DATES: *Effective Date.* These regulations are effective June 25, 2004.

Applicability Dates. These regulations apply to property placed in service by a taxpayer on or after July 7, 2003. For regulations applicable to property placed in service before July 7, 2003, see § 1.280F–6T as in effect prior to July 7, 2003 (§ 1.280F–6T as contained in 26 CFR part 1, revised as of April 1, 2003). Taxpayers may choose to apply § 1.280F–6(c)(3)(iii) to property placed in service prior to July 7, 2003, and if necessary may either amend returns for open taxable years or file a Form 3115 in order to apply § 1.280F–6(c)(3)(iii) to such property.

FOR FURTHER INFORMATION CONTACT: Bernard P. Harvey, (202) 622–3110 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On July 7, 2003, the IRS published temporary regulations (TD 9069) in the **Federal Register** (68 FR 40129) containing amendments to 26 CFR part 1 under section 280F of the Internal Revenue Code of 1986 (Code), including the addition of § 1.280F–6T(c)(3)(iii). On the same date, the IRS published proposed regulations (REG–138495–02) in the **Federal Register** (68 FR 40224) inviting comments under section 280F and inviting requests to hold a public hearing. Several comments were received, but no requests to hold a public hearing. After consideration of all the comments, the rules in TD 9069 and the proposed regulations are made retroactive for taxpayers that choose to apply the rules to property placed in service before the proposed effective date and are adopted as final regulations. In addition, a conforming amendment is made to § 1.280F–6T, and § 1.280F–6T is redesignated as § 1.280F–6.

Explanation of Provisions

Section 280F(a) of the Code imposes annual dollar limits on the depreciation deduction allowable with respect to passenger automobiles. TD 9069 and the proposed regulations provide that a truck or van is not subject to these limits if it is a *qualified nonpersonal use vehicle* as defined in § 1.274–5T(k). This rule applies to vehicles placed in service on or after July 7, 2003.

Commentators suggested that the rule announced by TD 9069 and the proposed regulations be made available retroactively to owners of qualified nonpersonal use vehicles placed in service during the period beginning January 1, 2003, and ending July 6, 2003, and that taxpayers who have filed fiscal-year returns be allowed to amend those returns to claim additional deductions for such vehicles. Commentators have also requested that we give some measure of audit protection to taxpayers who placed qualified nonpersonal use vehicles in service prior to 2003 and depreciated the vehicles in a manner consistent with TD 9069 and the proposed regulations. We have amended the effective date provision to allow taxpayers to use the exclusion for qualified nonpersonal use vehicles for vehicles placed in service prior to July 7, 2003, and to permit taxpayers either to amend tax returns for open taxable years, or to treat the change as a change in method of accounting by filing a Form 3115, "Application for Change in Accounting Method".

Comments received from the funeral services industry requested amendments to the definition of *qualified nonpersonal use vehicles* in the temporary regulations under section 274 to clarify that certain vehicles used in the funeral services industry are qualified nonpersonal use vehicles for purposes of the substantiation requirements under that section. We believe that such an amendment is beyond the scope of these regulations, which are specific to section 280F(a).

Another commentator indicated that the relief afforded by TD 9069 and the proposed regulations is too narrow, and requested that we amend the regulations to establish a use-based test that would exclude more trucks and vans from section 280F(a). The comment suggested a test that would exclude all trucks and vans for which the taxpayer could demonstrate a specific business need, and which are used for a valid business purpose. We believe that the proposed test is inherently subjective and would cause administrative difficulty of the type that the proposed regulations were designed to avoid. We continue to encourage suggestions for objective use-based tests that could serve as the basis for future guidance.

We were asked by the Office of Advocacy of the U.S. Small Business Administration (Advocacy) to perform a regulatory flexibility analysis because Advocacy believes that TD 9069 and the proposed regulations constitute a legislative rule as defined in the Regulatory Flexibility Act. A Regulatory Flexibility Act (RFA) analysis must be performed for legislative rules having a significant impact on small business, but not for interpretive rules or for legislative rules with no significant impact on small businesses. It is the position of the IRS and Treasury that TD 9069 and the proposed regulations constitute an interpretive rule for which no regulatory flexibility analysis is necessary. In any event, the rule proposed in the regulations is in all cases beneficial to taxpayers and does not have a significant impact on small business for purposes of the Regulatory Flexibility Act.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Bernard P. Harvey, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS

and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended by adopting the rules of section 1.280F–6T as final regulations, by making conforming amendments to sections 1.280F–1T through 1.280F–7, and by updating the authority citation as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by removing the entry for "Section 1.280F–6T" and adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.280F–6 also issued under 26 U.S.C. 280F. * * *

§ 1.280F–1T [Amended]

■ **Par. 2.** Section 1.280F–1T is amended as follows:

■ 1. The heading in the fifth column of the table of paragraph (b) is amended by removing "§ 1.280F–6T" and adding "§ 1.280F–6" in its place.

■ 2. The first sentence in paragraph (c)(1) is amended by removing "1.280F–6T" and adding "1.280F–6" in its place.

■ 3. The first sentence in paragraph (c)(2) is amended by removing "1.280F–6T" and adding "1.280F–6" in its place.

§ 1.280F–2T [Amended]

■ **Par. 3.** Section 1.280F–2T is amended as follows:

The first sentence in paragraph (i) is amended by removing "§ 1.280F–6T(d)(3)" and adding "§ 1.280F–6(d)(3)" in its place.

§ 1.280F–3T [Amended]

■ **Par. 4.** Section 1.280F–3T is amended as follows:

■ 1. The first sentence in paragraph (a) is amended by removing "§ 1.280F–6T(b)" and adding "§ 1.280F–6(b)" in its place.

■ 2. The last sentence in paragraph (a) is amended by removing "§ 1.280F–6T(d)" and adding "§ 1.280F–6(d)" in its place.

■ 3. The first sentence in paragraph (b)(1) is amended by removing "§ 1.280F–6T(d)(1)" and adding "§ 1.280F–6(d)(1)" in its place.

■ 4. The third sentence in paragraph (b)(1) is amended by removing "§ 1.280F–6T(d)(3)" and adding "§ 1.280F–6(d)(3)" in its place, and by removing "§ 1.280F–6T(d)(2)(i)" and adding "§ 1.280F–6(d)(2)(i)" in its place.

■ 5. The first sentence in paragraph (b)(2) is amended by removing "§ 1.280F–6T(d)(3)" and adding "§ 1.280F–6(d)(3)" in its place.

■ 6. The third sentence in paragraph (b)(2) is amended by removing "§ 1.280F–6T(d)(1)" and adding "§ 1.280F–6(d)(1)" in its place.

■ 7. The first sentence in paragraph (c)(1) is amended by removing "§ 1.280F–6T(b)" and adding "§ 1.280F–6(b)" in its place, and by removing "§ 1.280F–6T(d)(4)" and adding "§ 1.280F–6(d)(4)" in its place.

■ 8. The first sentence in paragraph (c)(2) is amended by removing "§ 1.280F–6T(d)(4)" and adding "§ 1.280F–6(d)(4)" in its place.

■ 9. Paragraph (d)(1) is amended by removing "§ 1.280F–6T(d)(4)" and adding "§ 1.280F–6(d)(4)" in its place.

§ 1.280F–4T [Amended]

■ **Par. 5.** Section 1.280F–4T is amended as follows:

■ The fifth sentence in paragraph (a)(1) is amended by removing "§ 1.280F–6T(d)(2)" and adding "§ 1.280F–6(d)(2)" in its place.

§ 1.280F–5T [Amended]

■ **Par. 6.** Section 1.280F–5T is amended as follows:

■ The first sentence in paragraph (d)(1) is amended by removing "§ 1.280F–6T(d)(3)(i)" and adding "§ 1.280F–6(d)(3)(i)" in its place.

§ 1.280F–6T [Redesignated as § 1.280F–6 and amended]

■ **Par. 7.** Section 1.280F–6T is redesignated as § 1.280F–6 and the word "(temporary)" is removed from the section heading. Newly-designated § 1.280F–6 is amended as follows:

■ 1. Paragraph (b)(1)(iv) is amended by removing "section 168(j)(5)(D)" and adding "section 168(i)(2)(B)" in its place.

■ 2. Paragraph (f) is added.

The addition reads as follows:

§ 1.280F–6 Special rules and definitions.

* * * * *

(f) *Effective date*—(1) *In general.* Except as provided in paragraph (f)(2) of this section, this section applies to property placed in service by a taxpayer on or after July 7, 2003. For regulations applicable to property placed in service before July 7, 2003, see § 1.280F–6T as in effect prior to July 7, 2003 (§ 1.280F–6T as contained in 26 CFR part 1, revised as of April 1, 2003).

(2) *Property placed in service before July 7, 2003.* The following rules apply to property that is described in paragraph (c)(3)(iii) of this section, was placed in service by the taxpayer before July 7, 2003, and was treated by the taxpayer as a passenger automobile under § 1.280F–6T as in effect prior to July 7, 2003 (pre-effective date vehicle):

(i) Except as provided in paragraphs (f)(2)(ii), (iii), and (iv) of this section, a pre-effective date vehicle will be treated as a passenger automobile to which section 280F(a) applies.

(ii) A pre-effective date vehicle will be treated as property to which section 280F(a) does not apply if the taxpayer adopts that treatment in determining depreciation deductions on the taxpayer's original return for the year in which the vehicle is placed in service.

(iii) A pre-effective date vehicle will be treated, to the extent provided in this paragraph (f)(2)(iii), as property to which section 280F(a) does not apply if the taxpayer adopts that treatment on an amended Federal tax return in accordance with this paragraph (f)(2)(iii). This paragraph (f)(2)(iii) applies only if, on or before December 31, 2004, the taxpayer files, for all applicable taxable years, amended Federal tax returns (or qualified amended returns, if applicable (for further guidance, see Rev. Proc. 94–69 (1994–2 C.B. 804) and § 601.601(d)(2)(ii)(*b*) of this chapter)) treating the vehicle as property to which section 280F(a) does not apply. The applicable taxable years for this purpose are the taxable year in which the vehicle was placed in service by the taxpayer (or, if the period of limitation for assessment under section 6501 has expired for such year or any subsequent year (a closed year), the first taxable year following the most recent closed year) and all subsequent taxable years in which the vehicle was treated on the taxpayer's return as property to which section 280F(a) applies. If the earliest applicable taxable year is not the year in which the vehicle was placed in service, the adjusted depreciable basis of the property as of the beginning of the first applicable taxable year is recovered over the remaining recovery period. If the remaining recovery period as of the beginning of the first applicable taxable year is less than 12 months, the entire adjusted depreciable basis of the property as of the beginning of the first applicable taxable year is recovered in that year.

(iv) A pre-effective date vehicle will be treated, to the extent provided in this paragraph (f)(2)(iv), as property to which section 280F(a) does not apply if the taxpayer adopts that treatment on Form 3115, Application for Change in Accounting Method, in accordance with this paragraph (f)(2)(iv). The taxpayer must follow the applicable administrative procedures issued under § 1.446–1(e)(3)(ii) for obtaining the

Commissioner's automatic consent to a change in method of accounting (for further guidance, for example, see Rev. Proc. 2002–9 (2002–1 C.B. 327) and § 601.601(d)(2)(ii)(*b*) of this chapter). If the taxpayer files a Form 3115 treating the vehicle as property to which section 280F(a) does not apply, the taxpayer will be permitted to treat the change as a change in method of accounting under section 446(e) of the Internal Revenue Code and to take into account the section 481 adjustment resulting from the method change. For purposes of Form 3115, the designated number for the automatic accounting method change authorized for this paragraph (f)(2)(iv) is 89.

§ 1.280F–7 [Amended]

■ **Par. 8.** Section 1.280F–7 is amended as follows:

■ 1. Paragraph (a)(2)(iii) is amended by removing "§ 1.280F–6T(d)(3)(i)" and adding "§ 1.280F–6(d)(3)(i)" in its place.

■ 2. The second sentence in paragraph (b)(1) is amended by removing "§ 1.280F–6T(d)(1)" and adding "§ 1.280F–6(d)(1)" in its place.

■ 3. Paragraph (b)(2)(i)(B) is amended by removing "§ 1.280F–6T(d)(3)(i)" and adding "§ 1.280F–6(d)(3)(i)" in its place, and by removing "§ 1.280F–6T(d)(1)" and adding "§ 1.280F–6(d)(1)" in its place.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: June 17, 2004.

Gregory Jenner,

Acting Assistant Secretary of the Treasury.

[FR Doc. 04–14390 Filed 6–24–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

33 CFR Part 326

RIN 0710–AA54

Civil Monetary Penalty Inflation Adjustment Rule

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is amending its regulations to ajust its Class I civil penalties under the Clean Water Act and the National Fishing Enhancement Act. The adjustment of civil penalties to account for inflation is required by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended. Since we have not made any adjustments to our Class I civil penalties to account for inflation since 1989, we are making the initial 10 percent increase under this Act. The Class I civil penalty under the Clean Water Act will not exceed $11,000 per violation, with a maximum civil penalty amount of $27,500. Under the National Fishing Enhancement Act, the Class I civil penalty will not exceed $11,000 per violation. Increasing the maximum amounts of the Class I civil penalties to account for inflation will maintain the deterrent effects of those penalties.

DATES: *Effective Date:* July 26, 2004.

ADDRESSES: HQUSACE, ATTN: CECW–CO, 441 "G" Street, NW., Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson at 202–761–4922 or access the U.S. Army Corps of Engineers Regulatory Home Page at *http://www.usace.army.mil/inet/functions/cw/cecwo/reg/.*

SUPPLEMENTARY INFORMATION:

Background

In the August 20, 2003, issue of the **Federal Register** (68 FR 50108) the Corps issued a proposal to amend 33 CFR 326.6(a)(1) to increase its Class I administrative penalties under section 309(g) of the Clean Water Act and section 205(e) of the National Fishing Enhancement Act to account for inflation. Under section 309(g) of the Clean Water Act, Class I civil penalties can be assessed for violations of the conditions and limitations of permits issued under section 404 of the Clean Water Act. Under section 205(e) of the National Fishing Enhancement Act, Class I civil penalties can be assessed for violations of permits issued under section 10 of the Rivers and Harbors Act of 1899 and/or section 404 of the Clean Water Act for the construction and management of artificial reefs.

According to section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, each Federal agency is required to adjust for inflation the maximum civil monetary penalties that can be imposed pursuant to that agency's statutory authorities. Under section 6 of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, the initial adjustment is limited to 10 percent of the civil penalty amount. Since we had not made any inflation adjustments for the Class I civil penalties since 33 CFR 326.6 was promulgated in 1989, we are limited to a 10 percent increase for these civil penalties. Therefore, we proposed to increase the Class I civil penalty for violations of the conditions and limitations of Clean Water Act section 404 permits, so that it may not exceed $11,000 per violation, with a $27,500 maximum penalty. We also proposed to increase the Class I civil penalty for violations of permits for the construction and management of artificial reefs under section 205 of the National Fishing Enhancement Act of 1984 so that it may not exceed $11,000 per violation.

In response to the August 20, 2003, proposal, we received no comments. Therefore, we are amending 33 CFR 326.6 as indicated below.

Administrative Requirements

Plain Language

In compliance with the principles in the President's Memorandum of June 1, 1998, regarding plain language, this preamble is written using plain language. The use of "we" in this notice refers to the Corps and the use of "you" refers to the reader. We have also used the active voice, short sentences, and common everyday terms except for necessary technical terms.

Paperwork Reduction Act

This action does not impose any new information collection burden under the provisions of the Paperwork Production Act, 44 U.S.C. 3501 *et seq.* This final rule adjusts our civil penalty amounts to comply with the requirements of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended. Therefore, this action is not subject to the Paperwork Reduction Act.

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. For the Corps regulatory program under section 10 of the Rivers and Harbors Act of 1899,

section 404 of the Clean Water Act, and section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, the current OMB approval number for information requirements is maintained by the Corps of Engineers (OMB approval number 0710–0003, which expires on December 31, 2004).

Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Corps 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 "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, we have determined that this final rule is not a "significant regulatory action" because it does not meet any of these four criteria. This final rule adjusts the Class I civil penalty amounts for violations of permit conditions and limitations for activities that involve discharges of dredged or fill material into waters of the United States and/or the construction and management of artificial reefs in navigable waters.

Executive Order 13132

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires the Corps 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." The phrase "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."

This final rule does not have Federalism implications. We do not believe that adjusting our Class I civil penalties to account for inflation will have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This final rule does not impose new substantive requirements. In addition, this final rule will not impose any additional substantive obligations on State or local governments since it is applicable only to permittees who violate the conditions and limitations of certain Corps permits. Therefore, Executive Order 13132 does not apply to this final rule.

Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions.

For purposes of assessing the impacts of this final rule on small entities, a small entity is defined as : (1) A small business based on Small Business Administration size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of the final rule on small entities, we believe that this action will not have a significant economic impact on a substantial number of small entities. The Corps regulations at 33 CFR 326.6 had set the Class I civil penalties under section 309(g)(2)(A) at no more than $10,000 per violation, with a maximum of $25,000. The Class I civil penalties under section 205 of the National Fishing Enhancement Act could have been up to $10,000 per violation. The final rule increases those Class I civil penalties by 10 percent, in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended. The final rule is consistent with current agency practice, does not impose new substantive requirements, and therefore would not have a significant economic impact on a substantial number of small entities.

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 agencies generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires the agencies 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 Corps to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted. Before the Corps establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, they 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 regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that this final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Previously, in 33 CFR 326.6, the Class I civil penalties under section 309(g)(2)(A) of the Clean Water Act could not exceed $10,000 per violation, with a $25,000 maximum. A Class I civil penalty under section 205(e) of the National Fishing Enhancement Act

could not exceed $10,000 for each violation. This final rule adjusts those civil penalties, through 10 percent increases to account for inflation, as required by the Federal Civil Penalties Adjustment Act of 1990, as amended. Under this final rule, the Class I civil penalties under section 309(g)(2)(A) of the Clean Water Act cannot exceed $11,000 per violation, with a $27,500 maximum. Under this final rule, a Class I civil penalty under section 205(e) of the National Fishing Enhancement Act cannot exceed $11,000 for each violation. This final rule is consistent with current agency practice, does not impose new substantive requirements and therefore does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Therefore, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA. For the same reasons, we have determined that this final rule contains no regulatory requirements that might significantly or uniquely affect small governments. Therefore, this final rule is not subject to the requirements of section 203 of UMRA.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note) directs us to use voluntary consensus standards in our regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

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

Executive Order 13045

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the final rule on children, and explain why the regulation is preferable to other potentially effective and reasonably feasible alternatives.

This final rule is not subject to this Executive Order because it is not economically significant as defined in Executive Order 12866. In addition, it does not concern an environmental or safety risk that we have reason to believe may have a disproportionate effect on children.

Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires agencies to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The phrase "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 the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. This final rule adjusts the civil penalties in 33 CFR 326.6 through 10 percent increases to account for inflation, as required by the Federal Civil Penalties Adjustment Act of 1990, as amended. It is generally consistent with current agency practice and does not impose new substantive requirements. Therefore, Executive Order 13175 does not apply to this final rule.

Environmental Documentation

The Corps prepares appropriate environmental documentation, including Environmental Impact Statements when required, for all permit decisions. Therefore, environmental documentation under the National Environmental Policy Act is not required for this final rule. This final rule only revises our Class I civil penalties to account for inflation, as required by the Federal Civil Penalties Adjustment Act of 1990, as amended. Appropriate environmental documentation has been, or will be, prepared for each permit action that is subject to the Class I administrative penalty process.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended 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. We 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. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Executive Order 12898

Executive Order 12898 requires that, to the greatest extent practicable and permitted by law, each Federal agency must make achieving environmental justice part of its mission. Executive Order 12898 provides that each Federal agency conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under such programs, policies, and activities because of their race, color, or national origin.

This final rule is not expected to negatively impact any community, and therefore is not expected to cause any disproportionately high and adverse impacts to minority or low-income communities. This final rule relates solely to the adjustments to Class I civil penalties under section 309(g)(2)(A) of the Clean Water Act and section 205(e) of the National Fishing Enhancement Act to account for inflation.

Executive Order 13211

This final rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use

of energy. This final rule relates only to the adjustments to Class I civil penalties under section 309(g)(2)(A) of the Clean Water Act and section 205(e) of the National Fishing Enhancement Act to account for inflation. This final rule is consistent with current agency practice, does not impose new substantive requirements, and therefore will not have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 33 CFR Part 326

Administrative practice and procedure, Intergovernmental relations, Investigations, Law enforcement, Navigation (Water), Water pollution control, Waterways.

Dated: June 18, 2004.

Carl A. Strock,

Major General, U.S. Army, Director of Civil Works.

■ For the reasons set forth in the preamble, the Corps amends 33 CFR part 326 as follows:

PART 326—ENFORCEMENT

■ 1. The authority citation for 33 CFR part 326 is revised to read as follows:

Authority: 33 U.S.C. 401 *et seq.*; 33 U.S.C. 1344; 33 U.S.C. 1413; 33 U.S.C. 2104; 33 U.S.C. 1319; 28 U.S.C. 2461 note.

■ 2. Amend § 326.6 by revising paragraph (a)(1) to read as follows:

§ 326.6 Class I administrative penalties.

(a) *Introduction.* (1) This section sets forth procedures for initiation and administration of Class I administrative penalty orders under section 309(g) of the Clean Water Act, and section 205 of the National Fishing Enhancement Act. Under section 309(g)(2)(A) of the Clean Water Act, Class I civil penalties may not exceed $11,000 per violation, except that the maximum amount of any Class I civil penalty shall not exceed $27,500. Under section 205(e) of the National Fishing Enhancement Act, penalties for violations of permits issued in accordance with that Act shall not exceed $11,000 for each violation.

* * * * *

[FR Doc. 04–14396 Filed 6–24–04; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

33 CFR Part 334

United States Navy Restricted Area, Coasters Harbor Island, Naval Station Newport, RI

AGENCY: United States Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers is amending its regulations to establish a restricted area on the east side of the East Passage of Narragansett Bay around Coasters Harbor Island in the vicinity of Naval Station Newport. This amendment would prohibit vessels and persons from entering the waters immediately adjacent to Coasters Harbor Island and enable the Navy to enhance safety and security around Coasters Harbor Island. It will create an area of separation between general navigation on the East Passage of Narragansett Bay and Naval Station Newport. The amendment is necessary to safeguard government personnel and property plus U.S. government contractor facilities located onboard Naval Station Newport from sabotage and other subversive acts, accidents, or incidents of similar nature. These regulations are also necessary to protect the public from potentially hazardous conditions that may exist as a result of Navy use and security of the area.

DATES: *Effective Date:* July 26, 2004.

ADDRESSES: U. S Army Corps of Engineers, ATTN: CECW–CO, 441 G Street, NW, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Kirk Stark, Headquarters Regulatory Branch, Washington, DC at (202) 761–5904, or Mr. Michael J. Elliott, Corps of Engineers, New England District, Regulatory Branch, at (978) 318–8131 or (800) 343–4789.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the River and Harbor Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX, of the Army Appropriations Act of 1919 (40 Stat.892; 33 U.S.C. 3) the Corps is amending the restricted area regulations in 33 CFR Part 334 by adding Section 334.82 which establishes a restricted area in the navigable waters immediate adjacent to Coasters Harbor Island and enclosing the island and mainland shoreline of Naval Station Newport from Coddington Point south to the Naval Hospital on the eastern side of the East Passage of Narragansett Bay in Newport, Rhode Island. By establishment of the restricted area the Navy can better protect the Naval War College and vessels and personnel stationed at the facility and the general public. The regulations will allow the Navy to keep persons and vessels out of the area at all times, except with the permission of the Commanding Officer Naval Station Newport, USN Newport, Rhode Island or his/her authorized representative.

Procedural Requirements

a. Review Under Executive Order 12866

This rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. Review Under the Regulatory Flexibility Act

This rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.*, small businesses and small governments). The Corps expects that the economic impact of this new restricted area would have practically no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic and accordingly, certifies that this proposal will have no significant economic impact on small entities.

c. Review Under the National Environmental Policy Act

The New England District has prepared an Environmental Assessment (EA) for this action. The District has concluded, based on the minor nature of the additional restricted area, that this action will not have a significant impact to the quality of the human environment, and preparation of an Environmental Impact Statement (EIS) is not required. The EA may be reviewed at the New England District office listed at the end of **FOR FURTHER INFORMATION CONTACT**, above.

d. Unfunded Mandates Act

This rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small Governments will not be significantly and uniquely affected by this rulemaking.

e. Submission to Congress and the General Accounting Office

Pursuant to section 801(a)(1)(A) of the Administrative Procedure Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, the Army has submitted a report containing this Rule to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office. This Rule is not a major Rule within the meaning of Section 804(2) of the Administrative Procedure Act, as amended.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

■ For the reasons set out in the preamble, the Corps amends 33 CFR Part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for Part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

■ 2. Section 334.82 is added to read as follows:

§ 334.82 Narragansett Bay, East Passage, Coasters Harbor Island, Naval Station Newport, Newport, Rhode Island, Restricted Area.

(a) *The area.* The waters within a "C-shaped" area adjacent to and surrounding Coasters Harbor Island beginning at Coddington Point at latitude 41°31′24.0″ N, longitude 71°19′24.0″ W; thence west southwest to latitude 41°31′21.5″ N, longitude 71°19′45.0″ W; thence south southwest to latitude 41°31′04.2″ N, longitude 71°19′52.8″ W; thence due south to latitude 41°30′27.3″ N, longitude 71°19′52.8″ W; thence south southeast to 41°30′13.8″ N, longitude 71°19′42.0″ W; thence southeast to latitude 41°30′10.2″ N, longitude 71°19′32.6″ W; thence due east to latitude 41°30′10.2″ N, longitude 71°19′20.0″ W; thence northerly along the mainland shoreline to the point of origin.

(b) *The regulation.* All persons, swimmers, vessels and other craft, except those vessels under the supervision or contract to local military or Naval authority, vessels of the United States Coast Guard, and Federal, local or State law enforcement vessels, are prohibited from entering the restricted areas without permission from the Commanding Officer Naval Station Newport, USN, Newport, Rhode Island or his/her authorized representative.

(c) *Enforcement.* (1) The regulation in this section, promulgated by the United States Army Corps of Engineers, shall be enforced by the United States Navy, Commanding Officer Naval Station Newport, Newport, Rhode Island and/or other persons or agencies as he/she may designate.

Dated: June 21, 2004.

Michael B. White,

Chief, Operations Division, Directorate of Civil Works.

[FR Doc. 04–14398 Filed 6–24–04; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AD01

Lake Roosevelt National Recreation Area, Personal Watercraft Use

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This rule designates areas where personal watercraft (PWC) may be used in Lake Roosevelt National Recreation Area, Washington. This rule implements the provisions of the National Park Service (NPS) general regulations authorizing park areas to allow the use of PWC by promulgating a special regulation. The NPS Management Policies 2001 require individual parks to determine whether PWC use is appropriate for a specific park area based on an evaluation of that area's enabling legislation, resources and values, other visitor uses, and overall management objectives.

EFFECTIVE DATE: This rule is effective June 25, 2004.

ADDRESSES: Mail inquiries to Superintendent, Lake Roosevelt National Recreation Area, 1008 Crest Drive, Coulee Dam, WA 99116 or e-mail *laro@den.nps.gov.*

FOR FURTHER INFORMATION CONTACT: Kym Hall, Special Assistant, National Park Service, 1849 C Street, NW., Room 3145, Washington, DC 20240. Phone: (202) 208–4206. e-mail: *Kym_Hall@nps.gov.*

SUPPLEMENTARY INFORMATION:

Background

Personal Watercraft Regulation

On March 21, 2000, the National Park Service published a regulation (36 CFR 3.24) on the management of personal watercraft (PWC) use within all units of the national park system (65 FR 15077). This regulation prohibits PWC use in all national park units unless the NPS determines that this type of water-based recreational activity is appropriate for the specific park unit based on the legislation establishing that park, the park's resources and values, other visitor uses of the area, and overall management objectives. The regulation banned PWC use in all park units effective April 20, 2000. The regulation established a 2-year grace period for 21 park units with existing PWC use to consider whether PWC use should be allowed.

Description of Lake Roosevelt National Recreation Area

Lake Roosevelt National Recreation Area was established in eastern Washington State in 1946 following the Secretary of the Interior's approval of a Tri-Party Agreement among the National Park Service, the Bureau of Reclamation, and the Bureau of Indian Affairs. The reservoir and related lands were administered as the recreation area under this agreement until 1974 when Interior Secretary Rogers C.B. Morton directed that the agreement for the management of the lake be expanded to include the Confederated Tribes of the Colville Reservation and the Spokane Tribe of Indians. Secretary Morton's directive was prompted by the Interior Solicitor's opinion that the tribes have exclusive rights to hunting, boating, and fishing within those areas of the reservoir that are within the boundaries of the two Indian reservations. An accord was reached on April 5, 1990, when the Secretary of the Interior approved the Lake Roosevelt Cooperative Management Agreement. The agreement confirmed and established management authority of the two Indian tribes over the portions of Lake Roosevelt and related lands within the boundaries of their respective reservations that were previously administered as part of the national recreation area. In 1997, the name of the park was changed from Coulee Dam National Recreation Area to Lake Roosevelt National Recreation Area.

In the Lake Roosevelt Cooperative Management Agreement, Lake Roosevelt National Recreation Area is defined as the waters and lands managed by the National Park Service. Lake Roosevelt National Recreation Area consists of 312 miles of shoreline along the Columbia River. The National Park Service administers 47,438 acres of the 81,389-acre water surface (at full pool), and 12,936 acres of adjacent land. The lands of Lake Roosevelt National Recreation Area consist primarily of a narrow band of shore above the maximum high water mark (1,290 feet), which was originally

purchased by the Bureau of Reclamation for construction of the reservoir. The national recreation area also includes shoreline along about 29 miles of the Spokane River Arm of the lake and about 7 miles along the Kettle River Arm. Most of the remainder of the shoreline and surface area of Lake Roosevelt lies within the reservation boundaries of the Spokane Tribe and the Colville Confederated Tribes and is not part of the national recreation area. The Bureau of Reclamation retains the management of the dam, an area immediately around the dam, and a few other locations that are necessary for operating the reservoir.

The NPS at Lake Roosevelt preserves and protects a rich cultural history throughout the park. Nine thousand years of human use of the area is evident throughout the park through a variety of archeological resources. Historical features such as St. Paul's Mission and Fort Spokane attest to a more recent history. The natural features around the lake tell the story of the Ice Age Floods that shaped this landscape about 13,000 years ago. The recreation area is home to many species of wildlife and fish, including bald eagles, peregrine falcons, black bear, kokanee salmon and walleye. Ponderosa Pine and Douglas Fir are plentiful. Popular types of recreation include fishing, swimming, boating, water skiing, picnicking, and camping from vessels and vehicles.

Purpose of Lake Roosevelt National Recreation Area

The purpose and significance statements below are from Lake Roosevelt's Strategic Plan (NPS 2000) and General Management Plan (NPS 2000). Lake Roosevelt National Recreation Area was established for the following purposes:

(1) To provide opportunities for diverse, safe, quality, outdoor recreational experiences for the public.

(2) To preserve, conserve, and protect the integrity of natural, cultural, and scenic resources.

(3) To provide opportunities to enhance public appreciation and understanding about the area's significant resources. The Recreation Area has no specific enabling legislation and was created under an act passed in 1946 authorizing the administration of the areas by the NPS for recreational use pursuant to cooperative agreements. [Act of August 7, 1946, 16 U.S.C. 17j–2(b)].

Significance of Lake Roosevelt National Recreation Area

The following statements summarize the significance of Lake Roosevelt National Recreation Area:

(1) It offers a wide variety of recreation opportunities in a diverse natural setting on a 154-mile-long lake that is bordered by 312 miles of publicly owned shoreline that is available for public use.

(2) It contains a large section of the upper Columbia River and a record of continuous human occupation dating back more than 9,000 years.

(3) It is contained within three distinct geologic provinces—the Okanogan Highlands, the Columbia Plateau, and the Kootenay Arc, which were sculpted by Ice Age floods.

The park's mission statement is as follows: As a unit of the national park system, Lake Roosevelt National Recreation Area is dedicated to conserving unimpaired, the natural and cultural resources and recreational and scenic values of Lake Roosevelt for the enjoyment, education, and inspiration of this and future generations. The recreation area also shares responsibility for advancing a great variety of programs designed to help extend the benefits of natural and cultural resource conservation and outdoor recreation.

Authority and Jurisdiction

Under the National Park Service's Organic Act of 1916 (Organic Act) (16 U.S.C. 1 *et seq.*) Congress granted the NPS broad authority to regulate the use of the Federal areas within the National Park System. In addition, the Organic Act (16 U.S.C. 3) allows the NPS, through the Secretary of the Interior, to "make and publish such rules and regulations as he may deem necessary or proper for the use and management of the parks * * *"

16 U.S.C. 1a–1 states, "The authorization of activities shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established * * *"

The NPS's regulatory authority over waters subject to the jurisdiction of the United States, including navigable waters and areas within their ordinary reach, is based upon the Property and Commerce Clauses of the U.S. Constitution. In regard to the NPS, Congress in 1976 directed the NPS to "promulgate and enforce regulations concerning boating and other activities on or relating to waters within areas of the National Park System, including waters subject to the jurisdiction of the United States * * *" (16 U.S.C. 1a–2(h)). In 1996 the NPS published a final rule (61 FR 35136, July 5, 1996) amending 36 CFR 1.2(a)(3) to clarify its authority to regulate activities within the National Park System boundaries occurring on waters subject to the jurisdiction of the United States.

PWC Use at Lake Roosevelt National Recreation Area

A variety of watercraft can be found on Lake Roosevelt during the summer season, *e.g.*, ski boats, PWC, runabouts, day cruisers, sailboats (some with auxiliary motors), houseboats, and, to a lesser degree, canoes, kayaks, and rowboats. Activities on the lake associated with boating include sightseeing, water skiing, fishing, swimming, camping, picnicking, and sailing. The park estimates that there were over 50,000 boat launches during the 2001 primary boating season based on the launch fees counted at the park. Most boaters reside within 100 miles of Lake Roosevelt but others come from cities and communities throughout Washington, as well as from Idaho, Oregon and Canada. PWC use is estimated at approximately 56 PWC users on a peak use summer day in 2002, increasing to an average of 62 PWC users per peak use day by 2012.

PWC use began on Lake Roosevelt during the 1980s but did not become fairly common until the mid-1990s. PWC are often used as a houseboat accessory. Activities undertaken by PWC on Lake Roosevelt include running up and down sections of the lake, towing skiers, jumping wakes, and general boating activities. Surveys of boat trailers conducted in 2001 and 2002 estimate the number of PWC to be approximately 4% of all boating use at Lake Roosevelt. PWC are allowed to launch, operate, and beach from dawn to dusk throughout the national recreation area. The primary PWC use season is June through September with some use from April through May and October through December, but no use in winter months because the weather and water is generally too cold.

In the past, PWC were regulated as vessels under the Superintendent's Compendium and, along with other vessels, were allowed in all areas of the lake. The Superintendent's Compendium is terminology the NPS uses to describe the authority provided to the Superintendent under 36 CFR 1.5 and 1.7. It allows for local, park-specific regulations for a variety of issues and under specific criteria. Before the closure, areas 100 feet around swim beaches, marinas, and narrow sections

of the lake had speed or "flat-wake" restrictions applicable to all vessels, based on Washington State boating regulations. In addition, before the closure, flat-wake zones on the lake included Hawk Creek from the waterfall at the campground to an area called "the narrows" and on the Kettle River above the Napoleon Bridge. Crescent Bay Lake, located near Lake Roosevelt but not a connected waterway, was closed to all motorized craft. In flat-wake zones vessels and PWC could not exceed flat-wake speed, which is defined as a minimal disturbance of the water by a vessel in order to prevent damage or injury.

None of the concessioners at Lake Roosevelt currently rent PWC. Within 60 to 100 miles of the park, a total of five PWC dealerships were identified in Wenatchee, Spokane, and Okanogan. No PWC dealerships were identified closer to the park. A total of three rental shops were found within 30 miles of the park including Banks Lake, Sun Lake, and Blue Lake.

Within 100 miles of Lake Roosevelt National Recreation Area there are several major lakes and many smaller lakes that allow PWC. The larger lakes include Banks Lake and Lake Chelan in Washington and Lake Coeur d'Alene and Lake Pend Oreille in Idaho.

Some research suggests that some segments of the public view PWC as a "nuisance" due to their noise, speed, and overall effects on the environment, while others view PWC as no different from other watercraft and believe PWC users have a "right" to enjoy their sport. There has been some conflict between PWC and fishermen, canoeists, and swimmers at Lake Roosevelt.

A total of only eight safety incidents involving PWC were reported on Lake Roosevelt during the years 1997 through 2002.

Notice of Proposed Rulemaking and Environmental Assessment

On February 6, 2004, the National Park Service published a Notice of Proposed Rulemaking (NPRM) for the operation of PWC at Lake Roosevelt National Recreation Area (69 FR 5799). The proposed rule for PWC use was based on alternative B in the Environmental Assessment (EA) prepared by NPS for Lake Roosevelt. The EA was available for public review and comment from April 28 to May 28, 2003, and the NPRM was available for public comment from February 6 to April 6, 2004.

The purpose of the environmental assessment was to evaluate a range of alternatives and strategies for the management of PWC use at Lake Roosevelt to ensure the protection of park resources and values while offering recreational opportunities. The analysis assumed alternatives would be implemented beginning in 2002 and considered a 10-year use period, from 2002 to 2012. In addition, the analysis assumed that PWC annual use will increase approximately 1% annually. Also, the analysis assumed that, due to the narrow and linear characteristics of the reservoir, each PWC that launches will recreate on waters managed by both NPS and tribal entities during an average trip, regardless of launch point. The NPS assumes no jurisdiction over tribal waters and generally does not enforce regulations in those areas; however, because of existing Memorandums of Understanding with the tribes the park may respond to law enforcement or emergency situations on tribal waters.

The EA evaluated three alternatives concerning the use of PWC at Lake Roosevelt National Recreation Area. Alternative A allows PWC use under a special NPS regulation in accordance with NPS Management Policies 2001, park practices, and state regulations. That is, after the effective date of a final rule, PWC use would be the same as it was before the closure on November 7, 2002. Therefore, under Alternative A, PWC use would be allowed throughout the recreation area, with limitations only in areas where restrictions existed before the closure. These areas include the following: Crescent Bay Lake (motorized watercraft restricted), Upper Kettle River, above the Napoleon Bridge (flat wake), and Upper Hawk Creek from the waterfall near the campground through the area known as the "narrows" (flat wake). Launch and retrieval of PWC would continue to be permitted only at designated boat launch ramps within Lake Roosevelt National Recreation Area. PWC users would be able to land anywhere along the shoreline, except in designated swimming areas. All nonconflicting State and Federal watercraft laws and regulations would continue to be enforced.

As with Alternative A, Alternative B reinstates PWC use under a special regulation, but specific limits and use areas would be defined. However, based on comments received from the public during the EA scoping process and through the comment period for the EA, the NPRM proposed to implement Alternative B with one modification; the Kettle River would be closed to PWC above the Hedlund Bridge. Under Alternative B, PWC use would be reinstated within Lake Roosevelt in most locations of the recreation area where it was allowed prior to November 7, 2002 with some new restrictions. Under this alternative, the current flat-wake zone in Hawk Creek and the restriction on motorized watercraft use on Crescent Bay Lake would remain. In addition, extra flat-wake speed zoning would be implemented. These flat-wake restrictions would apply to the following areas: Within 200 feet from launch ramps, marina facilities, campgrounds, beaches occupied by swimmers, water skiers and other persons in the water and the Spokane Arm from 200 feet west of the Two Rivers Marina on the downstream end, to 200 feet east of the Fort Spokane launch ramp on the upstream end, above the vehicle bridge. In addition to the extra flat-wake zones, PWC use would be prohibited on the Kettle River from Hedlund Bridge, north to the headwaters. Except for Napoleon Bridge launch on the Kettle River where PWC launching would be prohibited, launch and retrieval of PWC would be permitted only at designated boat launch ramps within Lake Roosevelt National Recreation Area. As with Alternative A, PWC users would be able to land anywhere along the shoreline, except in designated swimming areas and all state and federal watercraft laws and regulations would continue to be enforced. The no-action alternative, would continue the current closure on PWC use within this national park system unit.

As stated in the NPRM, based on the environmental analysis prepared for PWC use at Lake Roosevelt National Recreation Area, Alternative B is the preferred alternative and is also considered the environmentally preferred alternative because it best fulfills park responsibilities as trustee of this sensitive habitat; ensuring safe, healthful, productive, and aesthetically and culturally pleasing surroundings; and attaining a wider range of beneficial uses of the environment without degradation, risk of health or safety, or other undesirable and unintended consequences.

Summary of Comments

The proposed rule was published for public comment on February 6, 2004 (69 FR 5799), with the comment period lasting until April 6, 2004. The National Park Service received 19 timely written responses regarding the proposed regulation. All of the responses were separate letters. Of the 19 separate letters, 14 were from individuals, 4 from organizations, and 1 from a public agency. Within the following discussion, the term "commenter" refers to an individual, organization, or public

agency that responded. The term "comments" refers to statements made by a commenter.

General Comments

1. Several commenters stated that the analysis and restrictions should include all motorized watercraft and not be limited to only PWC.

NPS Response: The EA was not designed to determine if personal watercraft caused more environmental damage to park resources than other vessels, but rather to determine if personal watercraft use was consistent with the park's purposes and management goals and objectives. An analysis was done on the management of personal watercraft in order to meet the requirement of the NPS general regulations 36 CFR 3.24, for PWC use.

2. Several commenters stated that the proposed rule does not comply with Park's General Management Plan because it allows PWC use upstream of the Hedlund Bridge on the Kettle River.

NPS Response: The implementation of this final rule is consistent with the Lake Roosevelt National Recreation Area General Management Plan, which allows for continuing PWC use subject to additional controls as necessary. The final rule, which is based on the updated Preferred Alternative B, does not allow PWC use upstream of the Hedlund Bridge on the Kettle River.

3. One commenter stated that the management of PWC by the NPS was inconsistent with the Tri-Party Agreement signed in 1946 by the Bureau of Reclamation, National Park Service and the Bureau of Indian Affairs.

NPS Response: PWC use under this final rule will be managed in accordance with state boating regulations with additional management prescriptions included as part of this alternative. The prescriptions are within the authority of the National Park Service to regulate recreational activities in areas under National Park Service jurisdiction. The Lake Roosevelt Cooperative Management Agreement, signed by the Secretary of the Interior on April 5, 1990, recognizes Lake Roosevelt National Recreation Area as an existing unit of the national park system and as such, subject to all NPS laws, regulations, policies and guidelines.

4. Several commenters stated that the analysis failed to adequately address NPS impairment policies and mandates.

NPS Response: The "Summary of Laws and Policies" section in the "Environmental Consequences" chapter of the EA summarizes the three overarching laws that guide the National Park Service in making decisions concerning protection of park resources. These laws, as well as others, are also reflected in the NPS Management Policies. An explanation of how the Park Service applied these laws and policies to analyze the effects of personal watercraft on Lake Roosevelt National Recreation Area resources and values can be found under "Impairment Analysis" in the "Methodology" section of the EA.

An impairment is an impact that, in the professional judgement of the NPS manager, would harm the integrity of park resources or values. In the analysis used in the PWC use EA, an impairment to a particular park resource or park value must rise to the magnitude of a major impact, as defined by factors such as context, duration, and intensity. For each resource topic, the Environmental Assessments establish thresholds or indicators of magnitude of impact. An impact approaching a "major" level of intensity is one indication that impairment could result. For each impact topic, when the intensity approached "major," the park would consider mitigation measures to reduce the potential for "major" impacts, thus reducing the potential for impairment.

5. One commenter stated that the proposed rule gave the Superintendent of Lake Roosevelt National Recreation Area too much discretion to react contrarily to public preference for PWC use.

NPS Response: Section 1.5 of Title 36 of the Code of Federal Regulations authorizes a park superintendent to temporarily limit, restrict, or terminate access to a park area to all public use or to a specific use or activity. Except in emergency situations, prior to implementing or terminating a restriction, condition, public use limit or closure, the superintendent will prepare a written determination justifying the action. The determination will set forth the reason(s) the restriction or closure has been established and an explanation of why less restrictive measures will not suffice. This authority is the same authority that is given to all superintendents to manage visitor use activities in any unit of the national park system.

6. One commenter stated that the analysis considered for the proposed rule does not include adequate studies on visitor experience related to PWC use.

NPS Response: The scope of the EA did not include conducting site specific studies regarding potential effects of PWC use on the Lake Roosevelt National Recreation Area. Analysis of potential impacts of PWC use on the national recreation area was based on best available data, input from park staff, and the results of analysis using that data.

7. One commenter expressed concern that the water quality analysis did not take into account the actual lake level, which is currently well below full pool, when analyzing impacts from PWC use on water quality.

NPS Response: Although the analysis did not look at the lower lake levels described in this comment, the volume of water required for dilution was calculated to be such a small volume that even with lower lake levels impacts would be negligible adverse.

8. One commenter requested additional information regarding the statement from Bluewater Network that research at Lake Mead, Nevada, showed PWC dump 25–30% of unburned fuel into the water.

NPS Response: The report by the Bluewater Network cited in the Selected Bibliography section of the EA is "Jet Position Paper" (2001) available on the Web at *http://www.earthisland.org/bw/jetskipos.htm*. Information from this article is not used in the EA. In appendix A of the EA, an emission rate of 3 gal./hour is attributed to the California Air Research Board (CARB 1998). This is based on the CARB (1998, 1999) estimate of 25–30% unburned fuel discharged into the water. In Bluewater Network (2001), reference is made to figures in Personal Watercraft Illustrated wherein model year 2000 personal watercraft on average consume 15.1 gallons of fuel per hour at full throttle and can dump between 25 and 30% of the fuel unburned into the water or 3.79 to 4.53 gal/hour. The emission rate of 3 gal/hour used in calculations of impacts to water quality is a mid-point between 3 gallons in 2 hours (1.5 gal/hour; NPS 1999) and 3.79 to 4.53 gal/hour (Personal Watercraft Illustrated and Bluewater Network 2001). The reference in the comment to "25%–30% of unburned fuel in Lake Mead, Nevada" cannot be located in the Bluewater Network (2001) article, and therefore, the raw data also cannot be located.

9. One commenter expressed concern that there was little discussion of cumulative impacts to water quality in the analysis.

NPS Response: Cumulative impacts to water quality are not ignored in the EA. Cumulative impacts are discussed for each of the three alternatives on pages 95–96 and 98–99. The challenge in the EA was to quantify the impacts to water quality from personal watercraft, other motorized vessels, and from other sources of petroleum-based organic compounds typical of those emitted from personal watercraft within the

Columbia River watershed. Contributions of organic pollutants from personal watercraft and other motorized vessels were estimated for the purpose of evaluating cumulative impacts from these two types of vessels. As described on pages 88–89 of the EA, Lake Roosevelt National Recreation Area does not have quantitative water quality data applicable to the evaluation of impacts to the reservoir water quality. Therefore, the contribution of organic contaminants from upstream sources cannot be quantified. Because the EA was prepared for the purpose of evaluating potential impacts from personal watercraft, which constitute an estimated 4% of all motorized vessels on the reservoir (page 84 of the EA), the contribution from these watercraft was not ignored.

10. One commenter was concerned that the EA failed to adequately address the impacts to wildlife from PWC use. The commenter felt that the absence of osprey is directly related to PWC noise level and that the EA does not address the loss of river otters.

NPS Response: The upper Hawk Creek area is designated as a flat-wake zone (page 64 of the EA) which helps minimize noise disturbance of waterfowl, including osprey. The decline of a species from an area is usually the result of many contributing factors. These factors can include a loss of habitat, loss of suitable prey organisms, increased pollution levels, or other human disturbance. The apparent decline in numbers of osprey likely is not due to just one factor (*e.g.*, personal watercraft noise levels), especially since Hawk Creek is a flat-wake zone.

River otters are listed together with beaver as common small mammals on page 63 of the EA. In the Environmental Consequences section of the EA, "Aquatic mammals such as beaver * * *" are discussed in the context of disturbance of wildlife and wildlife habitat. A list of current protected (endangered, threatened, and species of concern) species is provided in Table 9 (page 66 of the EA). The river otter is not listed by either the U.S. Fish and Wildlife Service or the Washington Department of Fish and Wildlife. If, as the comment contends, the river otter is now absent from areas where it was once abundant, it might be considered as an extirpated species—missing from a formerly occupied area but still found in other areas of its normal range.

11. Several commenters expressed concern regarding the park's ability to adequately enforce the new regulations set forth in the proposed rule.

NPS Response: PWC use under the final rule will be managed under current NPS boating regulations, which adopt Washington State Boating Laws, with additional management prescriptions included as a part of this alternative. These management strategies are more restrictive than state PWC regulations by increasing flat-wake speed zones and resource monitoring. The prescriptions are within the NPS legal mandate to regulate recreational activities under its jurisdiction, and there will be no conflict with state or other federal policies or regulations. Conflicts with regulations and policies of the Spokane Tribe of Indians and the Confederated Tribes of the Colville Reservation would exist due to differences in restrictions on the National Park Service versus tribal waters. The park anticipates staffing at current levels will be able to manage the new restrictions.

12. Two commenters were concerned that the socioeconomic impact analysis was not adequate because it failed to consider impacts to other non-PWC businesses if a ban on PWC was to continue.

NPS Response: As outlined in the EA, Alternative B is expected to have minimal, if any, impact on local/regional socioeconomics since the use of PWC at Lake Roosevelt will not be banned.

13. Two commenters expressed concern that that Spokane and Colville Confederated Tribes were not consulted with during the planning process.

NPS Response: The tribes were invited to review and comment on the draft EA before it was released to the public. The superintendent, after the public comment period closed, involved the tribal Business Councils and senior BIA representatives in discussions about the final version of the preferred alternative. Both tribes indicated that they did not intend to limit use by PWC on the portions of Lake Roosevelt that they manage and that for the NPS to act unilaterally on this issue would cause great confusion for the recreating public, result in greater impacts from PWC on the parts of the lake under their management.

Economic Summary

The preferred alternative (Alternative B) and another alternative (Alternative A) were analyzed to determine the economic impacts of allowing the use of personal watercraft (PWC) in Lake Roosevelt National Recreation Area (LARO).[1] Alternative C, which would maintain a ban on PWC in LARO, represents the baseline for this analysis. The economic impacts of Alternatives A and B are measured relative to that baseline. Alternative A would reinstate PWC use in LARO as previously managed prior to the ban subject to specific location, flat wake, launch and retrieval, and operating restrictions. Alternative B would also reinstate PWC use, but includes additional location and flat wake restrictions to mitigate watercraft safety and visitor health and safety concerns, and to enhance the overall visitor experience. Additionally, Alternative B would establish a monitoring program to determine any future impacts of allowing PWC use in LARO.

The primary beneficiaries of Alternatives A and B are the visitors who would use PWCs within the recreation area if permitted, PWC users in substitute areas outside LARO where individuals displaced from LARO ride because of the ban, and the businesses that serve PWC users. All visitors using PWCs in LARO prior to the ban are assumed to regain their full economic value for PWC use in LARO under both Alternatives A and B. PWC users who currently ride in substitute areas outside LARO are assumed to gain some economic value if these areas are less crowded than under baseline conditions due to reinstating PWC use in LARO. Finally, suppliers of PWC rentals, sales, and service, as well as local hotels, restaurants, gas stations, and other businesses that serve PWC users, will likely experience an increase in business under Alternatives A and B.

While beneficiaries may gain more economic value under Alternative A than Alternative B due to fewer restrictions, NPS was unable to quantify any differences, and considers the benefits of those two alternatives to be similar. For both Alternatives A and B, PWC users are expected to gain a total present value of benefits between $1,076,400 and $1,311,300 over the next ten years, depending on the discount rate used.[2] Businesses are expected to gain a total present value of benefits between $9,600 and $78,000, depending on the discount rate used. The total present values of these benefits are presented in Table 1, and their

[1] This summary briefly describes the results of the economic analysis presented in National Park Service 2003.

[2] Quantified economic impacts were discounted over the ten-year timeframe using both 3 and 7-percent discount rates. A 3-percent discount rate is indicated by the economics literature (*e.g.*, Freeman, 1993) and by two Federal rule-makings (61 FR 453; 61 FR 20584). A 7-percent discount rate is required by Office of Management and Budget Circular A–94.

amortized values per year are given in Table 2.

TABLE 1.—TOTAL PRESENT VALUE OF BENEFITS (THOUSANDS OF DOLLARS) FOR PERSONAL WATERCRAFT USE IN LAKE ROOSEVELT NATIONAL RECREATION AREA, 2003 TO 2012

	PWC users	Businesses	Total
Alternative A:			
Discounted at 3%[a]	$1,311.3	$12.1 to $78.0	$1,323.5 to $1,389.3
Discounted at 7%[b]	1,076.4	9.6 to 61.6	1,086.0 to 1,138.0
Alternative B:			
Discounted at 3%[a]	1,311.3	12.1 to 78.0	1,323.5 to 1,389.3
Discounted at 7%[b]	1,076.4	9.6 to 61.6	1,086.0 to 1,138.0

[a] The economics literature supports a 3-percent discount rate in the valuation of public goods (*e.g.*, Freeman, 1993). Federal rule-makings also support a 3-percent discount rate in the valuation of lost natural resource use (61 FR 453; 61 FR 20584).
[b] Office of Management and Budget Circular A–94, revised January 2003.

TABLE 2.—AMORTIZED BENEFITS PER YEAR (THOUSANDS OF DOLLARS) FOR PERSONAL WATERCRAFT USE IN LAKE ROOSEVELT NATIONAL RECREATION AREA, 2003 TO 2012[a]

	PWC users	Businesses	Total
Alternative A:			
Discounted at 3%[b]	$153.7	$1.4 to $9.1	$155.2 to $162.9.
Discounted at 7%[c]	153.3	1.4 to 8.8	154.6 to 162.0.
Alternative B:			
Discounted at 3%[b]	153.7	1.4 to 9.1	155.2 to 162.9.
Discounted at 7%[c]	153.3	1.4 to 8.8	154.6 to 162.0.

[a] This is the total present value of benefits reported in Table 1 amortized over the ten-year analysis timeframe at the indicated discount rate.
[b] The economics literature supports a 3-percent discount rate in the valuation of public goods (*e.g.*, Freeman, 1993). Federal rule-makings also support a 3-percent discount rate in the valuation of lost natural resource use (61 FR 453; 61 FR 20584).
[c] Office of Management and Budget Circular A–94, revised January 2003.

The costs associated with Alternatives A and B would accrue primarily to LARO visitors who do not use PWCs and whose recreation area experience is negatively affected by the use of PWCs within the recreation area. At LARO, non-PWC uses include boating, canoeing, fishing, and hiking. Impacts to these users may include the aesthetic costs associated with noise and visibility impacts, human health costs, ecosystem degradation costs, and safety and congestion costs. Average annual visitation to LARO was over 1.4 million people from 1998 to 2002. Most of these visitors are believed to come to the park for some form of water-based recreation. However, non-PWC users accounted for over 99 percent of total visitation.

"Nonusers" of the recreation area may also bear some costs under Alternatives A and B. For example, individuals who do not visit the recreation area may experience a reduction in economic value simply from the knowledge that the natural resources of the recreation area may be degraded by PWC use. Part of this loss may stem from a decreased assurance that the quality of the recreation area's resources is being protected for the enjoyment of future generations.

Most of the costs associated with Alternatives A and B are believed to be relatively small. Evaluating these costs in monetary terms was not feasible with currently available data, but they are qualitatively described in the economic analysis. Therefore, the benefits presented in Tables 1 and 2 above overstate the net benefits (benefits minus costs) of the different alternatives. If all costs could be quantified, the indicated net benefits for each alternative would be lower than the benefits indicated in Tables 1 and 2.

The costs associated with aesthetics, ecosystem protection, human health and safety, congestion, and nonuse values would likely be greater for Alternative A and for Alternative B due to the additional restrictions on PWC use in Alternative B. Since the quantified benefits for Alternatives A and B were the same, inclusion of these unquantified costs would reasonably result in Alternative B having the greatest level of net benefits. Therefore, based on this analysis, the selection of Alternative B as the preferred alternative was considered reasonable.

References

Freeman, A. M. III. The Measurement of Environmental and Resource Values: Theory and Methods. Washington, DC: Resources for the Future, 1993.

National Park Service. "Economic Analysis of Management Alternatives for Personal Watercraft in Lake Roosevelt National Recreation Area." Report prepared for the National Park Service by MACTEC Engineering and Consulting, Inc., BBL Sciences, Inc., and RTI International, October 2003.

Changes to the Final Rule

Based on the preceding comments and responses, the NPS has made no changes to the proposed rule language with regard to PWC operations.

Compliance With Other Laws

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and has not been reviewed by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This determination is based on the report "Economic Analysis of Management Alternatives for Personal Watercraft in Lake Roosevelt National Recreation Area" (MACTEC Engineering and Consulting, Inc., October 2003).

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by

another agency. Actions taken under this rule will not interfere with other agencies or local government plans, policies or controls. This rule is an agency specific rule.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule will have no effects on entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. No grants or other forms of monetary supplements are involved.

(4) This rule does raise novel legal or policy issues. This rule is one of the special regulations being issued for managing PWC use in National Park Units. The National Park Service published general regulations (36 CFR 3.24) in March 2000, requiring individual park areas to adopt special regulations to authorize PWC use.

Regulatory Flexibility Act

The Department of the Interior certifies that this rulemaking will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This certification is based on a report entitled report "Economic Analysis of Management Alternatives for Personal Watercraft in Lake Roosevelt National Recreation Area" (MACTEC Engineering and Consulting, Inc., October 2003).

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. This rule is an agency specific rule and does not impose any other requirements on other agencies, governments, or the private sector.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. A taking implication assessment is not required. No taking of personal property will occur as a result of this rule.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This final rule only affects use of NPS administered lands and waters. It has no outside effects on other areas by allowing PWC use in specific areas of the park.

Civil Justice Reform (Executive Order 12988)

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

Paperwork Reduction Act

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB Form 83–I is not required.

National Environmental Policy Act

As a companion document to the NPRM, NPS issued the Personal Watercraft Use Environmental Assessment for Lake Roosevelt National Recreation Area. The Environmental Assessment (EA) was open for public review and comment from April 28, 2003 to May 28, 2003. A Finding of No Significant Impact (FONSI) was signed on June 17, 2004. Copies of the FONSI may be downloaded at *http://www.nps.gov/laro* or obtained by calling 509–633–9441 ext. 110 or writing to the Superintendent, Lake Roosevelt National Recreation Area, 1008 Crest Drive, Coulee Dam, WA 99116.

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 evaluated potential effects on federally recognized Indian tribes and have determined that there are potential effects. Lake Roosevelt conducted preliminary consultation with the Spokane Tribe of Indians and the Confederated Tribes of the Colville Reservation in 2000 when the original rulemaking came into effect. Since that time, the park has continued to keep the Tribes informed in writing about various milestones during the PWC process. The Colville Tribes also commented on the EA which supports this rulemaking and supported the preferred alternative which is implemented through this rulemaking. The NPS also consulted with the Tribes on the provisions of the regulation and its possible effects on tribal waters.

Administrative Procedure Act

This final rule is effective upon publication in the **Federal Register**. In accordance with the Administrative Procedure Act, specifically, 5 U.S.C. 553(d)(1), this rule, 36 CFR 7.55(c), is exempt from the requirement of publication of a substantive rule not less than 30 days before its effective date.

As discussed in this preamble, the final rule is a part 7 special regulation for Lake Roosevelt National Recreation Area that relieves the restrictions imposed by the general regulation, 36 CFR 3.24. The general regulation, 36 CFR 3.24, prohibits the use of PWC in units of the national park system unless an individual park area has designated the use of PWC by adopting a part 7 special regulation. The proposed rule was published in the **Federal Register** (69 FR 5799) on February 6, 2004, with a 60-day period for notice and comment consistent with the requirements of 5 U.S.C. 553(b). The Administrative Procedure Act, pursuant to the exception in paragraph (d)(1), waives the section 553(d) 30-day waiting period when the published rule "grants or recognizes an exemption or relieves a restriction." In this rule the NPS is authorizing the use of PWCs, which is otherwise prohibited by 36 CFR 3.24. As a result, the 30-day waiting period before the effective date does not apply to the Lake Roosevelt National Recreation Area final rule.

The Attorney General's Manual on the Administrative Procedure Act explained that the "reason for this exception would appear to be that the persons affected by such rules are benefited by them and therefore need no time to conform their conduct so as to avoid the legal consequences of violation. The fact that an interested person may object to such issuance, amendment, or repeal of a rule does not change the character of the rule as being one "granting or recognizing exemption or relieving restriction," thereby exempting it from the thirty-day requirement." This rule is within the scope of the exception as

described by the Attorney General's Manual and the 30-day waiting period should be waived. See also, *Independent U.S. Tanker Owners Committee* v. *Skinner*, 884 F.2d 587 (DC Cir. 1989). In this case, the court found that paragraph (d)(1) is a statutory exception that applies automatically for substantive rules that relieves a restriction and does not require any justification to be made by the agency. "In sum, the good cause exception must be invoked and justified; the paragraph (d)(1) exception applies automatically" (884 F.2d at 591). The facts are that the NPS is promulgating this special regulation for the purpose of relieving the restriction, prohibition of PWC use, imposed by 36 CFR 3.24 and therefore, the paragraph (d)(1) exception applies to this rule.

In accordance with the Administrative Procedure Act, this rule is also excepted from the 30-day waiting period by the "good cause" exception in 5 U.S.C. 553(d)(3) and is effective upon publication in the **Federal Register**. As discussed above, the purpose of this rule is to comply with the 36 CFR 3.24 requirement for authorizing PWC use in park areas by promulgating a special regulation. "The legislative history of the APA reveals that the purpose for deferring the effectiveness of a rule under section 553(d) was "to afford persons affected a reasonable time to prepare for the effective date of a rule or rules or to take other action which the issuance may prompt." S.Rep. No. 752, 79th Cong., 1st Sess.15 (1946); H.R. Rep. No. 1980, 79th Cong., 2d Sess. 25 (1946)." *United States* v. *Gavrilovic*, 551 F.2d 1099, 1104 (8th Cir. 1977). The persons affected by this rule are PWC users and delaying the implementation of this rule for 30 days will not benefit them; but instead will be counterproductive by denying them, for an additional 30 days, the benefits of the rule.

List of Subjects in 36 CFR Part 7

District of Columbia, National Parks, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, the National Park Service amends 36 CFR part 7 as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

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

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

■ 2. Amend § 7.55 by revising the section title and adding new paragraph (c) to read as follows:

§ 7.55 Lake Roosevelt National Recreation Area.

* * * * *

(c) *Personal Watercraft (PWC).* (1) PWCs are allowed on the waters within Lake Roosevelt National Recreation Area except in the following areas:

(i) Crescent Bay Lake.

(ii) Kettle River above the Hedlund Bridge.

(2) Launch and retrieval of PWC are permitted only at designated launch ramps. Launching and retrieval of PWC at Napoleon Bridge launch ramp is prohibited.

(3) PWC may land anywhere along the shoreline except in designated swimming areas.

(4) PWC may not be operated at greater than flat-wake speeds in the following locations:

(i) Upper Hawk Creek from the waterfall near the campground through the area known as the "narrows" to the confluence of the lake, marked by "flat wake" buoy(s).

(ii) Within 200 feet of launch ramps, marina facilities, campground areas, water skiers, beaches occupied by swimmers, or other persons in the water.

(iii) The stretch of the Spokane Arm from 200 feet west of the Two Rivers Marina on the downstream end, to 200 feet east of the Fort Spokane launch ramp on the upstream end, above the vehicle bridge.

(5) The Superintendent may temporarily limit, restrict or terminate access to the areas designated for PWC use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives.

Dated: June 10, 2004.

Paul Hoffman,

Deputy Assistant Secretary, Fish and Wildlife and Parks.

[FR Doc. 04–14115 Filed 6–24–04; 8:45 am]

BILLING CODE 4312–52–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 50, 51, and 81

[OAR 2003–0079, FRL–7779–2]

RIN 2060–AJ99

Revision to the Preamble of the Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 1; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: The EPA issued a final rule on April 30, 2004 (69 FR 23951) that set forth certain nationally-applicable requirements for implementation of the 8-hour ozone national ambient air quality standard (NAAQS)—the phase 1 rule. Section VI.L. of the preamble (69 FR 23995), provided that petitions for review challenging the final rule should be filed in the "appropriate circuit." The Clean Air Act (CAA) provides that petitions for review of any nationally applicable regulations may be filed only in the United States Court of Appeals for the District of Columbia Circuit. This document modifies section VI.L. to clarify that petitions for review of the phase I rule must be filed in the United States Court of Appeals for the District of Columbia Circuit.

DATES: This document is effective on June 25, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. John Silvasi, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–02, Research Triangle Park, NC 27711, phone number (919) 541–5666, fax number (919) 541–0824 or by e-mail at *silvasi.john@epa.gov* or Ms. Denise Gerth, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–02, Research Triangle Park, NC 27711, phone number (919) 541–5550, fax number (919) 541–0824 or by e-mail at *gerth.denise@epa.gov*.

SUPPLEMENTARY INFORMATION: The EPA issued final rule on April 30, 2004 (69 FR 23951) that set forth certain requirements for implementation of the 8-hour ozone NAAQS. That action is referred to as the "phase 1 rule." Section VI.L. of the preamble (69 FR 23995) provides information regarding when challenges to the phase 1 rule may be filed in accordance with section 307(b) of the CAA. Section 307(b) of the CAA provides that challenges to any nationally applicable regulations may be filed only in the United States Court of Appeals for the District of Columbia

Circuit. It also provides that challenges to any locally or regionally applicable rules may be filed in the United States Court of Appeals for the appropriate circuit. However, if EPA determines that a locally or regionally applicable rule is of nationwide scope and effect, then a challenge must be filed in the United States Court of Appeals for the District of Columbia Circuit.

The phase 1 rule is a nationally applicable rule. It establishes requirements for the 8-hour ozone NAAQS and those requirements apply in a consistent manner across the nation. The rule does not establish any requirements or obligations that apply only on a local or regional basis. Thus, under section 307(b), challenges to the phase 1 rule must be filed in the United States Court of Appeals for the District of Columbia Circuit. By the reference in section VI.L. to challenges being filed in the "appropriate circuit," EPA did not intend to suggest that a Court other than the United States Court of Appeals for the District of Columbia Circuit could be appropriate or that phase 1 rule is locally or regionally applicable as that phrase is used in section 307(b). However, because EPA's statement in section VI.L. could be misconstrued, we are issuing this correction to clarify the Agency's intention by replacing the clause "appropriate circuit" with "United States Court of Appeals for the District of Columbia Circuit."

The following is the corrected language:

Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit by June 29, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See CAA section 307(b)(2).

Authority: 42 U.S.C. 7408; 42 U.S.C. 7410; 42 U.S.C. 7501–7511f; 42 U.S.C. 7601(a)(1); 42 U.S.C. 7401.

Dated: June 21, 2004.

Robert Brenner,

Acting Assistant Administrator.

[FR Doc. 04–14457 Filed 6–24–04; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 405 and 414

[CMS–1372–CN2]

RIN 0938–AM97

Medicare Program; Changes to Medicare Payment for Drugs and Physician Fee Schedule Payments for Calendar Year 2004: Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Correction of interim final rule with comment period.

SUMMARY: This document corrects technical errors that appeared in the final rule with comment period published in the **Federal Register** on January 7, 2004 entitled "Changes to Medicare Payment for Drugs and Physician Fee Schedule Payments for Calendar Year 2004."

DATES: Effective Date: This correction is effective January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Diane Milstead (410) 786–3355.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 03–32323 of January 7, 2004 (69 FR 1084), there were a number of technical errors that we are identifying and correcting in section II—Correction of Errors. Additionally, there are various revisions to Addenda B and C. (The provisions in this correction notice are effective as if they were included in the document published January 7, 2004.)

Discussion of Addenda B and C

1. There was an inadvertent omission of two supplies (Polaroid film and gonisol) from the Practice Expense Advisory Committee (PEAC) recommendations for CPT codes 76511,76511–TC, 76512, 76512–TC, 76513,76513–TC, 76516, 76516–TC, 76519,76519–TC, 76529 and 76529–TC which impacts the practice expense RVUs for these codes on page 1205 of Addendum B. In addition, the supply inputs in the CPEP database for CPT code 94240 contained incorrect quantities for two supplies (oxygen and helium), resulting in incorrect practice expense RVUs on page 1229 of Addendum B for this code and for CPT code 94240–TC. The practice expense RVUs for CPT 95144 on page 1230 were also incorrect as they reflected the wrong antigen and price. The corrected RVUs are shown in section II.2.

2. In Addendum B, we assigned incorrect status indicators on page 1154 for CPT code 36416 and on page 1165 for CPT code 47133. These corrections are reflected in section II.2.

3. In Addendum B, we assigned incorrect practice expense RVUs to CPT codes 61863 and 61867 on page 1179, and to CPT codes 88358, 88358–26 and 88358–TC on page 1218. The correct RVUs are reflected in section II.2.

4. In Addendum B, on page 1241, an incorrect short descriptor was referenced for HCPCS code G0321, and the RVUs for G0321 and G0322 were transposed. The correct short descriptor and RVUs are shown in section II.2.

5. We inadvertently omitted the following CPT codes from Addendum B: page 1218 for CPT codes 89220, 89230, and 89240. These corrections are reflected in section II.3.

6. On pages 1146 and 1243 in Addenda B and C, respectively, we assigned the incorrect work RVUs to CPT 31629. We also failed to assign practice expense RVUs in the non-facility setting for this code. The corrected RVUs are shown in section II.4.

7. On page 1215 of Addenda B, the practice expense RVUs for CPT codes 78804 and 78804–TC are revised to reflect the appropriate crosswalk. The correction can be found in section II.4.

II. Correction of Errors

■ In FR Doc. 03–32323 of January 7, 2004 (69 FR 1084), make the following corrections—

■ 1. On page 1094, column one, second sentence, revise as follows to correct the specialty code referenced for urology: "Based on the 2002 data, we found that the specialties of gynecology/oncology (specialty code 98), rheumatology (specialty code 66), and urology (specialty code 34) received more than 40 percent of total Part B revenues from drugs."

■ 2. In the Table of Addendum B, the following CPT codes are corrected to read as follows:

CPT[1] HCPCS	MOD	Status	Description	Physician work RVUs	Non-facility PE RVUs	Facility PE RVUs	Mal-practice RVUs	Non-facility total	Facility total	Global
36416	.....	B	Capillary blood draw	0.00	0.00	0.00	0.00	0.00	0.00	XXX
47133	.....	X	Removal of donor liver	0.00	0.00	0.00	0.00	0.00	0.00	XXX
61863	.....	A	Implant neuroelectrode	18.97	NA	11.80	4.79	NA	35.56	XXX
61867	.....	A	Implant neuroelectrode	31.29	NA	18.08	4.79	NA	54.16	90
76511	.....	A	Echo exam of eye	0.94	1.83	NA	0.09	2.86	NA	XXX
76511	TC	A	Echo exam of eye	0.00	1.43	NA	0.07	1.50	NA	XXX
76512	.....	A	Echo exam of eye	0.66	1.75	NA	0.11	2.52	NA	XXX
76512	TC	A	Echo exam of eye	0.00	1.45	NA	0.10	1.55	NA	XXX
76513	.....	A	Echo exam of eye, water bath	0.66	1.84	NA	0.11	2.61	NA	XXX
76513	TC	A	Echo exam of eye, water bath	0.00	1.54	NA	0.10	1.64	NA	XXX
76516	.....	A	Echo exam of eye	0.54	1.45	NA	0.08	2.07	NA	XXX
76516	TC	A	Echo exam of eye	0.00	1.20	NA	0.07	1.27	NA	XXX
76519	.....	A	Echo exam of eye	0.54	1.54	NA	0.08	2.16	NA	XXX
76519	TC	A	Echo exam of eye	0.00	1.29	NA	0.07	1.36	NA	XXX
76529	.....	A	Echo exam of eye	0.57	1.40	NA	0.10	2.07	NA	XXX
76529	TC	A	Echo exam of eye	0.00	1.15	NA	0.08	1.23	NA	XXX
88358	.....	A	Analysis, tumor	0.95	0.56	NA	0.19	1.70	NA	XXX
88358	26	A	Analysis, tumor	0.95	0.42	NA	0.12	1.49	NA	XXX
88358	TC	A	Analysis, tumor	0.00	0.14	NA	0.07	0.21	NA	XXX
94240	.....	A	Residual lung capacity	0.26	0.70	NA	0.06	1.02	NA	XXX
94240	TC	A	Residual lung capacity	0.00	0.62	NA	0.05	0.67	NA	XXX
95144	.....	A	Antigen therapy services	0.06	0.19	0.02	0.01	0.26	0.09	000
G0321 ...	.....	A	ESRD related svs home mo 2–11y	8.11	3.92	3.92	0.29	12.32	12.32	XXX
G0322 ...	.....	A	ESRD relate svs home mo 2–19	6.90	3.67	3.67	0.23	10.80	10.80	XXX

[1] All CPT codes copyright 2003 American Medical Association.

■ 3. In the Table of Addendum B, the following CPT codes are added to read as follows:

CPT[1] HCPCS2	MOD	Status	Description	Physician work RVUs	Non-facility PE RVUs	Facility PE RVUs	Mal-practice RVUs	Non-facility total	Facility total	Global
89220	.....	A	Sputum specimen collection	0.00	0.40	NA	0.02	0.42	NA	XXX
89230	.....	A	Collect sweat for test	0.00	0.44	NA	0.02	0.46	NA	XXX
89240	.....	C	Pathology lab procedure	0.00	0.00	0.00	0.00	0.00	0.00	XXX

[1] All CPT codes copyright 2003 American Medical Association.

■ 4. In the Table of Addenda B and C, the following CPT codes are corrected to read as follows:

CPT[1] HCPCS2	MOD	Status	Description	Physician work RVUs	Non-facility PE RVUs	Facility PE RVUs	Mal-practice RVUs	Non-facility total	Facility total	Global
31629	.....	A	Bronchoscopy/needle bx, each	4.09	12.79	1.45	0.16	17.04	5.70	000
78804	.....	A	Tumor imaging, whole body	1.07	11.47	NA	0.34	12.88	NA	XXX
78804	TC	A	Tumor imaging, whole body	0.00	11.10	NA	0.30	11.40	NA	XXX

[1] All CPT codes copyright 2003 American Medical Association.

III. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a notice take effect. We can waive this procedure, however, if we find good cause that notice and comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporate a statement of the finding and the reasons for it into the notice issued.

In this case, we believe that it is unnecessary to subject the corrections identified above to public comment. These errors were the result of inadvertent omissions and typographical errors in Addenda B and C. Our corrections of the pricing errors and addition of pricing information in the addenda do not substantively change any policy nor affect the established payment methodology. For this reason, we find it unnecessary to provide the opportunity for comment on the technical corrections made in this notice. Therefore, we find good cause to waive notice and comment procedures.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 2, 2004.

Ann C. Agnew,

Executive Secretary to the Department.

[FR Doc. 04–14271 Filed 6–24–04; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 409

[CMS–1469–F2]

RIN–0938–AL90

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Correcting Amendment

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule; correcting amendment.

SUMMARY: In the August 4, 2003 issue of the **Federal Register** (68 FR 46036), we published a final rule that updates the payment rates used under the prospective payment system for skilled nursing facilities for fiscal year 2004. The effective date was October 1, 2003. This correcting amendment corrects a typographical error identified in the August 4, 2003 final rule.

DATES: *Effective Date:* This correcting amendment is effective July 26, 2004.

FOR FURTHER INFORMATION CONTACT: Bill Ullman, (410) 786–5667.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 03–19677 of August 4, 2003 (68 FR 46036), there was a technical error we are identifying and correcting in the "Correction of Errors" section II of this final rule. Specifically, the August 4, 2003 final rule made a number of technical corrections to the regulations, including the revision of a cross-reference that appears in the regulations text at § 409.20(c). However, in republishing the introductory portion of paragraph (c) of § 409.20, we inadvertently used the paragraph heading for the preceding paragraph instead (paragraph (b)(2), "*Services not generally provided by (or under arrangements made by) SNFs*"). Therefore, we are publishing this final rule to restore the correct paragraph heading ("*Terminology.*") for paragraph (c) of § 409.20. The provisions in this final rule are effective July 26, 2004.

II. Correction of Errors

In FR Doc. 03–19677 of August 4, 2003 (68 FR 46036), make the following correction:

On page 46070, in the second column, the heading for paragraph (c) of § 409.20 should read, "*Terminology.*"

III. Waiver of Proposed Rulemaking and 30-day Delay in Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect. We can waive this procedure, however, if we find good cause that a notice and comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporate a statement of finding and its reasons for it into the correcting amendment issued (5 U.S.C. (b)(B)).

We find for good cause that it is unnecessary to undertake notice and public comment procedures because this correcting amendment does not make any substantive policy changes. This document makes technical corrections and conforming changes to the August 4, 2003 final rule. Therefore, for good cause we waive the notice and public comment procedures.

■ Accordingly, 42 CFR chapter IV is corrected by making the following correcting amendment:

■ The authority citation for part 409 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart C—Posthospital SNF Care

■ In § 409.20, the introductory text to paragraph (c) is revised to read as follows:

§ 409.20 Coverage of services.

* * * * *

(c) *Terminology.* In § 409.21 through § 409.36—.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 2, 2004.

Ann C. Agnew,

Executive Secretary to the Department.

[FR Doc. 04–14054 Filed 6–24–04; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 411

[CMS–1809–F5]

RIN 0938–AM99

Medicare and Medicaid Programs; Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships: Extension of Partial Delay of Effective Date

AGENCY: Centers for Medicare & Medicaid Services (CMS), DHHS.

ACTION: Final rule; extension of partial delay in effective date.

SUMMARY: This final rule further delays for 19 days, until July 26, 2004, the effective date of the last sentence of 42 CFR § 411.354(d)(1), as published in the January 4, 2001 final rule (66 FR 856). The new effective date coincides with the effective date of a March 26, 2004 interim final rule that removed this sentence from the regulation. Consequently, the last sentence of § 411.354(d)(1), as originally published in January 2001, will be automatically superseded by the March 2004 interim final rule.

DATES: *Effective date:* The effective date of the last sentence in § 411.354(d)(1) of the final rule published in the **Federal Register** on January 4, 2001 (66 FR 856) is further delayed until July 26, 2004 at which time it will be superseded by a new § 411.354(d)(1), published in the **Federal Register** on March 26, 2004 (69 FR 16054), effective on July 26, 2004.

FOR FURTHER INFORMATION CONTACT: Karen Raschke, (410) 786–0016.

SUPPLEMENTARY INFORMATION: This **Federal Register** document is available from the **Federal Register** online database through *GPO Access*, a service of the U.S. Government Printing Office. The Web site address is: *http://www.access.gpo.gov/nara/index.html.*

In addition, the information in this final rule will be available soon after publication in the **Federal Register** on our MEDLEARN Web site at *http://cms.hhs.gov/medlearn/refphys.asp.*

I. Background

Under section 1877 of the Social Security Act (Act), if a physician or a member of a physician's immediate family has a financial relationship with a health care entity, the physician may not make referrals to that entity for the furnishing of designated health services (DHS) under the Medicare program, and

the entity may not bill for the services, unless an exception applies. Many of the exceptions that apply to compensation relationships require that the amount of compensation be "set in advance." Section 411.354(d)(1) defines the term "set in advance."

Section 411.354(d)(1) was first published in the **Federal Register** on January 4, 2001 (66 FR 856) in a final rule with comment period that is commonly referred to as the "Phase I" physician self-referral final rule. The last sentence of § 411.354(d)(1), as originally published in Phase I stated that—"Percentage compensation arrangements do not constitute compensation that is 'set in advance' in which the percentage compensation is based on fluctuating or indeterminate measures or in which the arrangement results in the seller receiving different payment amounts for the same service from the same purchaser." Many of the comments we received regarding Phase I final rule opposed this language. The comments indicated that physicians are commonly paid for their professional services on a percentage compensation basis and that hospitals, academic medical centers (AMCs), medical foundations, and other health care entities would have to restructure or renegotiate thousands of physician contracts to comply with the language in § 411.354(d)(1) regarding percentage compensation arrangements. To give the agency additional time to reconsider the matter, we published a 1-year delay of the effective date of the last sentence in § 411.354(d)(1) in the **Federal Register** on December 3, 2001 (66 FR 60154). Through a series of subsequent rules, we further delayed the effective date of this provision until July 7, 2004 (see 67 FR 70322, 68 FR 20347, and 68 FR 74491). We indicated in those rules that we intended to definitively address the percentage compensation issue in the "Phase II" physician self-referral final rule.

We published the Phase II interim final rule with comment period on March 26, 2004. In Phase II, we modified our interpretation of "set in advance" to permit some percentage compensation if the methodology for calculating the compensation is set in advance and does not change over the course of the arrangement in any manner that reflects the volume or value of referrals or other business generated by the referring physician. Accordingly, we removed the last sentence of § 411.354(d)(1) and otherwise modified the provision to reflect this interpretation. Phase II becomes effective on July 26, 2004, 19 days after the expiration of the most recent delay in effective date for the last sentence of the Phase I "set in advance" definition.

II. Provisions of This Final Rule

To avoid regulatory conflict and unnecessary disruption to existing contractual arrangements in the health care industry, we are further postponing for an additional 19 days, until July 26, 2004, the effective date of the last sentence of § 411.354(d)(1) as published in Phase I. This delay is intended to coincide with the effective date of the Phase II physician self-referral interim final rule. Accordingly, on July 26, 2004, § 411.354(d)(1) of Phase I will automatically be superseded by the revised § 411.354(d)(1), as published in Phase II. In the meantime, compensation that is required to be "set in advance" for purposes of compliance with section 1877 of the Act may continue to be based on percentage compensation methodologies, including those in which the compensation is based on a percentage of a fluctuating or indeterminate measure. We note that the remaining provisions of the Phase I § 411.354(d)(1) will still apply and that all other requirements for exceptions must be satisfied (including, for example, the fair market value and "volume and value" requirements.)

III. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking and invite public comment on the proposed rule. This procedure can be waived, however, if an agency finds good cause that the notice and comment rulemaking procedure is impracticable, unnecessary, or contrary to the public interest and if the agency incorporates in the rule a statement of such a finding and the reasons supporting that finding.

We do not believe that a delay in effective date is subject to notice and comment procedures when the regulatory provision at issue has never become effective. Nevertheless, for the benefit of the public, we set forth below the reasons why our implementation of this action without opportunity for public comment satisfies the good cause exception in 5 U.S.C. 553(b). We find that seeking public comment on this action would be impracticable and unnecessary.

We believe public comment is unnecessary because we are implementing this additional delay of effective date as a result of our review of the public comments that we received on the January 4, 2001 physician self-referral final rule. We do not believe that it is necessary to offer yet another opportunity for public comment on the same issue in the limited context of whether to delay this sentence of the regulation.

In addition, we find that seeking public comment on this delay in effective date will be impracticable and contrary to the public interest because it would implement, for 19 days, a statutory interpretation that we have rejected in a recent interim final rule. Even a brief implementation of the rejected statutory interpretation carries the potential for significant disruption in the health care industry. As discussed above, we understand from public comments and the comments we received on the December 3, 2001 interim final rule that, unless we further delay the effective date of the last sentence of § 411.354(d)(1), many physician contracts with hospitals, AMCs, and other entities furnishing DHS will not be in compliance with the physician self-referral prohibition. Consequently, these physicians will be unable to refer to the hospitals, AMCs, and other DHS entities to whom they are contractually obligated to provide professional or other services, and these DHS entities will be prohibited from billing Medicare for any services furnished as a result of a prohibited referral. We are concerned that this would unnecessarily disrupt the practice of medicine, inconvenience Medicare beneficiaries, or interfere with beneficiary medical care and treatment.

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program; Program No. 93.774, Medicare—Supplementary Medical Insurance Program; and Program No. 93.778, Medical Assistance Program)

Dated: May 13, 2004.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Approved: June 17, 2004.

Tommy G. Thompson,

Secretary.

[FR Doc. 04–14272 Filed 6–24–04; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–1650; MM Docket No. 02–290; RM–10527, RM–10772, RM–10773]

Radio Broadcasting Services; Beaver, UT, Coalville, UT, Dinosaur, CO, Elsinore, UT, Fort Bridger, WY, Franklin, ID, Green River, WY, Lyman, WY, Manila, UT, Monroe, UT, Nephi, UT, Preston, ID, Rangely, CO, Richfield, UT, Rock Springs, WY, Saratoga, WY, Smithfield, UT Tremonton, UT, and Wamsutter, WY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to proposals in this proceeding filed by Rural Pima Broadcasting, Millcreek Broadcasting, LLC, 3 Point Media-Franklin, LLC, Sanpete County Broadcasting Company, M. Kent 3 Point Media-Utah, LLC, this document grants multiple channels substitutions and changes of community of license in Utah, Colorado, Idaho and Wyoming. Specifically, this document substitutes Channel 248C for Channel 248C1 at Franklin, Idaho, reallots Channel 248C to Coalville, Utah, and modifies the Station KTPM license to specify operation on Channel 248C at Coalville. To replace the loss of the sole local service at Franklin, this document substitutes Channel 255C3 for Channel 256C1 at Fort Bridger, Wyoming, reallots Channel 255C3 to Franklin, Idaho, and modifies the Station KNYN license to specify operation on Channel 255C3 at Franklin. In order to replace the loss of the sole local service at Fort Bridger, this document substitutes Channel 280C for Channel 280A at Smithfield, Utah, reallots Channel 280C to Fort Bridger, and modifies the Station KGNT license to specify operation on Channel 280C at Fort Bridger. To replace the loss of the sole local service at Smithfield, this document reallots Channel 244C1 from Preston, Idaho, and modifies the Station KKEX license to specify Smithfield as the community of license. *See Supplementary Information.*

DATES: Effective July 26, 2004.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Media Bureau, (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Report and Order* in MM Docket No.02–290 adopted June 8, 2004, and released June 10, 2004. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *www.BCPIWEB.com.*

In order to accommodate the Channel 280C at Fort Bridger, this document substitutes Channel 256C for Channel 280C at Nephi, Utah, and modifies the Station KMDG license to specify operation on Channel 256C. Station KMDG changed its callsign to KUDE on December 20, 2003. Station KUDE was granted a license to specify operation on Channel 280C in lieu of Channel 280C1 at Nephi, Utah. *See* BLH–20011213ABC. This document also substitutes Channel 295C1 for vacant Channel 279C1 at Rangely, Colorado. We note that in MB Docket 02–118, Channel 257C1 was substituted for vacant Channel 279C1. *See* 67 FR 64553, published October 21, 2002. The FM Table of Allotments currently lists Channel 257C1 at Rangely, Colorado. In order to accommodate Channel 248C at Coalville, this document substitutes Channel 249C for Channel 248C at Richfield, Utah, reallots Channel 249C to Elsinore, Utah, and modifies the license of Station KLGL to specify operation on Channel 249C at Elsinore. In order to accommodate Channel 249C at Elsinore, it substitutes Channel 259A for vacant Channel 246A at Beaver, Utah, and substitutes Channel 266C1 for vacant Channel 247C1 at Dinosaur, Colorado. To accommodate the Channel 266C1 substitution at Dinosaur, it substitutes Channel 234A for vacant Channel 266A at Wamsutter, Wyoming. This document also substitutes Channel 284C for Channel 285C at Tremonton, Utah, reallots Channel 284C to Lyman, Wyoming, and modifies the Station KBNZ license to specify operation on Channel 284C at Lyman. Station KBNZ was granted a construction permit to specify operation on Channel 285C0 in lieu of Channel 285C at Tremonton, which the FM Table of Allotments currently reflects this change. *See* BLH–20030806ABI. In order to accommodate Channel 284C at Lyman, this document substitutes Channel 259C for Channel 283C at Rock Springs, Wyoming, and modifies the Station KSIT license to specify operation on Channel 259C. To accommodate Channel 259C at Rock Springs, this document substitutes Channel 250C2 for vacant Channel 259C1 at Green River, Wyoming, Channel 282C for vacant Channel 261C at Wamsutter, Wyoming, and Channel 258A for vacant Channel 259A at Saratoga, Wyoming. *See* 67 FR 63874, October 16, 2002. The reference coordinates for the Channel 248C allotment at Coalville, Utah, are 40–55–46 and 111–00–26. The reference coordinates for the Channel 255C3 allotment at Franklin, Idaho, are 42–10–05 and 111–48–38. The reference coordinates for the Channel 280C2 allotment at Fort Bridger, Wyoming, are 41–19–00 and 110–23–01. The reference coordinates for the Channel 244C1 allotment at Smithfield, Utah, are 41–52–18 and 111–48–31. The reference coordinates for the Channel 256C allotment at Nephi, Utah, are 39–45–37 and 111–34–38. The reference coordinates for the Channel 295C1 allotment at Rangely, Colorado, are 40–05–15 and 108–48–15. The reference coordinates for the Channel 264C2 allotment at Monroe, Utah, are 38–37–21 and 112–07–29. The reference coordinates for the Channel 249C allotment at Elsinore, Utah, are 38–16–23 and 112–09–13. The reference coordinates for the Channel 259A allotment at Beaver, Utah, are 38–16–37 and 112–38–25. The reference coordinates for the Channel 266C1 allotment at Dinosaur, Colorado, are 40–14–42 and 109–00–30. The reference coordinates for the Channel 234A allotment at Wamsutter, Wyoming, are 41–40–18 and 107–58–18. The reference coordinates for the Channel 284C allotment at Lyman, Wyoming, are 40–52–34 and 110. The reference coordinates for the Channel 259C allotment at Rock Springs, Wyoming, are 41–26–00 and 109–07–02. The reference coordinates for the Channel 250C2 allotment at Green River, Wyoming, are 41–31–36 and 109–28–06. The reference coordinates for the Channel 282C allotment at Wamsutter, Wyoming, are 41–44–00 and 108–14–27. The reference coordinates for the Channel 258A allotment at Saratoga, Wyoming, are 41–27–12 and the reference coordinates for the Channel 228A allotment at Manila, Utah, are 40–59–17 and 109–43–19.

List of Subjects in 47 CFR Part 73

Radio, Radio Broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments, under Colorado, is amended by removing Channel 247C1 and by adding Channel 266C1 at Dinosaur; by removing Channel 257C1 and by adding Channel 295C1 at Rangely.

■ 3. Section 73.202(b), the Table of FM Allotments under Idaho, is amended by removing Channel 248C1 and by adding Channel 255C3 at Franklin, and by removing Preston, Channel 244C1.

■ 4. Section 73.202(b), the Table of FM Allotments under Utah, is amended by removing Channel 246A and adding Channel 259A at Beaver; by adding Channel 248C at Coalville; by adding Elsinore, Channel 249C; by adding Manila, Channel 228A; by removing Channel 257C2 and by adding Channel 264C2 at Monroe; by removing Channel 280C1 and adding Channel 256C at Nephi; by removing Channel 248C at Richfield; by removing Channel 280A and by adding Channel 244C1 at Smithfield, and by removing Tremonton, Channel 285C0.

■ 5. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by removing Channel 256C1 and by adding Channel 280C at Fort Bridger; by removing Channel 259C1 and adding Channel 250C2 at Green River; by adding Lyman, Channel 284C; by removing Channel 283C and adding Channel 259C at Rock Springs; by removing Channel 259A and adding Channel 258A at Saratoga; by removing Channel 266A and Channel 261C and by adding Channel 234A and Channel 282C at Wamsutter.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–14483 Filed 6–24–04; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF DEFENSE

48 CFR Parts 212 and 237

[DFARS Case 2003–D111]

Defense Federal Acquisition Regulation Supplement; Use of FAR Part 12 for Performance-Based Contracting for Services

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove obsolete text pertaining to the use of FAR Part 12 (Acquisition of Commercial Items) procedures for performance-based contracting for services. The statutory authority upon which this text was based has expired.

EFFECTIVE DATE: June 25, 2004.

FOR FURTHER INFORMATION CONTACT: Ms. Teresa Brooks, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0326; facsimile (703) 602–0350. Please cite DFARS Case 2003–D111.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule removes DFARS 212.102 and 237.601, which implemented Section 821 of the National Defense Authorization Act for Fiscal Year 2001 (Pub. L. 106–398). Section 821 permitted DoD to treat certain performance-based service contracts and task orders as contracts for the procurement of commercial items. The authority provided by section 821 expired on October 30, 2003, and has been superseded by the authority provided in section 1431 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136). Section 1431 provides broader, governmentwide authority for the treatment of performance-based service contracts and task orders as contracts for the procurement of commercial items. An interim FAR rule implementing section 1431 was published in Federal Acquisition Circular 2001–24 on June 18, 2004 (69 FR 34226).

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This rule will not have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Therefore, publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2003–D111.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any 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 48 CFR Parts 212 and 237

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR parts 212 and 237 are amended as follows:

■ 1. The authority citation for 48 CFR parts 212 and 237 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

Subpart 212.1—[Removed]

■ 2. Subpart 212.1 is removed.

PART 237—SERVICE CONTRACTING

Subpart 237.6—[Removed]

■ 3. Subpart 237.6 is removed.

[FR Doc. 04–14336 Filed 6–24–04; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Part 237

[DFARS Case 2003–D107]

Defense Federal Acquisition Regulation Supplement; Firefighting Services Contracts

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 331 of the National Defense Authorization Act for Fiscal Year 2004. Section 331 provides authority for contractor performance of firefighting functions at military installations or facilities for periods of one year or less, if the functions would otherwise have to be performed by members of the armed forces who are not readily available by reason of a deployment.

DATES: *Effective date:* June 25, 2004.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before August 24, 2004, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2003–D107, using any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Defense Acquisition Regulations Web site: http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm.* Follow the instructions for submitting comments.

• E-mail: *dfars@osd.mil.* Include DFARS Case 2003–D107 in the subject line of the message.

• *Fax:* (703) 602–0350.

• *Mail:* Defense Acquisition Regulations Council, Attn: Ms. Teresa Brooks, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

• *Hand Delivery/Courier:* Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to *http://emissary.acq.osd.mil/dar/dfars.nsf.*

FOR FURTHER INFORMATION CONTACT: Ms. Teresa Brooks, (703) 602–0326.

SUPPLEMENTARY INFORMATION:

A. Background

10 U.S.C. 2465 prohibits DoD from entering into contracts for the performance of firefighting or security-guard functions at military installations or facilities, unless an exception applies. Section 331 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) added a new exception to the prohibition at 10 U.S.C. 2465. The new exception permits award of a contract for the performance of firefighting functions at a military installation or facility, if the contract is for a period of one year or less and the functions would otherwise have to be performed by members of the armed forces who are not readily available due to a deployment. This interim rule amends DFARS 237.102–70 to reflect the new exception.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this 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.*, because application of the rule is limited to firefighting functions at military installations or facilities for periods of one year or less, when members of the armed forces are not readily available due to a deployment. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003–D107.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 331 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136). Section 331 provides authority for contractor performance of firefighting functions at military installations or facilities for periods of one year or less, if the functions would otherwise have to be performed by members of the armed forces who are not readily available due to a deployment. Section 331 became effective upon enactment on November 24, 2003. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 237

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR Part 237 is amended as follows:

■ 1. The authority citation for 48 CFR Part 237 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 237—SERVICE CONTRACTING

■ 2. Section 237.102–70 is amended as follows:

■ a. In paragraph (a)(2) by removing "or";

■ b. In paragraph (a)(3) by removing the period and adding in its place "; or"; and

■ c. By adding paragraph (a)(4) to read as follows:

237.102–70 Prohibition on contracting for firefighting or security-guard functions.

(a) * * *

(4) The contract—

(i) Is for the performance of firefighting functions;

(ii) Is for a period of 1 year or less; and

(iii) Covers only the performance of firefighting functions that, in the absence of the contract, would have to be performed by members of the armed forces who are not readily available to perform such functions by reason of a deployment.

* * * * *

[FR Doc. 04–14338 Filed 6–24–04; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Parts 239 and 252

[DFARS Case 2002–D020]

Defense Federal Acquisition Regulation Supplement; Information Assurance

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to address requirements for information assurance in the acquisition of information technology. The rule implements policy issued by the National Security Telecommunications and Information Systems Security Committee.

EFFECTIVE DATE: June 25, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Thaddeus Godlewski, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–2022; facsimile (703) 602–0350. Please cite DFARS Case 2002–D020.

SUPPLEMENTARY INFORMATION:

A. Background

In July 1990, the National Security Telecommunications and Information Systems Security Committee (NSTISSC) was established for the purpose of developing and promulgating national policies applicable to the security of national security telecommunications and information systems. In January 2000, NSTISSC issued Policy No. 11, which addresses the national policy governing the acquisition of information assurance and information assurance-enabled information technology products. Policy No. 11 states that information assurance shall be considered as a requirement for all systems used to enter, process, store, display, or transmit national security information. DoD issued DoD Directive 8500.1, Information Assurance, and DoD Instruction 8500.2, Information Assurance Implementation, to

implement Policy No. 11. This final rule makes corresponding changes to DFARS Subpart 239.71 and the clause at DFARS 252.239–7000.

DoD published a proposed rule at 68 FR 28187 on May 23, 2003. One source submitted comments on the proposed rule. A discussion of the comments is provided below. Differences between the proposed and final rules are addressed in the discussion of Comments 4 and 5. In addition, Subpart 239.71 is restructured for clarity by removing the "General" section previously at 239.7101 and relocating its contents to the "Scope" and "Definition" sections in 239.7100 and 239.7101 of the final rule.

1. *Comment:* The "Scope" section should further specify that the acquisition of information technology includes equipment (hardware and software), capabilities (building of enterprise architectures), and information technology services. This clarification would help ensure that the appropriate information assurance requirements are included in all information technology acquisition contracts.

DoD Response: The recommended clarification is unnecessary. A comprehensive definition of "information technology" is provided in FAR 2.101.

2. *Comment:* Under "Policy and responsibilities," the "General" section should also include, as item (a)(7), Public Law 104–191, "Health Insurance Portability and Accountability Act of 1996," which addresses the security and privacy of health data.

DoD Response: Do not agree. The list of policies and statutes in the "General" section is a representative, not a comprehensive, list. The requirements of Public Law 104–191 are addressed in DoD 6025.18–R, DoD Health Information Privacy Regulation.

3. *Comment:* Under "Policy and responsibilities," paragraph (b) of the "General" section should also specify that the statement of work provided to the contracting officer contain a requirement that offerors provide a list to the contracting officer identifying any foreign nationals that may work on the contract by name, social security number (or other identifying number), and country of origin. In addition, the requiring activity should provide the requirements for disposal or destruction of information technology storage media.

DoD Response: Do not agree. DoD Directive 8500.1, Information Assurance, and DoD Instruction 8500.2, Information Assurance Implementation, contain references to other DoD publications that outline the numerous security requirements that must be addressed in a statement of work and other contract documents for information technology requirements.

4. *Comment:* The section entitled "Compromising emanations—TEMPEST or other standard" should be amended to add a requirement for a date after which an accreditation would be considered current for purposes of the proposed contract.

DoD Response: Agree. This change has been included in the final rule.

5. *Comment:* The clause at 252.239–7000, Protection Against Compromising Emanations, should be amended in paragraph (a) to add a requirement for a date after which a required accreditation would be considered current or valid for the contract.

DoD Response: Agree. This change has been included in the final rule.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the DFARS changes in this rule reflect existing government policy pertaining to requirements for information assurance in the acquisition of information technology.

C. Paperwork Reduction Act

The information collection requirements in the clause at DFARS 252.239–7000 have been approved by the Office of Management and Budget, under Clearance Number 0704–0341, for use through October 31, 2004.

List of Subjects in 48 CFR Parts 239 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR parts 239 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 239 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 239—ACQUISITION OF INFORMATION TECHNOLOGY

■ 2. Subpart 239.71 is revised to read as follows:

Subpart 239.71—Security and Privacy for Computer Systems

239.7100 Scope of subpart.

This subpart includes information assurance and Privacy Act considerations. Information assurance requirements are in addition to provisions concerning protection of privacy of individuals (see FAR Subpart 24.1).

239.7101 Definition.

Information assurance, as used in this subpart, means measures that protect and defend information, that is entered, processed, transmitted, stored, retrieved, displayed, or destroyed, and information systems, by ensuring their availability, integrity, authentication, confidentiality, and non-repudiation. This includes providing for the restoration of information systems by incorporating protection, detection, and reaction capabilities.

239.7102 Policy and responsibilities.

239.7102–1 General.

(a) Agencies shall ensure that information assurance is provided for information technology in accordance with current policies, procedures, and statutes, to include—

(1) The National Security Act;

(2) The Clinger-Cohen Act;

(3) National Security Telecommunications and Information Systems Security Policy No. 11;

(4) Federal Information Processing Standards;

(5) DoD Directive 8500.1, Information Assurance; and

(6) DoD Instruction 8500.2, Information Assurance Implementation.

(b) For all acquisitions, the requiring activity is responsible for providing to the contracting officer—

(1) Statements of work, specifications, or statements of objectives that meet information assurance requirements as specified in paragraph (a) of this subsection;

(2) Inspection and acceptance contract requirements; and

(3) A determination as to whether the information technology requires protection against compromising emanations.

239.7102–2 Compromising emanations—TEMPEST or other standard.

For acquisitions requiring information assurance against compromising emanations, the requiring activity is responsible for providing to the contracting officer—

(a) The required protections, *i.e.*, an established National TEMPEST standard (*e.g.*, NACSEM 5100, NACSIM 5100A) or a standard used by other authority;

(b) The required identification markings to include markings for TEMPEST or other standard, certified equipment (especially if to be reused);

(c) Inspection and acceptance requirements addressing the validation of compliance with TEMPEST or other standards; and

(d) A date through which the accreditation is considered current for purposes of the proposed contract.

239.7103 Contract clause.

Use the clause at 252.239–7000, Protection Against Compromising Emanations, in solicitations and contracts involving information technology that requires protection against compromising emanations.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Section 252.239–7000 is revised to read as follows:

252.239–7000 Protection against compromising emanations.

As prescribed in 239.7103, use the following clause:

Protection Against Compromising Emanations (JUN 2004)

(a) The Contractor shall provide or use only information technology, as specified by the Government, that has been accredited to meet the appropriate information assurance requirements of—

(1) The National Security Agency National TEMPEST Standards (NACSEM No. 5100 or NACSEM No. 5100A, Compromising Emanations Laboratory Test Standard, Electromagnetics (U)); or

(2) Other standards specified by this contract, including the date through which the required accreditation is current or valid for the contract.

(b) Upon request of the Contracting Officer, the Contractor shall provide documentation supporting the accreditation.

(c) The Government may, as part of its inspection and acceptance, conduct additional tests to ensure that information technology delivered under this contract satisfies the information assurance standards specified. The Government may conduct additional tests—

(1) At the installation site or contractor's facility; and

(2) Notwithstanding the existence of valid accreditations of information technology prior to the award of this contract.

(d) Unless otherwise provided in this contract under the Warranty of Supplies or Warranty of Systems and Equipment clause, the Contractor shall correct or replace accepted information technology found to be deficient within 1 year after proper installations.

(1) The correction or replacement shall be at no cost to the Government.

(2) Should a modification to the delivered information technology be made by the Contractor, the 1-year period applies to the modification upon its proper installation.

(3) This paragraph (d) applies regardless of f.o.b. point or the point of acceptance of the deficient information technology.

(End of clause)

[FR Doc. 04–14334 Filed 6–24–04; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Part 252

[DFARS Case 2004–D006]

Defense Federal Acquisition Regulation Supplement; Designated Countries—New European Union Members

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to add 10 new European Union Member States to the list of designated countries whose products DoD may acquire under the Trade Agreements Act, in accordance with a determination of the United States Trade Representative.

EFFECTIVE DATE: June 25, 2004.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0328; facsimile (703) 602–0350. Please cite DFARS Case 2004–D006.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the clauses at DFARS 252.225–7021, Trade Agreements, and 252.225–7045, Balance of Payments Program—Construction Material Under Trade Agreements, to add 10 new European Union Member States to the definition of "designated country." The new Member States are Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic, and Slovenia. The rule implements a determination of the United States Trade Representative that suppliers of eligible products of these Member States may participate in U.S. Government procurements without discriminatory treatment (69 FR 25654, May 7, 2004).

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of DoD. Therefore, publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2004–D006.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any 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 48 CFR Part 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR part 252 is amended as follows:

■ 1. The authority citation for 48 CFR part 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.212–7001 [Amended]

■ 2. Section 252.212–7001 is amended in paragraph (b), in entry "252.225–7021", by removing "(JAN 2004)" and adding in its place "(JUN 2004)".

■ 3. Section 252.225–7021 is amended by revising the clause date and paragraph (a)(4) to read as follows:

252.225–7021 Trade Agreements.

* * * * *

Trade Agreements (JUN 2004)

(a) * * *

(4) *Designated country* means—

Aruba
Austria
Bangladesh
Belgium
Benin
Bhutan
Botswana
Burkina Faso

Burundi
Canada
Cape Verde
Central African Republic
Chad
Comoros
Cyprus
Czech Republic
Denmark
Djibouti
Equatorial Guinea
Estonia
Finland
France
Gambia
Germany
Greece
Guinea
Guinea-Bissau
Haiti
Hong Kong
Hungary
Iceland
Ireland
Israel
Italy
Japan
Kiribati
Korea, Republic of
Latvia
Lesotho
Liechtenstein
Lithuania
Luxembourg
Malawi
Maldives
Mali
Malta
Mozambique
Nepal
Netherlands
Niger
Norway
Poland
Portugal
Rwanda
Sao Tome and Principe
Sierra Leone
Singapore
Slovak Republic
Slovenia
Somalia
Spain
Sweden
Switzerland
Tanzania U.R.
Togo
Tuvalu
Uganda
United Kingdom
Vanuatu
Western Samoa
Yemen
* * * * *

■ 4. Section 252.225–7045 is amended by revising the clause date and, in paragraph (a), the definition of "Designated country" to read as follows:

252.225–7045 Balance of Payments Program—Construction Material Under Trade Agreements.

* * * * *

Balance of Payments Program—Construction Material Under Trade Agreements (JUN 2004)

(a) * * *

"Designated country" means—
Aruba
Austria
Bangladesh
Belgium
Benin
Bhutan
Botswana
Burkina Faso
Burundi
Canada
Cape Verde
Central African Republic
Chad
Comoros
Cyprus
Czech Republic
Denmark
Djibouti
Equatorial Guinea
Estonia
Finland
France
Gambia
Germany
Greece
Guinea
Guinea-Bissau
Haiti
Hong Kong
Hungary
Iceland
Ireland
Israel
Italy
Japan
Kiribati
Korea, Republic of Latvia
Lesotho
Liechtenstein
Lithuania
Luxembourg
Malawi
Maldives
Mali
Malta
Mozambique
Nepal
Netherlands
Niger
Norway
Poland
Portugal
Rwanda
Sao Tome and Principe
Sierra Leone
Singapore
Slovak Republic
Slovenia
Somalia
Spain
Sweden
Switzerland
Tanzania U.R.
Togo
Tuvalu
Uganda
United Kingdom
Vanuatu
Western Samoa
Yemen
* * * * *

[FR Doc. 04–14337 Filed 6–24–04; 8:45 am]
BILLING CODE 5001–08–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Part 1507

[Docket No. TSA–2003–15900]

RIN 1652–AA28

Privacy Act of 1974: Implementation of Exemption

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Final rule.

SUMMARY: TSA is adding a new part to the Code of Federal Regulations that will exempt eight systems of records from one or more provisions of the Privacy Act. This rule will enable TSA to withhold records in response to requests for information pertaining to active investigations and in other instances where disclosure could reveal sensitive information.

DATES: Effective July 26, 2004.

FOR FURTHER INFORMATION CONTACT: Conrad Huygen, Privacy Act Officer, Information Management Programs, Office of Finance and Administration, TSA–17, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220; telephone (571) 227–1954; facsimile (571) 227–2912.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Document

You can get an electronic copy using the Internet by—

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http:dms/dot.gov/search*);

(2) Accessing the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html;* or

(3) Visiting TSA's Law and Policy Web Page at *http://www.tsa.dot.gov/public/index.jsp.*

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this rulemaking.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of

1996 requires TSA to comply with small entity requests for information and advice about compliance with statutes and regulations within TSA's jurisdiction. Any small entity that has a question regarding this document may contact the person listed in **FOR FURTHER INFORMATION CONTACT.** Persons can obtain further information regarding SBREFA on the Small Business Administration's Web page at *http://www.sba.gov/advo/laws/law_lib.html.*

Background

On August 18, 2003, TSA published a notice of proposed rulemaking to add a new part 1507 to Chapter XII of title 49, Code of Federal Regulations, in order to exempt eight systems of records from one or more provisions of the Privacy Act. *See* 68 FR 49410. The exempted systems are as follows:

- Transportation Security Enforcement Record System (DHS/TSA 001), which creates a civil enforcement and inspections system for all modes of transportation within TSA's jurisdiction.
- Transportation Workers Employment Investigations System (DHS/TSAA 002), which covers background checks and employment investigations for transportation workers.
- Personnel Background Investigation Files System (DHS/TSA 004), which encompasses background checks and employment investigations on TSA applicants, employees, and contractors.
- Internal Investigation Record System (DHS/TSA 005), which covers investigations of misconduct of current and former TSA employees.
- Correspondence and Matters Tracking Records (DHS/TSA 006), which track inquiries, claims, and complaints that come into the agency.
- Freedom of Information Act and Privacy Act Record System (DHS/TSA 007), which will record requests and appeals made under both statutes.
- General Legal Records System (DHS/TSA 009), which covers a variety of matters filed in the Office of Chief Counsel.
- Federal Flight Deck Officer Record System (DHS/TSA 013), which will document the selection and training of deputized pilots as mandated by the Homeland Security Act of 2002.

TSA did not receive any comments on the proposed exemptions and therefore adopts the proposed rule as final. There are two minor changes to note between the proposed and final regulations. First, the Privacy Act authority has been changed from "5 U.S.C. 552a(k)(1)–(k)(2)" to read "5 U.S.C. 552a(k)" in order to reflect TSA's reliance on other portions of subsection (k). Second, the Internal Investigation Record System and the Correspondence and Matters Tracking Records had been inadvertently designated as "DOT/TSA 005" and "DOT/TSA 006," respectively; these systems have been corrected to read "DHS/TSA 005" and "DHS/TSA 006," respectively, in order to reflect the proper department.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that TSA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there are no current or new information collection requirements associated with this proposed rule.

Analysis of Regulatory Impacts

This final rule is not a "significant regulatory action" within the meaning of Executive Order 12886. Because the economic impact should be minimal, further regulatory evaluation is not necessary. Moreover, I certify that this final rule would not have a significant economic impact on a substantial number of small entities, because the reporting requirements themselves are not changed and because it applies only to information on individuals.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), (Pub. L. 104–4, 109 Stat. 48), requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for proposed and final rules that contain Federal mandates. A "Federal mandate" is a new or additional enforceable duty, imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in aggregate, $100 million or more in any one year the UMRA analysis is required. This final rule would not impose Federal mandates on any State, local, or tribal government or the private sector.

Executive Order 13132, Federalism

TSA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore would not have federalism implications.

Environmental Analysis

TSA has reviewed this document for purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) and has determined that this action will not have a significant effect on the human environment.

Energy Impact

The energy impact of this document has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362). We have determined that this rulemaking is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 49 CFR Part 1507

Privacy.

■ For the reasons set forth in the preamble, the Transportation Security Administration amends Chapter XII, of title 49, Code of Federal Regulations, by adding a new part 1507 to read as follows:

PART 1507—PRIVACY ACT—EXEMPTIONS

Sec.
1507.1 Scope.
1507.3 Exemptions.

Authority: 49 U.S.C. 114(l)(1), 5 U.S.C. 552a(k).

§ 1507.1 Scope.

This part implements provisions of the Privacy Act of 1974 (the Act) that permit TSA to exempt any system of records within the agency from certain requirements of the Act. The procedures governing access to, and correction of, records in a TSA system of records are set forth in 6 CFR part 5, subpart B.

§ 1507.3 Exemptions.

The following TSA systems of records are exempt from certain provisions of the Privacy Act of 1974 pursuant to 5 U.S.C. 552a(j), (k), or both, as set forth in this section. During the course of normal agency functions, exempt materials from one system of records may become part of one or more other systems of records. To the extent that any portion of system of records becomes part of another Privacy Act system of records, TSA hereby claims the same exemptions as were claimed in the original primary system of which they are a part and claims any additional exemptions in accordance with this part.

(a) *Transportation Security Enforcement Record System (DHS/TSA 001).* The Transpiration Security

Enforcement Record System (TSERS) (DHS/TSA 001) enables TSA to maintain a system of records related to the screening of passengers and property and they may be used to identify, review, analyze, investigate, and prosecute violations or potential violations of transportations security laws. Pursuant to exemptions (k)(1) and (k)(2) of the Privacy Act, DHS/TSA 001 is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f). Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) (Accounting for Disclosures), because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation and reveal investigative interest on the part of TSA as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to transportations security law enforcement efforts and efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation and avoid detection or apprehension, which undermines the entire system.

(2) From subsection (d) (Access to Records), because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation and reveal investigative interest on the part of TSA as well as the recipient agency. Access to the records would permit the individual who is the subject of a record to impede the investigation and avoid detection or apprehension. Amendment of the records would interfere with ongoing investigations and law enforcement activities and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. The information contained in the system may also include properly classified information, the release of which would pose a threat to national defense and/or foreign policy. In addition, permitting access and amendment to such information also could disclose security sensitive information that could be detrimental to transportation security.

(3) From subsection (e)(1) (Relevancy and Necessity of Information), because in the course of investigation into potential violations of transportation security laws, the accuracy of information obtained or introduced, occasionally maybe unclear or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective enforcement of transportation security laws, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(4) From subsections (e)(4)(G), (H) and (I) (Agency Requirements), and (f) (Agency Rules), because this system is exempt from the access provisions of subsection (d).

(b) *Transportation Workers Employment Investigations System (DHS/TSA 002).* The Transportation Workers Employment Investigations System (TWEI) (DHS/TSA 002) enables TSA to facilitate the performance of background checks on employees of transportation operators and others who are issued credentials or clearances by transportation operators, other than TSA employees. Pursuant to exemptions (k)(1) and (k)(2) of the Privacy Act, DHS/TSA 002 is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f). Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) (Accounting for Disclosures), because release of the accounting of disclosures could reveal investigative interest on the part of the recipient agency that obtained the record pursuant to a routine use. Disclosure of the accounting could therefore present a serious impediment to law enforcement efforts on the part of the recipient agency, as the individual who is the subject of a record would learn of third-agency investigate interests and thereby avoid detection or apprehension.

(2) From subsection (d) (Access to Records), because access to the records contained in this system could reveal investigate techniques and procedures in the transportation workers employment investigation process, as well as the nature and scope of the employment investigation, the disclosure of which could enable individuals to circumvent agency regulations or statutes and obtain access to sensitive information and restricted areas in the transportation industry. The information contained in the system might include properly classified information, the release of which would pose a threat to national defense and/or foreign policy. In addition, permitting access and amendment to such information could reveal sensitive security information protected pursuant to 49 U.S.C. 114(s), the disclosure of which could be detrimental to the security of transportation.

(3) From subsection (e)(1) (Relevancy and Necessity of Information), because third-agency records obtained or made available to TSA during the course of an employment investigation may occasionally contain information that is not strictly relevant or necessary to a specific employment investigation. In the interests of administering an effective and comprehensive transportation worker employment investigation program, it is appropriate and necessary for TSA to retain all such information that may aid in that process.

(4) From subsections (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules), because this system is exempt from the access provisions of subsection (d).

(c) *Personnel Background Investigation File System (DHS/TSA 004).* The Personnel Background Investigation File System (PBIFS) (DHS/TSA 004) enables TSA to maintain investigative and background material used to make suitability and eligibility determinations regarding current and former TSA employees, applicants for TSA employment, and TSA contract employees. Pursuant to exemption (k)(5) of the Privacy Act, DHS/TSA 004 is exempt from 5 U.S.C. 552a(c)(3) (Accounting for Disclosures) and (d) (Access to Records). Exemptions from the particular subsections are justified because this system contains investigative material complied solely for determining suitability, eligibility, and qualifications for Federal civilian employment. To the extent that the disclosure of material would reveal the identity of a source who furnished information to the Government under an express promise that the identify of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence, the applicability of exemption (k)(5) will be required to honor promises of confidentiality should the data subject request access to or amendment of the record, or access to the accounting of disclosures of the record.

(d) *Internal Investigation Record System (DHS/TSA 005).* The Internal Investigation Record System (IIRS) (DHS/TSA 005) contains records of internal investigations for all modes of transportation for which TSA has security-related duties. This system covers information regarding investigations of allegations or appearances of misconduct of current or former TSA employees or contractors and provides support for any adverse action that may occur as a result of the findings of the investigation. Pursuant to exemptions (k)(1) and (k)(2) of the Privacy Act, DHS/TSA 005 is exempt

from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f). Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) (Accounting for Disclosures), because release of the accounting of disclosures could reveal investigative interest on the part of the recipient agency that obtained the record pursuant to a routine use. Disclosure of the accounting could therefore present a serious impediment to law enforcement efforts on the part of the recipient agency, as the individual who is the subject of a record would learn of third-agency investigative interests and thereby avoid detection or apprehension.

(2) From subsection (d) (Access to Records), because access to the records contained in this system could reveal investigative techniques and procedures of the Office of Internal Affairs and Program Review, as well as the nature and scope of the investigation, the disclosure of which could enable individuals to circumvent agency regulations or statutes. The information contained in the system might include properly classified information, the release of which would pose a threat to national defense and/or foreign policy. In addition, permitting access and amendment to such information could reveal sensitive security information protected pursuant to 49 U.S.C. 114(s), the disclosure of which could be detrimental to transportation security.

(3) From subsection (e)(1) (Relevancy and Necessity of Information), because third-agency records obtained or made available to TSA during the course of an investigation may occasionally contain information that is not strictly relevant or necessary to a specific investigation. In the interests of administering an effective and comprehensive investigation program, it is appropriate and necessary for TSA to retain all such information that may aid in that process.

(4) From subsections (e)(4)(G), (H) and (I) (Agency Requirements), and (f) (Agency Rules), because this system is exempt from the access provisions of subsection (d).

(e) *Correspondence and Matters Tracking Records (DHS/TSA 006).* The Correspondence and Matters Tracking Records (CMTR) (DHS/TSA 006) system allows TSA to manage, track, retrieve, and respond to incoming correspondence, inquiries, claims and other matters presented to TSA for disposition, and to monitor the assignment, disposition and status of such matters. This system covers information coming into TSA from individuals as well as information recorded by TSA employees in the performance of their duties. Pursuant to exemptions (k)(1) and (k)(2) of the Privacy Act, DHS/TSA 006 is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f). Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) (Accounting for Disclosures), because release of the accounting of disclosures could reveal investigative interest on the part of the recipient agency that obtained the record pursuant to a routine use. Disclosure of the accounting could therefore present a serious impediment to law enforcement efforts on the part of the recipient agency, as the individual who is the subject of a record would lean of third-agency investigative interests and thereby avoid detection or apprehension.

(2) From subsection (d) (Access to Records), because access to the records contained in this system could reveal investigative interest on the part of TSA or other agency and the nature of that interest, the disclosure of which could enable individuals to circumvent agency regulations or statutes. The information contained in the system might include properly classified information, the release of which would pose a threat to national defense and/or foreign policy. In addition, permitting access and amendment to such information could reveal sensitive security information protected pursuant to 49 U.S.C. 114(s), the disclosure of which could be detrimental to transportation security.

(3) From subsection (e)(1) (Relevancy and necessity of Information), because third-agency records obtained or made available to TSA during the course of an investigation may occasionally contain information that is not strictly relevant or necessary to a specific investigation. In the interests of administering an effective and comprehensive investigation program, it is appropriate and necessary for TSA to retain all such information that may aid in that process.

(4) From subsections (e)(4)(G), (H) and (I) (Agency Requirements), and (f) (Agency rules), because this system is exempt from the access provisions of subsection (d).

(f) *Freedom of Information and Privacy Act Records (DHS/TSA 007).* The Freedom of Information and Privacy Act (FOIA/PA) Records System (DHS/TSA 007) system enables TSA to maintain records that will assist in processing access requests and administrative appeals under FOIA and access and amendments requests and appeals under the PA; participate in associated litigation; and assist TSA in carrying out any other responsibilities under FOIA/PA. Pursuant to exemptions (k)(1) and (k)(2) of the Privacy Act, Freedom of Information and Privacy Act Records are exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f). Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) (Accounting for Disclosures), because release of the accounting of disclosures could reveal investigative interest on the part of the recipient agency that obtained the record pursuant to a routine use. Disclosure of the accounting could therefore present a serious impediment to law enforcement efforts on the part of the recipient agency, as the individual who is the subject of a record would learn of third-agency investigative interests and thereby avoid detection or apprehension.

(2) From subsection (d) (Access to Records), because access to the records contained in this system could reveal investigative interest on the part of TSA or other agency and the nature of that interest, the disclosure of which could enable individuals to circumvent agency regulations or statutes. The information contained in the system might include properly classified information, the release of which would pose a threat to national defense and/or foreign policy. In addition, permitting access and amendment to such information could reveal sensitive security information protected pursuant to 49 U.S.C. 114(s), the disclosure of which would be detrimental to transportation security.

(3) From subsection (e)(1) (Relevancy and necessity of Information), because third-agency records obtained or made available to TSA during the course of an investigation may occasionally contain information that is not strictly relevant or necessary to a specific investigation. In the interests of administering an effective and comprehensive investigation program, it is appropriate and necessary for TSA to retain all such information that may aid in that process.

(4) From subsections (e)(4)(G), (H) and (I) (Agency Requirements), and (f) (Agency Rules), because this system is exempt from the access provisions of subsection (d).

(g) *General Legal Records System (DHS/TSA 009).* The General Legal Records (GLR) System (DHS/TSA 009) enables TSA to maintain records that will assist attorneys to perform their functions within the office of Chief Counsel, to include providing legal

advice, responding to claims filed by employees and others, and assisting in litigation and in the settlement of claims. Pursuant to exemptions (k)(1) and (k)(2) of the Privacy Act, DHS/TSA 009 is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f). Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) (Accounting for Disclosures), because release of the accounting of disclosures could reveal investigative interest on the part of the recipient agency that obtained the record pursuant to a routine use. Disclosure of the accounting could therefore present a serious impediment to law enforcement efforts on the part of the recipient agency, as the individual who is the subject of a record would learn of third-agency investigative interests and thereby avoid detection or apprehension.

(2) From subsection (d) (Access to Records), because access to the records contained in this system could reveal investigative interest on the part of TSA or other agency and the nature of that interest, the disclosure of which would enable individuals to circumvent agency regulations or statutes. The information contained in the system might include properly classified information, the release of which would pose a threat to national defense and/or foreign policy. In addition, permitting access and amendment to such information could reveal sensitive security information protected pursuant to 49 U.S.C. 114(s), the disclosure of which could be detrimental to transportation security.

(3) From subsection (e)(1) (Relevancy and Necessity of Information), because third-agency records obtained or made available to TSA during the course of an investigation may occasionally contain information that is not strictly relevant or necessary to a specific investigation. In the interests of administering an effective and comprehensive investigation program, it is appropriate and necessary for TSA to retain all such information that may aid in that process.

(4) From subsections (e)(4)(G), (H) and (I) (Agency Requirements), and (f) (Agency Rules), because this system is exempt from the access provisions of subsections (d).

(h) *Federal Flight Deck Officer Records System (DHS/TSA 013).* The Federal Flight Deck Officer Record System (FFDORS) (DHS/TSA 013) enables TSA to maintain a system of records documenting the application, selection, training, and requalification of pilots deputized by TSA to perform the duties of a Federal Flight Deck Officer (FFDO). Pursuant to exemptions (k)(1), (k)(2), and (k)(6) of the Privacy Act, DHS/TSA 013 is exempt from 5 U.S.C. 552a(c)(3), (d), and (e)(1). Exemptions from the particular subsections are justified for the following reasons:

(1) From (c)(3) (Accounting of Certain Disclosures) and (d) (Access to Records), because access to the accounting of disclosures in this system could reveal the identity of a confidential source that provided information during the background check process. Without the ability to protect the identity of a confidential source, the agency's ability to gather pertinent information about candidates for the program may be limited. In addition, the system might contain information that is properly classified, the release of which would pose a threat to national security and/or foreign policy, or information the disclosure of which could be detrimental to the security of transportation pursuant to 49 U.S.C. 114(s). Finally, the agency must be able to protect against access to testing or examination material as release of this material could compromise the effectiveness of the testing and examination procedure itself. The examination material contained in this system is so similar in form and content to the examination material used in the selection process for TSA security screeners, or potential selection processes that TSA may utilize in the future, that release of the material would compromise the objectivity or fairness of the testing or examination process of those TSA employees.

(2) From (e)(1) (Relevancy and Necessity of Information), because information obtained or made available to TSA from other agencies and other sources during the evaluation of an individual's suitability for an FFDO position may occasionally include information that is not strictly relevant or necessary to the specific determination regarding that individual. In the interests of effective program administration, it is appropriate and necessary for TSA to collect all such information that may aid in the FFDO selection process.

Issued in Arlington, Virginia, on June 21, 2004.

David Stone,

Acting Administrator.

[FR Doc. 04–14502 Filed 6–24–04; 8:45 am]

BILLING CODE 4910–62–M

Proposed Rules

Federal Register
Vol. 69, No. 122
Friday, June 25, 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.

FEDERAL RESERVE SYSTEM

12 CFR Parts 202, 205, 213, 226, and 230

[Regulations B, E, M, Z, DD]; [Dockets No.R–1168, R–1169, R–1170, R–1167, R–1171]

Equal Credit Opportunity, Electronic Fund Transfers, Consumer Leasing, Truth in Lending, Truth in Savings

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Withdrawal of Proposed Rules.

SUMMARY: The Board is withdrawing proposed revisions to Regulation B (Equal Credit Opportunity), Regulation E (Electronic Fund Transfers), Regulation M (Consumer Leasing), Regulation Z (Truth in Lending), and Regulation DD (Truth in Savings). The proposed revisions sought to define more specifically the standard for providing "clear and conspicuous" disclosures, and to provide a more uniform standard among the Board's regulations. The revisions were intended to help ensure that consumers receive noticeable and understandable information that is required by law in connection with obtaining consumer financial products and services. In response to concerns raised by commenters, the Board has determined that this goal should be achieved by developing proposals that focus on improving the effectiveness of individual disclosures rather than the adoption of general definitions and standards applicable across the five regulations. This effort will be undertaken in connection with the Board's periodic review of its regulations; an advance notice of proposed rulemaking is expected to be issued later this year under Regulation Z, focused on disclosures for open–end credit accounts. Although the December 2003 proposals are withdrawn, they reflect principles that institutions may find useful in creating disclosures that are clear and conspicuous. These approaches will help inform the Board's review of individual disclosures.

DATES: The withdrawal is effective June 22, 2004.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Eurgubian, Attorney, and Krista P. DeLargy, Senior Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf ("TDD") only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

Disclosures generally must be "clear and conspicuous" under the consumer financial services and fair lending laws administered by the Board.[1] Currently, the laws and regulations contain standards that are similar but not identical. "Clear and conspicuous" is generally interpreted to require that disclosures be in a "reasonably understandable form." The existing interpretations do not elaborate on "conspicuousness" as a separate requirement distinct from clarity or understandability. See 12 CFR § 202.4(d), comment 4(d)1; § 205.4(a)(1); §§ 213.3(a) and 213.7(b), comments 3(a)–2 and 7(b)–1; §§ 226.5(a)(1), 226.17(a)(1), and 226.31(b), and comments 5(a)(1)–1, 17(a)(1)–1, and 5a(a)(2)–1; and §§ 230.3(a) and 230.8(c), comment 3(a)–1.

In contrast, Regulation P (Privacy of Consumer Financial Information), which implements the financial privacy provisions of the Gramm–Leach–Bliley Act, articulates more precisely than the other consumer regulations the standard for providing clear and conspicuous disclosures that consumers will notice and understand. Under Regulation P, disclosures are deemed "clear" if they are "reasonably understandable;" they are considered "conspicuous" if they are "designed to call attention to the nature and significance of the information." See 12 CFR § 216.3(b). Regulation P also provides examples and guidance illustrating these standards. Although the privacy disclosures provided by industry under this standard have not been without criticism, they have been reasonably noticeable to consumers. In addition, Truth in Lending disclosures that are subject to format and type size requirements and are segregated from other information, such as those required in connection with credit card solicitations (the "Schumer box"), tend to be more noticeable and easy to read."

In December 2003, the Board published proposed rules to establish a more specific standard for "clear and conspicuous" disclosures that would be uniform for five consumer regulations, Regulations B, E, M, Z and DD (68 FR 68786, 68788, 68791, 68793, and 68799, respectively) (collectively, the "December 2003 proposals"). The December 2003 proposals were intended to help ensure that the information required to be given to consumers in connection with financial products and services is provided in a noticeable and understandable form. Accordingly, the proposals sought to give explicit meaning to the requirement for "conspicuousness," using the clear and conspicuous standard in Regulation P as a model.

The December 2003 proposals also include compliance guidance in the form of examples of how institutions could satisfy the "clear and conspicuous" standard, based on guidance in Regulation P. Thus, the December 2003 proposals provide examples of how institutions can make disclosures clear or reasonably understandable–such as, by using "clear, concise sentences, paragraphs, and sections" and "short explanatory sentences or bullet lists whenever possible," and by avoiding "legal or highly technical business terminology whenever possible." The guidance also provides advice on making disclosures conspicuous. For example, in a document that combines required disclosures with other information, the guidance suggests using "distinctive type size, style, and graphic devices to call attention to the disclosures." The guidance also advises that disclosures are conspicuous when they "use a typeface and type size that are easy to read," and confirms that 12–point type generally meets this standard. The guidance notes that disclosures printed in type smaller than 12 points do not

[1] Regulation B, which implements the Equal Credit Opportunity Act, 12 CFR part 202, 15 U.S.C. 1691 – 1691f; Regulation E, which implements the Electronic Fund Transfers Act, 12 CFR part 205, 15 U.S.C. 1693 et seq.; Regulation M, which implements the Consumer Leasing Act, 12 CFR part 213, 15 U.S.C. 1667 – 1667e; Regulation Z, which implements the Truth in Lending Act, 12 CFR part 226, 15 U.S.C. 1601 et seq.; and Regulation DD, which implements the Truth in Savings Act, 12 CFR part 230, 12 U.S.C. 4301 et seq.

automatically violate the standard, but that disclosures printed in type smaller than 8 points would likely be too small to satisfy the standard. In 2000, the Board applied this standard and other format requirements to the Schumer box.

II. Comments on the December 2003 Proposals

Almost all industry commenters strongly oppose the Board's December 2003 proposals. Industry's opposition stems largely from its concern that the proposed rules would cast doubt on whether their existing disclosures meet the "clear and conspicuous" standard. In particular, industry commenters are concerned that it would be significantly more difficult to integrate federal disclosures with other account–related information. They assert that this would be a departure from the Board's long–standing practice of permitting the integration of required disclosures with other account information, except in certain clearly–articulated cases, such as the Truth in Lending disclosure table required for certain credit or charge card applications and solicitations and disclosures for closed–end loans. See § 226.5a(a)(2), § 226.17(a)(1). Industry commenters assert that the December 2003 proposed revisions would result in costly compliance reviews and forms changes by institutions, and would expose institutions to heightened litigation risk under arguably subjective standards. Consumer advocates generally support the proposals' goals, but they believe the December 2003 proposals do not set high enough standards.

Specific Industry Concerns

Effectiveness of using the Regulation P standard in other regulations. The Board's Regulation P (Privacy of Consumer Financial Information) requires institutions to provide conspicuous disclosures that "call attention to the nature and significance of the information." 12 CFR § 216.3(b). Institutions acknowledge that this standard, in the context of disclosing an institution's privacy policy, is workable since the privacy disclosure can be kept separate from other information in the same document. Consequently, using a heading to set off the privacy disclosures from other information satisfies the Regulation P conspicuous disclosure requirement.

Most industry commenters assert, however, that Regulation P is not an effective model for a uniform "clear and conspicuous" standard under the Board's consumer regulations that expressly permit institutions to integrate certain federal disclosures with contract terms and state law disclosures. For example, integrated disclosures are permitted for costs and terms required by federal law to be disclosed at account opening for deposit accounts and for open–end credit plans such as a credit card account. See 12 CFR § 230.3(a), comment 3(a)–1; § 226.5(a)(1), comment 5(a)(1)–1. Industry commenters believe that if the Regulation P "conspicuous" standard were adopted for these regulations, institutions generally would have to segregate required federal disclosures from contract terms and other information, as they currently do for privacy notices under Regulation P, in their credit card solicitation disclosures, and certain TILA closed–end credit disclosures and Consumer Leasing Act disclosures.

Industry commenters assert that in some cases, such as credit card account opening disclosures, consumers can better understand how an account operates when required disclosures are interspersed among other contract terms. The commenters also assert that certain methods for making federal disclosures more conspicuous—for example, increased font sizes and margins—would lengthen documents and could make consumers less inclined to read them in some cases. Because credit card and deposit account agreements can be lengthy and complex, and in small type size, some members of the Board's Consumer Advisory Council urged the Board to consider different approaches to making disclosures more useful to consumers, such as requiring "executive summaries" of more important terms to ensure that the key terms are highlighted.

Compliance Burden. Industry commenters believe that examples contained in the December 2003 proposed guidance about how disclosures can be made clear and conspicuous, although not intended to be mandatory, would effectively be viewed as legal requirements, necessitating the review and redesign of all disclosure documents. Most industry commenters claim that the cost to review, revise, and mail disclosure documents to comply with each example would be substantial.

Industry commenters are particularly concerned about the potential cost of complying with the typeface and type size example in the proposed staff commentary which states that, as to type size: "12–point type generally meets the conspicuous standard, but disclosures printed in less than 12–point type do not automatically violate the standard." The commenters generally assert that under this guidance 12–point type would become a de facto minimum requirement and that meeting it would be costly because federal consumer disclosures often use smaller type.

The December 2003 proposed guidance also states that disclosures printed in type less than 8 points would likely be too small to satisfy the clear and conspicuous standard. Industry commenters noted that this guidance could result in costly changes because it is common for some disclosures to be printed in type smaller than 8 points, such as credit card agreements and the notice of billing rights that often appears on the reverse side of monthly statements of account activity. See 12 CFR § 205.8(b), § 226.9(a)(2).

Industry concerns about litigation risks. The December 2003 proposed staff commentary provides examples of clear and conspicuous disclosures, such as the use of "short explanatory sentences" and "everyday words" whenever possible, "wide margins and ample line spacing," and "distinctive type size, style, or graphic devices." Industry commenters assert that these examples create vague standards subject to differing interpretations, and that institutions would potentially be liable in private lawsuits filed by consumers who allege violations under Regulations B, E, M, and Z. Although these examples are used in Regulation P, as commenters note, violations of Regulation P do not give rise to claims by consumers in private litigation. Some industry commenters urged the Board to review individual disclosures and address any specific problems identified with the particular disclosures instead of establishing standards and guidance of general applicability.

Specific Concerns of Consumer Advocates

Comment letters received from individual consumers and consumer groups generally supported the December 2003 proposed "clear and conspicuous" standard. Consumer representatives believe, however, that the Board's proposed interpretation of "clear" is not sufficient and they suggest that the Board clarify that a disclosure is not clear if it is "capable of more than one plausible interpretation." Consumer representatives also suggest that the Board amend the proposed example in the staff commentary to state that 10 points, instead of 8 points, should be the threshold below which type is likely to be deemed too small under the standard.

III. Withdrawal of the Proposals and Plan for Reviewing Individual Disclosures

The Board is withdrawing the December 2003 proposals to establish a uniform standard for "clear and conspicuous" disclosures under Regulations B, E, M, Z, and DD, in response to the concerns summarized above. Instead of adopting general definitions or standards that would apply across the five regulations, the Board intends to focus on individual disclosures and to consider ways to make specific improvements to the effectiveness of each disclosure. As noted above, some commenters supported this approach. In reviewing individual disclosures, the Board could consider both the content and format of the disclosures, and the Board could elect to make changes to the regulatory requirements as well as to the regulation's model forms.

The effort to review individual disclosures will be undertaken in connection with the Board's periodic review of its regulations, commencing with the issuance later this year of an advance notice of proposed rulemaking to review the rules for open–end credit accounts under the Truth in Lending Act and Regulation Z. The notice will seek comment on ways to make disclosures required to be provided at account–opening and on periodic statements more understandable and noticeable. Improved TILA disclosures and the standards used to develop them could serve as models for improving disclosures required under the other regulations. The Board's review of individual disclosures would continue with reviews of Regulation DD and Regulation E, which are scheduled to commence in 2005 and 2006 respectively.

Although the December 2003 proposals are withdrawn, they reflect principles that institutions may find useful in developing disclosures that are clear and conspicuous. Similarly, the proposals reflect approaches that will help inform the Board's review of individual disclosures in connection with its periodic review of its regulations. Clear, concise sentences that use definite, concrete, everyday words and active voice and avoid legal and highly technical business terminology foster consumer understanding of disclosures. Disclosures are more noticeable when printed in a typeface and type size that are easy to read. Particularly in lengthy disclosure documents, the use of plain–language headings that call attention to the substance of particular provisions improves customers' ability to navigate through the document or later review particular provisions. Readily understandable disclosures also reduce costs associated with frequent customer inquiries, customer complaints and litigation.

By order of the Board of Governors of the Federal Reserve System, June 22, 2004.

Jennifer J. Johnson,

Secretary of the Board

[FR Doc. 04–14504 Filed 6–24–04; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–117307–04]

RIN 1545–BD27

Stock Held by Foreign Insurance Companies

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains a proposed regulation relating to the determination of income of foreign insurance companies that is effectively connected with the conduct of a trade or business within the United States. The regulation provides that the exception to the asset-use test for stock shall not apply in determining whether the income, gain, or loss from portfolio stock held by foreign insurance companies constitutes effectively connected income.

DATES: Written or electronic comments and requests for a public hearing must be received by September 23, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–117307–04), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–117307–04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS and REG–117307–04).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Sheila Ramaswamy, at (202) 622–3870; concerning submissions and delivery of comments, Robin Jones, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

In 1992, the Treasury Department and the IRS published proposed regulations under section 864 providing that stock is not treated as an asset used in, or held for use in, the conduct of a trade or business in the United States. Proposed § 1.864–4(c)(2)(ii)(C). The notice of proposed rulemaking solicited comments regarding the appropriate treatment of income from portfolio stock investments of insurance companies. The Treasury Department and the IRS published final regulations in 1996 which adopted the general rule in the proposed regulations that stock is not treated as an asset used in, or held for use in, the conduct of a U.S. trade or business. TD 8657(1996–1 C.B. 153). The final regulations reserved on the treatment of stock held by a foreign insurance company. § 1.864–4(c)(2)(iii)(b). This proposed regulation sets forth circumstances in which stock held by a foreign insurance company is not subject to the general rule in § 1.864–4(c)(2)(iii)(a), which provides that stock is not an asset used in a U.S. trade or business.

Explanation of Provisions

In the case of a foreign corporation engaged in a trade or business within the United States during the taxable year, section 864(c)(2) generally provides rules for determining whether certain fixed or determinable, annual or periodical income from sources within the United States or gain or loss from sources within the United States from sale or exchange of capital assets is income effectively connected with the conduct of a trade or business in the United States. Section 864(c)(2). In making this determination, the factors taken into account include whether (a) the income, gain or loss is derived from assets used in or held for use in the conduct of such trade or business (the asset-use test), or (b) the activities of such trade or business were a material factor in the realization of such income, gain or loss. Section 864(c)(2). Section 1.864–4(c)(2)(iii)(a) generally provides that stock of a corporation (whether domestic or foreign) is not an asset used in or held for use in the conduct of a trade or business in the United States except as provided in (c)(2)(iii)(b). Section 1.864–4(c)(2)(iii)(b) entitled "Stock Held by Foreign Insurance Companies" is reserved.

Insurance companies hold investment assets, such as stocks and bonds, to fund their obligations to policyholders and to meet their surplus (capital) requirements. Thus, stock held in an

investment portfolio may be an asset held for use in the trade or business of a foreign insurance company. By contrast, stock of a subsidiary generally is not held for the purpose of meeting an insurance company's business needs.

This proposed regulation provides that the general rule excluding stock from the asset-use test does not apply to stock held by a foreign insurance company unless such company owns directly, indirectly, or constructively 10 percent or more of the vote or value of the company's stock. The 10-percent threshold is intended to distinguish portfolio stock held to fund policyholder obligations and surplus requirements from investments in a subsidiary. Comments are requested as to whether this 10-percent threshold provides an appropriate standard for determining whether stock is a portfolio investment for these purposes.

Proposed Effective Date

This regulation is proposed to apply to taxable periods beginning on or after the date of publication of a Treasury decision adopting this rule as a final regulation in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for a public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Sheila Ramaswamy, Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendment to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by revising § 1.864–4 as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 1.864–4, paragraph (c)(2)(iii)(b) is revised to read as follows:

* * * * *

§ 1.864–4 U.S. source income effectively connected with U.S. business.

* * * * *

(c) * * *

(2) * * *

(iii) * * *

(b) Paragraph (c)(2)(iii) of this section shall not apply to stock of a corporation (whether domestic or foreign) held by a foreign insurance company unless the foreign insurance company owns 10 percent or more of the total voting power or value of all classes of stock of such corporation. For purposes of this section, section 318(a) shall be applied in determining ownership, except that in applying section 318(a)(2)(C), the phrase "10 percent" is used instead of the phrase "50 percent."

* * * * *

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 04–14392 Filed 6–24–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–131486–03]

RIN 1545–BC29

Adjustment To Net Unrealized Built-in Gain

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations under section 1374 that provide for an adjustment to the amount that may be subject to tax under section 1374 in certain cases in which an S corporation acquires assets from a C corporation in an acquisition to which section 1374(d)(8) applies. These proposed regulations provide guidance to certain S corporations that acquire assets from a C corporation in a carryover basis transaction.

DATES: Written or electronic comments must be received by September 23, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–131486–03), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–131486–03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS—REG–131486–03). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Jennifer Sledge, (202) 622–7750; concerning submissions of comments, Treena Garrett, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Section 1374 of the Internal Revenue Code of 1986 (Code) generally imposes a corporate level tax on the income or gain of an S corporation that formerly was a C corporation to the extent the income or gain is attributable to the period during which the corporation was a C corporation. Congress amended

section 1374 to provide this rule as part of the Tax Reform Act of 1986, which repealed the *General Utilities* doctrine. Under the *General Utilities* doctrine, a C corporation, in certain cases, could distribute appreciated assets to its shareholders, or sell appreciated assets and distribute the sale proceeds in connection with a complete liquidation to its shareholders, without recognizing gain. Section 1374 prevents a corporation from circumventing *General Utilities* repeal by converting to S corporation status before distributing its appreciated assets to its shareholders, or selling its appreciated assets and distributing the sale proceeds in connection with a complete liquidation to its shareholders.

Specifically, section 1374 imposes a tax on an S corporation's net recognized built-in gain attributable to assets that it held on the date it converted from a C corporation to an S corporation for the 10-year recognition period beginning on the first day the corporation is an S corporation. Under section 1374, the total amount subject to tax is limited to the S corporation's net unrealized built-in gain (NUBIG), which is the "aggregate net built-in gain of the corporation at the time of conversion to S corporation status." See H.R. Conf. Rep. No. 99–841, at II–203 (1986). Section 1374 also imposes a tax on an S corporation's net recognized built-in gain attributable to assets that it acquired in a carryover basis transaction from a C corporation for the 10-year recognition period beginning on the day of the carryover basis transaction. The legislative history of section 1374 provides that each acquisition of assets from a C corporation is subject to a separate determination of the amount of net unrealized built-in gain and is subject to a separate 10-year recognition period. See H.R. Rep. No. 100–795, at 63 (1988).

Sections 337(d) and 1374(e) authorize the Secretary of the Treasury to prescribe regulations as necessary to carry out the purposes of *General Utilities* repeal generally and section 1374 specifically. The Treasury Department and the IRS have promulgated regulations consistent with these provisions. See, *e.g.*, §§ 1.337(d)–4 through 1.337(d)–7, 1.1374–1 through 1.1374–10.

Under § 1.1374–3, an S corporation's NUBIG generally is the amount of gain the S corporation would recognize on the conversion date if it sold all of its assets at fair market value to an unrelated party that assumed all of its liabilities on that date. Consistent with the legislative history of section 1374, section 1374(d)(8) and § 1.1374–8 require a separate determination of the amount subject to tax under section 1374 for the pool of assets the S corporation held on the date it converted to C status and each pool of assets acquired in a carryover basis transaction from a C corporation.

Under the current rules, therefore, if X, a C corporation, elects to be an S corporation when it owns all of the stock of Y, a C corporation, X's NUBIG will reflect the built-in gain or built-in loss in the Y stock. That built-in gain or built-in loss may be duplicative of the built-in gain or built-in loss in Y's assets. If Y later transfers its assets to X in a liquidation to which sections 332 and 337(a) apply, the built-in gain and built-in loss in Y's assets may be reflected twice: once in the NUBIG attributable to the assets X owned on the date of its conversion (including the stock of Y) and a second time in the NUBIG attributable to Y's former assets acquired by X in the liquidation of Y. A similar result would obtain if, on the date of its conversion to an S corporation, X owned less than 80 percent of the stock of Y and later acquired the assets of Y in a reorganization to which section 368(a) applies. These results are inconsistent with the fact that a liquidation to which sections 332 and 337(a) apply, and the acquisition of the assets of a corporation some or all of the stock of which is owned by the acquiring corporation in a reorganization under section 368(a), generally have the effect of eliminating the built-in gain or built-in loss in the redeemed or canceled stock of the liquidated or target corporation.

In the course of developing these proposed regulations, the Treasury Department and the IRS considered a number of approaches to address the issue raised by the situations described above. In particular, the Treasury Department and the IRS considered adopting an approach that would provide for a single determination of NUBIG for all of the assets of an S corporation and, thus, a single determination of the amount subject to tax under section 1374. While this approach may have produced results similar to those that would have been produced had the S corporation remained a C corporation and acquired the assets of another C corporation, it was rejected because such an approach appears to be inconsistent with the legislative history of section 1374, which seems to mandate a separate determination of tax for each pool of assets. See H.R. Rep. No. 100–795, at 63.

Instead, these regulations adopt an approach that adjusts (increases or decreases) the NUBIG of the pool of assets that included the stock of the liquidated or acquired C corporation to reflect the extent to which the built-in gain or built-in loss inherent in the redeemed or canceled C corporation stock at the time the pool of assets became subject to the tax under section 1374 has been eliminated from the corporate tax system in the liquidation or reorganization. These proposed regulations provide that, if section 1374(d)(8) applies to an S corporation's acquisition of assets, some or all of the stock of the C corporation from which such assets were acquired was taken into account in the computation of NUBIG for a pool of assets of the S corporation, and some or all of such stock is redeemed or canceled in such transaction, subject to certain limitations, the NUBIG of the pool of assets that included the C corporation stock redeemed or canceled in the transaction (other than stock with respect to which a loss under section 165 is claimed) is adjusted to eliminate any effect any built-in gain or built-in loss in the redeemed or canceled C corporation stock had on the initial computation of NUBIG for that pool of assets. For this purpose, stock that has an adjusted basis that is determined (in whole or in part) by reference to the adjusted basis of any other asset held by the S corporation as of the first day of the recognition period (*i.e.*, stock described in section 1374(d)(6)) is treated as taken into account in the computation of the NUBIG for the pool of assets of the S corporation.

Adjustments to NUBIG under these proposed regulations, however, are subject to two limitations. First, the NUBIG is only adjusted to reflect the amount of the built-in gain or built-in loss that was inherent in the redeemed or canceled stock at the time the pool of assets became subject to tax under section 1374 that has not resulted in recognized built-in gain or recognized built-in loss at any time during the recognition period, including on the date of the acquisition to which section 1374(d)(8) applies. For example, suppose that on the date X, a C corporation, converts to S corporation status, it owns the stock of Y, which has a basis of $0 and a value of $100. The gain inherent in the Y stock contributes $100 to X's NUBIG. During the recognition period and prior to the liquidation of Y, Y distributes $20 to X in a distribution to which section 301(c)(3) applies. That amount is recognized built-in gain under section 1374(d)(3). If Y later distributes its assets to X in a distribution to which sections 332 and 337(a) apply, pursuant to these regulations, X must adjust its

original NUBIG to reflect the elimination of the Y stock. X will reduce that NUBIG by $80, the original built-in gain in such stock ($100) minus the recognized built-in gain with respect to such stock during the recognition period ($20).

Second, an adjustment cannot be made if it is duplicative of another adjustment to the NUBIG for a pool of assets. This rule is intended to prevent more than one adjustment to the NUBIG of a pool of assets for the same built-in gain or built-in loss stock.

Any adjustment to NUBIG under these proposed rules will only affect computations of the amount subject to tax under section 1374 for taxable years that end on or after the date of the liquidation or reorganization. It will not affect computations of the amount subject to tax under section 1374 for taxable years that end before the date of the liquidation or reorganization.

The Treasury Department and IRS request comments regarding whether the rule proposed in these regulations should be expanded to apply in other cases in which the stock basis that was taken into account in the computation of NUBIG is eliminated. This may occur, for example, where an S corporation owns stock of a C corporation on the date of its conversion to an S corporation and later distributes the stock of the C corporation in a distribution to which section 355 applies. In addition, the Treasury Department and IRS request comments concerning whether there are any situations other than those identified in these proposed regulations in which adjustments to NUBIG should be less than the built-in gain or the built-in loss in the redeemed or canceled stock as of the beginning of the recognition period.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Public Comment

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. All comments will be made available for public inspection and copying. A public hearing may be scheduled. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Marie Byrne of the Office of Associate Chief Counsel (Corporate). Other personnel from Treasury and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.1374–3 is amended by:

1. Revising paragraph (b).
2. Adding paragraph (c).

The revision and addition read as follows:

§ 1.1374–3 Net unrealized built-in gain.

* * * * *

(b) *Adjustment to net unrealized built-in gain*—(1) *In general.* If section 1374(d)(8) applies to an S corporation's acquisition of assets, some or all of the stock of the corporation from which such assets were acquired was taken into account in the computation of the net unrealized built-in gain for a pool of assets of the S corporation, and some or all of such stock is redeemed or canceled in such transaction, then, subject to the limitations of paragraph (b)(2) of this section, such net unrealized built-gain is adjusted to eliminate any effect any built-in gain or built-in loss in the redeemed or canceled stock (other than stock with respect to which a loss under section 165 is claimed) had on the initial computation of net unrealized built-in gain for that pool of assets. For purposes of this paragraph, stock described in section 1374(d)(6) shall be treated as taken into account in the computation of the net unrealized built-in gain for a pool of assets of the S corporation.

(2) *Limitations on adjustment*—(i) *Recognized built-in gain or loss.* Net unrealized built-in gain for a pool of assets of the S corporation is only adjusted under paragraph (b)(1) of this section to reflect built-in gain or built-in loss in the redeemed or canceled stock that has not resulted in recognized built-in gain or recognized built-in loss during the recognition period.

(ii) *Anti-duplication rule.* Paragraph (b)(1) of this section shall not be applied to duplicate an adjustment to the net unrealized built-in gain for a pool of assets made pursuant to paragraph (b)(1) of this section.

(3) *Effect of adjustment.* Any adjustment to the net unrealized built-in gain made pursuant to this paragraph (b) only affects computations of the amount subject to tax under section 1374 for taxable years that end on or after the date of the acquisition to which section 1374(d)(8) applies.

(4) *Pool of assets.* For purposes of this section, a pool of assets means—

(i) The assets held by the corporation on the first day it became an S corporation, if the corporation was previously a C corporation; or

(ii) The assets the S corporation acquired from a C corporation in a section 1374(d)(8) transaction.

(c) *Examples.* The following examples illustrate the rules of this section:

Example 1. Computation of net unrealized built-in gain. (i)(A) X, a calendar year C corporation using the cash method, elects to become an S corporation on January 1, 1996. On December 31, 1995, X has assets and liabilities as follows:

Assets	FMV	Basis
Factory	$500,000	$900,000
Accounts Receivable	300,000	0
Goodwill	250,000	0
Total	1,050,000	900,000

Liabilities	Amount
Mortgage	$200,000
Accounts Payable	100,000
Total	300,000

(B) Further, X must include a total of $60,000 in taxable income in 1996, 1997, and 1998 under section 481(a).

(ii) If, on December 31, 1995, X sold all its assets to a third party that assumed all its liabilities, X's amount realized would be $1,050,000 ($750,000 cash received + $300,000 liabilities assumed = $1,050,000). Thus, X's net unrealized built-in gain is determined as follows:

Amount realized: $1,050,000
Deduction allowed: (100,000)
Basis of X's assets: (900,000)
Section 481 adjustments: 60,000
Net unrealized built-in gain: 110,000

Example 2. Adjustment to net unrealized built-in gain for built-in gain in eliminated C corporation stock. (i) X, a calendar year C corporation, elects to become an S corporation effective January 1, 2005. On that date, X's assets (the first pool of assets) have a net unrealized built-in gain of $15,000. Among the assets in the first pool of assets is all of the outstanding stock of Y, a C corporation, with a fair market value of $33,000 and an adjusted basis of $18,000. On March 1, 2009, X sells an asset that it owned on January 1, 2005, and as a result has $10,000 of recognized built-in gain. X has had no other recognized built-in gain or built-in loss. X's taxable income limitation for 2009 is $50,000. Effective June 1, 2009, X elects under section 1362 to treat Y as a qualified subchapter S subsidiary (QSub). The election is treated as a transfer of Y's assets to X in a liquidation to which sections 332 and 337(a) apply.

(ii) Under paragraph (b) of this section, the net unrealized built in-gain of the first pool of assets is adjusted to account for the elimination of the Y stock in the liquidation. The net unrealized built-in gain of the first pool of assets, therefore, is decreased by $15,000, the amount by which the fair market value of the Y stock exceeded its adjusted basis as of January 1, 2005. Accordingly, for taxable years ending after June 1, 2009, the net unrealized built-in gain of the first pool of assets is $0.

(iii) Under § 1.1374–2(a), X's net recognized built-in gain for any taxable year equals the least of X's pre-limitation amount, taxable income limitation, and net unrealized built-in gain limitation. In 2009, X's pre-limitation amount is $10,000, X's taxable income limitation is $50,000, and X's net unrealized built-in gain limitation is $0. Because the net unrealized built-in gain of the first pool of assets has been adjusted to $0, despite the $10,000 of recognized built-in gain in 2009, X has $0 net recognized built-in gain for the taxable year ending on December 31, 2009.

Example 3. Adjustment to net unrealized built-in gain for built-in loss in eliminated C corporation stock. (i) X, a calendar year C corporation, elects to become an S corporation effective January 1, 2005. On that date, X's assets (the first pool of assets) have a net unrealized built-in gain of negative $5,000. Among the assets in the first pool of assets is 10 percent of the outstanding stock of Y, a C corporation, with a fair market value of $18,000 and an adjusted basis of $33,000. On March 1, 2009, X sells an asset that it owned on January 1, 2005, resulting in $8,000 of recognized built-in gain. X has had no other recognized built-in gains or built-in losses. X's taxable income limitation for 2009 is $50,000. On June 1, 2009, Y transfers its assets to X in a reorganization under section 368(a)(1)(C).

(ii) Under paragraph (b) of this section, the net unrealized built in-gain of the first pool of assets is adjusted to account for the elimination of the Y stock in the reorganization. The net unrealized built-in gain of the first pool of assets, therefore, is increased by $15,000, the amount by which the adjusted basis of the Y stock exceeded its fair market value as of January 1, 2005. Accordingly, for taxable years ending after June 1, 2009, the net unrealized built-in gain of the first pool of assets is $10,000.

(iii) Under § 1.1374–2(a), X's net recognized built-in gain for any taxable year equals the least of X's pre-limitation amount, taxable income limitation, and net unrealized built-in gain limitation. In 2009, X's pre-limitation amount is $8,000 and X's taxable income limitation is $50,000. The net unrealized built-in gain of the first pool of assets has been adjusted to $10,000, so X's net unrealized built-in gain limitation is $10,000. X, therefore, has $8,000 net recognized built-in gain for the taxable year ending on December 31, 2009. X's net unrealized built-in gain limitation for 2010 is $2,000.

Example 4. Adjustment to net unrealized built-in gain in case of prior gain recognition. (i) X, a calendar year C corporation, elects to become an S corporation effective January 1, 2005. On that date, X's assets (the first pool of assets) have a net unrealized built-in gain of $30,000. Among the assets in the first pool of assets is all of the outstanding stock of Y, a C corporation, with a fair market value of $45,000 and an adjusted basis of $10,000. Y has no current or accumulated earnings and profits. On April 1, 2007, Y distributes $18,000 to X, $8,000 of which is treated as gain to X from the sale or exchange of property under section 301(c)(3). That $8,000 is recognized built-in gain to X under section 1374(d)(3), and results in $8,000 of net recognized built-in gain to X for 2007. X's net unrealized built-in gain limitation for 2008 is $22,000. On June 1, 2009, Y transfers its assets to X in a liquidation to which sections 332 and 337(a) apply.

(ii) Under paragraph (b) of this section, the net unrealized built in-gain of the first pool of assets is adjusted to account for the elimination of the Y stock in the liquidation. The net unrealized built-in gain of that pool of assets, however, can only be adjusted to reflect the amount of built-in gain that was inherent in the Y stock on January 1, 2005 that has not resulted in recognized built-in gain during the recognition period. In this case, therefore, the net unrealized built-in gain of the first pool of assets cannot be reduced by more than $27,000 ($35,000, the amount by which the fair market value of the Y stock exceeded its adjusted basis as of January 1, 2005, minus $8,000, the recognized built-in gain with respect to the stock during the recognition period). Accordingly, for taxable years ending after June 1, 2009, the net unrealized built-in gain of the first pool of assets is $3,000. The net unrealized built-in gain limitation for 2009 is $0.

Par. 3. Paragraph (a) of § 1.1374–10 is revised to read as follows:

§ 1.1374–10 Effective date and additional rules.

(a) *In general.* Sections 1.1374–1 through 1.1374–9, other than § 1.1374–3(b) and (c) *Examples 2* through *4*, apply for taxable years ending on or after December 27, 1994, but only in cases where the S corporation's return for the taxable year is filed pursuant to an S election or a section 1374(d)(8) transaction occurring on or after December 27, 1994. Section 1.1374–3(b) and (c) *Examples 2* through *4* apply for taxable years beginning after the date these regulations are published as final regulations in the **Federal Register**.

* * * * *

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 04–14391 Filed 6–24–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

28 CFR Part 75

[Docket No. CRM 103; AG Order No. 2723–2004]

RIN 1105–AB05

Inspection of Records Relating to Depiction of Sexually Explicit Performances

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends the record-keeping and inspection requirements of 28 CFR part 75 to bring the regulations up to date with current law, to improve understanding of the regulatory system, and to make the inspection process effective for the purposes of the Child Protection and Obscenity Enforcement Act of 1988, as amended, relating to the sexual exploitation and other abuse of children.

DATES: Written comments must be received on or before August 24, 2004.

ADDRESSES: Written comments may be submitted to: Andrew Oosterbaan, Chief, Child Exploitation and Obscenity Section, Criminal Division, United States Department of Justice, Washington, DC 20530; Attn: "Docket No. CRM 103."

Comments may be submitted electronically to: *Admin.ceos@usdoj.gov* or to *www.regulations.gov* by using the electronic comment form provided on that site. Comments submitted electronically must include Docket No. CRM 103 in the subject box. You may also view an electronic version of this rule at the *www.regulations.gov* site.

Facsimile comments may be submitted to: (202) 514–1793. This is not a toll-free number. Comments

submitted by facsimile must include Docket No. CRM 103 on the cover sheet.

FOR FURTHER INFORMATION CONTACT: Andrew Oosterbaan, Chief, Child Exploitation and Obscenity Section, Criminal Division, United States Department of Justice, Washington, DC 20530; (202) 514–5780. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

1. Background

Congress evidenced its concern for the exploitation of children by pornographers in the Child Protection and Obscenity Enforcement Act of 1988, one key provision of which requires producers of sexually explicit matter to maintain certain records concerning the performers to assist in monitoring the industry. See 18 U.S.C. 2257. The statute requires the producers of such matter to "ascertain, by examination of an identification document containing such information, the performer's name and date of birth," to "ascertain any name, other than the performer's present and correct name, ever used by the performer including maiden name, alias, nickname, stage, or professional name," and to record this information. 18 U.S.C. 2257(b). Violations of these record-keeping requirements are criminal offenses punishable by imprisonment for not more than five years for a first offense and not more than ten years for subsequent offenses. See 18 U.S.C. 2257(i). These provisions supplement the federal statutory provisions criminalizing the production and distribution of materials visually depicting minors engaged in sexually explicit conduct. See 18 U.S.C. 2251, 2252.

The record-keeping requirements apply to "[w]hoever produces" the material in question. 18 U.S.C. 2257(a). The statute defines "produces" as "to produce, manufacture, or publish any book, magazine, periodical, film, video tape, computer generated image, digital image, or picture, or other similar matter and includes the duplication, reproduction, or reissuing of any such matter, but does not include mere distribution or any other activity which does not involve hiring, contracting for[,] managing, or otherwise arranging for the participation of the performers depicted." 18 U.S.C. 2257(h)(3).

The Attorney General, under 18 U.S.C. 2257(g), issued regulations implementing the record-keeping requirements on April 24, 1992. See 57 FR 15017 (1992); 28 CFR part 75. In addition to the record-keeping requirements specifically discussed in section 2257, the regulations require producers to retain copies of the performers' identification documents, to cross-index the records by "[a]ll name(s) of each performer, including any alias, maiden name, nickname, stage name or professional name of the performer; and according to the title, number, or other similar identifier of each book, magazine, periodical, film, videotape, or other matter," and to maintain the records for a specified period of time. 28 CFR 75.2(a)(1), 75.3, 75.4.

Most recently, in 2003, Congress made extensive amendments to the child exploitation statutory scheme based on detailed legislative findings, which the Department adopts as grounds for proposing this rule. See Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT) Act of 2003, Public Law 108–21,117 Stat. 650 (April 30, 2003) (hereinafter the "2003 Amendments"). The Department agrees with each of these findings, and proposes to amend the regulations in 28 CFR part 75 on the basis of these specific findings. As explained more fully below, the rules implement a more detailed inspection system to ensure that children are not used as performers in sexually explicit depictions.

2. Need for the Rule

Recent federal statutory enactments and judicial interpretations have highlighted the urgency of protecting children against sexual exploitation and, consequently, the need for more specific and clear regulations detailing the records and inspection process for sexually explicit materials to assure the accurate identity and age of performers.

The identity of every performer is critical to determining and assuring that no performer is a minor. The key Congressional concern, evidenced by the child exploitation statutory scheme, was that all such performers be verifiably not minors, i.e. not younger than 18. 28 U.S.C. 2256(1), 2257(b)(1). Minors—children—warrant a special concern by Congress for several reasons, as discussed more specifically in relation to the inspection process. Children are incapable of giving voluntary and knowing consent to perform or to enter into contracts to perform. In addition, children often are involuntarily forced to engage in sexually explicit conduct. For these reasons, visual depictions of sexually explicit conduct that involve persons under the age of 18 constitute unlawful child pornography.

This proposed rule merely provides greater details for the record-keeping and inspection process in order to ensure that minors are not used as performers in sexually explicit depictions. The rule does not restrict in any way the content of the underlying depictions; it simply clarifies the labeling on, and record-keeping requirements pertaining to, that underlying depiction. Compliance with the record-keeping requirements of this part has no bearing on the legality or illegality of the underlying sexually explicit material.

Moreover, the growth of Internet facilities in the past five years, and the proliferation of pornography on Internet computer sites or services, requires that the regulations be updated. In the proposed rule, a number of definitions are revised to adapt the rule to the modern modes of communication.

3. Analysis of the Proposed Rule

Identification. The proposed rule would modify the acceptable types of identification in 28 CFR 75.1(b) by narrowing the categories of documents required to verify the individual's identity. For example, a selective service card is removed from the list of such documents because it does not have a photograph and is not a part of a system of records that can be independently accessed to verify the legitimacy of the identification card. At the same time, a requirement is proposed to be added that the identification card used to verify identification by the producer must be independently accessible by government entities in order to ensure its legitimacy. Thus, driver's licenses—which are routinely accessed through the States' departments that manage such licensing and motor vehicle registration—are a prime form of identification. Similarly, United States passports provide positive identification to the producer and may be accessed by law enforcement agencies through the Department of State for verification. However, less reliable forms of identification, such as college identification cards, which often have no security features and are subject to easy counterfeiting, have been removed from the list of acceptable identification. The point of this proposed rule change is to increase the reliability of the documents used to determine identity and age of performers to better protect minors from exploitation.

Internet Definitions. To bring the regulations up to date with the 2003 Amendments, the definition of a producer has been modified in proposed 28 CFR 75.1. Persons who manage the content of computer sites or services are considered secondary producers. An Internet service provider (ISP) is not a producer under this definition; ISPs

merely provide individuals with access to the Internet. See 47 U.S.C. 231(b). The terms used and defined in these regulations are intended to provide common-language guidance and usage and are not meant to exclude technologies or uses of these terms as otherwise employed in practice or defined in other regulations or federal statutes (such as 47 U.S.C. 230, 231).

Records. Proposed 28 CFR 75.2 contains a new paragraph (d) providing for a forward application of the provision of the rule to require that any record that is created for a performer after the effective date of the final rule must include updating of related records to reflect the current standards. This requirement is not a retroactive application, but a requirement that any future change in the records must ensure that all records relating to that performer are complete. The proposed rule will establish an implementation timeframe that is the minimum effective date rule required under the Administrative Procedure Act. See 5 U.S.C. 553(d). Accordingly, producers will be required to comply with the regulations 30 days after publication of a final rule.

A new paragraph (e) would specifically provide that the records required by this part must be segregated from all other records. As these specific records are subject to inspection under 28 CFR 75.5, the Department wishes to make clear that the inspection is substantively limited and that other records and items are not subject to such inspection. Accordingly, the Department proposes to require that the records subject to inspection be specifically segregated from all other records to assure that the inspections are limited.

The majority of new depictions are now created for the Internet. The content of the Internet is constantly changing, and these proposed rules recognize this fact. These rules also can be applied to more permanent media. Web pages appear to have an average life of only 100 days, and Web addresses disappear and change to such an extent that a permanent record of the depiction and its temporary locations (URL) are required. See R. Weiss, *On the Web, Research Work Proves Ephemeral*, Wash. Post, p. A8 (Nov. 24, 2003), accessed at *http://www.washingtonpost.com/wp-dyn/articles/A8730–2003Nov23.html* (last accessed on Nov. 25, 2003). Accordingly, proposed 28 CFR 75.2(a)(1) would require computer site or service producers to maintain a "hard" physical or electronic copy of the actual depiction with the identification and age files, along with and linked to all accession information, such as each URL used for that depiction. This ensures that all of the data about all of the people in the depictions can be accessed to ensure that none of the people in the depictions are minors.

Proposed § 75.5, which governs the inspection process, is completely rewritten and updated. The Department considers the identity and age of the performers to be a critical health and safety issue, and Congress has made clear its intent that minors shall not be performers in covered depictions. As discussed above, the age of the performer is directly linked to whether the producer has produced unlawful child pornography, and the identification and inspection of identification records to determine that performers are of legitimate age is the core underlying purpose of the records and inspection process. Because of the significant potential for child exploitation in the context of pornography production, the Department proposes in revised § 75.5 to adapt regulations of the Occupational Health and Safety Administration, 29 CFR 1903.1 *et seq.*, to the specific purpose of protecting minors from such exploitation.

The regulations and inspections are narrowly tailored to ensure that the process comports with constitutional standards. Although protections of the Fourth Amendment extend to commercial properties, and to administrative inspections, Congress has specifically required that certain records be kept to assure the health and welfare of performers, *i.e.*, that the performers are not children. These specific records are required to be created and maintained by law, and inspection is limited to those required records. The Department believes that the government unquestionably has a substantial interest in avoiding the sexual exploitation of minors. Congress' findings of fact in enacting legislative changes to the child exploitation statutory scheme in 2003 in the PROTECT Act bear this out.

As Justice White noted in *Ferber* v. *New York*, 458 U.S. 747, 757 (1982), "[t]he prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance." Noting the specific findings of the New York legislature in banning the sale of material depicting sexual conduct of children, the Court concluded: "We shall not second-guess this legislative judgment * * * [V]irtually all of the States and the United States have passed legislation proscribing the production of or otherwise combating 'child pornography.' The legislative judgment * * * is that the use of children as subjects of pornographic materials is harmful to the physiological, emotional, and mental health of the child. That judgment, we think, easily passes muster under the First Amendment." *Id.* at 758 (footnote omitted).

Finally, the regulations set out in great detail the specifications that inform producers of sexually explicit depictions of precisely what records are required to be kept, the manner in which the records must be kept, to whom and how the statement of location of such records must be made, and the limited inspection that may be imposed upon those mandatory records.

Proposed 28 CFR 75.6(d) makes clear the requirements for presentation of the notice regarding the locations of covered records. Although the Department did not, in the past, believe that it was necessary to be specific about the manner of display of the required notice, some producers, particularly in the film and Internet media, have attempted to minimize the required notice to such an extent that it has been unreadable, either for lack of size, acuity, contrast, or duration. Accordingly, to provide the industry with clear guidance, and to ensure that the required notice is displayed in such a manner as to be readable, this provision sets out specific requirements for the display. The Department specifically invites comments on how best to make these requirements clearer and applicable to all modes of presentation.

Regulatory Procedures

Regulatory Flexibility Act

The Department of Justice has drafted this regulation in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601–612. The Department of Justice drafted this rule to minimize its impact on small businesses while meeting its intended objectives. Based upon the preliminary information available to the Department through past investigations and enforcement actions involving the affected industry, the Department is unable to state with certainty that this rule, if promulgated as a final rule, will not have any effect on small businesses of the type described in 5 U.S.C. 601(3). Accordingly, the Department has prepared an initial Regulatory Flexibility Act analysis in accordance with 5 U.S.C. 603, as follows:

A. Need for and Objectives of This Proposed Rule

This proposed rule, the need for the proposed rule, and the objectives of the proposed rule are described in the **SUPPLEMENTARY INFORMATION**.

B. Description and Estimates of the Number of Small Entities Affected by This Proposed Rule

A "small business" is defined by the Regulatory Flexibility Act (RFA) to be the same as a "small business concern" under the Small Business Act ("SBA"), 15 U.S.C. 632. See 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Under the SBA, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA.

Based upon the information available to the Department through past investigations and enforcement actions involving the affected industry, there are likely to be a number of producers of sexually explicit depictions who hire or pay for performers and who, accordingly, would come under the ambit of the proposed rule. However, none of the changes proposed by this rule affect the number of producers that would be covered. The proposed rule clarifies the meaning of an existing definition and how that definition covers electronic sexually explicit depictions, but does not expand that definition.

Pursuant to the RFA, the Department encourages all affected commercial entities to provide *specific* estimates, wherever possible, of the economic costs that this rule will impose on them and the benefits that it will bring to them and to the public. The Department asks affected small businesses to estimate what these regulations will cost as a percentage of their total revenues in order to enable the Department to ensure that small businesses are not unduly burdened.

The proposed regulation has no effect on State or local governmental agencies.

C. Specific Requirements Imposed That Would Impact Private Companies

The proposed rule provides clearer requirements for private companies to maintain records of performers of sexually explicit depictions to ensure that minors are not used in such sexually explicit depictions. The proposed rule requires that these records be properly indexed and cross-referenced. The Department specifically seeks information from affected producers on the costs of the record-keeping, indexing, and cross-referencing requirements.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department of Justice has determined that this rule is a "significant regulatory action" under Executive Order 12866, section 3(f). Accordingly, this rule has been reviewed by the Office of Management and Budget.

The benefit of the proposed regulation is that children will be better protected from exploitation in the production of sexually explicit depictions by requiring producers to document that only those who are 18 years of age perform in such sexually explicit depictions. The costs to the industry include slightly higher record-keeping costs and the potential for obligation of some amount of time assisting inspectors in the process of inspecting the required records. The Department has determined that these benefits and costs are difficult to quantify precisely, but that the benefits are significant, the costs are minimal, and the benefits clearly outweigh the costs.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. See 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act

This proposed rule modifies existing requirements to clarify the record-keeping requirements pursuant to Congressional enactments and the development of the Internet.

This rule contains a new information collection that modifies the current requirements of existing regulations to clarify the means of maintaining and organizing the required documents. This information collection will be submitted to the Office of Management and Budget (OMB) for regular approval and comments will be solicited from the public, in accordance with the Paperwork Reduction Act of 1995. The title of the information collection is "18 U.S.C. 2257 Record keeping Requirements for Inspection Records Relating to Depiction of Sexually Explicit Performances". Any comments received during the comment period should address one or more of the following four points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to: Andrew Oosterbaan, Chief, Child Exploitation and Obscenity Section,

Criminal Division, United States Department of Justice, Washington, DC 20530. Comments should also be sent to: Brenda Dyer, Deputy Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Rm. 1600, Washington, DC 20530.

The Criminal Division of the United States Department of Justice cannot estimate the annual burden of collecting the requisite information. The Department of Justice has no way of estimating the annual record-keeping hours burden because of the multitude of variables within the control of producers of depictions of actual sexually explicit conduct. Inasmuch as these records may be maintained on simple spreadsheet or data management software, within the discretion of the producers of depictions of actual sexually explicit conduct, and only file copies of associated identification are required, the Department cannot estimate the annualized hour burden. Industry comment has been invited in the proposed rule.

List of Subjects in 28 CFR Part 75

Crime, Infants and children, Reporting and recordkeeping requirements.

Accordingly, the Department of Justice proposes to amend chapter 1 of title 28 of the Code of Federal Regulations as follows:

1. Part 75 of title 28 CFR is revised to read as follows:

PART 75—CHILD PROTECTION RESTORATION AND PENALTIES ENHANCEMENT ACT OF 1990 AND PROTECT ACT; RECORD-KEEPING AND RECORD INSPECTION PROVISIONS

Sec.

Authority: 18 U.S.C. 2257.

§ 75.1 Definitions.

(a) Terms used in this part shall have the meanings set forth in 18 U.S.C. 2257, and as provided in this section. The terms used and defined in this part are intended to provide common-language guidance and usage and are not meant to exclude technologies or uses of these terms as otherwise employed in practice or defined in other regulations or federal statutes (*e.g.*, 47 U.S.C. 230, 231).

(b) *Picture identification card* means a document issued by the United States, a State government or a political subdivision thereof, or a United States territory that bears the photograph and the name of the individual identified, and provides sufficient specific information that it can be accessed from the issuing authority, *e.g.*, a passport issued by the United States or a foreign country, driver's license issued by a State or the District of Columbia, or identification card issued by a State or the District of Columbia.

(c) *Producer* means any person, including any individual, corporation, or other organization, who is a primary producer or a secondary producer.

(1) A *primary producer* is any person who actually films, videotapes, photographs, or creates a computer-generated image, digital image, or picture of, or digitizes an image of, a visual depiction of actual sexually explicit conduct.

(2) A *secondary producer* is any person who produces, assembles, manufactures, publishes, duplicates, reproduces, or reissues a book, magazine, periodical, film, videotape, a computer-generated image, digital image, or picture, or other matter intended for commercial distribution that contains a visual depiction of actual sexually explicit conduct, or who inserts on a computer site or service a digital image of, or otherwise manages the content of a computer site or service that contains a visual depiction of, actual sexually explicit conduct, including any person who enters into a contract, agreement, or conspiracy to do any of the foregoing.

(3) The same person may be both a primary and a secondary producer.

(4) *Producer* does not include persons whose activities relating to the visual depiction of actual sexually explicit conduct are limited to the following:

(i) Photo processing;

(ii) Mere distribution;

(iii) Any activity, other than those activities identified in paragraphs (c)(1) and (2) of this section, that does not involve the hiring, contracting for, managing, or otherwise arranging for the participation of the depicted performers;

(iv) A provider of Web-hosting services who does not manage the content of the computer site or service; or

(v) A provider of an electronic communication service or remote computing service who does not manage the content of the computer site or service.

(5) A *producer* includes any subsidiary or parent organization, and any subsidiary of any parent organization, notwithstanding any limitations on liability that would otherwise be applicable.

(d) *Sell, distribute, redistribute,* and *re-release* refer to commercial distribution of a book, magazine, periodical, film, videotape, computer-generated image, digital image, picture, or other matter that contains a visual depiction of actual sexually explicit conduct, but does not refer to noncommercial or educational distribution of such matter, including transfers conducted by bona fide lending libraries, museums, schools, or educational organizations.

(e) *Copy,* when used in reference to an identification document or a picture identification card, means a photocopy or a photograph.

(f) *Internet* means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, that constitute the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio.

(g) *Computer site or service* means a computer server-based file repository or file distribution service that is accessible over the Internet, World Wide Web, Usenet, or any other interactive computer service (as defined in 47 U.S.C. 230(f)(2)). Computer site or service includes, without limitation, sites or services using hypertext markup language, hypertext transfer protocol, file transfer protocol, electronic mail transmission protocols, similar data transmission protocols, or any successor protocols, including but not limited to computer sites or services on the World Wide Web.

(h) *URL* means uniform resource locator.

(i) *Electronic communications service* has the meaning set forth in 18 U.S.C. 2510(15).

(j) *Remote computing service* has the meaning set forth in 18 U.S.C. 2711(2).

(k) *Manage content* means to make editorial or managerial decisions concerning the content of a computer site or service.

(l) *Interactive computer service* has the meaning set forth in 47 U.S.C. 230(f)(2).

§ 75.2 Maintenance of records.

(a) Any producer of any book, magazine, periodical, film, videotape, computer-generated image, digital

image, picture, or other matter that contains one or more visual depictions of actual sexually explicit conduct made after November 1, 1990, shall, for each performer portrayed in such visual depiction, create and maintain records containing the following:

(1) The legal name and date of birth of each performer, obtained by the producer's examination of an identification document, as defined by 18 U.S.C. 1028(d)(3). For any performer portrayed in such a depiction made after May 26, 1992, the records shall also include a legible copy of the identification document examined and, if that document does not contain a recent and recognizable picture of the performer, a legible copy of a picture identification card. For any performer portrayed in such a depiction after [insert date 30 days after publication of the final rule in the **Federal Register**], the records shall include:

(i) A copy of the depiction, and

(ii) Where the depiction is published on an Internet Computer site or service, a copy of any URL associated with the depiction.

(2) Any name, other than each performer's legal name, ever used by the performer, including the performer's maiden name, alias, nickname, stage name, or professional name. For any performer portrayed in such a depiction made after May 26, 1992, such names shall be indexed by the title or identifying number of the book, magazine, film, videotape, computer-generated image, digital image, picture, URL, or other matter.

(3) Records required to be created and maintained under this part shall be organized alphabetically, or numerically where appropriate, by the legal name of the performer (by last or family name, then first or given name), and shall be indexed or cross-referenced to each alias or other name used and to each title or identifying number of the book, magazine, film, videotape, computer-generated image, digital image, picture, URL, or other matter.

(b) A producer who is a secondary producer as defined in § 75.1(c) may satisfy the requirements of this part to create and maintain records by accepting from the primary producer, as defined in § 75.1(c), copies of the records described in paragraph (a) of this section. Such a secondary producer shall also keep records of the name and address of the primary producer from whom he received copies of the records.

(c) The information contained in the records required to be created and maintained by this part need be current only as of the time the primary producer actually films, videotapes, or photographs, or creates a computer-generated image, digital image, or picture, of the visual depiction of actual sexually explicit conduct. If the producer subsequently produces an additional book, magazine, film, videotape, computer-generated image, digital image, or picture, or other matter (including but not limited to Internet computer site or services) that contains one or more visual depictions of actual sexually explicit conduct made by a performer for whom he maintains records as required by this part, the producer may add the additional title or identifying number and the names of the performer to the existing records maintained pursuant to § 75.2(a)(2).

(d) For any record created or amended after [insert date 30 days after publication of the final rule in the **Federal Register**], all such records shall be organized alphabetically, or numerically where appropriate, by the legal name of the performer (by last or family name, then first or given name), and shall be indexed or cross-referenced to each alias or other name used and to each title or identifying number of the book, magazine, film, videotape, computer-generated image, digital image, picture, or other matter (including but not limited to Internet computer site or services). If the producer subsequently produces an additional book, magazine, film, videotape, computer-generated image, digital image, or picture, or other matter (including but not limited to Internet computer site or services) that contains one or more visual depictions of actual sexually explicit conduct made by a performer for whom he maintains records as required by this part, the producer shall add the additional title or identifying number and the names of the performer to the existing records and such records shall thereafter be maintained in accordance with this paragraph.

(e) Records required to be maintained under this part shall be segregated from all other records, shall not contain any other records, and shall not be contained within any other records.

§ 75.3 Categorization of records.

Records required to be maintained under this part shall be categorized alphabetically, or numerically where appropriate, and retrievable to: All name(s) of each performer, including any alias, maiden name, nickname, stage name, or professional name of the performer; and according to the title, number, or other similar identifier of each book, magazine, periodical, film, videotape, computer-generated image, digital image, picture, or other matter. Only one copy of each picture of a performer's picture identification card and identification document must be kept as long as each copy is categorized and retrievable according to any name, real or assumed, used by such performer, and according to any title or other identifier of the matter.

§ 75.4 Location of records.

Any producer required by this part to maintain records shall make such records available at the producer's place of business. Each record shall be maintained for seven years from the date of creation or last amendment or addition. If the producer ceases to carry on the business, the records shall be maintained for five years thereafter. If the producer produces the book, magazine, periodical, film, videotape, computer-generated image, digital image, picture, or other matter (including but not limited to Internet computer site or services) as part of his control of or through his employment with an organization, records shall be made available at the organization's place of business. If the organization is dissolved, the individual who was responsible for maintaining the records on behalf of the organization, as described in § 75.6(b), shall continue to maintain the records for a period of five years after dissolution.

§ 75.5 Inspection of records.

(a) *Authority to inspect.* Investigators designated by the Attorney General (hereinafter "investigators") are authorized to enter without delay and at reasonable times (as defined in subsection (c)(1)) any establishment of a producer where records under § 75.2 are maintained to inspect, within reasonable limits and in a reasonable manner, for the purpose of determining compliance with the record-keeping requirements of 18 U.S.C. 2257.

(b) *Advance notice of inspections.* Advance notice of record inspections shall not be given.

(c) *Conduct of inspections.*

(1) Inspections shall take place during normal business hours and at such places as specified in § 75.4. For the purpose of this part, "normal business hours" are from 8 a.m. to 6 p.m., local time, and any other time during which the producer is actually conducting business relating to producing depiction of actual sexually explicit conduct.

(2) Upon commencing an inspection, the investigator shall:

(i) Present his or her credentials to the owner, operator, or agent in charge of the establishment;

(ii) Explain the nature and purpose of the inspection, including the limited

nature of the records inspection, and the records required to be kept by the Act and this part; and

(iii) Indicate the scope of the specific inspection and the records that he or she wishes to inspect.

(3) The inspections shall be conducted so as not to unreasonably disrupt the operations of the producer's establishment.

(4) At the conclusion of an inspection, the investigator may informally advise the producer of any apparent violations disclosed by the inspection. The producer may bring to the attention of the investigator any pertinent information regarding the records inspected or any other relevant matter.

(d) *Frequency of inspections.* A producer may be inspected once during any four-month period, unless there is a reasonable suspicion to believe that a violation of this part has occurred, in which case an additional inspection or inspections may be conducted before the four-month period has expired.

(e) *Copies of records.* An investigator may photocopy, at no expense to the producer, during the inspection, any record that is subject to inspection.

(f) *Other law enforcement authority.* These regulations do not restrict the otherwise lawful investigative prerogatives of an investigator while conducting an inspection.

(g) *Seizure of evidence.* Notwithstanding any provision of this part or any other regulation, a law enforcement officer may seize any evidence of the commission of any felony while conducting an inspection.

§ 75.6 Statement describing location of books and records.

(a) Any producer of any book, magazine, periodical, film, videotape, computer-generated image, digital image, picture, or other matter that contains one or more visual depictions of actual sexually explicit conduct made after November 1, 1990, and produced, manufactured, published, duplicated, reproduced, or reissued on or after May 26, 1992, shall cause to be affixed to every copy of the matter a statement describing the location of the records required by this part. A producer may cause such statement to be affixed, for example, by instructing the manufacturer of the book, magazine, periodical, film, videotape, computer-generated image, digital image, picture, or other matter to affix the statement.

(b) Every statement shall contain:

(1) The title of the book, magazine, periodical, film, or videotape, computer-generated image, digital image, picture, or other matter (unless the title is prominently set out elsewhere in the book, magazine, periodical, film, or videotape, computer-generated image, digital image, picture, or other matter) or, if there is no title, an identifying number or similar identifier that differentiates this matter from other matters that the producer has produced;

(2) The date of production, manufacture, publication, duplication, reproduction, or reissuance of the matter; and,

(3) A street address at which the records required by this part may be made available. The street address may be an address specified by the primary producer or, if the secondary producer satisfies the requirements of § 75.2(b), the address of the secondary producer. A post office box address does not satisfy this requirement.

(c) If the producer is an organization, the statement shall also contain the name, title, and business address of the individual employed by such organization who is responsible for maintaining the records required by this part.

(d) The information contained in the statement must be accurate as of the date on which the book, magazine, periodical, film, videotape, computer-generated image, digital image, picture, or other matter is sold, distributed, redistributed, or rereleased.

(e) For the purposes of this section, the required statement shall be displayed in the same typeface as the names of the performers, director, producer, or owner, whichever is larger, and shall be no smaller in size than the largest of the names of the performers, director, producer, or owner, and in no case in less than 11pt type, in black on a white, untinted background. For any electronic or other display of the notice that is limited in time, the notice must be displayed for a sufficient duration and of a sufficient size to be capable of being read by the average viewer.

§ 75.7 Exemption statement.

(a) Any producer of any book, magazine, periodical, film, videotape, computer-generated image, digital image, picture, or other matter may cause to be affixed to every copy of the matter a statement attesting that the matter is not covered by the record-keeping requirements of 18 U.S.C. 2257(a)–(c) and of this part if:

(1) The matter contains only visual depictions of actual sexually explicit conduct made before November 1, 1990, or is produced, manufactured, published, duplicated, reproduced, or reissued before May 26, 1992;

(2) The matter contains only visual depictions of simulated sexually explicit conduct; or,

(3) The matter contains only some combination of the visual depictions described in paragraphs (a)(1) and (a)(2) of this section.

(b) If the primary producer and the secondary producer are different entities, the primary producer may certify to the secondary producer that the visual depictions in the matter satisfy the standards under paragraphs (a)(1) through (a)(3) of this section. The secondary producer may then cause to be affixed to every copy of the matter a statement attesting that the matter is not covered by the record-keeping requirements of 18 U.S.C. 2257(a)–(c) and of this part.

§ 75.8 Location of the statement.

(a) All books, magazines, and periodicals shall contain the statement required in § 75.6 or suggested in § 75.7 either on the first page that appears after the front cover or on the page on which copyright information appears.

(b) In any film or videotape that contains end credits for the production, direction, distribution, or other activity in connection with the film or videotape, the statement referred to in § 75.6 or § 75.7 shall be presented at the end of the end titles or final credits and shall be displayed for a sufficient duration to be capable of being read by the average viewer.

(c) Any other film or videotape shall contain the required statement within one minute from the start of the film or videotape, and before the opening scene, and shall display the statement for a sufficient duration to be read by the average viewer.

(d) A computer site or service or Web address containing a computer-generated image, digital image, or picture, shall contain the required statement on its homepage or principal URL.

(e) For all other categories not otherwise mentioned in this section, the statement is to be prominently displayed consistent with the manner of display required for the aforementioned categories.

Dated: June 14, 2004.

John Ashcroft,

Attorney General.

[FR Doc. 04–13792 Filed 6–24–04; 8:45 am]

BILLING CODE 4410–14–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–7779–1]

Hazardous Waste Management System; Proposed Exclusion for Identifying and Listing Hazardous Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: The EPA (also, "the Agency" or "we" in this preamble) is proposing to grant a petition submitted by General Motors Corporation, Lordstown Assembly Plant (GM) in Lordstown, Ohio to exclude (or "delist") up to 2,000 cubic yards of sludge per year generated by its wastewater treatment plant (WWTP) from the list of hazardous wastes.

The Agency has tentatively decided to grant the petition based on an evaluation of waste-specific information provided by GM. This proposed decision, if finalized, conditionally excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

We conclude that GM's petitioned waste is nonhazardous with respect to the original listing criteria and that there are no other factors which would cause the waste to be hazardous.

DATES: We will accept public comments on this proposed decision until August 9, 2004. We will stamp comments postmarked after the close of the comment period as "late." These "late" comments may not be considered in formulating a final decision.

ADDRESSES: Please send two copies of your comments to Judy Kleiman, Waste Management Branch (DW–8J), Environmental Protection Agency, 77 W. Jackson Blvd., Chicago, Illinois 60604.

Any person may request a hearing on this proposed decision by filing a request with Margaret Guerriero, Director, Waste, Pesticides and Toxics Division, Environmental Protection Agency, 77 W. Jackson Blvd., Chicago, Illinois 60604.

Your request for a hearing must reach EPA by July 12, 2004. The request must contain the information prescribed in § 260.20(d).

FOR FURTHER INFORMATION CONTACT: For technical information concerning this document, contact Judy Kleiman at the address above or at 312–886–1482. The RCRA regulatory docket for this proposed rule is located at the U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, and is available for viewing from 8 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. Call Judy Kleiman for appointments. The public may copy material from the regulatory docket at $0.15 per page.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Overview Information

The EPA is proposing to grant a petition submitted by GM's Lordstown Assembly Plant located in Lordstown, Ohio to exclude or delist an annual volume of 2,000 cubic yards of F019 wastewater treatment sludge from the lists of hazardous waste set forth in 40 CFR 261.32 and 261.33. GM claims that the petitioned waste does not meet the criteria for which EPA listed it, and that there are no additional constituents or factors which could cause the waste to be hazardous.

Based on our review described in section III, we agree with the petitioner that the waste is nonhazardous. We reviewed the description of the process which generates the waste and the analytical data submitted by GM. We believe that the petitioned waste does not meet the criteria for which the waste was listed, and that there are no other factors which might cause the waste to be hazardous.

II. Background

A. What Is a Listed Waste?

The EPA published an amended list of hazardous wastes from nonspecific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA. The EPA has amended this list several times and published it in 40 CFR 261.31 and 261.32.

We list these wastes as hazardous because: (1) They typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (that is, ignitability, corrosivity, reactivity, and toxicity) or (2) they meet the criteria for listing contained in §§ 261.11(a)(2) or (3).

B. What Is a Delisting Petition?

Individual waste streams may vary depending on raw materials, industrial processes, and other factors. Thus, while a waste described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be.

A procedure to exclude or delist a waste is provided in 40 CFR 260.20 and 260.22 which allows a person, or a facility to submit a petition to the EPA or to an authorized state, demonstrating that a specific waste from a particular generating facility is not hazardous.

In a delisting petition, the petitioner must show that a waste does not meet any of the criteria for listed wastes in 40 CFR 261.11 and that the waste does not exhibit any of the hazardous waste characteristics of ignitability, reactivity, corrosivity, or toxicity. The petitioner must present sufficient information for us to decide whether any factors in addition to those for which the waste was listed warrant retaining it as a hazardous waste. (See § 260.22, 42 U.S.C. 6921(f) and the background documents for the listed wastes.)

If a delisting petition is granted, the generator remains obligated under RCRA to confirm that the waste remains nonhazardous.

C. What Factors Must EPA Consider in Deciding Whether To Grant a Delisting Petition?

In reviewing this petition, we considered the original listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)–(4). We evaluated the petitioned waste against the listing criteria and factors cited in §§ 261.11(a)(2) and (3).

Besides considering the criteria in 40 CFR 260.22(a), §§ 261.11(a)(2) and (3), 42 U.S.C. 6921(f), and in the background documents for the listed wastes, EPA must consider any factors (including additional constituents) other than those for which we listed the waste if these additional factors could cause the waste to be hazardous.

Our tentative decision to delist waste from GM's Lordstown facility is based on our evaluation of the waste for factors or criteria which could cause the waste to be hazardous. These factors included: (1) Whether the waste is considered acutely toxic; (2) the toxicity of the constituents; (3) the concentration of the constituents in the waste; (4) the tendency of the constituents to migrate and to bioaccumulate; (5) the persistence in the environment of any constituents once released from the waste; (6) plausible and specific types of management of the petitioned waste; (7) the quantity of waste produced; and (8) waste variability.

EPA must also consider as hazardous wastes mixtures containing listed hazardous wastes and wastes derived from treating, storing, or disposing of listed hazardous waste. See 40 CFR 261.3(a)(2)(iv) and (c)(2)(i), called the "mixture" and "derived-from" rules, respectively. Mixture and derived-from wastes are also eligible for exclusion but remain hazardous until excluded.

III. EPA's Evaluation of the Waste Information and Data

A. What Wastes Did GM Petition EPA To Delist?

In February 1999, GM petitioned EPA to exclude an annual volume of 1,000 cubic yards (yd^3) of F019 WWTP filter press sludge generated at its Lordstown Assembly Plant located in Lordstown, Ohio from the list of hazardous wastes contained in 40 CFR 261.31. On April 22, 2004, GM requested that the annual volume of F019 waste under consideration for a delisting be increased to 2,000 yd^3. F019 is defined in § 261.32 "Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process." GM claims that the petitioned waste does not meet the criteria for which F019 was listed (*i.e.*, hexavalent chromium and complexed cyanide) and that there are no other factors which would cause the waste to be hazardous.

B. How Does GM Generate the Petitioned Waste?

Automobile bodies are cleaned with city water and a surfactant to loosen and remove soils and metal working fluids in preparation for a uniform dense phosphate coating. After rinsing, a phosphate conditioner is applied to the automobile bodies in a 27,000 gallon immersion tank. The bodies are then immersed in a 72,000 gallon tank where the zinc-nickel phosphate coating is applied. The phosphating bath includes zinc phosphate, nickel phosphate, and phosphoric acid. Following the phosphating, the automobile bodies are rinsed, sprayed with a non-chromium sealer and rinsed again. There are no active overflows from the phosphating tank. A paint film is then cathodically electrodeposited on the automobile bodies in a 93,000 gallon immersion tank followed by a multi-stage rinse before baking at 350 degrees for 45 minutes.

Color-specific primers, base coats and clear coats are applied in spray booths with manual and automated spray zones. Spray booth ambient air is forced through a downdraft wash water recirculation system to remove airborne paint mists. Within the recirculation system, water is chemically treated and filtered. When dissolved solids reach 40,000 milligrams per liter (mg/l) in the wash water, a portion of the wash water is discharged to the wastewater treatment plant (WWTP). The filtered solids from the recirculation system are disposed of as solid wastes.

The WWTP receives (1) process waste water which includes car washing waste water, plant clean up and maintenance waste water, and spray booth wash water, (2) phosphate waste water from the phosphating line, (3) the waste stream from the electrodeposition of the primer paint operations (ELPO) and (4) the oily waste stream from the fabrication plant.

The general process waste water enters a solids separator and is then discharged to one of five process waste holding tanks. The phosphating wastewater and the ELPO wastewater blend with the general process waste water within the process waste holding tanks. Prior to entering the process waste holding tanks, the ELPO waste water is segregated in one of two 150,000 gallon ELPO holding tanks to allow for controlled metering of the ELPO waste water into the process waste holding tanks. The phosphate waste water may also be segregated before being discharged into the process waste holding tanks. The process wastewater in the holding tanks is pumped to the blend tank where it is treated with sodium hydroxide and flocculants and then enters a 6,000 gallon flash mix tank. From the flash mix tank, the wastewater enters a clarifier. The settled sludge from the clarifier is pumped to a sludge thickening tank and then to a conditioner tank where it is mixed and pumped into a plate and frame filter press. The dewatered sludge drops into a roll-off box and is disposed of as F019. The dewatered sludge from the filter press is the subject of this petition.

The supernatant from the clarifier passes through a sand filter, is pH adjusted and is mixed with the oily waste water before it is discharged to the city sewer system. Infrequently, the sand filter is backwashed and the solids from the sand filter are routed to the waste water treatment plant to be incorporated into the final sludge. Before mixing with the process waste water, the oily waste water is mixed with emulsifiers and is pumped to a dissolved air floatation unit (DAF). The oily sludge from the DAF may be pumped to the sludge thickener tank where it commingles with the sludge from the process waste or the oily sludge may be hauled off site for disposal as a solid waste. The sludge filter cake sampled for this petition was generated when the oily sludge from the DAF was being pumped to the sludge thickener tank.

C. How Did GM Sample and Analyze the Petitioned Waste?

On December 16, 1997 GM sampled the WWTP sludge from four separate roll-off boxes representing sludge collected over a period of approximately 4 weeks. On June 9, 1998 GM sampled the sludge in another roll-off box representing the sludge collected over a period of one week. GM collected one composite and one grab sample of sludge from each roll-off box during each sampling event. Composite samples consisted of four individual full-depth core grab samples mixed together to form one sample.

GM analyzed composite samples for the following parameters using the methods specified: (1) Total constituent analysis and Oily Waste Extraction Procedure for metals in Appendix IX of 40 CFR part 264, including antimony,

arsenic, barium, beryllium, cadmium, chromium, cobalt, copper, lead, mercury,[1] nickel, selenium, silver, thallium, tin, vanadium, and zinc (SW–846 Methods 6010B, 6020A and 1330A);[2] (2) total constituent and Toxicity Characteristic Leaching Procedure (TCLP) analysis for 120 semi-volatile organic compounds (SW–846 Methods 8270B, and 1311); (3) total constituent and TCLP analysis for formaldehyde (Association of Official Analytical Chemists Method 931.08 and SW–846 Method 1311); (4) total constituent and TCLP analysis for sulfide (SW–846 Methods 9030A and 1311); (5)total constituent and TCLP analysis for cyanide (SW–846 Methods 9012, 9013,and 1311);[3] (6) total constituent and TCLP analysis for fluoride (EPA Method 340.2 and SW–846 Method 1311); (7) total constituent and TCLP analysis for organochlorine pesticides and chlorinated herbicides(SW–846 Methods 8081,8151 and 1311); and (8) total oil and grease (SW–846 Method 9071A). GM also tested the waste for the characteristics of ignitability, corrosivity(SW 846 Method 1010), and pH (SW 846 Method 9045C).

GM analyzed full-depth core grab samples for total constituent and TCLP analysis for 55 volatile organic compounds (VOCs) (SW–846 Method 8260A and SW–846 Method 1311)

D. What Were the Results of GM's Analysis of Its Waste?

The table below presents the maximum observed total and leachate concentrations for all detected constituents and maximum allowable total and TCLP concentrations for those constituents.

Constituents	Allowable levels for 2,000 cubic yards				
	Maximum concentration observed		Maximum allowable concentrations		Maximum allowable groundwater concentration (µg/l)
	Total (mg/kg)	TCLP (mg/kg)	Total (mg/kg)	TCLP (mg/kg)	
acetone	J 0.488	< 0.05	NA	2,100	33,800
antimony	12.6	X 0.017	700,000	0.66	6
arsenic	4.5	X 0.125	10,000	0.3	4.88
barium	4,280	0.431	NA	[1] 100	2,000
beryllium	0.23	J 0.008	20,000	1.3	4
bis (2-ethylhexyl) phthalate	J 102	< 0.05	NA	0.20	3.2
cadmium	0.93	< 0.031	27,000	0.48	5
chloromethane	J 0.087	< 0.01	3,700	0.32	5.63
chromium	759	JX 0.127	4,100	5	100
cobalt	5.4	X 0.049	18,000	24	750
copper	J 1,490	JX 0.039	NA	29,000	1,300
m-cresol	< 367	0.0343	NA	110	1,875
p-cresol	< 367	0.0343	NA	11	188
di-n-octyl phthalate	J 91.5	< 0.05	NA	0.22	2.6
ethylbenzene	J 0.185	< 0.01	NA	43	700
formaldehyde	4	J 0.2	700	84	1,390
lead	J 5,660	X 0.16	630,000	[1] 5	15
mercury	J 0.11	< 0.0055	10	[1] 0.2	2
methyl ethyl ketone	J 0.179	< 1	NA	[1] 200	22,500
methyl isobutyl ketone	J 0.218	< 0.05	NA	180	3,000
methylene chloride	< 0.4	0.053	150,000	0.29	5
nickel	5,720	46.209	NA	91	750
phenol	< 367	0.057	NA	690	11,300
selenium	2.6	X 0.015	NA	[1] 1	50
silver	1.1	X 0.09	NA	[1] 5	188
styrene	J 0.017	< 0.01	NA	6.1	100
thallium	1.5	X 0.009	140,000	0.28	2
tin	609	X 3.042	NA	720	22,500
toluene	J 0.223	J 0.0019	NA	61	1,000
vanadium	30.3	0.02	NA	87	338
xylenes	1.23	J 0.0058	NA	110	1,800
zinc	16,300	JX 4.865	NA	900	11,300
cyanide (total)	18	J 0.00831	NA	12	200
sulfide	991	1.58	NA	NA	NA
fluoride	498	1.75	NA	130	4,000
oil & grease	331,000	NA	NA	NA	NA
pH	8.09–11.3	NA	NA	NA	NA

These levels represent the highest concentration of each constituent found in any sample and do not necessarily represent the levels found in a single sample.

[1] The allowable level in a TCLP leachate defaults to the characteristic level set forth in 40 CFR part 261, subpart C.

<—Denotes that the constituent was not detected at the quantitation level.

J—Estimated value.

X—Constituent was not detected in one of the two OWEP extractions. In the final OWEP calculation, the sample quantitation limit was used as a worst case when a constituent was not detected in one of the extractions.

NA—The program did not calculate a delisting level for this constituent or the delisting level was significantly higher than the level expected to be found in the waste.

[1] Mercury was determined using SW–846 methods 7470A for aqueous samples and 7471A for nonaqueous samples.

[2] In step 7.10 of Method 1330, Method 1311 was substituted for Method 1310.

[3] Deionized water was used as the extraction fluid instead of the fluid specified in the method.

GM submitted a signed statement certifying accuracy and responsibility of the results. See 40 CFR 260.22(i)(12).

E. How Did EPA Evaluate the Risk of Delisting This Waste?

For this delisting determination, we assumed that the waste would be disposed in a Subtitle D landfill and we considered transport of waste constituents through ground water, surface water and air. We evaluated GM's petitioned waste using the Agency's Delisting Risk Assessment Software (DRAS) to predict the concentration of hazardous constituents that might be released from the petitioned waste and to determine if the waste would pose a threat. To predict the potential for release to groundwater from landfilled wastes and subsequent routes of exposure to a receptor, the DRAS uses dilution attenuation factors derived from EPA's Composite Model for leachate migration with Transformation Products. From a release to ground water, the DRAS considers routes of exposure to a human receptor of ingestion of contaminated ground water, inhalation from groundwater while showering and dermal contact from groundwater while bathing. From a release to surface water by erosion of waste from an open landfill into storm water run-off, DRAS evaluates the exposure to a human receptor by fish ingestion and ingestion of drinking water. From a release of waste particles and volatile emissions to air from the surface of an open landfill, DRAS considers routes of exposure of inhalation of volatile constituents, inhalation of particles, and air deposition of particles on residential soil and subsequent ingestion of the contaminated soil by a child. For a detailed description of the DRAS program and revisions see 65 FR 58015, September 27, 2000; 65 FR 59000, November 7, 2000; and 65 FR 75879, December 5, 2000.

At a target cancer risk of 1×10^{-6} and a target hazard quotient of one, the DRAS program determined maximum allowable concentrations for each constituent in both the waste and the leachate at an annual waste volume of 2,000 cubic yards. However, since naturally occurring levels of arsenic are often higher than allowable levels set by the DRAS at a risk of 1×10^{-6}, EPA set the allowable level of leachable arsenic at a target cancer risk of 1×10^{-4}, which corresponds to a concentration at the point of exposure of approximately one half of the existing MCL. Arsenic is not expected to be a major constituent of concern in this waste.

We used the maximum estimated annual waste volume and the maximum reported total and leachate concentrations as inputs to estimate the constituent concentrations in the ground water, soil, surface water or air. If, using an appropriate analytical method, a constituent was not detected in any sample or in the leachate of any sample, it was considered not to be present in the waste.

F. What Did EPA Conclude About GM's Analysis?

The maximum reported leachate concentrations and the maximum reported levels of the hazardous constituents found in this waste are presented in the table above. The table also presents the maximum allowable levels. The concentrations of all constituents in both the waste and the leachate are below the allowable levels of concern calculated by the DRAS program at the target risk levels. We therefore conclude that GM's wastewater treatment sludge is not a substantial or potential hazard to human health and the environment when disposed of in a Subtitle D landfill.

We therefore propose to grant an exclusion for this waste. If this exclusion is finalized, GM must dispose of this waste in a Subtitle D landfill permitted or licensed by a state, and will remain obligated to verify that the waste meets the allowable levels set forth here. The Agency will no longer regulate the petitioned waste under 40 CFR parts 262 through 268 and the permitting standards of part 270.

IV. Conditions for Exclusion

A. When Would EPA Finalize the Proposed Delisting Exclusion?

HSWA specifically requires the EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, EPA will not make a final decision or grant an exclusion until it has addressed all timely public comments on today's proposal, including any at public hearings.

Since this rule would reduce the existing requirements for persons generating hazardous wastes, the regulated community does not need a six-month period to come into compliance in accordance with sec. 3010 of RCRA as amended by HSWA.

B. How Will GM Manage the Waste If It Is Delisted?

If the petitioned waste is delisted, GM must dispose of it in a Subtitle D landfill which is permitted, licensed, or registered by a state to manage industrial waste.

C. What Are the Maximum Allowable Concentrations of Hazardous Constituents in the Waste?

Concentrations measured in the TCLP (or OWEP, where appropriate) extract of the waste of the following constituents must not exceed the following levels (mg/l): antimony—0.66; arsenic—0.30; chromium—5; lead—5; mercury—0.2; nickel—91; selenium—1; silver—5; thallium—0.28; tin—720; zinc—900; fluoride—130; p-cresol—11; formaldehyde—84; methylene chloride—0.29. The total concentrations in the waste of the following constituents must not exceed the following levels (mg/kg): formaldehyde—700; chromium—4,100; mercury—10.

D. How Frequently Must GM Test the Waste?

GM must analyze a representative sample of the WWTP filter press sludge on a quarterly basis to demonstrate that the constituents of concern in the petitioned waste do not exceed the levels of concern in section IV.C above. GM must use methods with appropriate detection levels with appropriate quality control procedures.

E. What Data Must GM Submit?

GM must submit the data obtained through quarterly verification testing to U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, upon the anniversary of the effective date of this exclusion. GM must compile, summarize, and maintain on site records of operating conditions and analytical data. GM must make these records available for inspection. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12).

F. What Happens if GM Fails To Meet the Conditions of the Exclusion?

If GM violates the terms and conditions established in the exclusion, the Agency may start procedures to withdraw the exclusion.

If the verification testing of the waste does not meet the delisting levels described in section IV.C above or other data (including but not limited to leachate data or groundwater monitoring data) relevant to the delisted waste indicates that any constituent is at a level in the leachate higher than the specified delisting level, or is in the groundwater at a concentration higher than the maximum allowable groundwater concentration in the table in Section III.D. GM must notify the Agency within 10 days of first possessing or being made aware of the data. The exclusion will be suspended

and the waste managed as hazardous until GM has received written approval from the Agency to continue the exclusion. GM may provide sampling results which support the continuation of the delisting exclusion.

The EPA has the authority under RCRA and the Administrative Procedures Act, 5 U.S.C. 551 (1978) *et seq.* to reopen a delisting decision if we receive new information indicating that the conditions of this exclusion have been violated, or are otherwise not being met.

G. What Must GM Do if the Process Changes?

If GM significantly changes the manufacturing or treatment process or the chemicals used in the manufacturing or treatment process, GM may not handle the WWTP filter press sludge generated from the new process under this exclusion until it has demonstrated to the EPA that the waste meets the levels set in section IV.C and that no new hazardous constituents listed in Appendix VIII of 40 CFR part 261 have been introduced. GM must manage wastes generated after the process change as hazardous waste until GM has received written notice from EPA that the delisting is reinstated.

V. Regulatory Impact

A. How Would This Aaction Affect the States?

Because EPA is issuing today's exclusion under the federal RCRA delisting program, only states subject to federal RCRA delisting provisions would be affected. This exclusion may not be effective in states which have received our authorization to make their own delisting decisions.

EPA allows states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a federally issued exclusion from taking effect in the state. We urge petitioners to contact the state regulatory authority to establish the status of their wastes under the state law.

EPA has also authorized some states to administer a delisting program in place of the federal program, that is, to make state delisting decisions. Therefore, this exclusion does not apply in those authorized states. If GM manages the waste in any state with delisting authorization, GM must obtain delisting authorization from that state before it can manage the waste as nonhazardous in that state.

B. Is an Assessment of Costs and Benefits Required?

Under Executive Order 12866, EPA must conduct an "assessment of the potential costs and benefits" for all "significant" regulatory actions. The proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thus enabling a facility to manage its waste as nonhazardous.

Because there is no additional impact from today's proposed rule, this proposal would not be a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under section (6) of Executive Order 12866.

VI. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (that is, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on small entities.

This rule, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, the Agency certifies that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and record-keeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Public Law 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

VIII. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with federal mandates that may result in estimated costs to state, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year.

When such a statement is required for EPA rules, under section 205 of the UMRA EPA must identify and consider alternatives, including the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law.

Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, EPA must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The UMRA generally defines a federal mandate for regulatory purposes as one that imposes an enforceable duty upon state, local, or tribal governments or the private sector.

The EPA finds that today's delisting decision is deregulatory in nature and does not impose any enforceable duty on any state, local, or tribal governments or the private sector. In addition, the proposed delisting decision does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

IX. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of

their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

X. Executive Order 13045

The Executive Order 13045 is entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This order applies to any rule that EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposed rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

XI. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments.

If the mandate is unfunded, EPA must provide to the Office Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "meaningful and timely input" in the development of regulatory policies on matters that significantly or uniquely affect their communities. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

XII. National Technology Transfer and Advancement Act

Under section 12(d) if the National Technology Transfer and Advancement Act, the Agency is directed to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical.

Voluntary consensus standards are technical standards (for example, materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. Where EPA does not use available and potentially applicable voluntary consensus standards, the Act requires that Agency to provide Congress, through the OMB, an explanation of the reasons for not using such standards.

This rule does not establish any new technical standards, and thus the Agency has no need to consider the use of voluntary consensus standards in developing this final rule.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling, and Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: June 16, 2004.

Margaret M. Guerriero,

Director, Waste, Pesticides and Toxics Division.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of Appendix IX to part 261 it is proposed to add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
•	•	•
General Motors Corporation.	Lordstown, Ohio	Waste water treatment plant sludge, F019, that is generated at General Motors Corporation's Lordstown facility at a maximum annual rate of 2,000 cubic yards per year. The sludge must be disposed of in a Subtitle D landfill which is licensed, permitted, or otherwise authorized by a state to accept the delisted wastewater treatment sludge. The exclusion becomes effective as of (insert final publication date). 1. *Delisting Levels:* (A) The constituent concentrations measured in the TCLP extract may not exceed the following levels (mg/L): antimony—0.66; arsenic—0.30; chromium—5; lead—5; mercury—0.2; nickel—91; selenium—1; silver—5; thallium—0.28; tin—720; zinc—900; fluoride—130; p-cresol—11; formaldehyde—84; and methylene chloride—0.29 B) The total constituent concentration measured in any sample of the waste may not exceed the following levels (mg/kg): chromium—4,100 ; formaldehyde—700; and mercury—10. (C) Maximum allowable groundwater concentrations (µg/L) are as follows: antimony—6; arsenic—4.88; chromium—100; lead—15; mercury—2; nickel—750; selenium—50; silver—188; thallium—2; tin—22,500; zinc—11,300; fluoride—4,000; p-cresol—188; formaldehyde—1,390; and methylene chloride—5.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		2. *Quarterly Verification Testing:* To verify that the waste does not exceed the specified delisting levels, GM must collect and analyze one waste sample on a quarterly basis using methods with appropriate detection levels and elements of quality control. 3. *Changes in Operating Conditions:* The facility must notify the EPA in writing if the manufacturing process, the chemicals used in the manufacturing process, the treatment process, or the chemicals used in the treatment process significantly change. GM must handle wastes generated after the process change as hazardous until it has demonstrated that the wastes continue to meet the delisting levels and that no new hazardous constituents listed in appendix VIII of part 261 have been introduced and it has received written approval from EPA. 4. *Data Submittals:* The facility must submit the data obtained through verification testing or as required by other conditions of this rule to U.S. EPA Region 5, Waste Management Branch, RCRA Delisting Program (DW–8J), 77 W. Jackson Blvd., Chicago, IL 60604. The quarterly verification data and certification of proper disposal must be submitted annually upon the anniversary of the effective date of this exclusion. The facility must compile, summarize, and maintain on site for a minimum of five years records of operating conditions and analytical data. The facility must make these records available for inspection. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12). 5. *Reopener Language*—(A) If, anytime after disposal of the delisted waste, GM possesses or is otherwise made aware of any data (including but not limited to leachate data or groundwater monitoring data) relevant to the delisted waste indicating that any constituent is at a level in the leachate higher than the specified delisting level, or is in the groundwater at a concentration higher than the maximum allowable groundwater concentration in paragraph (1), then GM must report such data, in writing, to the Regional Administrator within 10 days of first possessing or being made aware of that data. (B) Based on the information described in paragraph (A) and any other information received from any source, the Regional Administrator will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (C) If the Regional Administrator determines that the reported information does require Agency action, the Regional Administrator will notify the facility in writing of the actions the Regional Administrator believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing GM with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. GM shall have 30 days from the date of the Regional Administrator's notice to present the information. (D) If after 30 days GM presents no further information, the Regional Administrator will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator's determination shall become effective immediately, unless the Regional Administrator provides otherwise.

[FR Doc. 04–14460 Filed 6–24–04; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–1652; MB Docket No. 04–224; RM–10853, RM–10854]

Radio Broadcasting Services; Lake Havasu City, Arizona and Pahrump, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on two mutually exclusive Petitions for Rule Making. The first proposal, filed by SSR Communications Incorporated, proposes the allotment of Channel 272C3 at Pahrump, Nevada, as that community's third local service. The second proposal, filed by Steven M. Greeley, licensee of Station KJJJ(FM), Lake Havasu City, Arizona, requests the substitution of Channel 272C for Channel 272B at Lake Havasu City, Arizona, the reallotment of Channel 272C from Lake Havasu City to Pahrump, Nevada, as its third local service, and modification of Station KJJJ(FM)'s license accordingly. Channel 272C3 can be allotted to Pahrump, Nevada, in conformity with the Commission's Rules, provided there is a site restriction of 6.1 kilometers (3.8 miles) northwest of the community. The reference coordinates for Channel 272C3 at Pahrump are 36–14–09 North Latitude and 116–02–32 West Longitude. Alternatively, Channel 272C can be allotted to Pahrump, consistent with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules, provided there is a site restriction of 15.6 kilometers (9.7 miles) west of the community. The reference coordinates for Channel 272C at Pahrump are 36–15–25 North Latitude and 116–08–45 West Longitude.

DATES: Comments must be filed on or before August 2, 2004, and reply comments on or before August 17, 2004.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Matthew K. Wesolowski, General Manager, SSR Communications Incorporated, 5270 West Jones Bridge Road, Norcross, GA 30092–1628 and Robert L. Olender, Esq., c/o Steven M. Greeley, Koerner & Olender, PC, 5809 Nicholson Lane, Suite 124, North Bethesda, Maryland 20852–5706.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MB Docket No.

04–224, adopted June 8, 2004, and released June 10, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Channel 272C2 at Lake Havasu City.

3. Section 73.202(b), the Table of FM Allotments under Nevada, is amended by adding Channel 272C3 or Channel 272C at Pahrump.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–14481 Filed 6–24–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–1651; MB Docket No. 02–331; RM–10589]

Radio Broadcasting Services; Milford, UT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: This document dismisses the Petition for Rule Making filed by Larry Jackson requesting the allotment of Channel 288C2 at Milford, Utah, as its first local service. *See* 67 FR 69703, published November 19, 2002. This document also dismisses the counterproposal filed by Craig Morris proposing the allotment of Channel 289C3 at Enterprise, Utah, as its first local service, among other changes channel to various communities to accommodate the proposal at Enterprise.

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

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–331, adopted June 8, 2004, and released June 10, 2004. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898. This document is not subject to the Congressional Review Act. (The Commission is, therefore, not required to submit a copy of this Report and Order to GAO, pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A), because this proposed rule was dismissed.)

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–14482 Filed 6–24–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–1623; MB Docket No. 04–218; RM–10987]

Radio Broadcasting Services; Las Vegas and Pecos, NM

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This *Notice of Proposed Rule Making* requests comments on a petition for rule making filed by KFUN/KLVF Inc. ("Petitioner"), the former licensee of Station KLVF(FM), Channel 264C3, Las Vegas, New Mexico. The current licensee of Station KLVF(FM) is Meadows Media, LLC. This document proposes to reallot Station KLVF(FM) from Las Vegas to Pecos, New Mexico, and to provide Pecos with its third local aural transmission service. In addition, the document proposes to allot Channel 296A to Las Vegas, New Mexico. The coordinates for requested Channel 264C3 at Pecos, New Mexico, are 35–40–48 NL and 105–32–26 WL, with a site restriction of 17.4 kilometers (10.8 miles) northeast of Pecos. The coordinates for requested Channel 296A at Las Vegas, New Mexico, are 35–36–33 NL and 105–09–31 WL, with a site restriction of 5.4 kilometers (3.3 miles) east of Las Vegas.

Petitioner's reallotment proposal complies with the provisions of Section 1.420(i) of the Commission's Rules, and therefore, the Commission will not accept competing expressions of interest in the use of Channel 264C3 at Pecos, New Mexico, or require the petitioner to demonstrate the availability of an additional equivalent class channel.

DATES: Comments must be filed on or before August 9, 2004, and reply comments on or before August 24, 2004.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for Meadows Media, LLC: Paul H. Brown, Esq, Wood, Maines & Brown, Chartered; 1827 Jefferson Place, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 04–218, adopted June 8, 2004, and released June 10, 2004. The full text of

this Commission decision is available for inspection and copying during regular business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898.

The provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by removing Channel 264C3 and by adding Channel 296A at Las Vegas; and by adding Channel 264C3 at Pecos.

Federal Communications Commission.

John A. Karousos

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–14484 Filed 6–24–04; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–1617; MB Docket No. 04–219; RM–10986]

Radio Broadcasting Services; Evergreen, AL, and Shalimar, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Gulf Coast Broadcasting Company, Inc., licensee of Station WPGG(FM) ("WPGG"), Channel 227C1, Evergreen, Alabama. The petition proposes to downgrade Channel 227C1 to Channel 227C2 and reallot Channel 227C2, from Evergreen to Shalimar, Florida, thus providing Shalimar with its first local aural transmission service. The coordinates for requested Channel 227C2 at Shalimar are 30–23–36 NL and 86–29–45 WL, with a site restriction of 9.9 kilometers (6.1 miles) southeast of Shalimar.

Petitioner's reallotment proposal complies with the provisions of Section 1.420(i) of the Commission's Rules, and therefore, the Commission will not accept competing expressions of interest in the use of Channel 227C2 at Shalimar, Florida, or require Petitioner to demonstrate the availability of an additional equivalent class channel.

DATES: Comments must be filed on or before August 2, 2004, and reply comments on or before August 17, 2004.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve Petitioner's counsel, as follows: Lauren A. Colby, Esq.; 10 E. Fourth Street; PO Box 113; Frederick, Maryland 21705–0113.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 04–219, adopted June 8, 2004, and released June 10, 2004. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW, CY7–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898.

The provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by removing Evergreen, Channel 227C1.

3. Section 73.202(b), the Table of FM Allotments under Florida, is amended by adding Shalimar, Channel 227C2.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–14485 Filed 6–24–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–1616; MB Docket No. 04–217; RM–10863]

Radio Broadcasting Services; Clayton, GA and Sylva, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Sutton Radiocasting Corporation, licensee of Station

WRBN(FM), Channel 281A, Clayton, Georgia. The petition proposes to reallot Channel 281A, Station WRBN(FM) from Clayton, Georgia, to Sylva, North Carolina, and to provide Sylva with its second local aural transmission service. The coordinates for requested Channel 281A at Sylva, North Carolina are 35–19–40 NL and 83–20–11 WL, with a site restriction of 11.2 kilometers (7.0 miles) southwest of Sylva.

Petitioner's reallotment proposal complies with the provisions of Section 1.420(i) of the Commission's Rules, and therefore, the Commission will not accept competing expressions of interest in the use of Channel 281A at Sylva, North Carolina, or require the petitioner to demonstrate the availability of an additional equivalent class channel.

DATES: Comments must be filed on or before August 2, 2004, and reply comments on or before August 17, 2004.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: John F. Garziglia, Esq., Womble Carlyle Sandridge & Rice, PLLC; 1401 I Street, NW., 7th Floor; Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 04–217, adopted June 8, 2004, and released June 10, 2004. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898.

The provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Clayton, Channel 281A.

3. Section 73.202(b), the Table of FM Allotments under North Carolina, is amended by adding Sylva, Channel 281A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division Media Bureau.

[FR Doc. 04–14486 Filed 6–24–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–1615; MB Docket No. 04–220; RM–10861]

Radio Broadcasting Services; Clayton & Raton, NM

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by Clayton Community Broadcasters requesting the allotment of Channel 248C1 at Clayton, New Mexico. The coordinates for Channel 248C1 at Clayton are 36–27–00 and 103–10–54. To accommodate the allotment at Clayton, we shall also propose the deletion of vacant Channel 248C1 at Raton, New Mexico. If, however, interest is expressed for retention of Channel 248C1 at Raton, New Mexico, during the initial comment cycle, the channel will not be deleted as it is Commission policy not to delete a channel in which interest has been expressed.

DATES: Comments must be filed on or before August 2, 2004, and reply comments on or before August 17, 2004.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel as follows: Richard J. Hayes, Jr., 8404 Lee's Ridge Road, Warrenton, Virginia 20186.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, MB Docket No. 04–220, adopted June 8, 2004, and released June 10, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *www.bcpiweb.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by adding Channel 248C1 at Clayton and by removing Channel 248C1 at Raton.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–14487 Filed 6–24–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–1539; MB Docket No. 04–213, RM–10991; MB Docket No. 04–214, RM–10992; MB Docket No. 04–215, RM–10993; MB Docket No. 04–216, RM–10994]

Radio Broadcasting Services; Boligee, AL; Jackson, WY; Matagorda, TX; and Vaiden, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes new allotments in separate communities, Boligee, Alabama, Jackson, Wyoming, Matagorda, Texas, and Vaiden, Mississippi. (1) The Audio Division requests comment on a petition filed by Greene County Broadcasting, proposing the allotment of Channel 297A at Boligee, Alabama, as the community's first local aural transmission service. Channel 297A can be allotted to Boligee in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.5 kilometers (5.9 miles) northwest of the community. The reference coordinates for Channel 297A at Boligee are 32–48–34 NL and 88–06–27 WL. (2) The Audio Division also requests comments on a petition filed by Bulldog Broadcasting proposing the allotment of Channel 249A at Jackson, Wyoming as the community's sixth local aural transmission service. Channel 249A can be allotted to Jackson in compliance with the Commission's minimum distance separation requirements without a site restriction. The reference coordinates for Channel 249A at Jackson are 43–28–42 NL and 110–45–42 WL. (3) The Audio Division requests comments on a petition filed by Joseph L. Sandlin requesting the allotment of Channel 252A at Matagorda, Texas, as the community's first local aural transmission service. Channel 252A may be allotted at Matagorda without a site restriction at coordinates 28–41–25 NL and 95–58–02 WL. Petitioner's site is short-spaced to Channel 252C3, Sheridan, Texas, which was proposed in MM Docket No. 99–331 which is pending on reconsideration. This petition, if granted before MM Docket No. 99–331 is final, will be conditioned on the outcome of that earlier proceeding, and any construction will be at the licensee's risk. (4) The Audio Division also requests comments on a petition filed by Team Broadcasting Co., Inc. proposing the allotment of Channel 271A at Vaiden, Mississippi, as the community's first local aural transmission service. Channel 271A can be allotted at Vaiden at Team's requested site, 4.4 kilometers (2.7 miles) southeast of the community at coordinates 33–18–03 NL and 89–42–54 WL.

DATES: Comments must be filed on or before August 2, 2004, and reply comments on or before August 17, 2004.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: (1) Greene County Broadcasting, c/o John C. Trent, Esq., Putbrese, Hunsaker, & Trent, P.C., 100 Carpenter Drive, Suite 100, Sterling, Virginia, 20167–0217; (2) Bulldog Broadcasting, c/o Scott C. Cinnamon, PLLC, 1090 Vermont Ave., NW., Suite 800 #144, Washington, DC 20005; (3) Joseph L. Sandlin, P.O. Box 2056, Bay City, Texas, 77404–2056; (4) Team Broadcasting Co., Inc., c/o Mark N. Lipp, Esq., Vinson & Elkins, L.L.P., The Willard Office Building, 1455 Pennsylvania Avenue, NW., Washington, DC 20004–1008.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket Nos. 04–213, 04–214, 04–215, 04–216, adopted on August 2, 2004 and released on August 17, 2004. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by adding Boligee, Channel 297A.

3. Section 73.202(b), the Table of FM Allotments under Mississippi is amended by adding Vaiden, Channel 271A.

4. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Matagorda, Channel 252A.

5. Section 73.202(b), the Table of FM Allotments under Wyoming is amended by adding Channel 249A at Jackson.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–14488 Filed 6–24–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Parts 204, 252, and Appendix F to Chapter 2

[DFARS Case 2003–D009]

Defense Federal Acquisition Regulation Supplement; Payment and Billing Instructions

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to improve payment and billing instructions in DoD contracts. This proposed rule is a result of a transformation initiative undertaken by

DoD to dramatically change the purpose and content of the DFARS.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before August 24, 2004, to be considered in the formation of the final rule.

ADDRESSES: Respondents may submit comments via the Internet at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. As an alternative, respondents may e-mail comments to: *dfars@osd.mil*. Please cite DFARS Case 2003–D009 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Mr. Thaddeus Godlewski, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2003–D009.

At the end of the comment period, interested parties may view public comments on the Internet at *http://emissary.acq.osd.mil/dar/dfars.nsf*.

FOR FURTHER INFORMATION CONTACT: Mr. Thaddeus Godlewski, (703) 602–2022.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at *http://www.acq.osd.mil/dp/dars/transf.htm*.

This proposed rule is a result of the DFARS Transformation initiative. The proposed changes include—

- Deletion of text at DFARS 204.201, 204.202, 204.7103–2, 204.7104–2, 204.7107, and 204.7108 addressing distribution of contracts and modifications; numbering of contract line items, subline items, and accounting classification references; and inclusion of payment instructions in contracts. Text on these subjects will be relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI). In addition, PGI will contain a menu of standard payment instructions from which the contracting officer will make a selection for inclusion in Section G of the contract. A proposed rule describing the purpose and structure of PGI was published at 69 FR 8145 on February 23, 2004. Draft PGI text related to this proposed rule is available at *http://www.acq.osd.mil/dpap/dfars/changes.htm*.
- Clarification of the definition of "accounting classification reference number" at DFARS 204.7101.
- Amendment of DFARS 204.7103–1 to add text addressing contract type in the establishment of contract line items.
- Amendment of DFARS 204.7106 to clarify that contract modifications decreasing the amount obligated shall not be issued unless sufficient unliquidated obligation exists or the purpose is to recover monies owed to the government.
- Addition of a clause addressing contract line item information needed in contract financing and interim payment requests.
- Amendment of Material Inspection and Receiving Report instructions to address electronic submissions.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this 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.*, because the rule relates primarily to procedures that DoD contracting officers and payment offices must follow in structuring contracts and disbursing funds. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003–D009.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any 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 48 CFR Parts 204 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR parts 204, 252, and Appendix F to chapter 2 as follows:

1. The authority citation for 48 CFR parts 204, 252, and Appendix F to subchapter I continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 204—ADMINISTRATIVE MATTERS

2. Section 204.201 is revised to read as follows:

204.201 Procedures.

Follow the procedures at PGI 204.201 for the distribution of contracts and modifications.

204.202 [Removed]

3. Section 204.202 is removed.

4. Section 204.7101 is amended by revising the definition of *Accounting classification reference number (ACRN)* to read as follows:

204.7101 Definitions.

Accounting classification reference number (ACRN) means any combination of a two position alpha/numeric code used as a method of relating the accounting classification citation to detailed line item information contained in the schedule.

* * * * *

5. Section 204.7103–1 is amended by redesignating paragraphs (b) through (d) as paragraphs (d) through (f), respectively; and by adding new paragraphs (b) and (c) to read as follows:

204.7103–1 Criteria for establishing.

* * * * *

(b) All subline items and exhibit line items under one contract line item shall be the same contract type as the contract line item.

(c) For a contract that contains both fixed-price and cost-reimbursement line items, identify the contract type for each contract line item in Section B, Supplies or Services and Prices/Costs, to facilitate appropriate payment.

* * * * *

6. Section 204.7103–2 is revised to read as follows:

204.7103–2 Numbering procedures.

Follow the procedures at PGI 204.7103–2 for numbering contract line items.

7. Section 204.7104–2 is revised to read as follows:

204.7104–2 Numbering procedures.

Follow the procedures at PGI 204.7104–2 for numbering contract subline items.

8. Section 204.7106 is amended by adding paragraph (b)(3) to read as follows:

204.7106 Contract modifications.

* * * * *

(b) * * *

(3) If the modification will decrease the amount obligated—

(i) There shall be coordination between the administrative and procuring contracting offices before issuance of the modification; and

(ii) The contracting officer shall not issue the modification unless sufficient unliquidated obligation exists or the purpose is to recover monies owed to the Government.

9. Section 204.7107 is revised to read as follows:

204.7107 Contract accounting classification reference number (ACRN).

Follow the procedures at PGI 204.7107 for assigning ACRNs.

10. Sections 204.7108 and 204.7109 are added to read as follows:

204.7108 Payment instructions.

Follow the procedures at PGI 204.7108 for inclusion of payment instructions in contracts.

204.7109 Contract clause.

Use the clause at 252.204–7XXX, Billing Instructions, if Section G of the contract requires the contractor to identify the applicable contract line item(s) when the contractor submits a request for—

(a) A contract financing payment; or

(b)(1) An interim payment under a cost-reimbursement contract for services; and

(2) The contract includes the clause at FAR 52.232–25, Prompt Payment, with its Alternate I.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

11. Section 252.204–7XXX is added to read as follows:

252.204–7XXX Billing Instructions.

As prescribed in 204.7109, use the following clause:

BILLING INSTRUCTIONS (XXX 2004)

When submitting a request for payment, the Contractor shall—

(a) Identify the contract line item(s) on the payment request that best reflect contract work performance; and

(b) Separately identify a payment amount for each contract line item that is included in the payment request.

(End of clause)

Appendix F—Material Inspection and Receiving Report

12. Appendix F to Chapter 2 is amended in Part 3 by revising section F–306 to read as follows:

F–306 Invoice instructions.

(a) Contractors shall submit payment requests in electronic form, unless an exception in 232.7002 applies. Contractor submission of the material inspection and receiving information required by this appendix by using the Wide Area WorkFlow-Receipt and Acceptance (WAWF–RA) electronic form (see paragraph (b)(1) of the clause at 252.232–7003) fulfills the requirement for an MIRR.

(b) If the contracting officer authorizes the contractor to submit an invoice in paper form, the Government encourages, but does not require, the contractor to use the MIRR as an invoice, in lieu of a commercial form. If commercial forms are used, identify the related MIRR shipment number(s) on the form. If using the MIRR as an invoice, prepare the MIRR and forward the required number of copies to the payment office as follows:

(1) Complete Blocks 5, 6, 19, and 20. Block 6 shall contain the invoice number and date. Column 20 shall be totaled.

(2) Mark in letters approximately one inch high, first copy: "ORIGINAL INVOICE, for all invoice submissions; and three copies: "INVOICE COPY," when the payment office requires four copies. Questions regarding the appropriate number of copies (i.e., one or four) should be directed to the applicable payment office.

(3) Forward the appropriate number of copies to the payment office (Block 12 address), except when acceptance is at destination and a Navy finance office will make payment, forward to destination.

(4) Be sure to separate the copies of the MIRR used as an invoice from the copies of the MIRR used as a receiving report.

[FR Doc. 04–14335 Filed 6–24–04; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Part 219

[DFARS Case 2003–D063]

Defense Federal Acquisition Regulation Supplement; Small Business Competitiveness Demonstration Program

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to revise text regarding identification of contract awards under the Small Business Competitiveness Demonstration Program. This proposed rule is a result of an initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before August 24, 2004, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2003–D063, using any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Defense Acquisition Regulations Web site: *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. Follow the instructions for submitting comments.
- E-mail: *dfars@osd.mil*. Include DFARS Case 2003–D063 in the subject line of the message.
- Fax: (703) 602–0350.
- Mail: Defense Acquisition Regulations Council, Attn: Ms. Donna Hairston-Benford, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to *http://emissary.acq.osd.mil/dar/dfars.nsf*.

FOR FURTHER INFORMATION CONTACT: Ms. Donna Hairston-Benford, (703) 602–0289.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the

acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at *http://www.acq.osd.mil/dpap/dfars/transf.htm*.

This proposed rule is a result of the DFARS Transformation initiative. Section 19.1007(a)(2) of the Federal Acquisition Regulation requires inclusion of a statement on the face page of each contract awarded under the Small Business Competitiveness Demonstration Program, to identify the contract as an award under the Program. To accommodate the use of automated systems, this proposed DFARS rule specifies that, when it is not practical to mark the face page of an award document, alternate means may be used to identify a contact as an award under the Small Business Competitiveness Demonstration Program.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this 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.*, because the rule proposes an administrative change to accommodate the use of automated contracting systems. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003–D063.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any 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 48 CFR Part 219

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR part 219 as follows:

1. The authority citation for 48 CFR part 219 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 219—SMALL BUSINESS PROGRAMS

2. Section 219.1007 is amended by adding paragraph (a)(2) to read as follows:

219.1007 Procedures.

(a)(2) When it is not practical to mark the face page of an award document, alternative means may be used to identify the contract as an award under the Small Business Competitiveness Demonstration Program.

* * * * *

[FR Doc. 04–14340 Filed 6–24–04; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Part 225

[DFARS Case 2004–D002]

Defense Federal Acquisition Regulation Supplement; Polyacrylonitrile Carbon Fiber—Restriction to Domestic Sources

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to extend the ending date for phasing out domestic source restrictions on the acquisition of polyacrylonitrile (PAN) carbon fiber. The ending date will be extended from May 31, 2005, to May 31, 2006.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before August 24, 2004, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2004–D002, using any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Defense Acquisition Regulations Web site: *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. Follow the instructions for submitting comments.
- E-mail: *dfars@osd.mil*. Include DFARS Case 2004–D002 in the subject line of the message.
- Fax: (703) 602–0350.
- Mail: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to *http://emissary.acq.osd.mil/dar/dfars.nsf*.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0328.

SUPPLEMENTARY INFORMATION:

A. Background

This rule proposes amendments to DFARS Subpart 225.71 to extend the ending date for phasing out domestic source restrictions on the acquisition of PAN carbon fiber from May 31, 2005, to May 31, 2006. The clause at DFARS 252.225–7022, Restriction on Acquisition of Polyacrylonitrile (PAN) Carbon Fiber, will be required in solicitations and contracts for major systems issued on or before May 31, 2006, if the system is not yet in development and demonstration.

The current phase-out schedule was added to the DFARS on December 13, 2000 (65 FR 77832). The aerospace industry has requested an extension of the phase-out in order to provide U.S. companies sufficient time to maintain the industrial and technological capability to support a critical material used in advanced aerospace weapons programs. DoD considers a one-year extension to be appropriate at this time.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

The proposed rule is not expected 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.*, because there are no known domestic small business manufacturers of PAN carbon fiber. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such

comments should be submitted separately and should cite DFARS Case 2004–D002.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any 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 48 CFR Part 225

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR part 225 as follows:

1. The authority citation for 48 CFR part 225 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

2. Section 225.7103–1 is amended by revising the second sentence to read as follows:

225.7103–1 Policy.

* * * DoD is phasing out the restrictions over the period ending May 31, 2006. * * *

3. Section 225.7103–3 is revised to read as follows:

225.7103–3 Contract clause.

Use the clause at 252.225–7022, Restriction on Acquisition of Polyacrylonitrile (PAN) Carbon Fiber, in solicitations and contracts for major systems issued on or before May 31, 2006, if the system is not yet in engineering and manufacturing development (milestone B as defined in DoDI 5000.2).

[FR Doc. 04–14339 Filed 6–24–04; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Part 236

[DFARS Case 2003–D035]

Defense Federal Acquisition Regulation Supplement; Construction and Architect-Engineer Services

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update text pertaining to selection of firms for architect-engineer contracts. This proposed rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before August 24, 2004, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2003-D035, using any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Defense Acquisition Regulations Web site: *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. Follow the instructions for submitting comments.
- E-mail: *dfars@osd.mil*. Include DFARS Case 2003–D035 in the subject line of the message.
- Fax: (703) 602–0350.
- Mail: Defense Acquisition Regulations Council, Attn: Mr. Euclides Barrera, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to *http://emissary.acq.osd.mil/dar/dfars.nsf*.

FOR FURTHER INFORMATION CONTACT: Mr. Euclides Barrera, (703) 602–0296.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at *http://www.acq.osd.mil/dp/dars/transf.htm*.

This proposed rule is a result of the DFARS Transformation initiative. The proposed changes—

- Revise DFARS 236.602–1 to remove procedures for establishment of evaluation criteria in the selection of firms for architect-engineer contracts. This text will be relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI). A proposed rule describing the purpose and structure of PGI was published at 69 FR 8145 on February 23, 2004.
- Remove unnecessary text on preselection boards and selection authorities at DFARS 236.602–2 and 236.602–4.
- Amend DFARS 236.604 to reflect replacement of Standard Form 254, Architect-Engineer and Related Services Questionnaire, with Standard Form 330, Architect-Engineer Qualifications.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this 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.*, because the changes in the rule represent no substantive change to policy with regard to selection of firms for architect-engineer contracts. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003-D035.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any 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 48 CFR Part 236

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR part 236 as follows:

1. The authority citation for 48 CFR part 236 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

2. Section 236.602–1 is revised to read as follows:

236.602–1 Selection criteria.

(a) Establish the evaluation criteria before making the public announcement required by FAR 5.205(c) and include the criteria and their relative order of importance in the announcement. Follow the procedures at PGI 236.602–1.

236.602–2 and 236.602–4 [Removed]

3. Sections 236.602–2 and 236.602–4 are removed.

4. Section 236.604 is amended by revising paragraph (c)(ii) to read as follows:

236.604 Performance evaluation.

* * * * *

(c) * * *

(ii) File and use the DD Form 2631, Performance Evaluation (Architect-Engineer), in a manner similar to the SF 330, Architect-Engineer Qualifications, Part II.

[FR Doc. 04–14341 Filed 6–24–04; 8:45 am]
BILLING CODE 5001–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 040617186–4186–01; I.D. 051704D]

RIN 0648–AS39

International Fisheries; Pacific Tuna Fisheries; Restrictions for 2004 Purse Seine and Longline Fisheries in the Eastern Tropical Pacific Ocean

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes this rule to implement the 2004 management measures to prevent overfishing of the eastern tropical Pacific Ocean (ETP) tuna stocks, consistent with recommendations by the Inter-American Tropical Tuna Commission (IATTC) that have been approved by the Department of State (DOS) under the Tuna Conventions Act. The purse seine fishery for tuna in a portion of the Convention Area would be closed for a 6–week period beginning August 1, 2004. This proposed rule would also close the U.S. longline fishery in the IATTC Convention Area if the catch reaches the estimated level of 2001. This action is taken to limit fishing mortality caused by purse seine fishing and longline fishing in the Convention Area and contribute to long-term conservation of the tuna stocks at levels that support healthy fisheries.

DATES: Comments must be received by July 12, 2004.

ADDRESSES: Comments on the proposed rule should be sent to Rodney R. McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802 or by email to the Southwest Region at *0648–AS39@noaa.gov*. Comments may also be submitted by email through the Federal e-Rulemaking portal: *http://www.regulations.gov*. Include in the subject line of the e-mail comment the following document identifier: 0648–AS39. Comments also may be submitted by fax to (562) 980–4047. Copies of the regulatory impact review/regulatory analysis may be obtained from the Southwest Regional Administrator, Southwest Region, NMFS, 501 W. Ocean Blvd., Long Beach, CA 90902–4213.

This **Federal Register** document is also accessible via the Internet at the Office of the **Federal Register**'s website at *http://www.access.gpo.gov/su-docs/acces/*.

FOR FURTHER INFORMATION CONTACT: J. Allison Routt, Sustainable Fisheries Division, Southwest Region, NMFS, (562) 980–4030.

SUPPLEMENTARY INFORMATION: The United States is a member of the IATTC, which was established under the Convention for the Establishment of an Inter-American Tropical Tuna Commission signed in 1949 (Convention). The IATTC was established to provide an international arrangement to ensure the effective international conservation and management of highly migratory species of fish in the Convention Area. The Convention Area is defined to include the waters of the eastern tropical Pacific Ocean bounded by the coast of the Americas, the 40°N. and 40° S. parallels, and the 150° W. meridian. The IATTC has maintained a scientific research and fishery monitoring program for many years and annually assesses the status of stocks of tuna and the fisheries to determine appropriate harvest limits or other measures to prevent overexploitation of the stocks and promote viable fisheries. Under the Tuna Conventions Act, 16 U.S.C. 951–961 and 971 *et seq.*, NFMS must publish proposed rules to carry out IATTC recommendations that have been approved by DOS. The Southwest Regional Administrator, also is required by rules at 50 CFR 300.29(b)(3) to issue a direct notice to the owners or agents of all U.S. purse seine vessels that operate in the ETP of actions recommended by the IATTC and approved by the DOS.

At an extraordinary meeting in October 2003, the IATTC adopted a resolution addressing yellowfin, bigeye, and skipjack tuna conservation for 2003 and 2004. The resolution calls upon the Parties to the Convention and cooperating non-Parties to prohibit tuna purse seine fishing in a portion of the IATTC Convention Area for the month of December 2003 and for a 6–week period beginning August 1, 2004. The 2003 closure was implemented by separate action last year. The 2004 closure would be of waters bounded by a line from the point where the 95° W. long. meridian intersects the west coast of the Americas, south to 10° N. lat., then west to 120° W. long., then south to 5° S. lat. then east to 100° W. long., then north to 5° N. lat., then east to 85° W. long., and then north to the point of intersection with the west coast of the Americas. This closure will target fishing that has higher catches of juvenile tuna. Therefore, there should be improved yields from the stocks later in the year. The resolution also calls upon Parties and cooperating non-Parties to take measures necessary to ensure that their total longline catches of bigeye tuna in the ETP during 2004 will not exceed those of 2001. The catch level for 2001 is estimated to be approximately 100 metric tons in the Convention Area. This is intended to prevent overfishing of the stock, which has declined in recent years while longline fishing effort has greatly expanded. The IATTC action at the extraordinary meeting in October 2003 came after considering a variety of measures, including the use of quotas and partial fishery closures as in 1999 through 2002 and the full month purse seine closure used in 2003. The selected measures should provide protection against overfishing of the stocks in a manner that is fair, equitable, and readily enforceable. The DOS has approved the IATTC recommendations.

The proposed 2004 time/area closure is based on 2003 assessments of the condition of the tuna stocks in the ETP and historic catch and effort data for different portions of the ETP, as well as records relating to implementation of quotas and closures in prior years. The closure is targeted to areas with high catches of bigeye tuna in the purse seine fishery and is believed by the IATTC scientific staff to be sufficient to reduce the risk of overfishing of that stock, especially when considered in

combination with the measures implemented in December 2003. The IATTC will meet in June 2004 and review new tuna stock assessments and fishery information and will consider that new information in evaluating the need for management measures for 2005 and future years.

The Acting Regional Administrator, Southwest Region, sent a notice October 10, 2003, to owners and agents of U.S. tuna purse seine fishing vessels of the actions that were recommended by the IATTC and have been approved by the DOS.

Classification

This action is proposed under the regulations for the Pacific Tuna Fisheries found at 50 CFR 200.29.

On December 8, 1999, NMFS prepared a biological opinion (BO) assessing the impacts of the fisheries as they would operate under the regulations (65 FR 47, January 3, 2000) implementing the International Dolphin Conservation Program Act (IDCPA) that amended the Marine Mammal Protection Act (MMPA). NMFS concluded that the fishing activities conducted under those regulations are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of critical habitat. This rule will not result in any changes in the fisheries such that there would be impacts beyond those considered in that BO. The IATTC has also taken action to reduce sea turtle injury and mortality from interactions in the purse seine fishery so impacts of the fisheries should be lower than in the past. Because this closure does not alter the scope of the fishery management regime analyzed in the IDCPA rule, or the scope of the impacts considered in that consultation, NMFS is relying on that analysis to conclude that this rule will not likely adversely effect any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of critical habitat. Therefore, NMFS has determined that additional consultation is not required for this action.

The U.S. ETP tuna purse seine fisheries occasionally interact with a variety of species of dolphin, and dolphin takes are authorized and managed under the IDCPA. These conservation management measures in this proposed rule do not affect the administration of that program, which is consistent with section 303(a)(2) of the MMPA.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on as substantial number of small entities as follows:

This action would prohibit the use of purse seine gear to harvest tuna in a portion of the Convention Area for a 6–week period beginning August 1, 2004, and limit the 2004 U.S. catch of bigeye tuna caught by longline in the ETP to the level reached in 2001 (approximately 100 metric tons). The proposed purse seine closure would apply to the U.S. tuna purse seine fleet, which consists of 10–20 small vessels (carrying capacity below 400 short tons (363 metric tons)) and 4–6 large vessels (carrying capacity 400 short tons (363 metric tons) or greater). The large vessels usually fish outside U.S. waters and deliver their catch to foreign ports or transship to processors outside the mainland United States. The large vessels are categorized as large business entities (revenues in excess of $3.5 million per year). A large purse seine vessel typically generates 4,000 to 5,000 metric tons of tuna valued at between $4 and $5 million per year. The closure should not significantly affect their operations as they are capable of fishing in other areas that would remain open. The small vessels are categorized as small business entities (revenues below $3.5 million per year). They fish out of California in the U.S. exclusive economic zone (EEZ) most of the year for small pelagic fish (Pacific sardine, Pacific mackerel) and for market squid in summer. Some small vessels harvest tuna seasonally when they are available. The proposed time/area closure will have no effect on small vessels because they do not have the endurance and markets to fish that far south.

The portion of the U.S. longline fleet (approximately 18 vessels) operating out of California has historically caught bigeye tuna in the swordfish fishery (now closed), so they should not be affected by the longline fishery limit. Further, the recent prohibition of swordfish targeting by this fleet has encouraged many of the vessel owners to relocate their activity to Hawaii (5 have moved or are moving to date); therefore, the likelihood that they will fish in the ETP for bigeye tuna is reduced. The portion of the fleet operating out of Hawaii has generally operated outside the boundaries of the IATTC Convention Area, and has not made significant catches in those waters. Also, with the reopening of the swordfish fishery for that fleet, effort directed at bigeye tuna (which has mainly occurred west of the Convention Area) should decrease, so there is a very low likelihood that the bigeye catch limit of 100 metric tons will be reached and trigger a closure.

As a result, a regulatory flexibility analysis is not required and none has been prepared.

Authority: 16 U.S.C. 951–961 and 971 *et seq.*

Dated: June 21, 2004.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 04–14473 Filed 6–24–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 040617187–4187–01; I.D. 060704H]

RIN 0648–AR85

Fisheries Off West Coast States and in the Western Pacific; Western Pacific Bottomfish Fishery; Fishing Moratorium

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to extend the current moratorium on harvesting seamount groundfish from the Hancock Seamount in the Northwestern Hawaiian Islands (NWHI) for 6 years, until August 31, 2010. The fishery has been under a moratorium since 1986. This action is being taken in response to a recommendation by the Western Pacific Fishery Management Council from its Bottomfish Plan Team (Plan Team) and Scientific and Statistical Committee (SSC) that revealed that pelagic armorhead (*Pseudopentaceros wheeleri*; formerly, *Pentaceros richardsoni*), an overfished stock, has not recovered. The intent of this action is to allow the protection provided for this resource to continue.

DATES: Comments must be submitted by July 12, 2004.

ADDRESSES: You may submit comments on this proposed rule by any of the following methods:

- E-mail: *0648–AR85.PIR@noaa.gov.* Include in the subject line of the e-mail comment the following document identifier: 0648–AR85.
- Federal e-Rulemaking portal: *http://www.regulations.gov* Follow the instructions for submitting comments.
- Mail: William L. Robinson, Regional Administrator, Pacific Islands Region, NOAA Fisheries, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814.

•Fax: (808) 973–2941.

FOR FURTHER INFORMATION CONTACT: Mr. Lewis Van Fossen, Resource Management Specialist, Sustainable Fisheries Division 808–973–2937.

SUPPLEMENTARY INFORMATION: When the Fishery Management Plan for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region (FMP) was implemented (51 FR 27413, July 31, 1986), it was determined that a 6–year moratorium on fishing at Hancock Seamount was needed to aid the recovery of the pelagic armorhead (*Pseudopentaceros wheeleri*; formerly, *Pentaceros richrdsoni*). Foreign vessels over-exploited the seamount groundfish resources before the Fishery Conservation and Management Act (Magnuson-Stevens Act) was enacted. There has never been a domestic fishery targeting these stocks. Periodic reviews since the original moratorium indicated that no recovery of the stock has occurred. Therefore, the moratorium was extended twice in 6–year increments in 1992 and 1998 (57 FR 36907, August 17, 1992; and 63 FR 35162, June 29, 1998; respectively).

The last U.S. research cruise of the Hancock Seamount was conducted in 1993. However, the Japanese trawl fleet continues to harvest pelagic armorhead on neighboring seamounts outside of the U.S. exclusive economic zone (U.S. EEZ) surrounding the NWHI. According to information provided by the Japan National Research Institute of Far Seas Fisheries, the most current (2002) spawning potential ratio (SPR) for the armorhead stock is 0.1 percent at all seamounts outside of the U.S. EEZ. These seamounts comprise 95 percent of the trawl grounds for the Japanese trawl fishery. Based on the low SPR value, it is inferred that the status of the Hancock Seamount is similarly depressed and well under the current 20 percent SPR definition of an overfished stock. At its October 2003 meeting the Council heard reports from its Plan Team and SSC on the status of the seamount groundfish resources. On the basis of those reports, and in accordance with the framework at 50 CFR 660.67, the Council recommended a permanent closure of the Hancock Seamount to the harvest of groundfish resources. However, it is unlikely that an amendment to the FMP permanently closing Hancock Seamount to the harvesting of groundfish resources could be completed before the current moratorium expires on August 31, 2004. Therefore, at its March 2004 meeting, the Council recommended extending the current moratorium another 6 years (i.e., August 31, 2010). During the proposed moratorium an amendment to the FMP that would permanently close Hancock Seamount could be developed.

Classification

This proposed rule has been determined to be not significant for the purposes of E.O. 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

The purpose of the proposed action is to enhance the recovery of a stock as overfished under the Magnuson-Stevens Act by extending the moratorium on the harvest of groundfish resources at Hancock Seamount in the U.S. EEZ around the NWHI for six years. This extension will enhance the likelihood of recovery for the pelagic armorhead (*Pseudopentaceros wheeleri*; formerly, *Pentaceros richardsoni*). Because there has never been a U.S. fishery targeting seamount groundfish stocks on the Hancock Seamount, no U.S. interests or small entities would be immediately affected. It is unlikely that any U.S. fishermen would show an interest in starting a U.S. fishery for pelagic armorhead. There is a remote possibility that a vessel employing bottom trawl gear or demersal longline gear would show an interest in groundfish resources at Hancock Seamount. However, it is unlikely that such an effort would be ultimately profitable. Any profitability would be short-lived and, definitely, to the detriment of the resource. Use of bottom trawl gear for groundfish resources is prohibited under the current FMP. Therefore, there are no vessels so-equipped in Hawaii, and any trawl vessel targeting pelagic armorhead would need to transit from the western U.S. or Alaska or equip in Hawaii. It is unlikely that the investment in gear and fuel would be worth the likely returns on a short-lived fishery. Demersal longline fishing for pelagic armorhead would be ultimately unattractive for the same reasons as bottom trawl fishing.

As a result, an Initial Regulatory Flexibility Analysis was notprepared.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: June 21, 2004.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 660.68 is revised to read as follows:

§ 660.68 Fishing moratorium on Hancock Seamount.

Fishing for bottomfish and seamount groundfish on the Hancock Seamount is prohibited through August 31, 2010.

[FR Doc. 04–14472 Filed 6–24–04; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 69, No. 122
Friday, June 25, 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

[Docket Number FV–04–307]

United States Standards for Grades of Cucumbers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS), prior to undertaking research and other work associated with revising official grade standards, is soliciting comments on the possible revisions to the United States Standards for Grades of Cucumbers. At a 2003 meeting with the Fruit and Vegetable Industry Advisory Committee, AMS was asked to review all the fresh fruit and vegetable grade standards for usefulness in serving the industry. As a result, AMS has identified industry terms such as Super Select, Select, Small, Large and Plain for possible inclusion into the standards. Additionally, AMS is seeking comments regarding any other revisions of the cucumber grade standards that may be necessary to better serve the industry.

DATES: Comments must be received by August 24, 2004.

ADDRESSES: Interested persons are invited to submit written comments to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 1661 South Building, Stop 0240, Washington, DC 20250–0240; Fax (202) 720–8871, e-mail *FPB.DocketClerk@usda.gov* or comments may be sent electronically to the Federal eRulemaking portal at *http://www.regulations.gov*. Comments should make reference to the dates and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours. The United States Standards for Grades of Cucumbers are available either through the address cited above or by accessing the Fresh Products Branch Web site at *http://www.ams.usda.gov/standards/stanfrfv/htm*.

FOR FURTHER INFORMATION CONTACT: David L. Priester, at the above address or call (202) 720–2185; e-mail *David.Priester@usda.gov*.

SUPPLEMENTARY INFORMATION:

Background

At a 2003 meeting with the Fruit and Vegetable Industry Advisory Committee, AMS was asked to review all the fresh fruit and vegetable grade standards for usefulness in serving the industry. AMS has identified the United States Standards for Grades of Cucumbers for a possible revision. These standards were last revised in 1958. As a result, AMS has identified industry terms such as Super Select, Select, Small, Large and Plain for possible inclusion into the standards. These terms are used by the industry in the marketing of cucumbers in a number of ways; some members of the industry use these terms to refer specifically to size of cucumbers in a container, while others use these terms as part of a grading system. Therefore, these terms would need to be standardized for inclusion into the U.S. standards. However, prior to undertaking detailed work to develop proposed revisions to the standards, AMS is soliciting comments on the possible revision to the standards and the probable impact on distributors, processors, and growers. Additionally, AMS is seeking comments regarding any other revisions that may be necessary to better serve the industry.

Accordingly, AMS is soliciting comments on the possible revisions to the United States Standards for Grades of Cucumbers.

This notice provides for a 60-day comment period for interested parties to comment on changes to the standards. Should AMS conclude that there is a need for the revisions of the standards, the proposed revisions will be published in the **Federal Register** with a request for comments in accordance with 7 CFR part 36.

Authority: 7 U.S.C. 1621–1627.

Dated: June 22, 2004.

Kenneth C. Clayton,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 04–14545 Filed 6–24–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket Number FV–04–309]

United States Standards for Grades of Persian (Tahiti) Limes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS), prior to undertaking research and other work associated with revising an official grade standard, is soliciting comments on a possible revision to revise the United States Standards for Grades of Persian (Tahiti) Limes. At a meeting in 2003 of the Fruit and Vegetable Industry Advisory Committee, AMS was asked to review all the fresh fruit and vegetable grade standards for usefulness in serving the industry and identify commodities that may be better served if the grade standards were revised. As a result, AMS has noted that the color, as well as the juice content requirements in the lime grade standards are complex and difficult to apply. Additionally, AMS is seeking comments regarding any other revisions of the grade standards that may be necessary to better serve industry.

DATES: Comments must be received by August 24, 2004.

ADDRESSES: Interested persons are invited to submit written comments to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 1661 South Building, Stop 0240, Washington, DC 20250–0240, fax (202) 720–8871, e-mail *FPB.DocketClerk@usda.gov* or comments may be sent electronically to the Federal eRulemaking portal at: *http://www.regulations.gov*. Comments should make reference to the dates and page number of this issue of the **Federal Register** and will be made available for

public inspection in the above office during regular business hours. The United States Standards for Grades of Persian (Tahiti) Limes are available either through the address cited above or by accessing the Fresh Products Branch Web site at: *http://www.ams.usda.gov/standards/stanfrfv.htm.*

FOR FURTHER INFORMATION CONTACT: David L. Priester, at the above address or call (202) 720–2185, e-mail *David.Priester@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

At a meeting in 2003 of the Fruit and Vegetable Industry Advisory Committee, AMS was asked to review all the fresh fruit and vegetable grade standards for usefulness in serving the industry and to identify commodities that may be better served if the grade standards were revised. AMS has identified the U.S. Standards for Grades of Persian (Tahiti) Limes for possible revision. The current grade standards were last revised in 1958. AMS identified the color requirements in all the U.S. lime grades as being complex, and the juice content requirement of the U.S. No. 1 grade as being difficult to apply. There are color requirements for U.S. No. 1 and U.S. No. 2 grades, requiring three-fourths and one-half of the surface good green color respectively. The U.S. No. 1 grade, U.S. No. 2 grade and U.S. Combination grades may be further qualified to describe the color by adding the terms "Turning" or "Mixed Color" after the grade, *i.e.*, "U.S. No. 2 Mixed Color."

The U.S. No. 1 grade requires a juice content of not less than 42 percent by volume of the limes. To determine juice content it is necessary to measure the volume of a sample, then squeeze the juice from the sample and calculate the percentage of juice in the sample.

Both the color and juice content requirements have been in the grade standards for years, however, they are complex and cumbersome to determine. Therefore, AMS believes that changing these requirements is warranted to better serve the industry. However, prior to undertaking detailed work to develop the proposed standards for Persian (Tahiti) Limes, AMS is soliciting comments on the possible revision of the standards for grades of Persian (Tahiti) Limes and the probable impact on distributors, processors, and growers. Additionally, AMS is seeking comments regarding any other revisions that may be necessary to better serve the industry.

This notice provides for a 60-day comment period for interested parties to comment on the revision of the standards. Should AMS conclude that there is a need for the revision of the standards, the proposed revision will be published in the **Federal Register** with a request for comments in accordance with 7 CFR part 36.

Authority: 7 U.S.C. 1621–1627.

Dated: June 22, 2004.

Kenneth C. Clayton,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 04–14544 Filed 6–24–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 04–041–1]

Availability of Environmental Assessment for Field Test of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment for a confined field of corn plants genetically engineered to express the protein trypsinogen. This environmental assessment is available for public review and comment.

DATES: We will consider all comments we receive on or before July 26, 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. 04–041–1, 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. 04–041–1.
- *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. 04–041–1" 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 the environmental assessment and any comments that we receive 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: Dr. Michael Wach, BRS, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–0485. To obtain a copy of the environmental assessment, contact Ms. Kay Peterson at (301) 734–4885; e-mail: *Kay.Peterson@aphis.usda.gov.* The environmental assessment is also available on the Internet at *http://www.aphis.usda.gov/brs/aphisdocs/04_11402r_ea.pdf.*

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles." A permit must be obtained or a notification acknowledged before a regulated article may be introduced into the United States. The regulations set forth the permit application requirements and the notification procedures for the importation, interstate movement, and release into the environment of a regulated article.

On April 23, 2004, the Animal and Plant Health Inspection Service (APHIS) received a permit application (APHIS No. 04–114–02r) from ProdiGene, Inc., College Station, TX, for a permit for a confined field test of corn (*Zea mays* L.) plants genetically engineered to express a gene coding for the enzyme trypsinogen. The field test is to be conducted in Frio County, TX. The subject corn plants have been genetically engineered to express a trypsinogen amino acid sequence that is identical to bovine (*Bos taurus* L.) trypsin precursor. The subject corn

plants also express the *pat* gene from *Streptomyces viridochromogenes*, a common soil bacterium. The *pat* gene expresses a phosphinothricin acetyltransferase enzyme, which confers tolerance to the herbicide glufosinate, and is useful as a marker gene. The experimental genes were transferred into corn plants through use of the *Agrobacterium tumefaciens* transformation system, and expression of the added genes is controlled in part by the plant pathogen cauliflower mosaic virus. The genetically engineered corn plants are considered regulated articles under the regulations in 7 CFR part 340 because they contain gene sequences from plant pathogens.

The purpose of the proposed field trial is threefold: (1) Grain production; (2) hybrid seed production; and (3) line development in a nursery. The tests will be conducted through use of a combination of biological and physical containment measures. In addition, the experimental protocols and field plot design, as well as the procedures for termination of the field tests, are designed to ensure that none of the subject corn plants persist in the environment beyond the termination of the experiments.

To provide the public with documentation of APHIS" review and analysis of any potential environmental impacts and plant pest risk associated with the proposed confined field test of the subject corn plants, an environment assessment (EA) has been prepared. The EA was prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Authority: 7 U.S.C. 1622n and 7701–7772; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 21st day of June 2004.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–14431 Filed 6–24–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 04–044–1]

Availability of Environmental Assessment for Field Test of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment for a confined field of corn plants genetically engineered to express the protein aprotinin. This environmental assessment is available for public review and comment.

DATES: We will consider all comments we receive on or before July 26, 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. 04–044–1, 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. 04–044–1.
- *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. 04–044–1" 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 the environmental assessment and any comments that we receive 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: Dr. James White, BRS, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–5940. To obtain a copy of the environmental assessment, contact Ms. Kay Peterson at (301) 734–4885; e-mail: *Kay.Peterson@aphis.usda.gov*. The environmental assessment is also available on the Internet at *http://www.aphis.usda.gov/brs/aphisdocs/04_12101r_ea.pdf*.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles." A permit must be obtained or a notification acknowledged before a regulated article may be introduced into the United States. The regulations set forth the permit application requirements and the notification procedures for the importation, interstate movement, and release into the environment of a regulated article.

On April 30, 2004, the Animal and Plant Health Inspection Service (APHIS) received a permit application (APHIS No. 04–121–01r) from ProdiGene, Inc., College Station, TX, for a permit for a confined field test of corn (*Zea mays* L.) plants genetically engineered to express a gene coding for the enzyme (protein) aprotinin. The field test is to be conducted in Frio County, TX. The subject corn plants have been genetically engineered to express an aprotinin protein that is identical to the native bovine (*Bos taurus* L.) protein. The subject corn plants also express the pat gene from *Streptomyces viridochromogenes*, a common soil bacterium. The pat gene expresses a phosphinothricin acetyltransferase enzyme, which confers tolerance to the herbicide glufosinate, and is useful as a marker gene. The experimental genes were transferred into corn plants through use of the *Agrobacterium tumefaciens* transformation system, and expression of the added genes is controlled in part by the plant pathogen cauliflower mosaic virus. The genetically engineered corn plants are considered regulated articles under the regulations in 7 CFR part 340 because

they contain gene sequences from plant pathogens.

The purpose of the proposed field trial is to produce grain, hybrid seed, and to develop a research line in a nursery. The tests will be conducted through use of a combination of biological and physical containment measures. In addition, the experimental protocols and field plot design, as well as the procedures for termination of the field tests, are designed to ensure that none of the subject corn plants persist in the environment beyond the termination of the experiments.

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts and plant pest risk associated with the proposed confined field test of the subject corn plants, an environment assessment (EA) has been prepared. The EA was prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Authority: 7 U.S.C. 1622n and 7701–7772; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 21st day of June 2004.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–14432 Filed 6–24–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 04–053–1]

Horse Protection Technology Meeting; Animal Care

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice to horse industry members and other interested persons that Animal Care will host a series of educational meetings to present current information on new technology being explored for use in the enforcement of the Horse Protection Act. This notice provides the agenda for the meetings, information on the location and dates of the first meeting, and general information on subsequent meetings.

DATES: The first meeting will be held in Lexington, KY, on June 29, 2004. Registration will take place from 7:30 a.m. to 8:30 a.m. The meeting will begin at 8 a.m. and end at noon. Additional meetings are being planned for July through October 2004, for Tennessee, Missouri, and Oregon.

ADDRESSES: The meeting will be held at the Four Points Sheraton, 1938 Stanton Way, Lexington, KY 40511, (859) 259–1311.

FOR FURTHER INFORMATION CONTACT: Mr. James Tuck, Management Analyst, PPD, APHIS, 4700 River Road, Riverdale, MD 20737; (301) 734–5819.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service (APHIS), Animal Care, is announcing a series of educational meetings on the new technology being tested to enforce the Horse Protection Act. The meetings are designed to provide a forum for information dissemination on various topics that are important for the horse industry to understand. This series of meetings will be held in various geographical locations to facilitate attendance by most of our regulated parties that maintain horses.

The first meeting will be held on Tuesday, June 29, 2004, at the Four Points Sheraton, Lexington, KY. Additional meetings are being planned for July through October 2004, for Tennessee, Missouri, and Oregon.

The series of meetings have been developed to provide current information and ideas on a variety of technological innovations Animal Care is testing to assist in the enforcement of the Horse Protection Act. Each meeting will, with the exception of possible minor modifications, follow the same agenda:

7:30 a.m.–8:30 a.m.—Registration
8:00 a.m.–8:45 a.m.—Welcome Overview
8:45 a.m.–9:30 a.m.—Thermography Technology
9:45 a.m.–10:45 a.m.—Sniffer Technology
10:45 a.m.–Noon—Other Horse Protection Enforcement Issues

Meeting notices are also available on the Animal Care Web site at *http://www.aphis.usda.gov/ac.*

Please note that these meetings are being held to provide and disseminate information on the technology being tested by Animal Care to enforce the Horse Protection Act and is not an opportunity to submit formal comments on proposed rules or other regulatory initiatives.

Pre-registration is requested by calling (301) 734–7833, or emailing Animal Care at *ACE@aphis.usda.gov* and providing your name, number of attendees, phone number, email address or other contact address. This information is needed in the event of any changes to the meeting schedule so we may inform registrants in a timely manner. Please pre-register for the meeting by June 28, 2004.

Done in Washington, DC, this 21st day of June, 2004.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–14434 Filed 6–24–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 04–050–1]

National Animal Identification System; Public Meetings

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meetings.

SUMMARY: We are advising the public that the Under Secretary for Marketing and Regulatory Programs, U.S. Department of Agriculture, will host a series of listening sessions to provide livestock producers and other stakeholders with the opportunity to offer their comments regarding the Department's implementation of a National Animal Identification System.

DATES: The public meetings will be held in Oregon on July 1, 2004; in California on July 10, 2004; in New Mexico on July 16, 2004; in Washington (State) on July 23, 2004; in Colorado on August 10, 2004; in Montana on August 13, 2004; in Florida on August 16, 2004; in Ohio on August 18, 2004; in Iowa on August 26, 2004; in Missouri on August 27, 2004; in Wisconsin on August 30, 2004; and in Minnesota on August 31, 2004. Information regarding the specific time of each session will be made available as soon as arrangements are finalized (see **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The public meetings will be held in the following cities:

- Prineville, OR;
- Stockton, CA;
- Socorro, NM;
- Pasco, WA;
- Greeley, CO;
- Billings, MT;
- Kissimmee, FL;
- Columbus, OH;
- Ames, IA;
- Joplin, MO;

- Appleton, WI; and
- St. Cloud, MN.

Information regarding the specific location of each session will be made available as soon as arrangements are finalized (*see* **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: Mr. Neil Hammerschmidt, Animal Identification Officer, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231, (301) 734–5571.

SUPPLEMENTARY INFORMATION: On December 30, 2003, the Secretary of Agriculture announced that the U.S. Department of Agriculture (USDA) would expedite the implementation of a national animal identification system for all species after the discovery of bovine spongiform encephalopathy in a cow in Washington State. On April 27, 2004, following several months of a USDA working group's efforts to develop an implementation framework for a U.S. animal identification plan, the Secretary announced the framework for implementation of a National Animal Identification System (NAIS) designed to identify any agricultural premises exposed to a foreign animal disease so that it can be more quickly contained and eradicated. The Secretary also announced that $18.8 million would be transferred from the Department's Commodity Credit Corporation to provide initial funding for the program during fiscal year (FY) 2004. The FY 2004 funding has been earmarked for the initial infrastructure development and implementation of the national system, but both private and public support will be required to make it fully operational. The Administration's proposed FY 2005 budget includes another $33 million for the effort.

The implementation of a NAIS will be conducted in three main phases. Under Phase I, USDA will evaluate current federally funded animal identification systems and determine which system(s) should be used for a NAIS, further the dialog with producers and other stakeholders on the operation of a NAIS, identify staffing needs, and develop any regulatory and legislative proposals needed for implementing the system.

Phase II will involve the implementation of the animal identification system at regional levels for one or more species, continuation of the communication and education effort, addressing regulatory needs, and working with Congress on any needed legislation.

In Phase III, the animal identification system(s) would be scaled up to the national level.

The first step in the process is to select an interim data repository to handle incoming national premises data. USDA has commissioned an independent analysis of repositories that are currently part of various USDA-funded animal identification projects around the country. Once the system is identified that shows greatest potential for use on a national level, USDA will enter into cooperative agreements with States, Indian tribes, and other government entities to assist them in adapting their existing systems to the new system.

USDA is committed to developing a program that is technology neutral, so as to provide producers, to the extent possible, the flexibility to use current and effective systems and technologies, as well as adopt new technologies as they are developed.

As noted previously, one element of USDA's Phase I efforts is furthering the dialog with producers and other stakeholders on the operation of a NAIS. To provide an opportunity for such a dialog, the Under Secretary for Marketing and Regulatory Programs, USDA, will host a series of listening sessions across the country to provide livestock producers and other stakeholders with the opportunity to offer their comments regarding the implementation of the NAIS.

In order to provide interested persons with as much advance notice of the listening sessions as possible, we are publishing this notice before we have finalized the precise locations and times of each listening session. As soon as the arrangements for the listening session in each city are finalized, we will post information regarding the location and time of the session on the NAIS Web page (*http://www.aphis.usda.gov/lpa/issues/nais/nais.html*) maintained by the USDA's Animal and Plant Health Inspection Service (APHIS). In addition, APHIS' Legislative and Public Affairs staff will issue press releases and undertake other outreach activities to ensure that this information is made as widely available as possible.

The tentative agenda for each listening session is as follows:

- Opening remarks from the Under Secretary;
- Remarks from other officials who may be in attendance (*e.g.*, Members of Congress, State agriculture secretaries or commissioners);
- An overview of the NAIS presented by APHIS' Veterinary Services program;
- Opportunity for remarks from livestock producers and other stakeholders in attendance. If the number of persons wishing to speak warrants it, USDA may limit the time for each presentation so that everyone wishing to speak has the opportunity to do so.

A transcript will be made of each listening session, and the transcript will be placed on the NAIS Web page.

Done in Washington, DC, this 21st day of June 2004.

W. Ron DeHaven,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–14433 Filed 6–24–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Understanding Value Trade-Offs Regarding Fire Hazard Reduction Programs in the Wildland-Urban Interface

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on a new research study for developing a better understanding of communities' perceived risk of losses from wildfire in the wildland-urban interface and their willingness to pay for fuels reduction programs to reduce the risk of wildfires.

DATES: Comments must be received in writing on or before August 24, 2004, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Armando González-Cabán, Pacific Southwest Research Station, Forest Service, USDA, 4955 Canyon Crest Drive, Riverside, CA 92507.

Comments also may be submitted via facsimile to (909) 680–1501, or by e-mail to *agonzalezcaban@fs.fed.us.*

The public may inspect comments received at 4955 Canyon Crest Drive, Riverside, CA 92507, building one reception area during normal business hours. Visitors are encouraged to call ahead to (909) 680–1500 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Armando González-Cabán, Pacific Southwest Research Station, Forest Service, USDA, (909) 680–1525.

SUPPLEMENTARY INFORMATION:

Title: Understanding Value Trade-offs Regarding Fire Hazard Reduction

Programs in the Wildland-Urban Interface.

OMB Number: 0596–New.

Expiration date of approval: N/A.

Type of request: New.

Abstract: Forest Service and university researchers will contact recipients of a mail-phone-mail questionnaire to solicit information designed to help forest and fire managers understand value trade-offs regarding fire hazard reduction programs in the wildland-urban interface. Through those contacts researchers will evaluate the responses of Florida residents to different scenarios related to fire hazard reduction programs, determine how effective residents think the programs are, and calculate how much residents would be willing to pay to implement the alternatives presented to them. This will help researchers provide better information to natural resource, forest, and fire managers when they are contemplating the kind and type of fire hazard reduction program to implement to achieve forest land management planning objectives.

To gather the information, a stratified random sample of Florida residents will be contacted through a random digit dialing process to seek participation in the research study. Those who agree to participate will then be informed that a questionnaire will be sent to them and asked to provide an address to which to mail the questionnaire; they will be asked to answer a minimal set of questions to determine their pre-existing knowledge of fuels reduction treatments. They will also be asked to agree to a date and time for an in-depth interview related to the questionnaire mailed to them. Once the in-depth interview is completed no further contact will take place with participants.

The information will be collected by a university research survey center and will be analyzed by a Forest Service researcher and a researcher at a cooperating university who are experienced in applied economic nonmarket valuation research and survey research.

At present the Forest Service, Bureau of Land Management, Bureau of Indian Affairs, National Park Service, Fish and Wildlife Service, and many State agencies with fire protection responsibilities are planning to embark on an ambitious and costly fuels reduction program for fire risk reduction without a clear understanding of the public's opinion on which treatments are most effective or even desirable. Information collected in this research will help natural resource and fire managers to better understand the public's opinions on fuels reduction activities.

Estimate of Annual Burden: The average annual burden estimated per respondent is 30 minutes, based on 1000 respondents at 5 minutes for the initial screener interview and 25 minutes of the in-depth interview.

Type of Respondents: Respondents will be a stratified random sample of heads of households.

Estimated Annual Number of Responses per Respondent: Only one response per respondent will be requested.

Estimated Total Annual Burden on Respondents: The annual burden on respondents that is estimated for this information collection is 30 minutes.

Comment Is Invited

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

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: June 18, 2004.

Barbara C. Weber,

Associate Deputy Chief, Research & Development.

[FR Doc. 04–14389 Filed 6–24–04; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

[CA–668–1040 (P)]

Correction to Notice of a Call for Nominations for the Santa Rosa and San Jacinto Mountains National Monument Advisory Committee

AGENCIES: Bureau of Land Management, U.S. Department of the Interior; Forest Service, U.S. Department of Agriculture.

ACTION: Notice of correction; this notice was previously published in the Federal Register: Vol. 69, No. 94, Friday, May 14, 2004.

SUMMARY: The Federal Register Notice incorrectly identified positions open for nomination. The call for nominations for a representative of the Winter Park Authority is withdrawn. The current Winter Park Authority position expires in 2005. This **Federal Register** notice will open the call for nominations for a representative with expertise in the natural science and research selected from a regional college or university, for a 3-year term starting in November 2004 and ending in November 2007.

DATES: Submit nomination packets for the natural science position to the address listed below by August 9, 2004.

ADDRESSES: Request nomination packets and send completed nomination packets to: Advisory Committee Nominations, Ms. Danella George, Bureau of Land Management, P.O. Box 581260, North Palm Springs, California 92258–1260.

FOR FURTHER INFORMATION CONTACT: Ms. Danella George, Santa Rosa and San Jacinto Mountains National Monument Manager, (760) 251–4800.

Dated: June 17, 2004.

Melissa Drew,

Acting Santa Rosa and San Jacinto Mountains National Monument Manager, Palm Springs Field Office of the Bureau of Land Management.

Dated: June 16, 2004.

Laurie Rosenthal,

District Ranger, San Jacinto Ranger District, San Bernardino National Forest, U.S. Forest Service.

[FR Doc. 04–14402 Filed 6–24–04; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF AGRICULTURE

Rogue/Umpqua Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Action of meeting.

SUMMARY: The Rogue/Umpqua Resource Advisory Committee (RAC) will meet on Thursday and Friday, July 8 and 9, 2004. The meeting is scheduled to begin at 8 a.m. and conclude at approximately 5 p.m. on July 8 and begin at 8 a.m. and conclude at approximately 4:30 p.m. on July 9. The meeting will be held at the Umpqua National Forest headquarters, 2900 NW., Stewart Parkway, Roseburg, OR. On July 8, the agenda includes (1) Approval of the July 17 and 18, 2003, and May 14, 2004, meeting followed by a review of the 2004 budget/expense summary and the 2005 project budget summary notes at 8:30 a.m., (2) Review of previous Title II projects on the Rogue River and Umpqua national forests at 9:15 a.m., (3) Public Forum at 10:30 a.m. (4) Review of Title II projects in Klamath County proposed for 2005 by the Forest Service at 11 a.m., and (5) Review of Title II projects in Jackson County proposed for 2005 by the Forest Service and private individuals at 12:45 p.m. The agenda on July 9 includes (1) Public Forum at 8:05 a.m., (2) Review of Title II projects in Douglas County proposed for 2005 by the Forest Service and private individuals at 8:30 a.m., (3) Review of Title II projects in Lane Count proposed for 2005 by the Forest Service and private individuals at 2 p.m., (4) Review of Title II projects in Josephine County proposed for 2005 by the Forest Service at 3:30 p.m., and (5) Selecting next meeting or field trip date at 4:15 p.m. Written public comments may be submitted prior to the July meeting by sending them to Designated Federal Official Jim Caplan at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Jim Caplan; Umpqua National Forest; P.O. Box 1008, Roseburg, Oregon 97470; (541) 957–3203.

Dated: June 21, 2004.

James A. Caplan,

Forest Supervisor, Umpqua National Forest.

[FR Doc. 04–14541 Filed 6–24–04; 8:45 am]

BILLING CODE 3410–11–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Courthouse Access Advisory Committee

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of intent to establish advisory committee.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) announces its intent to establish a Courthouse Access Advisory Committee (Committee) to advise the Access Board on issues related to the accessibility of courthouses covered by the Americans with Disabilities Act of 1990 and the Architectural Barriers Act of 1968. The Access Board requests applications for representatives to serve on the Committee.

DATES: Applications should be received by August 24, 2004.

ADDRESSES: Applications should be sent to the attention of Ms. Rose Bunales, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Fax number (202) 272–0081. Applications may also be sent via electronic mail to the Access Board at the following address: *CAAC@access-board.gov.*

FOR FURTHER INFORMATION CONTACT: Elizabeth Stewart, Deputy General Counsel, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–0042 (Voice); (202) 272–0082 (TTY).

SUPPLEMENTARY INFORMATION:

Availability of Copies and Electronic Access

Single copies of this publication may be obtained at no cost by calling the Access Board's automated publications order line (202) 272–0080, by pressing 2 on the telephone keypad, then pressing 1, and requesting publication S–44 (Courthouse Access Advisory Committee notice). Persons using a TTY should call (202) 272–0082. Please record a name, address, telephone number and request publication S–44. This document is available in alternate formats upon request. Persons who want a copy in an alternate format should specify the type of format (cassette tape, Braille, large print, or computer disk). This document is also available on the Board's Internet site (*http://www.access-board.gov/courthouse.htm*).

Background

Americans with Disabilities Act

The Architectural and Transportation Barriers Compliance Board (Access Board) is responsible for developing accessibility guidelines under the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. 12101 *et seq.*) to ensure that facilities and vehicles covered by the law are readily accessible to and usable by individuals with disabilities.[1] The Department of Justice is responsible for issuing final regulations, consistent with the guidelines issued by the Access Board, to implement titles II and III (except for transportation vehicles and facilities). The Department of Transportation is responsible for issuing regulations to implement the transportation provisions of titles II and III of the ADA. Those regulations must also be consistent with the Access Board's guidelines.

On July 26, 1991, the Access Board published the Americans with Disabilities Act Accessibility Guidelines (ADAAG) for new construction and alterations in places of public accommodation and commercial facilities 36 CFR part 1191. ADAAG contains scoping provisions and technical specifications generally applicable to buildings and facilities (sections 1 through 4) and additional requirements specifically applicable to certain types of buildings and facilities covered by title III of the ADA: Restaurants and cafeterias (section 5); medical care facilities (section 6); mercantile and business facilities (section 7); libraries (section 8); and transient lodging (section 9). On September 6, 1991, the Access Board amended ADAAG to include additional requirements specifically applicable to transportation facilities (section 10).

On January 13, 1998, the Access Board published a final rule in the **Federal Register** which added two special application sections to ADAAG specifically applicable to certain types of State and local government buildings and facilities covered by title II of the ADA. (63 FR 2000) Those special application sections included section 11, which addresses Judicial, Legislative, and Regulatory Facilities and section 12, Detention and Correctional Facilities.

[1] The Access Board is an independent Federal agency established by section 502 of the Rehabilitation Act (29 U.S.C. 792) whose primary mission is accessibility for individuals with disabilities. The Access Board consists of 25 members. Thirteen are appointed by the President from among the public, a majority of whom are required to be individuals with disabilities. The other twelve are heads of the following Federal agencies or their designees whose positions are Executive Level IV or above: The departments of Health and Human Services, Education, Transportation, Housing and Urban Development, Labor, Interior, Defense, Justice, Veterans Affairs, and Commerce; the General Services Administration; and the United States Postal Service.

Architectural Barriers Act

The Architectural Barriers Act of 1968 (ABA) (42 U.S.C. 4151 *et seq.*) requires that facilities designed, built, altered or leased with certain Federal funds be accessible to persons with disabilities. Similar to its responsibility under the ADA, the Access Board is responsible for developing accessibility guidelines for facilities covered by the ABA. The Board's guidelines serve as the basis for enforceable standards issued by four standard-setting agencies; the standard-setting agencies are the Department of Defense (DOD), the General Services Administration (GSA), the Department of Housing and Urban Development (HUD), and the U.S. Postal Service (USPS). The Uniform Federal Accessibility Standards (UFAS) were developed by the four standard-setting agencies to implement the Architectural Barriers Act of 1968. Most Federal agencies also reference UFAS as the accessibility standard for buildings and facilities constructed or altered by recipients of Federal financial assistance for purposes of section 504 of the Rehabilitation Act of 1973, as amended.

In addition to its responsibilities to establish minimum guidelines for facilities covered by the ABA, the Access Board is also charged with enforcing the standards issued by the four standard-setting agencies. (29 U.S.C. 792(b)(1).)

Courthouse Access Advisory Committee

In February of this year, the Access Board announced that it will undertake outreach activities that highlight accessibility within a particular sphere or focus area. Outreach efforts will aim to increase awareness of a particular aspect of accessibility through partnerships with interested stakeholders and the development and distribution of information and guidance materials. The goal of this program is to increase the visibility of different facets of accessibility in a manner that supplements the Board's technical assistance and training programs, builds partnerships with other entities, improves compliance with access requirements, and showcases best practices for accessible design. In choosing access to courthouses as its first focus topic, the Board gave priority to an area that has been problematic or not well understood and where supplementary guidance is needed. Elevated spaces within courtrooms, such as judges' benches and witness stands, and space limitations within the well of the court have posed challenges to designers as to how access can best be achieved. In addition, there are known and potential design solutions for achieving access to courtroom spaces that bear further exploration. The Board plans to collaborate with agencies that oversee the construction of courthouses, such as the General Services Administration, on addressing these and other issues. The information to be developed will be relevant to Federal courthouses covered by the Architectural Barriers Act and State and county courthouses covered by the Americans with Disabilities Act.

As part of the outreach efforts on courthouse accessibility, the Access Board intends to establish a Federal advisory committee to advise the Access Board on issues related to the accessibility of courthouses, particularly courtrooms, including best practices, design solutions, promotion of accessible features, educational opportunities, and the gathering of information on existing barriers, practices, recommendations, and guidelines. (The Committee will not be making recommendations on agency rulemaking). The Committee will be expected to present a report with its recommendations to the Access Board. The Access Board requests applications for representatives of the following interests for membership on the Committee:

- Federal agencies (ex-officio membership);
- Design professional organizations;
- Judges and court administrators;
- State and local government agencies;
- Standards setting organizations;
- Organizations representing the access needs of individuals with disabilities; and
- Other persons affected by courthouse accessibility.

The number of Committee members will be limited to effectively accomplish the Committee's work and will be balanced in terms of interests represented. Organizations with similar interests are encouraged to submit a single application to represent their interest. Although the Committee will be limited in size, there will be opportunities for the public to present written information to the Committee, to participate through subcommittees, and to comment at Committee meetings.

Applications should be sent to the Access Board at the address listed at the beginning of this notice. The application should include the representative's name (and an alternate), title, address and telephone number; a statement of the interests represented; and a description of the representative's qualifications, including technical and design expertise; knowledge of making courthouses accessible to individuals with disabilities; and familiarity with judicial and court administration.

Committee members will not be compensated for their service. The Access Board may, at its own discretion, pay travel expenses for a limited number of persons who would otherwise be unable to participate on the Committee. Committee members will serve as representatives of their organizations, not as individuals. They will not be considered special government employees and will not be required to file confidential financial disclosure reports.

After the applications have been reviewed, the Access Board will publish a notice in the **Federal Register** announcing the appointment of Committee members and the first meeting of the Committee. The first meeting of the Committee is tentatively scheduled for November 4th and 5th, 2004, in Washington, DC. The Committee will operate in accordance with the Federal Advisory Committee Act, 5 U.S.C. app 2. Each meeting will be open to the public. A notice of each meeting will be published in the **Federal Register** at least 15 days in advance of the meeting. Records will be kept of each meeting and made available for public inspection.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 04–14514 Filed 6–24–04; 8:45 am]

BILLING CODE 8150–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must be Received on or Before: July 25, 2004.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C

47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions. If the Committee approves the proposed additions, the entities of the Federal government identified in the notice for each product or service will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Services

Service Type/Location: Custodial Services; Colville NF Ranger Station; 255 W 11th St., Kettle Falls, Washington.
NPA: Career Connections, Spokane, Washington.
Contract Activity: USDA Forest Service, Colville, Washington.
Service Type/Location: Custodial Services; Grissom Air Reserve Base; 448 Mustang Avenue, Grissom ARB, Indiana.
NPA: Wabash Center, Inc., Lafayette, Indiana.
Contract Activity: Air Force Reserve Command, Grissom ARB, Indiana.
Service Type/Location: Custodial Services; Ranger Station/Comp Bldg.; 765 S Main, Colville, Washington.
NPA: Career Connections, Spokane, Washington.
Contract Activity: USDA Forest Service, Colville, Washington.
Service Type/Location: Document Image Conversion for Disability Claims. At the following Social Security Administration Regions ServiceSource, Inc., Alexandria, Virginia will be the Prime Contractor for this project and will subcontract the requirements to the Nonprofit Agencies identified below: Mid Region (ND, SD, MN, IA, WI, MI, IL, IN, OH, KY, TN, MO, MT, WY, CO, NE, KS, OK).
NPA: AccessAbility, Inc., Minneapolis, Minnesota.
NPA: Bayaud Industries, Inc., Denver, Colorado.
NPA: Business Technology Career Opportunities (BTCO), Wichita, Kansas.
NPA: Goodwill Industries of Kentucky, Louisville, Kentucky; North East Region (MD, VA, WV, DC, DE, PA, NJ, NY, RI, CT, MA, VT, NH, ME).
NPA: Opportunity Center, Incorporated, Wilmington, Delaware.
NPA: ServiceSource, Inc., Alexandria, Virginia; South East Region (NC, SC, GA, AL, MS, FL, PR).
NPA: Abilities Inc. of Florida, Clearwater, Florida; West-SW Region (CA, NV, UT, AZ, NM, TX, AR, LA, WA, OR, ID, AK, HI).
NPA: DePaul Industries, Portland, Oregon.
NPA: Goodwill Industries of San Antonio, San Antonio, Texas.
NPA: Hope Services, Santa Clara, California.
NPA: The Centers for Habilitation/TCH, Tempe, Arizona.
Contract Activity: Social Security Administration, Baltimore, Maryland.

Sheryl D. Kennerly,
Director, Information Management.
[FR Doc. 04–14453 Filed 6–24–04; 8:45 am]
BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to procurement list.

SUMMARY: This action adds to the Procurement List products to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: July 18, 2004.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On April 30, 2004, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (69 FR 23723) of proposed addition to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and impact of the additions on the current or most recent contractors, the Committee has determined that the products listed below are suitable for procurement by the Federal government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.

2. The action will result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products are added to the Procurement List:

Products

Product/NSN: Pre-moistened Disposable Cleaning Wipes; Antibacterial Wipes, M.R. 591; Glass Cleaning Wipes, M.R. 573; Kitchen and Bath Disinfecting, M.R. 572; Microwave and Refrigerator Wipes, M.R. 590; Wood Cleaning Wipes, M.R. 589.
NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina.
Contract Activity: Defense Commissary Agency (DeCA), Ft. Lee, Virginia.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Sheryl D. Kennerly,
Director, Information Management.
[FR Doc. 04–14454 Filed 6–24–04; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 27–2004]

Foreign-Trade Zone 15—Kansas City, Missouri, Area Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Kansas City Foreign Trade Zone, Inc., grantee of Foreign-Trade Zone 15, requesting authority to expand its zone in the Kansas City, Missouri, area, adjacent to the Kansas City, Missouri, Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on June 18, 2004.

FTZ 15 was approved on March 23, 1973 (Board Order 93, 38 FR 8622, 4/4/73) and expanded on October 25, 1974 (Board Order 102, 39 FR 39487, 11/7/74); on February 28, 1996 (Board Order 804, 61 FR 9676, 3/11/96); on May 31, 1996 (Board Order 824, 61 FR 29529, 6/11/96); on December 8, 1997 (Board Order 934, 62 FR 65654, 12/15/97); on October 19, 1998 (Board Order 1004, 63 FR 59761, 11/5/98); on January 8, 1999 (Board Order 1016, 64 FR 3064, 1/20/99); on June 17, 1999 (Board Order 1042, 64 FR 34188, 6/25/99); and, on April 15, 2002 (Board Order 1226, 67 FR 20087, 4/24/02).

The zone project includes nine general-purpose sites in the Kansas City area: *Site 1* (5.7 acres, 250,000 sq. ft.)—Midland International Corporation warehouse facility located at 1650 North Topping, Kansas City; *Site 1A:* (2.76 acres)—located at 1226 Topping Drive, Kansas City; *Site 2* (64.3 acres, 2.8 million sq. ft.)—surface/underground warehouse complex located at 8300 NE Underground Drive, Kansas City; *Site 3* (9,615 acres)—located within the 10,000-acre Kansas City International Airport facility; *Site 3A* (1 acre, 33,541 sq. ft.)—located at 10201 N. Everton, Kansas City; *Site 3B* (3 parcels, 384 acres total)—Kansas City: *Parcel 1* (68 acres)—within the 330-acre Air World Center Business Park, located at Interstate 29 and 112th Street; *Parcel 2* (155 acres)—Congress Corporate Center Industrial Park, located at the northwest corner of 112th Street and North Congress; and, *Parcel 3* (161 acres)—city-owned Harley Davidson Site; *Site* 4 (416 acres)—Carefree Industrial Park, 1600 NM–291 Highway, Sugar Creek/Independence; *Site 5* (1,000 acres, 5.75 million sq. ft.)—CARMAR Underground Business Park/CARMAR Industrial Park, No. 1 Civil War Road, Carthage; *Site 6* (28,000 sq. ft., 11 acres)—Laser Light Technologies, Inc., facility located within the Hermann Industrial Park, 5 Danuser Drive, Hermann (expires 12/31/05); *Site 7* (1,750 acres)—Richards-Gebaur Memorial Airport/Industrial Park complex. 1540 Maxwell, Kansas City; *Site 8* (168 acres, 3 parcels)—Chillicothe: *Site 8A* (3 acres)—Midwest Quality Gloves, Inc., warehouse facility, 600 Brunswick (expires 10/1/04); *Site 8B* (11 acres)—Chillicothe-Brunswick Rail Yard, Washington Street (expires 5/31/04); *Site 8C* (154 acres, 50,000 sq. ft.)—within the Chillicothe Industrial Park, Corporate Road (expires 5/31/04); *Site 9:* (50 acres, 2 parcels)—St Joseph: *Parcel 1* (200,000 sq. ft., 25 acres) located at 2307 Alabama Street and *Parcel 2* (169,000 sq. ft., 25 acres) located at 2326 Lower Lake Road.

The applicant is now requesting authority to remove *Site 8B* (Chillicothe-Brunswick Rail Yard) and *Site 8C* (Chillicothe Industrial Park) from the general-purpose zone project that expired on May 31, 2004, and to also remove *Site 8A* (Midwest Quality Gloves warehouse facility) from the zone project that expires on October 1, 2004. The applicant is also requesting authority to expand the zone to include another site in Chillicothe (new proposed *Site 8*, 19.57 acres) located at Ryan Road and Brunswick Road. The proposed site is located within the industrial section of Chillicothe. The property is owned by the Chillicothe Development Corporation.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. *Submissions via Express/Package Delivery Services:* Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building-Suite 4100W, 1099 14th Street, NW., Washington, DC 20005; or,

2. *Submissions via the U.S. Postal Service:* Foreign-Trade Zones Board, U.S. Department of Commerce, FCB-Suite 4100W, 1401 Constitution Avenue, NW., Washington, DC 20230.

The closing period for their receipt is August 24, 2004. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to September 8, 2004).

A copy of the application and accompanying exhibits will be available during this time for public inspection at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 2345 Grand Boulevard, Suite 650, Kansas City, MO 64108.

Dated: June 21, 2004.

Pierre V. Duy,

Acting Executive Secretary.

[FR Doc. 04–14496 Filed 6–24–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

President's Export Council Subcommittee on Export Administration; Notice of Recruitment of Private-Sector Members

SUMMARY: The President's Export Council Subcommittee on Export Administration (PECSEA) advises the U.S. Government on matters and issues pertinent to implementation of the provisions of the Export Administration Act and the Export Administration Regulations, as amended, and related statutes and regulations. These issues relate to U.S. export controls as mandated by law for national security, foreign policy, non-proliferation, and short supply reasons. The PECSEA draws on the expertise of its members to provide advice and make recommendations on ways to minimize the possible adverse impact export controls may have on U.S. industry. The PECSEA provides the Government with direct input from representatives of the broad range of industries that are directly affected by export controls.

The PECSEA is composed of high-level industry and Government members representing diverse points of view on the concerns of the business community. PECSEA industry representatives are selected from firms producing a broad range of goods, software, and technologies presently controlled for national security, foreign policy, non-proliferation, and short supply reasons or that are proposed for such controls, balanced to the extent possible among large and small firms.

PECSEA members are appointed by the Secretary of Commerce and serve at the Secretary's discretion. The membership reflects the Department's commitment to attaining balance and diversity. PECSEA members must obtain secret-level clearances prior to appointment. These clearances are necessary so that members can be permitted access to relevant classified

information needed in formulating recommendations to the President and the U.S. Government. The PECSEA meets 4 to 6 times per year. Members of the Subcommittee will not be compensated for their services. The PECSEA is seeking private-sector members with senior export control expertise and direct experience in one or more of the following industries: machine tools, semiconductors, commercial communication satellites, high performance computers, telecommunications, aircraft, pharmaceuticals, and chemicals.

To apply: Please send a short biographical sketch to Ms. Lee Ann Carpenter at *Lcarpent@bis.doc.gov*. For more information, please contact Ms. Carpenter on 202–482–2583.

Deadline: This request will be open for 15 days from the date of publication in the **Federal Register**.

Dated: June 18, 2004.

Peter Lichtenbaum,

Assistant Secretary for Export Administration.

[FR Doc. 04–14386 Filed 6–24–04; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 040610178–4178–01]

National Defense Stockpile Market Impact Committee Request for Public Comments on the Potential Market Impact of Proposed Stockpile Disposals in the FY 2005 Annual Materials Plan (AMP)

AGENCY: U.S. Department of Commerce.

ACTION: Notice of inquiry.

SUMMARY: This notice is to advise the public that the National Defense Stockpile Market Impact Committee (co-chaired by the Departments of Commerce and State) is seeking public comments on the potential market impact of proposed increases to the disposal levels of excess materials from the National Defense Stockpile for the Fiscal Year 2005 Annual Materials Plan.

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

ADDRESSES: Written comments should be sent to William J. Denk, Co-Chair, Stockpile Market Impact Committee, Office of Strategic Industries and Economic Security, Room 3876, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; Fax: (202) 482–5650; E-mail: *wdenk@bis.doc.gov*.

FOR FURTHER INFORMATION CONTACT: The co-chairs of the National Defense Stockpile Market Impact Committee. Contact either William J. Denk, Office of Strategic Industries and Economic Security, Bureau of Industry and Security, U.S. Department of Commerce, (202) 482–3634 or James Steele, Office of International Energy and Commodity Policy, U.S. Department of State, (202) 647–2871.

SUPPLEMENTARY INFORMATION: Under the authority of the Strategic and Critical Materials Stock Piling Act of 1979, as amended, (50 U.S.C. 98 *et seq.*), the Department of Defense ("DOD"), as National Defense Stockpile Manager, maintains a stockpile of strategic and critical materials to supply the military, industrial, and essential civilian needs of the United States for national defense. Section 3314 of the Fiscal Year ("FY") 1993 National Defense Authorization Act ("NDAA") (50 U.S.C. 98h–1) formally established a Market Impact Committee ("the Committee") to "advise the National Defense Stockpile Manager on the projected domestic and foreign economic effects of all acquisitions and disposals of materials from the stockpile * * *" The Committee must also balance market impact concerns with the statutory requirement to protect the Government against avoidable loss.

The Committee is comprised of representatives from the Departments of Commerce, State, Agriculture, Defense, Energy, Interior, Treasury, and the Federal Emergency Management Agency, and is co-chaired by the Departments of Commerce and State. The FY 1993 NDAA directs the Committee to "consult from time to time with representatives of producers, processors and consumers of the types of materials stored in the stockpile."

The National Defense Stockpile Administrator is proposing revisions to the previously approved FY 2005 Annual Materials Plan ("AMP") quantities for three materials: (1) Ferromanganese, from 50,000 Short Tons to 100,000 Short Tons; (2) Manganese ore (Metallurgical grade), from 250,000 Short Dry Tons to 500,000 Short Dry Tons, and (3) Tungsten ores and Concentrates, from 4,000,000 Pounds to 5,000,000 Pounds (contained tungsten). Significant supply shortfalls in global and domestic markets, at this time, necessitate an additional increase in the allotment of these materials for the FY 2005 AMP. The Committee is seeking public comments on the potential market impact of an increase to the previously approved material quantities to be offered for sale in the FY 2005 AMP. Note: The proposed revisions must first be approved by the U.S. Congress.

The AMP quantities are not targets for either sale or disposal. They are only a statement of the proposed maximum disposal quantity of each listed material that may be sold in a particular fiscal year. The quantity of each material that will actually be offered for sale will depend on the market for the material at the time of the offering as well as on the quantity of each material approved for disposal by Congress.

The Committee requests that interested parties provide written comments, supporting data and documentation, and any other relevant information on the potential market impact of the sale of these AMP commodities. Although comments in response to this Notice must be received by July 26, 2004, to ensure full consideration by the Committee, interested parties are encouraged to submit comments and supporting information at any time thereafter to keep the Committee informed as to the market impact of the sale of these commodities. Public comments are an important element of the Committee's market impact review process.

Public comments received will be made available at the Department of Commerce for public inspection and copying. Anyone submitting business confidential information should clearly identify the business confidential portion of the submission and also provide a non-confidential submission that can be placed in the public file. The Committee will seek to protect such information to the extent permitted by law.

The records related to this Notice will be made accessible in accordance with the regulations published in Part 4 of Title 15 of the Code of Federal Regulations (15 CFR 4.1 *et seq.*). Specifically, the Bureau of Industry and Security's Freedom of Information Act ("FOIA") reading room is located on its Web page, which can be found at *http://www.bis.doc.gov*, and copies of the public comments received will be maintained at that location (see FOIA heading). If requesters cannot access the Web site, they may call (202) 482–2165 for assistance.

Dated: June 17, 2004.

Peter Lichtenbaum,

Assistant Secretary for Export Administration, Bureau of Industry and Security, U.S. Department of Commerce.

[FR Doc. 04–14436 Filed 6–24–04; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–884]

Notice of Amended Antidumping Duty Order: Certain Color Television Receivers from the People's Republic of China

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

EFFECTIVE DATE: June 25, 2004.

FOR FURTHER INFORMATION CONTACT: Irina Itkin or Elizabeth Eastwood, Office of AD/CVD Enforcement, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0656 or (202) 482–3874, respectively.

SUPPLEMENTARY INFORMATION:

Amended Antidumping Duty Order

On May 27, 2004, the International Trade Commission (the ITC) notified the Department of Commerce (the Department) of its final determination pursuant to section 735(b)(1)(A)(i) of the Tariff Act of 1930, as amended (the Act), that the industry in the United States producing certain color television receivers (CTVs) is materially injured by reason of less–than-fair–value imports of subject merchandise from the People's Republic of China (PRC). On June 3, 2004, in accordance with section 736(a) of the Act, the Department published the antidumping duty order on CTVs from the PRC. *See Antidumping Duty Order: Certain Color Television Receivers From the People's Republic of China*, 69 FR 31347 (June 3, 2004). However, the antidumping duty order contained ministerial errors in the scope section. Specifically, the scope inadvertently included the following: 1) the sentence 'Incomplete' CTVs are defined as unassembled CTVs with a color picture tube (i.e., cathode ray tube), printed circuit board or ceramic substrate, together with the requisite parts to comprise a complete CTV, when assembled," and 2) a sentence fragment at the end of the scope section, which reads "and parts or imports of assemblages of parts that comprise less than a complete CTV." As noted in the final determination, the Department has made no changes to the scope of this investigation in the course of this proceeding. *See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (Apr. 16, 2004). The additional sentence and the sentence fragment were inadvertent typographical errors which constitute ministerial errors in accordance with 19 CFR 351.224(f). Consequently, this amended order is being published to correct the scope of the order.

Scope of Order

For purposes of this order, the term "certain color television receivers" includes complete and incomplete direct–view or projection–type cathode–ray tube color television receivers, with a video display diagonal exceeding 52 centimeters, whether or not combined with video recording or reproducing apparatus, which are capable of receiving a broadcast television signal and producing a video image. Specifically excluded from this order are computer monitors or other video display devices that are not capable of receiving a broadcast television signal.

The color television receivers subject to this order are currently classifiable under subheadings 8528.12.2800, 8528.12.3250, 8528.12.3290, 8528.12.4000, 8528.12.5600, 8528.12.3600, 8528.12.4400, 8528.12.4800, and 8528.12.5200 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

In accordance with section 736(a)(2) of the Act, the Department will instruct U.S. Customs and Border Protection 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 CTVs from the PRC, pursuant to the amended scope language, as discussed above.

This amended order is published in accordance with section 736(a) of the Act and 19 CFR 351.211.

Dated: June 21, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–14492 Filed 6–24–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–822]

Certain Helical Spring Lock Washers From the People's Republic of China: Notice of Extension of Time Limit of Preliminary Results of Antidumping Duty Administrative Review

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

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

SUMMARY: The Department of Commerce (the Department) is extending the preliminary results in the antidumping duty administrative review of certain helical spring lock washers (lock washers) from the People's Republic of China (PRC) covering the period October 1, 2002, to September 30, 2003. This extention is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).

EFFECTIVE DATE: June 25, 2004.

FOR FURTHER INFORMATION CONTACT: Marin Weaver at (202) 482–2336, or Charles Riggle at (202) 482–0650, AD/CVD Enforcement Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Extension of Preliminary Results

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

Background

On November 28, 2003, the Department of Commerce (the Department) published a notice of initiation of administrative review of the antidumping duty order on lock washers from the PRC, covering the

period October 1, 2002, through September 30, 2003 (68 FR 66799). The preliminary results for this review are currently due no later than July 2, 2004.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit for the reasons stated in our memorandum from Edward Yang, Director, China/NME Unit, AD/CVD Enforcement, to Jeffery A. May, Deputy Assistant Secretary for Import Administration, Group I, which is on file in the Central Records Unit, Room B–099 of the main Commerce building. Therefore, the Department is extending the time limit for completion of the preliminary results until no later than November 1, 2004. We intend to issue the final results no later than 120 days after publication of the preliminary results notice.

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

Dated: June 21, 2004.

Jeffrey A. May,

Deputy Assistant Secretary for Import Administration, Group I.

[FR Doc. 04–14493 Filed 6–24–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–059, A–588–068]

Continuation of Antidumping Duty Findings: Prestressed Concrete Wire Strand from Japan and Pressure Sensitive Plastic Tape From Italy

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

ACTION: Notice of Continuation of Antidumping Duty Findings: Prestressed Concrete Wire Strand from Japan and Pressure Sensitive Plastic Tape from Italy.

SUMMARY: The Department of Commerce ("the Department"), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended ("the Act"), determined that revocation of the antidumping duty findings on prestressed concrete wire strand from Japan and pressure sensitive plastic tape from Italy, would be likely to lead to continuation or recurrence of dumping.[1]

On June 14, 2004, the International Trade Commission ("the Commission"), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty findings on prestressed concrete wire strand from Japan and pressure sensitive plastic tape from Italy, would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2] Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of the continuation of the antidumping duty findings on prestressed concrete wire strand from Japan and pressure sensitive plastic tape from Italy.

EFFECTIVE DATE: June 25, 2004.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230; telephone: (202) 482–5050.

SUPPLEMENTARY INFORMATION

Background

On January 2, 2004, the Department initiated, and the Commission instituted, sunset reviews of the antidumping duty findings on prestressed concrete wire strand from Japan and pressure sensitive plastic tape from Italy pursuant to section 751(c) of the Act.[3] As a result of its reviews, the Department found that revocation of the antidumping duty findings would be likely to lead to continuation or recurrence of dumping, and notified the Commission of the magnitude of the margins likely to prevail were the order to be revoked. *See Department's Final Results.*

On June 14, 2004, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty findings on prestressed concrete wire strand from Japan and pressure sensitive plastic tape from Italy would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Pressure Sensitive Plastic Tape from Italy and Prestressed Concrete Wire Strand from Japan*, 69 FR 33070–33071 (June 14, 2004), *Pressure Sensitive Plastic Tape from Italy and Prestressed Concrete Wire Strand from Japan:* Investigation Nos. AA1921–167 and AA1921–188 (Second Reviews), and USITC Publications 3698–3699 (June 2004).

Scope

Italy

Imports covered by this sunset review are shipments of pressure sensitive plastic tape ("PSPT") measuring over 1 3/8 inches in width and not exceeding 4 mils in thickness. The above described PSPT was classified under Harmonized Tariff Schedule ("HTS") subheadings 3919.90.20 and 3919.90.50. The HTS subheadings are provided for convenience and for U.S. Customs purposes. The written description remains dispositive as the scope of the product coverage.

Japan

The products covered in this sunset review are shipments of steel wire strand, other than alloy steel, not galvanized, which are stress-relieved and suitable for use in prestressed concrete. Such merchandise is currently classifiable under HTS item number 7312.10.30.12. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive as the scope of the product coverage.

Determination

As a result of the determinations by the Department and the Commission that revocation of these antidumping duty findings would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty findings on prestressed concrete wire strand from Japan and pressure sensitive plastic tape from Italy.

The Department will instruct Customs to continue to collect antidumping duty deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of these findings will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to section 751(c)(2) and 751(c)(6) of the Act, the Department intends to initiate the next five-year review of these findings not later than May 2009.

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[1] *See Prestressed Concrete Wire Strand From Japan; Final Results of Expedited Sunset Review of Antidumping Finding*, 69 FR 25563 (May 7, 2004); *Pressure Sensitive Plastic Tape From Italy; Final Results of the Second Sunset Review of Antidumping Duty Finding*, 69 FR 26068 (May 11, 2004) (*"Department's Final Results"*).

[2] *See Pressure Sensitive Plastic Tape from Italy* and *Prestressed Concrete Wire Strand from Japan*, 69 FR 33070–33071 (June 14, 2004).

[3] *See Five-Year ("Sunset") Reviews*, 69 FR 50 (January 2, 2004).

Dated: June 21, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–14489 Filed 6–24–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–427–815]

Countervailing Duty Order on Stainless Steel Sheet and Strip in Coils from France: Rescission of Five-Year ("Sunset") Review

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

ACTION: Stainless Steel Sheet and Strip in Coils from France: Rescission of Five-Year ("Sunset") Review.

SUMMARY: On June 1, 2004, the Department of Commerce ("the Department") pursuant to section 751(d)(2) of the Tariff Act of 1930, as amended ("the Act"), published a Notice of Initiation of Five-Year ("Sunset") Reviews (Sunset Initiation Notice) of the antidumping duty orders on stainless steel sheet and strip from France, Germany, Italy, Japan, Korea, Mexico, Taiwan, and the United Kingdom, and the countervailing duty orders on stainless steel sheet and strip from France, Italy, and Korea.[1] Subsequent to the issuance of the Sunset Initiation Notice, we discovered an error. As a result, we are rescinding initiation of the sunset review with respect to the countervailing duty order on stainless sheet and strip in coils from France. The International Trade Commission is publishing concurrently with this notice its rescission of its notice of Institution of Five-Year Review.

EFFECTIVE DATE: June 25, 2004.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th St. & Constitution Ave., NW., Washington, DC 20230: telephone (202) 482–5050.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 2004, the Department published in the **Federal Register**, the Sunset Initiation Notice for the antidumping duty orders on stainless steel sheet and strip in coils from France, Germany, Italy, Japan, South Korea, Mexico, Taiwan, and the United Kingdom, and the countervailing duty orders on stainless steel sheet and strip in coils from France, Italy, and South Korea. Subsequent to the publication of the Sunset Initiation Notice, we discovered an error.

Rescission of Review

In our Initiation Notice, we indicated that we were initiating five-year sunset reviews in accordance with 19 CFR 351.218(c). In the *Initiation of Reviews* section of our Initiation Notice, we initiated a sunset review of the countervailing duty order on stainless steel and strip in coils from France. However, this order was revoked effective November 7, 2003, in implementing certain determinations under Section 129 of the Uruguay Round Agreements Act.[2] Therefore, we are rescinding the sunset review of the countervailing duty order of stainless steel sheet and strip in coils from France. The sunset review of the antidumping duty order of stainless steel sheet and strip in coils from France will continue.

This amendment is issued and published in accordance with section 777(i) of the Act.

Dated: June 14, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–14490 Filed 6–24–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of issuance of an amended Export Trade Certificate of Review, application No. 99–2A005.

SUMMARY: On June 17, 2004, The Department of Commerce issued an amended Export Trade Certificate of Review to California Almond Export Association, LLC ("CAEA").

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

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (2003).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of the certification in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 99–00005, was issued to CAEA on December 27, 1999 (65 FR 760, January 6, 2000) and previously amended on June 25, 2001 (66 FR 34912, July 2, 2001).

CAEA's Export Trade Certificate of Review has been amended to:

1. Add each of the following companies as a new "Member" of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): Nutco, LLC doing business as Spycher Brothers, Turlock, California; and Treehouse California Almonds, LLC, Los Angeles, California;

2. Change the listing of the following Members: "A&P Growers Cooperative, Inc., Tulare, California" to the new listing "A&P Growers Cooperative, Inc., Clovis, California"; "Del Rio Nut Company, Livingston, California" to the new listing "Del Rio Nut Company, Inc., Livingston, California"; "Hilltop Ranch, Ballico, California" to the new listing "Hilltop Ranch, Inc., Ballico, California"; "Hughson Nut Company, Hughson, California" to the new listing "Hughson Nut, Inc., Hughson, California"; and "Minturn Nut Company, LeGrand, California" to the new listing "Minturn Nut Company, Inc., LeGrand, California"; and

3. Delete the following companies as "Members" of the Certificate: Calcot, Ltd., Bakersfield, California; California Independent Almond Growers, Ballico, California; and Kindle Nut Company, Denair, California.

The effective date of the amended certificate is March 23, 2004. A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, room 4102, U.S. Department of Commerce, 14th Street

[1] *Initiation of Five-Year ("Sunset") Reviews*, 69 FR 30874 (June 1, 2004).

[2] Notice of Implementation Under Section 129 of the Uruguay Round Agreements Act; Countervailing Measures Concerning Certain Steel Products From the European Communities, 68 FR 64858 (November 17, 2003).

and Constitution Avenue, NW., Washington, DC 20230.

Dated: June 21, 2004.

Vanessa M. Bachman,

Acting Director, Office of Export Trading, Company Affairs.

[FR Doc. 04–14405 Filed 6–24–04; 8:45 am]

BILLING CODE 3510–DR–P

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)

June 22, 2004.

AGENCY: The Committee for the Implementation of Textile Agreements

ACTION: Request for public comments concerning a petition for a determination that certain dyed, two way stretch twill woven fabric cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA.

SUMMARY: On June 18, 2004, the Chairman of CITA received a petition from Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt, LLP, on behalf of Pressman-Gutman Co., Inc., alleging that certain dyed, two way stretch twill woven fabric, of three ply yarns composed of 62 percent staple polyester, 33 percent staple rayon and 5 percent filament spandex, of the specifications detailed below, classified in subheading 5515.11.0040 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner. It requests 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 this petition, in particular with regard to whether this fabric can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by July 12, 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: Janet E. Heinzen, 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 June 18, 2004, the Chairman of CITA received a petition on behalf of Pressman-Gutman Co., Inc., alleging that certain dyed, two way stretch twill woven fabric, of three-ply yarns composed of 62 percent staple polyester, 33 percent staple rayon and 5 percent filament spandex, of the specifications detailed below, classified in subheading 5515.11.0040 of the Harmonized Tariff Schedule of the United States (HTSUS), 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:

Construction: 40.9 warp ends per centimeter, 27.6 filling picks per centimeter

3 Ply Yarn: two size 40 c.c. polyester/rayon blend staple yarns combined with a 40 denier filament spandex yarn in both the warp and the filling

Weight: Approximately 285 g/m2.

CITA is soliciting public comments regarding this request, particularly with respect to whether this fabric 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 July 12, 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.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 04–14495 Filed 6–22–04; 4:06 pm]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Shipments of Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Apparel in Excess of Agreement Limits

June 22, 2004.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice

FOR FURTHER INFORMATION CONTACT: Philip J. Martello, Director, Trade and Data Division, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

It has come to CITA's attention that some textile and apparel products may be shipped in excess of 2004 annual quota limits with the expectation that they will be allowed entry on January 1, 2005.

This notice serves to remind interested parties that charges against the limits subject to U.S. bilateral agreements, the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC) are by date of export and not date of entry. Shipments exported in 2004 in excess of agreed limits are in violation of the terms of these agreements.

The purpose of this notice is to advise the public that CITA reserves the right under the bilateral agreements, the Uruguay Round Agreements Act and the ATC to deny entry to goods that have been shipped in excess of 2004 limits; or to stage entry in 2005 to merchandise exported during 2004 which exceed the restraint limit(s) established for that period.

A properly completed visa, electronic visa (ELVIS) transmission, Guaranteed Access Level (GAL) certification, or exempt certification will be required for all shipments exported in 2004, regardless of the date of entry into the United States.

Textile and apparel goods that are the product of countries that are members of the World Trade Organization (WTO) and that are exported from the country of origin on or after January 1, 2005 will not require a visa, ELVIS transmission, GAL certification, or exempt certification to enter the United States. For goods that are the product of countries that are not members of the WTO, currently applicable requirements will remain in effect.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 04–14494 Filed 6–24–04; 8:45 am]

BILLING CODE 3510–DR–S

CONSUMER PRODUCT SAFETY COMMISSION

Notice of Submission for OMB Review of Collection of Information Approval Extension and Request for Comments—Safety Standard for Multi-Purpose Lighters

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the **Federal Register** of March 30, 2004 (69 FR 16526), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) to announce the agency's intention to seek extension of approval of the collection of information in the Safety Standard for Multi-Purpose Lighters. 16 CFR part 1212. No comments were received in response to the March 30, 2004 notice. The Commission now announces that it has submitted to the Office of Management and Budget (OMB) a request for extension of approval of that collection of information without change for a period of three years from the date of approval.

Section 14(a) of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2063(a)) requires manufacturers, importers, and private labelers of a consumer product subject to a consumer product safety standard to issue a certificate stating that the product complies with all applicable consumer product safety standards. Section 14(a) of the CPSA also requires that the certificate of compliance must be based on a test of each product or upon a reasonable testing program.

Section 14(b) of the CPSA authorizes the Commission to issue regulations to prescribe a reasonable testing program to support certificates of compliance with a consumer product safety standard. Section 16(b) of the CPSA (15 U.S.C. 2065(b)) authorizes the Commission to issue rules to require that firms "establish and maintain" records to permit the Commission to determine compliance with rules issued under the authority of the CPSA.

The Commission has issued regulations prescribing requirements for a reasonable testing program to support certificates of compliance with the standard for multi-purpose lighters. These regulations require manufacturers and importers to submit a description of each model of lighter, results of prototype qualification tests for compliance with the standard, and other information before the introduction of each model of lighter into commerce. These regulations also require manufacturers, importers, and private labelers of multi-purpose lighters to establish and maintain records to demonstrate successful completion of all required tests to support the certificates of compliance that they issue. 16 CFR part 1212, subpart B.

The Commission uses the information compiled and maintained by manufacturers, importers, and private labelers of multi-purpose lighters to protect consumers from risks of accidental deaths and burn injuries associated with those lighters. More specifically, the Commission uses this information to determine whether lighters comply with the standard by resisting operation by young children. The Commission also uses this information to obtain corrective actions if multipurpose lighters fail to comply with the standard in a manner that creates a substantial risk of injury to the public.

OMB approved the collection of information in the certification regulations for multi-purpose lighters under control number 3041–0130. OMB's current approval will expire on July 31, 2004. The Commission is requesting an extension of approval without change for these collection of information requirements.

Additional Information About the Request for Extension of Approval of Information Collection Requirements

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Safety Standard for Multi-Purpose Lighters. 16 CFR part 1212.

Type of request: Extension of approval.

General description of respondents: Manufacturers and importers of multi-purpose lighters.

Estimated number of respondents: 100.

Estimated average number of hours per respondent: 100 per year.

Estimated number of hours for all respondents: 10,000 per year.

Estimated cost of collection for all respondents: $244,800 per year.

Comments: Comments on this request for reinstatement of approval of information collection requirements should be submitted by July 26, 2004, to (1) The Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395–7340, and (2) the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at *cpsc-os@cpsc.gov.*

Copies of this request for renewal of the information collection requirements and supporting documentation are available from Linda Glatz, management and program analyst, Office of Planning and Evaluation, Consumer Product

Safety Commission, Washington, DC 20207; telephone: (301) 504–7671.

Dated: June 15, 2004.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 04–14387 Filed 6–24–04; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Advisory Board Closed Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Pub. L. 92–463, as amended by Section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of the DIA Advisory Board has been scheduled as follows:

DATES: 23–24 June 2004 (8:30 a.m. to 5 p.m.)

ADDRESSES: ANSER Conference Center, 2900 S. Quincy Street, Suite 800, Arlington, VA

FOR FURTHER INFORMATION CONTACT: Ms. Jane McGehee, Program Manager/ Executive Secretary, DIA Advisory Board, Washington, DC., 20340–1328 (703) 693–9567.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(l), Title 5 of the U.S. Code, and therefore will be closed to the public. The Board will receive briefings and discuss several current critical intelligence issues in order to advise the Director, DIA.

Dated: June 21, 2004.

L. M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 04–14435 Filed 6–24–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Supplemental Environmental Impact Statement/ Supplemental Environmental Impact Report for the Pacific Energy Crude Oil Marine Terminal on Pier 400 in the Port of Los Angeles, Los Angeles County, California

AGENCY: U.S. Army Corps of Engineers, Los Angeles District, DoD.

ACTION: Notice of intent.

SUMMARY: USACE and LAHD previously prepared and certified the *Deep Draft Navigation Improvements, Los Angeles and Long Beach Harbors, San Pedro Bay, California Final SEIS/SEIR* (Deep Draft EIS/EIR) that in part analyzed the impacts of creation of Pier 400 from dredge material and the subsequent construction and operation of a new liquid bulk terminal on the new Pier 400 land (USACE and LAHD, 1992). LAHD approved the Deep Draft SEIS/ SEIR in its action of November 18, 1992; and the USACE issued a Record of Decision (ROD) on January 21, 1994. The SEIS/SEIR being prepared for this specific action is a supplement to the Deep Draft EIS/EIR. The landside developments will include (1) development and construction of the liquid bulk marine terminal facilities on Pier 400, (2) construction of product storage terminals on Terminal Island and/or other suitable sites, (3) construction of a 42-inch pipeline to connect the Marine Terminal to the Storage Terminals, (4) construction of two 36-inch pipelines from the Storage Terminals to link with an existing 36-inch pipeline running between the ExxonMobil Southwest Terminal on Terminal Island and the Ultramar Liquid Bulk Terminal on Mormon Island (one of the 36-inch pipelines would deliver product to the Exxon/ Mobil Southwest Terminal and the other would deliver product to the Ultramar Liquid Bulk Terminal), and (5) construction of a 24-inch pipeline from the Ultramar Terminal to the Ultramar/ Valero Refinery located north of the Terminal Island Freeway and south of Anaheim Street.

The primary Federal concern is the dredging and discharging of materials within waters of the U.S. and potential impacts on the human environment. Under section 404 of the Clean Water Act, the Corps is authorized to approve discharges of dredged or fill material into waters of the U.S. Under section 10 of the Rivers and Harbors Act, the Corps may authorize activities that could affect navigable waters. The Corps is preparing an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA) prior to deciding whether or not to authorize the Proposed Action. The Corps may ultimately make a determination to permit or deny the Proposed Action, or permit or deny alternatives to the Proposed Action.

Pursuant to the California Environmental Quality Act (CEQA), the Port will serve as Lead Agency for the preparation of an Environmental Impact Report (EIR) for its consideration of development approvals within its jurisdiction. The Corps and the Port have agreed to jointly prepare a Draft SEIS/SEIR in order to optimize efficiency and avoid duplication. The Draft SEIS/SEIR is intended to be sufficient in scope to address Federal, State, and local requirements and environmental issues concerning the proposed activities and permit approvals.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and Draft SEIS/SEIR can be answered by Mr. Joshua Burnam, Corps Project Manager, at 213–452–3294. Comments regarding the scope of the Draft SEIS/ SEIR shall be addressed to: U.S. Army Corps of Engineers, Los Angeles District, Regulatory Branch, Attn: File Number 2004–00917–JLB, P.O. Box 532711, Los Angeles, California 90053–2325.

SUPPLEMENTARY INFORMATION:

1. *Project Site and Background Information.* The proposed marine terminal portion of this project would be located on the western side (Face C) and southern side (Face D) of Pier 400 in the Port's Planning Area 9. The currently identified new storage terminal sites would be located on Terminal Island and would also be in the Port's Planning Area 9. The proposed terminal would require approximately 4 million barrels of storage capacity. Five sites within the port (described below) with a total storage capacity of approximately 3.5 million barrels have already been identified. The total storage capacity will be limited to 3.5 million barrels pending identification of other sites in or outside the Port that could accommodate the project, in its entirety or in part, or accommodate the remaining needed capacity (approximately 500,000 barrels). Pacific Energy's anchor customer plans to use 1.0 million barrels of capacity and Pacific Energy would use the other 3.0 million barrels to serve other customers.

Reeves Avenue/Navy Way Site. The Reeves Avenue/Navy Way Site is a 10.82-acre (4.4-hectare) site that can accommodate four (4) 250,000-barrel storage tanks plus related manifolds and pumping equipment. The proposed 42-inch-diameter offloading pipeline from the Pier 400 Marine Terminal dock would terminate at this site. The property that would be utilized by Pacific Energy is under the control of the LAHD and excludes the nearby strip of land controlled by the U.S. Navy.

Site 6a. This 9.72-acre (3.9-hectare) site, North of Seaside Avenue, is narrow and long and would not provide sufficient width for the construction of 250,000-barrel storage tanks. However, Pacific Energy could fit 140,000-barrel tanks into this space and would build four (4) tanks for a total capacity of 560,000 barrels.

Naval Reserve Center Site. The Naval Reserve Center Site is located east of Terminal Way between Seaside Avenue and Reeves Avenue. Pacific Energy could build three (3) 250,000-barrel tanks on the property. Pacific Energy assumes that the easterly half of this property, which is approximately 11 acres (4.5 hectares), could be used for the proposed project since this section of the property is either vacant or is being used for operations which could be easily located elsewhere. Pacific Energy's design maintains the existing entrance to the property, the large parking area on the westerly half, and the main Navy Reserve building in the Northwest corner. LAHD has begun consultation with the U.S. Navy concerning use of this site.

Seaside Avenue/Terminal Way Site. The Seaside Avenue/Terminal Way Site is a 12.47-acre (5.0-hectare) triangular shaped piece of property that is split in half by an active rail system. However, relocation of the existing rail to the inside edge of the property would allow Pacific Energy to build three (3) 250,000-barrel tanks at this location.

Pier 400 Site. Pacific Energy could build one (1) 500,000-barrel storage tank on the Face D side of Pier 400. This tank would be built in conjunction with other offloading equipment required for the new marine terminal such as pumps, manifolds, electrical buildings, and a small 50,000-barrel surge tank to be used for pumping operations. Use of this site will require consultation with the U.S. Fish and Wildlife Service and the California Department of Fish and Game regarding the nearby least tern nesting site on Pier 400.

2. *Proposed Action.* Construction would consist of three primary activities, *i.e.*, marine terminal construction, storage terminal (tank farm) construction, and pipeline construction.

Marine Terminal Construction. The principal elements of the proposed marine terminal project are described below.

1. Construct and operate the following marine structures:

(a) Construct approximately 6000 square feet (SF) of unloading platform (ULP) with dock house and placement of 8 steel and/or concrete piles in waters of the U.S.

(b) Construct approximately 8000 SF of breasting dolphins (BD), and placement of approximately 16 steel and/or concrete piles.

(c) Construct approximately 8000 SF of north and south trestles (NST) with roadway, and pipe-way, and placement of approximately 20 steel and/or concrete piles.

(d) Construct approximately 270-foot wharf (23,500 SF) along the existing rock dike and adjoining the NST, and placement of approximately 70 concrete piles.

(e) Construct approximately 4500 SF of walkway, and placement of approximately 8 steel and/or concrete piles.

(f) Construct approximately 1500 SF of floating dock and gangway and placement of approximately 8 concrete piles.

(g) Construct approximately 6 power capstans (shore mooring points) with approximately 48 concrete piles.

(h) Construct control building.

(i) Construct fire protection system.

(j) Construct spill containment boom.

2. Construct and develop 10 acres of backland area for roadway, pipelines, buildings and landscaping.

Offloading Berth. The proposed liquid bulk-offloading berth would be designed to accommodate marine crude oil tankers up to 375,000 DWT, with a length overall (LOA) of 1,200 ft (366 m) and 2.8 million barrel capacity. The maximum allowable vessel draught at the proposed Pier 400 Berth is 79.5 ft (24.2 m). The offloading arms would be designed to deliver crude oil from ships to the proposed storage terminals at rates that average 52,500 gallons per minute (75,000 barrels per hour [BPH]). Initially, the marine terminal would deliver an average of about 150,000 barrels per day from vessels to the proposed storage terminals.

Storage Terminal (Tank Farm) Construction. Storage terminals with 3.5 million barrels of capacity would be constructed at the sites previously described. An additional site with up to 500,000 barrels of capacity has yet to be identified. This remaining unidentified site may be located on or off of Port property.

The proposed tanks would be designed for crude oil storage and service. The total number of tanks will depend on the final selection of tank sites. It is anticipated that the tanks would be external floating roof, drain dry, welded steel crude oil storage tanks, designed and constructed in accordance with the API Standard 650, Welded Steel Tanks for Oil Storage. Although the final dimensions of the tanks would be determined during detailed design, the current proposed dimensions for a 500,000-barrel tank are nominally 285-ft (86.9 m) diameter by 48-ft (14.6 m) tall.

Principal components of the storage terminals to be constructed would be:

(1) External floating roof, drain dry, welded steel crude oil storage tanks.

(2) Containment structures and dikes including primary containment structures that encircle all tanks.

(3) Control, switchgear, and storage buildings.

(4) Electrical substation and electrical power system.

(5) Fire suppression and emergency response systems.

Pipeline Construction. Pipelines to be constructed would include a 42-inch pipeline from the Pier 400 Marine Terminal to the Storage Terminals, two 36-inch pipelines from the Storage Terminals to connect to the existing Kinder Morgan Energy Partners (KMEP) 36-inch pipeline at a point on Terminal Island, between ExxonMobil Southwest Terminal, and the Ultramar Liquid Bulk Terminal on Mormon Island. A new 24-inch pipeline would be constructed from the Ultramar Liquid Bulk Terminal on Mormon Island, to the Ultramar/Valero Refinery.

Proposed Action Operation: Activities and system elements that would be associated with the operation of the Marine Terminal, the Storage Terminals, and the Pipelines are listed below.

(1) Site access and security.

(2) Process control and safety systems.

(3) Vapor and leak monitoring/detection.

(4) Spill detection and containment.

(5) Storm water drainage and treatment system.

(6) Wastes/waste handling.

(7) Chemical storage (lubricating oil, hydraulic fluid, water based solvents, fire fighting foam surfactant, oil drag reducing agents, corrosion inhibitors, etc.).

(8) Lighting.

(9) Product transfer operations.

(10) Fire detection and suppression.

(11) Cathodic protection system.

3. *Issues:* There are several potential environmental issues that will be

addressed in the SEIS/SEIR. Additional issues may be identified during the scoping process. Issues initially identified as potentially significant include:

(1) Impacts to air quality from new air emissions;

(2) Potential for cultural impacts due to pipeline disturbance of historical resources;

(3) Geological issues, including risks from known seismic activity and the presence of expansive soils;

(4) Potential for hazardous materials impacts through transport and use of crude oil products and risk of upset or accident;

(5) Impacts to hydrology, including known risks due to seiches and tsunamis;

(6) Potential impacts on public health and safety;

(7) Potential impacts on aesthetics due to light and glare;

(8) Potential impacts on biological resources, in particular impact to the least tern nesting area on Pier 400;

(9) Potential noise impacts during both construction and operation phases;

(10) Impacts to marine vessel traffic, including marine navigation; and

(11) Cumulative impacts.

Alternatives: Alternatives initially being considered for the proposed project include the following:

(1) Proposed Action as described above (does not require dredging activity).

(2) Expansion of other crude oil terminals within the POLA.

(3) Development of a new landfill and/or terminal within the POLA.

(4) Expansion or construction of a crude oil terminal outside of the POLA.

(5) Lightering of crude from deep-water locations in the Inner or Outer Harbor.

(6) Development of a deepwater offshore mooring site with connection to onshore storage facilities via underwater pipeline.

(7) Combination marine terminal/lightering operation.

(8) Near-shore dredging with wharf setback.

(9) No Project (no physical changes).

(10) Relocation of existing liquid bulk facilities with wharf construction.

(11) No Federal Action (no structures or dredging in waters of the U.S.).

5. *Scoping Process.* The Corps and the Port will jointly conduct a scoping meeting for the proposed project. English and Spanish translation services will be provided at the meeting. The public scoping meeting will be held to receive public comment and assess public concerns regarding the appropriate scope of the Draft SEIS/SEIR. Participation in the public meeting by Federal, State and local agencies and other interested organizations and persons are encouraged. Parties interested in being added to the Corps' electronic mail notification list for Port projects in Los Angeles District can register at: *http://www.spl.usace.army.mil/regulatory/register.html.* This list will be used in the future to notify the public about scheduled hearings and availability of future public notices.

The Corps of Engineers will also be consulting with the U.S. Fish and Wildlife Service under the Endangered Species Act and Fish and Wildlife Coordination Act, and with the National Marine Fisheries Service under the Magnuson-Stevens Act. Additionally, the SEIS/SEIR will assess the consistency of the proposed Action with the Coastal Zone Management Act and potential water quality impacts pursuant to section 401 of the Clean Water Act.

The public scoping meetings will be held July 8th, 2003 at the Banning's Landing Recreation Center in Wilmington beginning at 6:30 p.m. Written comments will be received until July 16, 2003.

6. *Availability of the Draft SEIS/SEIR.* The Draft SEIS/SEIR is expected to be published and circulated in the Spring of 2005, and a Public Hearing will be held after its publication.

Dated: May 27, 2004.

David E. Hurley,

Major, U.S. Army, Acting Deputy District Engineer.

[FR Doc. 04–14397 Filed 6–24–04; 8:45 am]

BILLING CODE 3710–92–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 July 26, 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: June 22, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.

Title: Data Collection for the Evaluation of the Improving Literacy through School Libraries Program (LSL).

Frequency: One-time.

Affected Public: State, local, or tribal gov't, SEAs or LEAs (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 800.

Burden Hours: 600.

Abstract: This submission requests approval of a data collection for an evaluation of the Improving Literacy through School Libraries (LSL). LSL, established under the No Child Left Behind Act of 2001 (NCLB), is designed to improve the literacy skills and academic achievement of students by providing them with access to up-to-date school library materials, technologically advanced school library media centers, and professionally certified school library media specialists. The evaluation of this program is authorized by NCLB, title I, part B, subpart 4.

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 2528. 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. 04–14531 Filed 6–24–04; 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 July 26, 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: June 22, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Report of Early Intervention Services on IFSPs Provided to Infants, Toddlers and Their Families in Accordance With Part C and Report of Number and Type of Personnel Employed and Contracted To Provide Early Intervention Services.

Frequency: Annually.

Affected Public: State, local, or tribal gov't, SEAs or LEAs (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 56. *Burden Hours:* 4,760.

Abstract: This package provides instructions and forms necessary for States to report, by race and ethnicity, the number of infants and toddlers with disabilities and their families receiving different types of part C services, and the number of personnel employed and contracted to provide services for infants and toddlers with disabilities and their families. Data are obtained from state and local service agencies and are used to assess and monitor the implementation of IDEA and for Congressional reporting.

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 2496. 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 Sheila Carey at her e-mail address, *Sheila.Carey@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. 04–14532 Filed 6–24–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Technology and Media Services for Individuals with Disabilities—Cultural Experiences for Deaf or Hard of Hearing Individuals; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Catalog of Federal Domestic Assistance (CFDA) Number: 84.327T.

DATES:

Applications Available: June 25, 2004.

Deadline for Transmittal of Applications: July 30, 2004.

Deadline for Intergovernmental Review: September 28, 2004.

Eligible Applicants: State educational agencies (SEAs); local educational agencies (LEAs); Institutes of Higher Education (IHEs); other public agencies; nonprofit private organizations; outlying areas; freely associated States; Indian tribes and tribal organizations; and for-profit organizations.

Estimated Available Funds: $550,000.

Estimated Average Size of Awards: $110,000.

Maximum Award: We will reject any application that proposes a budget exceeding $110,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 5.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Technology and Media Services for Individuals With Disabilities—Cultural Experiences for Deaf or Hard of Hearing Individuals competition is to: (1) Improve results for children with disabilities by promoting the development, demonstration, and use of technology; (2) support educational media activities designed to be of educational value to children with disabilities; (3) provide support for some captioning and video description; and (4) provide cultural experiences through appropriate nonprofit organizations.

Priority: In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from allowable activities specified in the statute (see sections 661(e)(2) and 687 of the Individuals with Disabilities Education Act, as amended (IDEA)).

Absolute Priority: For FY 2004 this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Technology and Media Services for Individuals with Disabilities—Cultural Experiences for Deaf or Hard of Hearing Individuals.

Background: Past projects funded under this program supported a variety of activities, including: theatrical experiences in which cast members included deaf, hard-of-hearing, and hearing performers; theater and set design, directing, dance, and storytelling for deaf, hard-of-hearing, and hearing individuals; cultural experiences focusing on Native American art and culture; hands-on theater experience involving persons from minority groups; a touring "instant theater;" producing videos of performances and documentaries of performances; and drama workshops.

Priority: This priority supports a variety of cultural activities designed to enrich the lives of deaf or hard-of-hearing individuals, including children or adults. These activities must use an approach that integrates deaf or hard-of-hearing individuals with those who can hear, while providing cultural experiences that will increase public awareness and understanding of deafness, deaf culture, and of the artistic and intellectual achievements of deaf and hard-of-hearing individuals.

A grantee may not use funds under this priority for passive activities, such as viewing a play or video, or passively watching a storyteller or artist at work.

To be considered for funding under this priority, a project must—

(a) Use an integrated approach that mixes children or adults who are deaf or hard-of-hearing with those who can hear in carrying out project activities;

(b) Develop and implement strategies that will increase public awareness and understanding of deafness and deaf culture, and of the artistic and intellectual achievements of deaf and hard-of-hearing individuals;

(c) Budget for a two-day Project Directors' meeting in Washington, DC during each year of the project; and

(d) If the project has a Web site, include relevant information and documents in an accessible form for individuals with disabilities.

Note: Outreach activities such as promoting the project to schools, community organizations, news media, and relevant national organizations are encouraged.

Waiver of Proposed Rulemaking: It is generally our practice to offer interested parties the opportunity to comment on proposed priorities. However, section 661(e)(2) of the IDEA makes the public comment requirements in the Administrative Procedure Act (5 U.S.C. 553) inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1487.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $550,000.

Estimated Average Size of Awards: $110,000.

Maximum Award: We will reject any application that proposes a budget exceeding $110,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 5.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* State and local educational agencies; IHEs; other public agencies; nonprofit private organizations; outlying areas; freely associated States; Indian tribes and tribal organizations; and for-profit organizations.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this notice must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of the IDEA).

(b) Applicants and grant recipients funded under this notice must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects (see section 661(f)(1)(A) of the IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.327T.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the Grants and Contracts Services Team listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 40 pages, using the following standards:

- A "page" is 8.5″ x 11″, (on one side only) with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography or references, the letters of support, or the appendix. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: June 25, 2004.

Deadline for Transmittal of Applications: July 30, 2004. The dates and times for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition. The application package also specifies the hours of operation of the e-Application Web site.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: September 28, 2004.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Instructions and requirements for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition.

Application Procedures

Note: Some of the procedures in these instructions for transmitting applications differ from those in EDGAR (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications: We are continuing to expand our pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Special Education—Technology and Media Services for Individuals with Disabilities—Cultural Experiences for Deaf or Hard of Hearing Individuals competition—CFDA Number 84.327T is one of the competitions included in the pilot project. If you are an applicant under the Special Education—Technology and Media Services for Individuals with Disabilities—Cultural Experiences for Deaf or Hard of Hearing Individuals competition, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application). If you use e-Application, you will be entering data online while completing your application. You may not e-mail an electronic copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter online will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Your e-Application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.
2. The institution's Authorizing Representative must sign this form.
3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.
4. Fax the signed ED 424 to the Application Control Center at (202) 245–6272.

- We may request that you give us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you elect to participate in the e-Application pilot for the Special Education—Technology and Media Services for Individuals with Disabilities—Cultural Experiences for Deaf or Hard of Hearing Individuals competition and you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

1. You are a registered user of e-Application, and you have initiated an e-Application for this competition; and

2. (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time) on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Special Education—Technology and Media Services for Individuals with Disabilities—Cultural Experiences for Deaf or Hard of Hearing Individuals competition at: *http://e-grants.ed.gov.*

V. Application Review Information

Selection Criteria: The selection criteria for this competition are chosen from the general selection criteria in 34 CFR 75.210 of EDGAR. The specific selection criteria to be used for this competition are in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other

requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the Department is currently developing measures that will yield information on various aspects of the quality of the Technology and Media Services for Individuals with Disabilities program (*e.g.*, the extent to which projects are of high quality, are relevant to the needs of children with disabilities, and contribute to improving results for children with disabilities). Data on these measures will be collected from the projects funded under this notice.

Grantees will also be required to report information on their projects' performance in annual reports to the Department (EDGAR, 34 CFR 75.590).

We will notify grantees of the performance measures once they are developed.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Ernie Hairston, U.S. Department of Education, 400 Maryland Avenue, SW., room 4070, Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 205–9172 (voice) or 205–8170 (TTY).

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request by contacting the following office: The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 205–8207.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html.*

Dated: June 22, 2004.

Troy R. Justesen,

Acting Deputy Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 04–14503 Filed 6–24–04; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: United States Election Assistance Commission.

ACTION: Notice of Public Meeting for the Newly Established Technical Guidelines Development Committee.

DATE AND TIME: Friday, July 9, 2004; 9 a.m. to 3 p.m.

PLACE: U.S. Election Assistance Commission, 1225 New York Ave, NW., Suite 1100, Washington, DC 20005 (Metro Stop: Metro Center).

STATUS: This Meeting Will Be Open to the Public.

SUMMARY: The Technical Guidelines Development Committee (the "Development Committee") has scheduled an organizational meeting for July 9, 2004. The Committee was established pursuant to 42 U.S.C. 15361(b)(1), to act in the public interest to assist the Executive Director of the Election Assistance Commission in the development of the voluntary voting system guidelines. The purpose of this first meeting of the Committee will be to convene the Committee, and discuss its purpose, and begin developing a plan to establish voluntary voting system guidelines.

* * * * *

CONTACT INFORMATION: Adam Ambrogi (202) 566–3105. If a member of the public would like to submit written comments concerning the Committee's affairs at any time before and after the meeting, written comments should be addressed to the contact person indicated above, or *TGDCinfo@eac.gov*

Paul S. DeGregorio;

Commissioner, U.S. Election Assistance Commission.

[FR Doc. 04–14627 Filed 6–23–04; 2:08 pm]

BILLING CODE 6820–MP–M

ENVIRONMENTAL PROTECTION AGENCY

[RCRA–2004–0005; FRL–7778–9]

Agency Information Collection Activities: Proposed Collection; Comment Request; Reporting and Recordkeeping Requirements for Universal Waste Handlers and Destination Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Reporting and Recordkeeping Requirements for Universal Waste Handlers and Destination Facilities, ICR Number 1597.06, OMB Control Number 2050–0145. This ICR is scheduled to expire on November 30, 2004. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before August 24, 2004.

ADDRESSES: Submit your comments, referencing docket ID No. RCRA–2204–0005 to EPA online using EDOCKET (our preferred method), by e-mail to: *RCRA-docket@epa.gov*, or by mail to: EPA Docket Center (5305T), U.S. Environmental Protection Agency, OSWER Docket, 1200 Pennsylvania Ave, NW., Washington, DC 20460. Follow the detailed instructions provided in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Tab Tesnau, Office of Solid Waste (5303W), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (703) 605–0636, or by e-mail *tesnau.tab@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR

under Docket ID No. RCRA–2004–0005. Documents in the official public docket are listed in the index list in EPA's electronic public docket and comment system, EDOCKET. Documents may be available either electronically or in hard copy. Electronic documents may be viewed through EDOCKET. Hard copy documents may be viewed at the OSWER Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the OSWER Docket is (202) 566–0270. An electronic version of the public docket is available through EPA Docket (EDOCKET) at *http://www.epa.gov/docket.*

You may use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Certain types of information will not be placed in EDOCKET. Information claimed as CBI, and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EDOCKET. EPA's policy is that copyrighted material will not be placed in EDOCKET but will be available only in printed, paper form in the official public docket. Publicly available docket materials that are not available electronically may be viewed at the EPA Docket Center.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EDOCKET. Public comments that are mailed or delivered to the Docket will be scanned and placed in EDOCKET. Where practical, physical objects will be photographed, and the photograph will be placed in EDOCKET along with a brief description written by the docket staff.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment, Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments in formulating a final decision.

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

Your use of EDOCKET to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EDOCKET at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. Once in the system, select "search," and then key in Docket ID No. RCRA–2004–0005. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Electronic comments may also be sent through the federal-wide eRulemaking Web site at *www.regulations.gov.*

Comments may be sent by electronic mail (e-mail) to *RCRA-docket@epa.gov,* Attention Docket ID No. RCRA–2004–0005. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EDOCKET, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EDOCKET.

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

Send your comments to: OSWER Docket, Environmental Protection Agency, Mailcode 5305T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. RCRA–2004–0005.

Deliver your comments to: EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. RCRA–2004–0005. Such deliveries are only accepted during the Docket's normal hours of operation as identified above.

Affected entities: Entities potentially affected by this action are waste handlers and destination facilities that collect and manage certain hazardous waste batteries, certain hazardous waste pesticides, hazardous waste mercury-containing thermostats, and hazardous waste lamps.

Title: Reporting and Recordkeeping Requirements for Universal Waste Handlers and Destination Facilities, OMB Control number 2050–0145, EPA ICR number 1597.06, expiration date: 11/30/2004.

Abstract: EPA promulgated the Universal Waste standards at 40 CFR part 273. The Universal Waste standards govern the collection and management of widely generated wastes known as universal wastes. EPA has identified hazardous waste batteries, certain hazardous waste pesticides, hazardous waste thermostats, and hazardous waste lamps as universal wastes. Other wastes may be added to the universal waste federal program if EPA determines such regulation is appropriate. Additional wastes can be added by states as a "state-only" waste. The regulations allow universal waste handlers to manage universal wastes under a reduced set of regulatory requirements. Destination facilities, on the other hand, (*i.e.,* those facilities accepting universal waste for treatment, recycling, or

disposal) remain subject to their regular requirements. The universal waste regulations at part 273 were promulgated by EPA under the authority of Subtitle C in RCRA.

This information collection targets the collection of information for the following reporting or recordkeeping requirements: Notification, labeling and marking, storage time limitations, off-site shipments, tracking of universal waste shipments, and petitions to include other waste categories at the federal level. It is necessary for EPA to collect universal waste information to ensure that universal waste is collected and managed in a manner that is protective of human health and the environment. EPA requires, among other things, Large Quantity Handlers of Universal Waste to notify the Agency of their universal waste management activities so that EPA can obtain general information on these handlers, and to facilitate enforcement of the regulations at part 273. In addition, EPA requires universal waste handlers to record the date on which they begin storing universal waste on-site to ensure that such accumulation is performed responsibly. EPA also requires certain universal waste handlers to track receipt of universal waste shipments as well as shipments sent off-site to ensure that universal waste is properly treated, recycled, and disposed. Finally, the submission of petitions in support of regulating other wastes or waste categories under part 273 helps EPA (1) to compile information on these wastes, and (2) to determine whether regulation as a universal waste is appropriate.

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 are listed in 40 CFR part 9 and 48 CFR chapter 15.

EPA would like to solicit comments to:

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

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The average public recordkeeping burden for Small Quantity Handlers of Universal Waste (SQHUWs) under this collection of information is estimated to be 1.4 hours per year. This estimate includes time for reading the regulations, labeling universal waste, and maintaining records demonstrating the length of storage. The reporting burden for SQHUWs (for submitting notices of rejected or illegal universal waste shipments) is expected to be negligible. The recordkeeping burden for Large Quantity Handlers of Universal Waste (LQHUWs) under this collection of information is estimated to be 2.8 hours per year. This estimate includes time for reading the regulations, labeling universal waste, maintaining records demonstrating the length of storage, and maintaining records of universal waste received and sent. The reporting burden for LQHUWs is estimated to be 0.5 hours per year. This estimate includes time for notifying EPA of universal waste management, and preparing and submitting notices of rejected or illegal universal waste shipments. The recordkeeping burden for destination facilities is estimated to be 183.1 hours per year. This estimate includes time for reading the regulations and maintaining records of universal waste received. The reporting burden for destination facilities is estimated to be 18.4 hours per year. This estimate includes time for preparing and submitting notices of rejected or illegal universal waste shipments.

Respondents/Affected Entities: SQHUWs, LQHUWs, and Destination Facilities.

Estimated Number of Respondent: 119,738 (118,367 SQHUWs, 1,313 LQHUWs, and 58 Destination Facilities).

Frequency of Response: as needed.

Estimated Total Annual Hour Burden: 185,682 hours.

Over a 3 year period: 556,872.

Estimated Total Annualized Capital, O&M Cost Burden: $2,098.

Over a three year period: $6,295.

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.

Dated: June 15, 2004.

Robert Springer,

Director, Office of Solid Waste.

[FR Doc. 04–14458 Filed 6–24–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0203; FRL–7363–3]

Committee to Advise on Reassessment and Transition; Request for Nominations for Appointment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA's Office of Pesticide Programs is inviting nominations of qualified candidates to be considered for appointment to the EPA-USDA Committee to Advise on Reassessment and Transition (CARAT). The current CARAT Charter expires in June 2004. EPA and the U.S. Department of Agriculture (USDA) intend to renew the CARAT Charter for another 2–year term, July 2004 to July 2006, in accordance with the Federal Advisory Committee Act.

DATES: Nominations must be postmarked no later than July 19, 2004.

ADDRESSES: Nominations may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions provided in Unit III. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Margie Fehrenbach, Office of Pesticide Programs (7501C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–4775; fax number: (703) 308–4776; e-mail address:*fehrenbach.margie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general; however, persons may be interested who work in agricultural settings or persons who are concerned

about implementation of the Food Quality Protection Act (Public Law 104–170). Passed in 1996, this law strengthens the nation's system for regulating pesticides on food. CARAT is preceded by the Tolerance Reassessment Advisory Committee which was established in 1998 in order for EPA and USDA to work together to ensure smooth implementation of FQPA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. Potentially affected entities may include but are not limited to: Agricultural workers and farmers; pesticide industry and trade associations; environmental, consumer and farmworker groups; pesticide users and growers; pest consultants; state, local and tribal governments; academia; public health organizations; food processors; and the public. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0203. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background

The Food Quality Protection Act, Public Law 104–170, was passed in 1996 to strengthen the nation's system for regulating pesticides on food. The Committee to Advise on Reassessment and Transition, CARAT, is preceded by the EPA-USDA Tolerance Reassessment Advisory Committee (TRAC). Its purpose is to provide advice and counsel to the Administrator of EPA and the Secretary of Agriculture regarding strategic approaches for pest management planning and tolerance reassessment for pesticides as required by FQPA. Through CARAT, EPA and USDA are working together to ensure smooth implementation of FQPA through use of sound science, consultation with stakeholders, increased transparency, and reasonable transition for agriculture.

EPA and USDA intend to appoint members to 1– or 2–year terms. An important consideration in the selection of members will be to maintain balance and diversity of experience and expertise. EPA also intends to seek broad geographic representation from the following sectors: Pesticide industry and trade associations, farmers, environmental/public interest groups, public health officials, pediatric experts, food processors and distributors, academicians, and tribal, state and local government officials.

Copies of the CARAT Charter are filed with appropriate committees of Congress and the Library of Congress and are available upon request.

III. Nomination Submissions

Potential candidates should submit the following information: Name, occupation, organization, position, address, telephone number and a brief resume containing their background, experience, qualifications and other relevant information as part of the consideration process. Any interested person and/or organization may submit the name(s) of qualified persons.

Nominations may be submitted electronically, by mail, or through hand delivery/couier.

1. *Electronically.* By e-mail:*fehrenbach.margie@epa.gov*.

2. *By mail*: Margie Fehrenbach, Designated Federal Officer for CARAT, Office of Pesticide Programs (7501C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *By hand delivery/courier.* Margie Fehrenbach,Environmental Protection Agency, CM #2, Rm. 1119, 1801 S. Bell St., Arlington, VA 22202, contact phone number: (703) 308–4775.The room at which submissions are accepted is only open until 5 p.m. Uniformed couriers are permitted to deliver directly to the contactperson. Non-uniformed couriers will be met at the 1801 S. Bell St. entrance by EPA personnel.

List of Subjects

Environmental protection, Agriculture, Agricultural workers, Chemicals, Fees, Foods, Pesticides, Pests, Registration, Tolerance reassessment, Public health.

Dated: June 21, 2004.

James Jones,

Director, Office of Pesticide Programs.

[FR Doc. 04–14461 Filed 6–24–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6652–8]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/*.

Weekly receipt of Environmental Impact Statements

Filed June 14, 2004 Through June 18, 2004

Pursuant to 40 CFR 1506.9.

EIS No. 040281, Final EIS, EPA, SC, Port Royal Ocean Dredged Material Disposal Site (ODMDS), Designation, SC, Wait Period Ends: July 26, 2004, Contact: Wesley B. Crum (404) 562–9352.

EIS No. 040282, Draft Supplement, BLM, NV, Pipeline/South Pipeline Pit Expansion Project, Updated Information on Modifying the Extending Plan of Operations (Plan), Gold Acres Mining District, Launder County, NV, Comment Period Ends: August 9, 2004, Contact: Pam Jarnecke (775) 635–4144.

EIS No. 040283, Final EIS, JUS, TX, Rio Grande Operation Project, Reduction or Elimination of Illegal Drug Activities and Illegal Immigrants, Starr, Hidalgo and Cameron Counties, TX, Wait Period Ends: July 26, 2004, Contact: Dr. Terrell Roberts (409) 766–3035.

EIS No. 040284, Draft EIS, COE, AK, Unalaska Navigation Improvements Project, Construction of Harbor on Amaknak Island in Aleutian Island Chain, Locally known as "Little South America, Integrated Feasibility Report, Aleutian Island, AK, Comment Period Ends: August 9, 2004, Contact: Guy McConnell (907) 753–2614.

EIS No. 040285, Final EIS, FHW, OR, Pioneer Mountain to Eddyville Project on U.S. 20, Corvallis-Newport Highway Improvements, Funding, Right-of-Way Grant and U.S. Army COE Section 404 Permit Issuance, Lincoln County, OR, Wait Period Ends: July 26, 2004, Contact: Elton Chang (503) 587–4710.

EIS No. 040286, Final EIS, AFS, ID, WY, EastBridge Cattle Allotment Management Plan Revision (AMP), Authorization of Continued Grazing, Caribou-Targhee National Forest, Soda Springs Ranger District, Caribou and Bonneville County, ID and Lincoln County, WY, Wait Period Ends: July 26, 2004, Contact: Victor Bradfield (208) 547–4356.

EIS No. 040287, Draft EIS, NOA, FL, Programmatic EIS—Seagrass Restoration in the Florida Keys National Marine Sanctuary, Implementation, US Army COE Section 404 and CZMA Permits, Monroe County, FL, Comment Period Ends: August 9, 2004, Contact: Harriet Sopher Ext. 109 (301) 713–3125. This document is available on the Internet at: *http://www.sanctuaries.noaa.gov/library/library.htm1*

EIS No. 040288, Draft EIS, FHW, UT, Iron County Transportation Corridors, Construction from Station Road 56 to Exit 51 on Interstate 15, Funding and Right-of-Way Grant, Southwest of the Cedar City, Iron County, UT, Comment Period Ends: August 9, 2004, Contact: Gregory Penske (801) 963–0078.

EIS No. 040289, Final EIS, AFS, UT, WY, East Fork Fire Salvage Project Timber Harvesting of Dead and Dying Trees, Implementation, Wasatch-Cache National Forest, Evanston Ranger District, Summit County, UT, Wait Period Ends: July 26, 2004, Contact: Larry Johnson (307) 789–3194. This document is available on the Internet at: *http://www.fs.fed.us/r4/wcnf/projects.*

EIS No. 040290, Draft EIS, AFS, MT, Robert-Wedge Post-Fire Project, Salvage Trees and Rehabilitate Lands, Flathead National Forest, Glacier View Ranger District, Flathead County, MT, Comment Period Ends: August 9, 2004, Contact: Kathy Ramirez (208) 331–5908.

EIS No. 040291, Draft EIS, CGD, LA, Gulf Landing LLC Deepwater Port License Application for Construct of Deepwater Port and Associated Anchorages in the Gulf of Mexico, South of Cameron, LA, Comment Period Ends: August 9, 2004, Contact: Mark Prescott (202) 267–0225. This document is available on the Internet at: *http//dms.dot.gov.*

EIS No. 040292, Draft EIS, FHW, MT, US–2 Highway Corridor Improvement Project, Reconstruction between Havre to Fort Belknap to Replace the Aging US–2 Facility, U.S. Army COE Section 404 Permit, Hill and Blaine Counties, MT, Comment Period Ends: August 13, 2004, Contact: Dale W. Paulson Ext 239 (406) 449–5302.

EIS No. 040293, Final EIS, AFS, MT, West Troy Project, Proposes Timber Harvesting; Natural Fuels Reduction Treatments, Pre-Commercial Thinning, and Watershed Rehabilitation (Decommissioning) Work, Kootenai National Forest, Three River Ranger District, Lincoln County, MT, Wait Period Ends: July 26, 2004, Contact: Kathy Mohar (206) 295–4693.

EIS No. 040294, Final EIS, NOA, TX, MS, FL, LA, AL, Generic Essential Fish Habitat Amendment to the Fishery Management Plans of the Gulf of Mexico (GOM) for Shrimp, Red Drum, Reef Fish, Stone Crab, Coral and Coral Reef, Spiny Lobster Fisheries of the GOM and South Atlantic Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic, Wait Period Ends: July 26, 2004, Contact: Roy E. Crabtree (727) 570–5301.

EIS No. 040295, Final EIS, USN, CA, Military Family Housing (MFH) in the San Diego Region, Construction of 1,600 MFH Units, Three MFH Sites are Located in the Marine Corps Air Station (MCAS), Miramar in the City of San Diego, San Diego County, CA, Wait Period Ends: July 26, 2004, Contact: Sheila Donovan (619) 532–2518.

Dated: June 22, 2004.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 04–14466 Filed 6–24–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6652–9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 2, 2004 (69 FR 17403).

Draft EISs

ERP No. D–AFS–K65269–NV Rating EC2, Martin Basin Rangeland Project, Authorize Continued Livestock Grazing in Eight Allotments:

Martin Basin, Indian, West Side Flat Creek, Buffalo, Bradshaw, Buttermilk, Granite Peak and Rebel Creek Cattle and Horse Allotments, Humboldt-Toiyabe National Forest, Santa Rosa Ranger District, Humboldt County, NV.

Summary: EPA expressed concerns with potential adverse impacts to riparian resources. EPA recommended a more aggressive implementation schedule, reduced permitted animal numbers and seasons where ecosystem functions are known to be impaired, and a commitment to tiered environmental documentation for specific Allotment Management Plans.

ERP No. D–COE–K11114–CA Rating EO2, Mare Island Reuse of Dredged Material Disposal Ponds, Issuing Section 404 Permit under the Clean Act and Section 10 Permit Rivers and Harbor Act, San Francisco Bay Area, City of Vallejo, Solando County, CA.

Summary: EPA objects to the project as proposed based on the potential unmitigated loss of aquatic habitat from filling over 250 acres of seasonal wetlands, and the lack of environmental safeguards for key aspects of site operation.

ERP No. D–COE–K36139–CA Rating LO, Hamilton City Flood Damage Reduction and Ecosystem Restoration, Propose to Increase Flood Protection and Restore the Ecosystem, Sacramento River, Glenn County, CA.

Summary: EPA has no objections to the proposed project.

ERP No. DR–AFS–J65303–MT Rating EC2, Bridger Bowel Ski Area, Special Use Permit and Master Development Plan, Improve the Current Recreation

Experience, Gallatin National Forest, Bozeman Ranger District, Gallatin County, MT.

Summary: EPA expressed environmental concerns with project impacts to water quality, fisheries, vegetation and wildlife. Additional information should be provided regarding the need for expansion beyond existing permit boundaries. EPA believes Alternative 4 better balances environmental and resource management trade-offs while addressing purpose and need. The FEIS should include an improved analysis and disclosure of the ski area expansion's indirect effects.

ERP No. DS–BLM–K36197–NV Rating EC2, Clark County Regional Flood Control Master Plan, Updated Information to the 1991 FEIS, Facilities Construction and Operation, Right-of-Way Approval and U.S. Army COE Section 404 Permit, Clark County, NV.

Summary: EPA expressed concerns based on the project's potential impacts to air quality, waters of the U.S., shallow groundwater, and biological resources. EPA recommended additional information in the FEIS regarding these resources, other reasonable alternative to meet the project purpose, indirect impacts, and mitigation measures.

ERP No. D1–AFS–J65308–UT Rating EC2, Wasatch Powderbird Guides Permit Renewal, Authorization to Continue Providing Guided Helicopter Skiing Activities on National Forest System (NFS) Land in the Wasatch-Cache and Uinta National Forests, Special-Use Permit (SUP), Provo and Salt Lake City, UT.

Summary: EPA expressed environmental concerns with potential impacts to wilderness, wildlife and recreation from helicopter skiing operations and that a discussion on fuel storage and potential impacts should be included in the Final EIS.

Final EISs

ERP No. F–AFS–L65436–OR Juncrock Timber Sale Project, Treat Forest Vegetation, MT. Hood National Forest, Barlow Ranger District, Wasco County, OR.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–AFS–L65442–OR Baked Apple Fire Salvage Project, Salvaging Fire Killed Trees in the Matrix Portion of the 2002 Apple Fire, Umpqua National Forest, Umpqua Ranger District, Douglas County, OR.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–BLM–G65084–00 El Camino Real De Tierra Adentro National Historic Trail, Comprehensive Management Plan, Implementation, TX and NM.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–FTA–C40150–NY Second Avenue Subway Project, Improve Transit Access to Manhattan's East Side and Reduce Excess Crowds on the Lexington Avenue Subway, Metropolitan Transportation Authority (MTC) New York City Transit (NYCT), New York, NY.

Summary: EPA has no objections to the proposed project. EPA did suggest that the ROD provide commitments to regarding emission control measures should the project sponsors elect to use barges in the last phase of the project.

ERP No. FR–COE–E34030–FL Central and Southern Project, Indian River Lagoon-South Feasibility Study, Final Integrated Project Implementation Report, Comprehensive Everglades Restoration Plan, (CERP), Martin and St. Lucie Counties, FL.

Summary: EPA has no objection to the proposed action.

Dated: June 22, 2004

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 04–14467 Filed 6–24–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6653–1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa.*

Emergency Publication of Environmental Impact Statements

Filed June 23, 2004
Pursuant to 40 CFR 1506.9.

EIS No. 040296. Final Supplement, NOA, Final Rule to Implement Management Measures for the Reduction of Sea Turtle Bycatch and Bycatch Mortality in the Atlantic Pelagic Longline Fishery, Wait Period Ends: June 29, 2004, Contact: Christopher Rogers (301) 713–2347.

Under Section 1502.9(c)(4) the Council on Environmental Quality (CEQ) has Approved Alternative Procedures for the above Final Supplemental EIS by Granting a 26–Day Waiver on the above standard 30 day Wait Period before NOAA can issue their Record of Decision.

Comments can be submitted by e-mail to *0648–AR80.final@noaa.gov,* include the following identifier 0648–AR80 in the comment subject line. This document is available on the Internet at: *http//www.nmfs.noaa.gov/sfa/hms/hmsdocuments.htm1#feis.*

Dated: June 23, 2004.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 04–14570 Filed 6–24–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7778–8]

Science Advisory Board Staff Office; Notification of Advisory Meetings of the Science Advisory Board; Illegal Competitive Advantage Economic Benefit Advisory Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Science Advisory Board (SAB) Illegal Competitive Advantage (ICA) Economic Benefit (EB) Advisory Panel will hold three public advisory meetings, two teleconference and one face-to-face, to provide advice to the Agency on economic methods related to assessing economic benefits attributed to non-compliance with EPA regulations.

DATES: July 12, 2004, August 5–6, 2004, and September 22, 2004.

1. July 12, 2004 Public Conference Call

The SAB ICA EB Advisory Panel will meet on July 12, 2004, via teleconference from 10 am to 12 noon Eastern Standard Time.

2. August 5–6, 2004 Public Meeting

The SAB ICA EB Advisory Panel will meet on August 5–6, 2004, in Washington, DC. The meeting will commence at 9 am Eastern Standard Time on August 5, 2004, and adjourn no later than 5:30 pm on August 6, 2004.

3. September 22, 2004 Public Conference Call

The SAB ICA EB Advisory Panel will meet on September 22, 2004, via teleconference from 2 to 4 pm Eastern Standard Time.

ADDRESSES: The two public teleconferences will take place via teleconference only. The face-to-face public meeting will take place at the SAB Conference Center, 1025 F Street,

NW., Suite 3700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wishes to: Obtain the teleconference call-in numbers and access codes; would like to submit written or brief oral comments (5 minutes or less); or who wants further information concerning these public meetings should contact Dr. Jack Kooyoomjian, Designated Federal Officer (DFO), EPA SAB, 1200 Pennsylvania Avenue, NW., (MC 1400F), Washington, DC 20460; via telephone/voice mail: (202) 343–9984; fax: (202) 233–0643; or e-mail at: *kooyoomjian.jack@epa.gov*. General information concerning the SAB can be found on the EPA Web site at: *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION:

Background: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the SAB Staff Office hereby gives notice of three public meetings of the SAB ICA EB Advisory Panel. The Office of Enforcement and Compliance Assurance (OECA) requested that the SAB review a White Paper entitled, "Identifying and Calculating Economic Benefit That Goes Beyond Avoided and/or Delayed Costs." Additional background information on this advisory activity, as well as the **Federal Register** notice (68 FR 46604, August 6, 2003) soliciting nominations for Panel membership can be found on the SAB Web site at: *http://www.epa.gov/sab*.

Purpose of the July 12, 2004 Public Teleconference: The purpose of this public teleconference meeting is to discuss the charge to the ICA EB Advisory Panel; review advisory and background materials; and plan for the August 5–6, 2004, face-to-face public advisory meeting.

Purpose of the August 5–6, 2004 Public Face-to-Face Meeting: The purpose of this meeting is to review the EPA White Paper and respond to the charge questions.

Purpose of the September 22, 2004 Public Teleconference: The purpose of this teleconference is to complete the draft advisory report of the ICA EB Advisory Panel.

Availability of Meeting Materials: Copies of the agendas for the SAB meetings described in this notice will be posted on the SAB Web site at: *http://www.epa.gov/sab* prior to each meeting. Persons who wish to obtain copies of the EPA White Paper and other background materials may find them at: *http://www.indecon.com/iec_web/practice/SAB.asp*. For further information regarding the EPA White Paper, please contact Mr. Jonathan Libber of the U.S. EPA, Office of Enforcement and Compliance Assurance (Mail Code 2248A), by telephone/voice mail at (202) 564–6102, by fax at (202) 564–9001; or via e-mail at *libber.jonathan@epa.gov*.

Providing Oral or Written Comments at SAB Meetings: It is the policy of the SAB Staff Office to accept written public comments of any length, and to accommodate oral public comments wherever possible. The SAB Staff Office expects the public statements presented at its 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 face-to-face meeting will be limited to a total time of five minutes (unless otherwise indicated). Requests to provide oral comments must be *in writing* (e-mail, fax, or mail) and received by the DFO no later than noon Eastern Time five business days prior to the meeting in order to reserve time on the meeting agenda. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting.

Written Comments: Although the SAB Staff Office accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office no later than noon Eastern Time five business days prior to the meeting so that the comments may be made available to the Panelists for their consideration. Comments should be supplied to the DFO (preferably by e-mail) at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 98/2000/XP format)). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution.

Meeting Access: Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact the DFO at the phone number or e-mail address noted above at least five business days prior to the meeting, so that appropriate arrangements can be made.

Dated: June 17, 2004.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 04–14459 Filed 6–24–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0048]; FRL–7367–2]

Amitraz; Availability of Risk Assessments (Interim Process)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of risk assessments that were developed as part of EPA's process for making pesticide Reregistration Eligibility Decisions (REDs) and tolerance reassessments consistent with the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). These risk assessments are the human health and environmental fate and effects risk assessments and related documents for Amitraz. This notice also starts a 60-day public comment period for the risk assessments. By allowing access and opportunity for comment on the risk assessments, EPA is seeking to strengthen stakeholder involvement and help ensure decisions made under FQPA are transparent and based on the best available information. The tolerance reassessment process will ensure that the United States continues to have the safest and most abundant food supply.

DATES: Comments, identified by the docket ID number OPP–2004–0048, must be received on or before August 24, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: John W. Pates, Jr., Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308-8195; e-mail address: *pates.john@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the risk assessments for Amitraz, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the

public interested in the use of pesticides on food. Since other entities also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0048. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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

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

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

II. How Can I Respond to this Action?

A. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

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

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2004–0048. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2004–0048. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

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

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0048.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2004–0048. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

B. How Should I Submit CBI to the Agency?

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

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

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

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

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

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

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

III. What Action is the Agency Taking?

EPA is making available to the public the risk assessments that have been developed as part of the Agency's interim public participation process for tolerance reassessment and reregistration. During the next 60 days, EPA will accept comments on the human health and environmental fate and effects risk assessments and other related documents for Amitraz, available in the individual pesticide docket. Like other REDs for pesticides developed under the interim process, the Amitraz RED will be made available for public comment.

EPA and USDA have been using a pilot public participation process for the assessment of organophosphate pesticides since August 1998. In considering how to accomplish the movement from the current pilot being used for the organophosphate pesticides to the public participation process that will be used in the future for non-organophosphates, such as Amitraz, EPA and USDA have adopted an interim public participation process. EPA is using this interim process in reviewing the non-organophosphate pesticides scheduled to complete tolerance reassessment and reregistration in 2001 and early 2002. The interim public participation process ensures public access to the Agency's risk assessments while also allowing EPA to meet its reregistration commitments. It takes into account that the risk assessment development work on these pesticides is substantially complete. The interim public participation process involves: A registrant error correction period; a period for the Agency to respond to the registrant's error correction comments; the release of the refined risk assessments and risk characterizations to the public via the docket and EPA's internet website; a significant effort on stakeholder consultations, such as meetings and conference calls; and the issuance of the risk management decision document (i.e., RED) after the consideration of issues and discussions with stakeholders. USDA plans to hold meetings and conference calls with the public (i.e., interested stakeholders such as growers, USDA Cooperative Extension Offices, commodity groups, and other Federal Government agencies) to discuss any identified risks and solicit input on risk management strategies. EPA will participate in USDA's meetings and conference calls with the public. This feedback will be used to complete the risk management decisions and the RED. EPA plans to conduct a close-out conference call with interested stakeholders to describe the regulatory decisions presented in the RED. REDs for pesticides developed under the interim process will be made available for public comment.

Included in the public version of the official record are the Agency's risk assessments and related documents for Amitraz. As additional comments, reviews, and risk assessment modifications become available, these will also be docketed. The Amitraz risk assessments reflect only the work and analysis conducted as of the time they were produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions they contain may change.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: June 21, 2004.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 04–14462 Filed 6–24–04 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7776–6]

Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons

AGENCY: Environmental Protection Agency (EPA).

ACTION: Policy guidance.

SUMMARY: The U.S. Environmental Protection Agency is publishing for public comment proposed policy Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against

National Origin Discrimination Affecting Limited English Proficient Persons. The proposed guidance suggests a general framework that EPA-assisted programs and activities may use to provide meaningful access to LEP persons. The guidance is proposed in accordance with Executive Order 13166—Improving Access to Services for Persons with Limited English Proficiency and guidance issued by the U.S. Department of Justice.

DATES: This Guidance is effective immediately. Comments must be submitted on or before 30 days from the date of this publication in the **Federal Register**. EPA will review all timely comments and will determine if modifications to the Guidance are necessary.

ADDRESSES: Written comments on the guidance document should be mailed to LEP Guidance, Office of Civil Rights (MC 1201A), U.S. EPA, Washington, DC 20460, or submitted to the following e-mail address: *civilrights@epa.gov*. Please include your name and address, and optionally, your affiliation.

FOR FURTHER INFORMATION CONTACT: Helena Wooden-Aguilar, U.S. Environmental Protection Agency, Office of Civil Rights (1201A), 1200 Pennsylvania Ave., NW., Washington, DC, 20460–1000. Telephone 202–343–9681.

SUPPLEMENTARY INFORMATION: Pursuant to Executive Order 13166, entitled "Improving Access to Services for Persons with Limited English Proficiency," issued on August 11, 2000 [1] (see 65 FR 50121 (August 16, 2000), 67 FR 41455 (June 18, 2002)), Memorandum from Ralph F. Boyd, Jr., to Heads of Federal Agencies, General Counsels, and Civil Rights Directors regarding Executive Order 13166 (July 8, 2002), each Federal agency is directed to examine the services it provides, and then identify, develop, and implement a system by which LEP persons can meaningfully access those services consistent with, and without unduly burdening, the fundamental mission of the agency. In addition, Executive Order 13166 directs each Federal agency to issue guidance pursuant to Title VI of the Civil Rights Act of 1964 [2] to ensure that recipients of Federal financial assistance take reasonable steps to provide meaningful access to their programs and activities by LEP persons.[3] Executive Order 13166 directs that such guidance be consistent with guidance published contemporaneously in the **Federal Register** by DOJ, which "set[s] forth general principles for agencies to apply in developing guidelines for services to individuals with limited English proficiency." [4]

In accordance with EPA's Title VI regulations, the term recipient is defined as "any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance." [5] Additionally, EPA defines assistance as, "any grant or cooperative agreement, loan, contract (other than a procurement contract or a contract of insurance or guaranty) or any other arrangement by which EPA provides or otherwise makes available assistance in the form of: Funds; Services of personnel; or, Real or personal property or any interest in or use of such property, including: Transfers or leases of such property for less than fair market value or for reduced consideration; and Proceeds from a subsequent transfer or lease of such property if EPA's share of its fair market value is not returned to EPA." [6]

When entities apply for EPA financial assistance, they submit an assurance with their application stating that they will comply with the requirements of Title VI and EPA's implementing regulations. Persons, or their authorized representatives, who believe that they have been discriminated against by EPA recipients in violation of Title VI and EPA's implementing regulations may file written complaints with the EPA.[7] Under certain circumstances, the failure to assure that people who are not proficient in English can have meaningful access to an EPA financial assistance recipient's programs and activities may constitute national origin discrimination prohibited by Title VI and EPA's implementing regulations.

The purpose of this LEP Guidance is to assist recipients in complying with Title VI and EPA's implementing regulations that prohibit discrimination against persons based on their national origin, and to provide LEP persons meaningful access to EPA recipients' programs or activities. Likewise, this Guidance describes steps that EPA encourages its recipients to provide to Limited English Proficient persons to ensure meaningful access to recipients's programs and activities. The LEP Guidance is consistent with the goals set forth in Executive Order 13166, DOJ's final LEP guidance [8], and with the DOJ policy guidance document entitled "Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons with Limited English Proficiency." [9]

During the development of this guidance document, EPA has ensured, to the extent possible under the time frame established by Executive Order 13166, that stakeholders, such as LEP persons and their representative organizations, recipients, and other appropriate individuals or entities, have had an adequate opportunity to provide input into this guidance document. To ensure stakeholder involvement in the development of this guidance, EPA has consulted with affected groups (both community organizations and recipients, amongst others) and has solicited comments on earlier versions of this document from a wide range of stakeholders.

On October 26, 2001, DOJ issued a memorandum to Federal agencies on Executive Order 13166 that clarified requirements for complying with Executive Order 13166, directed those agencies that had not yet published guidance documents to submit agency-specific guidance to DOJ for approval,[10] and stated that the guidance did not create any new statutory or regulatory obligations for recipients. Rather, it only clarifies existing Title VI responsibilities by identifying the steps that recipients of Federal financial assistance can take to avoid administering their programs in a way that results in discrimination on the basis of national origin in violation of Title VI and EPA's implementing regulations. In addition to the October memorandum, DOJ issued a July 2002 memorandum asking federal agencies for their continued assistance in implementing Executive Order 13166.[11]

[1] 65 FR 50121 (August 16, 2000).

[2] 42 U.S.C. 2000d–7.

[3] Executive Order 13166 states that the agency-specific guidance documents must "take into account the types of services provided by recipients, the individuals served by recipients, and other factors set forth in the [Department of Justice] LEP Guidance."

[4] Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons With Limited English Proficiency; Policy Guidance, 65 FR 50123 (August. 16, 2000).

[5] 40 CFR 7.25.

[6] *Id.*

[7] 40 CFR 7.120.

[8] 67 FR 41455 (June 18, 2002).

[9] 65 FR 50123 (August 16, 2000).

[10] Memorandum from the Department of Justice, to the Heads of Departments and Agencies, General Counsels, and Civil Rights Directors (October 26, 2001) (on file with author).

[11] Memorandum from the Department of Justice, to the Heads of Federal Agencies, General Counsels, and Civil Rights Directors (July 8, 2002) (on file with author).

DOJ's initial guidance for recipients was published January 16, 2001.[12] On January 18, 2002, DOJ's initial guidance for recipients was republished for additional comment.[13] Based on public comments filed in response to the January republication, DOJ published a revised draft guidance for public comment on April 18, 2002.[14] After taking into account additional comments, DOJ issued its final guidance on June 18, 2002.[15] On March 14, 2002, the Office of Management and Budget (OMB) issued a Report to Congress titled "Assessment of the Total Benefits and Costs of Implementing Executive Order 13166: Improving Access to Services for Persons with Limited English Proficiency." Among other things, the Report recommended the adoption of uniform guidance across all Federal agencies, with flexibility to permit tailoring to each agency's specific recipients. Consistent with this OMB recommendation, DOJ published LEP Guidance for DOJ recipients which was drafted and organized to also function as a model for similar guidance documents to other Federal grant agencies. This proposed EPA LEP Guidance is consistent with DOJ's Final LEP Guidance.

Because this guidance adopts to the federal government-wide standards and framework detailed in the DOJ LEP Guidance, EPA specifically solicits comments on the nature, scope, and appropriateness of the EPA specific examples set out in this guidance which explain and/or highlight how those federal government-wide compliance standards are applicable to recipients of federal financial assistance from EPA.

Pursuant to the Administrative Procedures Act, 5 U.S.C. 553(b)(A), interpretive rules, general statements of policy, and rules of agency organization, procedure, or practice are exempt from notice and comment. Because this policy guidance is a general statement of policy without the force and effect of law, it falls within this exception and prior notice and opportunity for public comment is not required.

According to DOJ's October 26, 2001 memorandum, Federal agencies should consider whether the action they propose to take to implement Executive Order 13166 and Title VI is subject to Executive Order 12866 (Regulatory Review and Planning, September 30, 1993). Executive Order 12866 requires that agencies submit to the Office of Management and Budget for review any "significant regulatory actions" the agency wishes to take.[16] A significant regulatory action is described as a regulatory action that is likely to have an annual effect on the economy of $100 million or more. Executive Order 13166 and this guidance merely clarify existing Title VI responsibilities and help recipients to understand their existing obligations. Hence, they do not create any new binding requirements.

I. Introduction

Most individuals living in the United States read, write, speak and understand English. There are many individuals, however, for whom English is not their primary language. For instance, based on the 2000 census, over 26 million individuals speak Spanish and almost 7 million individuals speak an Asian or Pacific Island language at home. If these individuals have a limited ability to read, write, speak, or understand English, they are limited English proficient, or "LEP." Based on the 2000 census, 28% of all Spanish-speakers, 28% of all Chinese-speakers, and 32% of all Vietnamese-speakers reported that they spoke English "not well" or "not at all" in response to the 2000 census.[17]

Language for LEP individuals can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by a recipient's programs and activities. The Federal Government is committed to improving the accessibility of programs and activities to eligible LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English. Recipients should not overlook the long-term positive impacts of incorporating or offering English as a Second Language (ESL) programs in parallel with language assistance services. ESL courses can serve as an important adjunct to a proper LEP plan. However, the fact that ESL classes are made available does not obviate the statutory and regulatory requirement to provide meaningful access to a recipient's programs or activities for those who are not yet English proficient. Recipients of Federal financial assistance have an obligation to reduce language barriers that can preclude meaningful access by LEP persons to important government services.[18]

In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from Federally assisted programs and activities may violate the prohibition under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d to 2000d–7, and Title VI regulations against national origin discrimination. The purpose of this policy guidance is to assist recipients in fulfilling their responsibilities to provide meaningful access to LEP persons under existing law. This policy guidance clarifies existing legal requirements for LEP persons by providing a description of the factors recipients should consider in fulfilling their responsibilities to LEP persons.[19] These are criteria the U.S. Environmental Protection Agency expects to use in evaluating whether recipients are in compliance with Title VI and Title VI implementing regulations.

As with most government initiatives, several principles are balanced. While this Guidance discusses that balance in some detail, it is important to note the basic principles behind that balance. First, we must ensure that Federally-assisted programs aimed at the American public do not leave some behind simply because they face challenges communicating in English. This is of particular importance because, in many cases, LEP individuals form a substantial portion of those encountered in Federally-assisted programs. Second, we must achieve this goal while finding constructive methods to reduce the costs of LEP requirements on small businesses, small local governments, or small non-profits that receive Federal financial assistance.

There are many productive steps that the Federal government, either collectively or as individual grant agencies, can take to help recipients reduce the costs of language services without sacrificing meaningful access for LEP persons. Without these steps, certain smaller grantees may well

[12] 66 FR 3834 (January 16, 2001).

[13] 67 FR 2671 (January 18, 2002).

[14] 67 FR 19237 (April 18, 2002).

[15] 67 FR 41455 (June 18, 2002).

[16] Executive Order 12866 section 6(a).

[17] United States Census (2000), available at *http://www.census.gov/prod/2003pubs/c2kbr-29.pdf.*

[18] EPA recognizes that many recipients had language assistance programs in place prior to the issuance of Executive Order 13166. This policy guidance provides a uniform framework for a recipient to integrate, formalize, and assess the continued vitality of these existing efforts based on the nature of its program or activity, the current needs of the LEP populations it encounters, and its prior experience in providing language services in the community it serves.

[19] The policy guidance is not a regulation but rather a guide. Title VI and its implementing regulations require that recipients take responsible steps to ensure meaningful access by LEP persons. This guidance provides an analytical framework that recipients may use to determine how best to comply with statutory and regulatory obligations to provide meaningful access to the benefits, services, information, and other important portions of their programs and activities for individuals who are limited English proficient.

choose not to participate in Federally assisted programs, threatening the critical functions that the programs strive to provide. To that end, EPA, in conjunction with DOJ, plans to continue to provide assistance and guidance in this important area. In addition, EPA plans to share information, such as, model plans, examples of best practices, and cost-saving approaches, with recipients, state, and local administrative agencies, and LEP persons. A Federal interagency working group on LEP has developed a Web site, *http://www.lep.gov*, to assist in disseminating this information to recipients, Federal agencies, and the communities being served.

Many commentators have noted that some have interpreted the case of Alexander v. Sandoval, 532 U.S. 275 (2001), as impliedly striking down the disparate impact prohibition in the regulations promulgated under Title VI that form part of the basis for Executive Order 13166. Consistent with the position of DOJ detailed below, EPA takes the position that this is not the case, and will continue to do so. Accordingly, EPA will strive to ensure that assisted programs and activities work in a way that is effective for all eligible beneficiaries, including those with limited English proficiency.

II. Legal Authority

Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, provides that no person shall "on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." Section 602 authorizes and directs Federal agencies that are empowered to extend Federal financial assistance to any program or activity "to effectuate the provisions of [section 601] * * * by issuing rules, regulations, or orders of general applicability." [20]

EPA implementing regulations provide that recipients "shall not use criteria or methods of administering its program which have the effect of subjecting individuals to discrimination because of their race, color, national origin, * * * or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin." [21]

[20] 42 U.S.C. 2000d–1.

[21] EPA's implementing regulations also prohibit discrimination based on sex and disability. 40 CFR 7.35(b).

The Supreme Court, in *Lau* v. *Nichols*, 414 U.S. 563 (1974), interpreted regulations promulgated by the former Department of Health, Education, and Welfare, including a regulation similar to that of EPA, to hold that Title VI prohibits conduct that has a disproportionate effect on LEP persons because such conduct constitutes national origin discrimination. In Lau, a San Francisco school district that had a significant number of non-English speaking students of Chinese origin was required to take reasonable steps to provide them with a meaningful opportunity to participate in Federally funded educational programs.

On August 11, 2000, Executive Order 13166 was issued. "Improving Access to Services for Persons with Limited English Proficiency," 65 FR 50121 (August 16, 2000). Under that order, every Federal agency that provides financial assistance to non-Federal entities must publish guidance on how their recipients can provide meaningful access to LEP persons and thus comply with Title VI regulations forbidding funding recipients from "restrict[ing] a person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, aid, or other benefit provided by the program" [22] or from "utiliz[ing] criteria or methods of administering its programs which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin." [23]

On that same day, DOJ issued a general guidance document addressed to "Executive Agency Civil Rights Officers" setting forth general principles for agencies to apply in developing guidance documents for recipients pursuant to the Executive Order. "Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons With Limited English Proficiency," 65 FR 50123 (August 16, 2000) ("DOJ LEP Guidance"). The Executive Order charges DOJ with responsibility for providing LEP Guidance to other Federal agencies and for ensuring consistency among each agency-specific guidance. Consistency among Departments of the Federal Government is particularly important. Inconsistency or contradictory guidance could confuse recipients of federal funds and needlessly increase costs without rendering the meaningful access for LEP persons that this Guidance is designed to address.

[22] 40 CFR 7.35(a)(3).

[23] 40 CFR 7.35(b).

Subsequently, Federal agencies raised questions regarding the requirements of the Executive Order, especially in light of the Supreme Court's decision in *Alexander* v. *Sandoval*, 532 U.S. 275 (2001). On October 26, 2001, Ralph F. Boyd, Jr., Assistant Attorney General for the Civil Rights Division, issued a memorandum for "Heads of Departments and Agencies, General Counsels and Civil Rights Directors." This memorandum clarified and reaffirmed the DOJ LEP Guidance in light of Sandoval.[24] The Assistant Attorney General stated that because Sandoval did not invalidate any Title VI regulations that proscribe conduct that has a disparate impact on covered groups—the types of regulations that form the legal basis for the part of Executive Order 13166 that applies to Federally assisted programs and activities—the Executive Order remains in force. This guidance document is published pursuant to Title VI and in accordance with Executive Order 13166 and Assistant Attorney General Boyd's October 26, 2001 clarifying memorandum.

III. Who Is Covered?

EPA interprets its Title VI regulations to require all recipients of EPA assistance to provide meaningful access to LEP persons. A recipient is defined as "any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the

[24] The memorandum noted that some commentators have interpreted Sandoval as impliedly striking down the disparate-impact regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to Federally assisted programs and activities. See, *e.g.*, Sandoval, 532 U.S. at 286, 286 n.6 ("[W]e assume for purposes of this decision that section 602 confers the authority to promulgate disparate impact regulations; * * * We cannot help observing, however, how strange it is to say that disparate-impact regulations are 'inspired by, at the service of, and inseparably intertwined with' section 601 * * * when section 601 permits the very behavior that the regulations forbid."). The memorandum, however, made clear that DOJ disagreed with the commentators' interpretation. Sandoval holds principally that there is no private right of action to enforce Title VI disparate-impact regulations. It did not alter the validity of those regulations or Executive Order 13166 or otherwise limit the authority and responsibility of Federal grant agencies to enforce their own implementing regulations.

assistance."[25] EPA assistance is defined "as any grant or cooperative agreement, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which EPA provides or otherwise makes available assistance in the form of: Funds; Services of personnel; or Real or personal property or any interest in or use of such property, including: Transfers or leases of such property for less than fair market value or for reduced consideration; and Proceeds from a subsequent transfer or lease of such property if EPA's share of its fair market value is not returned to EPA."[26] Recipients of EPA assistance include, for example:

- Nonprofit agencies or community groups that receive technical assistance grants to interpret and disseminate information related to Superfund hazardous waste sites.
- State and local government agencies that receive grants to implement effective environmental management programs.

Subrecipients of EPA recipients (but not the ultimate beneficiary of the assistance) likewise are covered. Coverage extends to a recipient's entire program or activity, *i.e.*, to all parts of a recipient's operations. This is true even if only one part of the recipient receives the Federal assistance.[27]

Example: EPA provides assistance to a state department of environment to identify and clean up hazardous waste sites. All of the operations of the entire state environmental department and not just the hazardous waste programs are covered.

Finally, some recipients operate in jurisdictions in which English has been declared the official language. Nonetheless, these recipients continue to be subject to Federal non-discrimination requirements, including those applicable to the provision of Federally assisted services to persons with limited English proficiency.

IV. Who Is a Limited English Proficient Individual?

Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English can be Limited English Proficient, or "LEP,"and may be entitled to language assistance with respect to a particular type of service, benefit, or encounter.

Examples of populations likely to include LEP persons who are encountered and/or served by EPA recipients and should be considered when planning language services include, but are not limited to:

- Persons who live in communities in close proximity to a plant or facility that is permitted or regulated by an EPA recipient.
- Persons subject to, or affected by environmental protection, clean-up, and enforcement actions of an EPA recipient
- Persons who seek to enforce or exercise rights under Title VI or environmental statutes and regulations.

V. How Does a Recipient Determine the Extent of Its Obligation To Provide LEP Services?

Recipients are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. While designed to be flexible and fact-dependent, the starting point is an individualized assessment that balances the following four factors: (1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee; (2) the frequency with which LEP individuals come in contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people's lives; and (4) the resources available to the grantee/recipient and costs. The intent of this guidance is to suggest a balance that ensures meaningful access by LEP persons to critical services while not imposing undue burdens on small businesses, small local governments, or small nonprofits.

After applying the above four-factor analysis, a recipient may conclude that different language assistance measures are sufficient for the different types of programs or activities in which it engages. For instance, some of a recipient's activities will be more important than others and/or have greater impact on or contact with LEP persons, and thus may require more in the way of language assistance. The flexibility that recipients have in addressing the needs of the LEP populations they serve does not diminish, and should not be used to minimize, the obligation that those needs be addressed. EPA recipients should apply the following four factors to the various kinds of contacts that they have with the public to assess language needs and decide what reasonable steps they should take to ensure meaningful access for LEP persons.

(1) The Number or Proportion of LEP Persons Served or Encountered in the Eligible Service Population

One factor in determining what language services recipients should provide is the number or proportion of LEP persons from a particular language group served or encountered in the eligible service population. The greater the number or proportion of these LEP persons, the more likely language services are needed. This population will be program-specific, and includes persons who are in the geographic area that has been approved by a Federal grant agency as the recipient's service area. However, where for instance, a recipient provides services through local district offices, the appropriate service area is most likely the district, and not the jurisdiction or area served by the department. Where no service area has previously been approved, the relevant service area may be that which is approved by state or local authorities or designated by the recipient itself, provided that these designations do not themselves discriminatorily exclude certain populations. When considering the number or proportion of LEP individuals in a service area, recipients should consider LEP parent(s) when their English-proficient or LEP minor children and dependents encounter proposed action by an environmental agency in their community.

Recipients should first examine their prior experiences with LEP encounters and determine the breadth and scope of language services that were needed. In conducting this analysis, it is important to include language minority populations that are eligible for their programs or activities but may be underserved because of existing language barriers. Other data should be consulted to refine or validate a recipient's prior experience, including the latest census data for the area served, data from school systems and from community organizations, and data from state and local governments.[28] Community agencies, school systems, religious organizations, legal aid entities, and others can often assist in identifying populations for whom outreach is needed and who would benefit from the recipients' programs

[25] 40 CFR 7.25.

[26] 40 CFR 7.25.

[27] See 42 U.S.C. 2000d–4a. However, if a Federal agency were to decide to terminate or refuse to grant or continue assistance based on noncompliance with Title VI or its regulations, the termination or refusal will be limited in its effect to the particular program, or part thereof in which such noncompliance is found. 42 U.S.C. 2000d–1.

[28] The focus of the analysis is on lack of English proficiency, not the ability to speak more than one language. Note that demographic data may indicate the most frequently spoken languages other than English and the percentage of people who speak these languages. When using demographic data, it is important to focus in on the languages spoken by those who are not proficient in English.

and activities were language services provided.

(2) The Frequency With Which LEP Individuals Come in Contact With the Program

Recipients should assess, as accurately as possible, the frequency with which they have or should have contact with LEP individuals from different language groups seeking assistance. The more frequent the contact with a particular language group, the more likely that enhanced language services in that language are needed. The steps that are reasonable for a recipient that serves an LEP person on a one-time basis will be very different than those expected from a recipient that serves LEP persons daily. It is also advisable to consider the frequency of different types of language contacts. For example, frequent contacts with Spanish-speaking people who are LEP may require certain assistance in Spanish. Less frequent contact with different language groups may suggest a different and less intensified solution. If an LEP individual accesses a program or service on a daily basis, a recipient has greater duties than if the same individual's program or activity contact is unpredictable or infrequent. But even recipients that serve LEP persons on an unpredictable or infrequent basis should use this balancing analysis to determine what to do if an LEP individual seeks services under the program in question. This plan need not be intricate. It may be as simple as being prepared to use one of the commercially-available telephonic interpretation services to obtain immediate interpreter services. In applying this standard, recipients should take care to consider whether appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups.

(3) The Nature and Importance of the Program, Activity, or Service Provided by the Program

The more important the activity, information, service, or program, or the greater the possible consequences of the contact to the LEP individuals, the more likely language services are needed. The obligations to communicate information to a person who may be adversely impacted by an immediate water source contamination or to sudden release of airborne toxic chemicals differ from those to provide information on efforts to increase recycling. A recipient needs to determine whether denial or delay of access to services or information could have serious or even life-threatening implications for the LEP individual. Decisions by a Federal, State, or local entity to make an activity, warning or notice compulsory, such as particular educational programs on lead-based paint and children, can serve as strong evidence of the program's importance.

(4) The Resources Available to the Recipient and Costs

A recipient's level of resources and the costs that would be imposed on it may have an impact on the nature of the steps it should take. Smaller recipients with more limited budgets are not expected to provide the same level of language services as larger recipients with larger budgets. In addition, "reasonable steps" may cease to be reasonable where the costs imposed substantially exceed the benefits.

Resource and cost issues, however, can often be reduced by technological advances; the sharing of language assistance materials and services among and between recipients, advocacy groups, and Federal grant agencies; and reasonable business practices. Where appropriate, training bilingual staff to act as interpreters and translators, information sharing through industry groups, telephonic and video conferencing interpretation services, pooling resources and standardizing documents to reduce translation needs, using qualified translators and interpreters to ensure that documents need not be "fixed" later and that inaccurate interpretations do not cause delay or other costs, centralizing interpreter and translator services to achieve economies of scale, or the formalized use of qualified community volunteers, for example, may help reduce costs.[29] Recipients should carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns. Large entities and those entities serving a significant number or proportion of LEP persons should ensure that their resource limitations are well-substantiated before using this factor as a reason to limit language assistance. Such recipients may find it useful to be able to articulate, through documentation or in some other reasonable manner, their process for determining that language services would be limited based on resources or costs.

This four-factor analysis necessarily implicates the "mix" of LEP services required. Recipients have two main ways to provide language services: Oral interpretation either in person or via telephone interpretation service (hereinafter "interpretation") and written translation (hereinafter "translation"). Interpretation can range from either on-site interpreters for critical services provided to a high volume of LEP persons to access through commercially-available telephonic interpretation services. Written translation, likewise, can range from translation of an entire document to translation of a short description of the document. In some cases, language services should be made available on an expedited basis while in others the LEP individual may be referred to another office of the recipient for language assistance.

The correct mix should be based on what is both necessary and reasonable in light of the four-factor analysis. For instance, an emergency response action in a largely Hispanic neighborhood may need immediate oral interpreters available, so recipients whose programs cover such activity should give serious consideration to hiring some bilingual staff. In contrast, there may be circumstances where the importance and nature of the activity and number or proportion and frequency of contact with LEP persons may be low and the costs and resources needed to provide language services may be high—such as in the case of a voluntary general public tour of a water treatment plant—in which pre-arranged language services for the particular service may not be necessary. Regardless of the type of language service provided, quality and accuracy of those services can be critical in order to avoid serious consequences to the LEP person and to the recipient. Recipients have substantial flexibility in determining the appropriate mix.

VI. Selecting Language Assistance Services

Recipients have two main ways to provide language services: oral and written language services. Quality and accuracy of the language service is critical in order to avoid serious consequences to the LEP person and to the recipient.

A. Oral Language Services (Interpretation). Interpretation is the act of listening to something in one language (source language) and orally translating it into another language (target language). Where interpretation is needed and is reasonable, recipients should consider some or all of the following options for providing competent interpreters in a timely manner:

Competence of Interpreters. When providing oral assistance, recipients

[29] Small recipients with limited resources may find that entering into a bulk telephonic interpretation service contract will prove cost effective.

should ensure competency of the language service provider, no matter which of the strategies outlined below are used. Competency requires more than self-identification as bilingual. Some bilingual staff and community volunteers, for instance, may be able to communicate effectively in a different language when communicating information directly in that language, but not be competent to interpret in and out of English. Likewise, they may not be able to do written translations. Competency to interpret, however, does not necessarily mean formal certification as an interpreter, although certification is helpful. When using interpreters, recipients should ensure that they:

- Demonstrate proficiency in and ability to communicate information accurately in both English and in the other language and identify and employ the appropriate mode of interpreting (*e.g.*, consecutive, simultaneous, summarization, or sight translation);
- Have knowledge in both languages of any specialized terms or concepts peculiar to the entity's program or activity and of any particularized vocabulary and phraseology used by the LEP person; [30]
- Understand and follow confidentiality and impartiality rules to the same extent the recipient employee for whom they are interpreting and/or to the extent their position requires;
- Understand and adhere to their role as interpreters without deviating into a role as engineer, legal advisor, or other roles (particularly in administrative or public hearings).

Some activities of recipients, such as enforcement bureaus or administrative courts, may have additional self-imposed requirements for interpreters. Where individual rights or potential liability for noncompliance with environmental requirements depend on precise, complete, and accurate interpretation or translations, the use of certified interpreters is strongly encouraged.[31] Where such proceedings are lengthy, the interpreter will likely need breaks and team interpreting may be appropriate to ensure accuracy and to prevent errors caused by mental fatigue of interpreters.

While quality and accuracy of language services is critical, it can vary with the context. For example, the quality and accuracy of language services during an emergency response action, for example, must be extraordinarily high, while the quality and accuracy of language services in understanding ultraviolet. Indexes need not meet the same exacting standards.

Finally, when interpretation is needed and is reasonable, it should be provided in a timely manner. While there is no single definition for "timely" applicable to all types of interactions at all times by all types of recipients, one clear guide is that the language assistance should be provided at a time and place that avoids the effective denial of the service, benefit, or right at issue or the imposition of an undue burden on or delay in important rights, benefits, or services to the LEP person. For example, when the timeliness of services is important, such as with certain activities of EPA recipients providing health and safety services, and when important legal rights are at issue, a recipient would likely not be providing meaningful access if it had one bilingual staffer available one day a week to provide the service. Such conduct would likely result in delays for LEP persons that would be significantly greater than those for English proficient persons. Conversely, where access to or exercise of a service, benefit, or right is not effectively precluded by a reasonable delay, language assistance can likely be delayed for a reasonable period.

Hiring Bilingual Staff. When particular languages are encountered often, hiring bilingual staff offers one of the best, and often most economical, options. Recipients can, for example, fill public contact positions, program directors, emergency response teams or community involvement coordinators, with staff who are bilingual and competent to communicate directly with LEP persons in their language. If bilingual staff are also used to interpret between English speakers and LEP persons, or to orally interpret written documents from English into another language, they should be competent in the skill of interpreting. Being bilingual does not necessarily mean that a person has the ability to interpret. In addition, there may be times when the role of the bilingual employee may conflict with the role of an interpreter (for instance, a bilingual law clerk would probably not be able to perform effectively the role of an environmental appeals or administrative hearing interpreter and law clerk at the same time, even if the law clerk were a qualified interpreter). Effective management strategies, including any appropriate adjustments in assignments and protocols for using bilingual staff, can ensure that bilingual staff are fully and appropriately utilized. When bilingual staff cannot meet all of the language service obligations of the recipient, the recipient should turn to other options.

Hiring Staff Interpreters. Hiring interpreters may be most helpful where there is a frequent need for interpreting services in one or more languages. Depending on the facts, sometimes it may be necessary and reasonable to provide on-site interpreters to provide accurate and meaningful communication with an LEP person.

Contracting for Interpreters. Contract interpreters may be a cost-effective option when there is no regular need for a particular language skill. In addition to commercial and other private providers, many community-based organizations and mutual assistance associations provide interpretation services for particular languages. Contracting with and providing training regarding the recipient's programs and processes to these organizations can be a cost-effective option for providing language services to LEP persons from those language groups.

Using Telephone Interpreter Lines. Telephone interpreter service lines often offer speedy interpreting assistance in many different languages. They may be particularly appropriate where the mode of communicating with an English proficient person would also be over the phone. Although telephonic interpretation services are useful in many situations, it is important to ensure that, when using such services, the interpreters used are competent to interpret any technical or legal terms specific to a particular program that may be important parts of the conversation. Nuances in language and non-verbal communication can often assist an interpreter and cannot be recognized over the phone. Video teleconferencing may sometimes help to resolve this issue where necessary. In addition, where documents are being discussed, it is important to give telephonic interpreters adequate opportunity to review the document prior to the

[30] Many languages have "regionalisms," or differences in usage. For instance, a word that may be understood to mean something in Spanish for someone from Cuba may not be so understood by someone from Mexico. In addition, because there may be languages that do not have an appropriate direct interpretation of some courtroom or legal terms and the interpreter should be so aware and be able to provide the most appropriate interpretation. The interpreter should make the recipient aware of the issue and the interpreter and recipient can then work to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate.

[31] For those languages in which no formal accreditation or certification currently exists, agencies should consider a formal process for establishing the credentials of the interpreter. Additionally, for those languages in which no formal accreditation currently exists, a particular level of membership in a professional translation association can provide some indicator of professionalism.

discussion and any logistical problems should be addressed.

Using Community Volunteers. In addition to consideration of bilingual staff, staff interpreters, or contract interpreters (either in-person or by telephone) as options to ensure meaningful access by LEP persons, use of recipient-coordinated community volunteers, working with, for instance, community-based organizations may provide a cost-effective supplemental language assistance strategy under appropriate circumstances. They may be particularly useful in providing language access for a recipient's less critical programs and activities. To the extent the recipient relies on community volunteers, it is often best to use volunteers who are trained in the information or services of the program and can communicate directly with LEP persons in their language. Just as with all interpreters, community volunteers used to interpret between English speakers and LEP persons, or to orally translate documents, should be competent in the skill of interpreting and knowledgeable about applicable confidentiality and impartiality rules. Recipients should consider formal arrangements with community-based organizations that provide volunteers to address these concerns and to help ensure that services are available more regularly.

Use of Family Members or Friends as Interpreters. Although recipients should not plan to rely on an LEP person's family members, friends, or other informal interpreters to provide meaningful access to important programs and activities, where LEP persons so desire, they should be permitted to use, at their own expense, an interpreter of their own choosing (whether a professional interpreter, family member, or friend) in place of or as a supplement to the free language services expressly offered by the recipient. LEP persons may feel more comfortable when a trusted family member or friend acts as an interpreter. In addition, in exigent circumstances that are not reasonably foreseeable, temporary use of interpreters not provided by the recipient may be necessary. However, with proper planning and implementation, recipients should be able to avoid most such situations.

Recipients, however, should take special care to ensure that family, legal guardians, caretakers, and other informal interpreters are appropriate in light of the circumstances and subject matter of the program, service or activity, including protection of the recipient's own administrative or enforcement interest in accurate interpretation. In many circumstances, family members (especially children) or friends are not competent to provide quality and accurate interpretations. Issues of confidentiality, privacy, or conflict of interest may also arise. LEP individuals may feel uncomfortable revealing or describing sensitive, confidential, or potentially embarrassing medical, family, or financial information to a family member, friend, or member of the local community. In addition, such informal interpreters may have a personal connection to the LEP person or an undisclosed conflict of interest. For these reasons, when oral language services are necessary, recipients should generally offer competent interpreter services free of cost to the LEP person. For EPA recipient programs and activities, this could be true in emergency response actions where health, safety, or access to important benefits and services are at stake, or when accuracy is important to protect an individual's rights and access to important services.

One example of such a case would be an administrative investigation conducted by a municipal environmental control office in response to an anonymous citizen complaint about illegal environmental discharges in a residential neighborhood. In such a case, use of family members or neighbors to interpret for persons alleged to have committed the discharge or potential witnesses may raise serious issues of competency, confidentiality, and conflict of interest and is inappropriate. While issues of competency, confidentiality, and conflict of interest in the use of family members (especially children), friends, or neighbors often make their use inappropriate, the use of these individuals as interpreters may be an appropriate option where proper application of the four factors would lead to a conclusion that recipient-provided services are not necessary. An example of this is a voluntary educational tour of the environmental quality physical offices (as distinguished from the environmental enforcement activities it performs) offered to the public. There, the importance and nature of the activity may be relatively low and unlikely to implicate issues of confidentiality, conflict of interest, or the need for accuracy. In addition, the resources needed and costs of providing language services may be high. In such a setting, an LEP person's use of family, friends, or others may be appropriate.

If the LEP person voluntarily chooses to provide his or her own interpreter, a recipient should consider whether a record of that choice and of the recipient's offer of assistance is appropriate. Where precise, complete, and accurate interpretations or translations of information and/or testimony are critical for regulatory enforcement, adjudicatory, or legal reasons, or where the competency of the LEP person's interpreter is not established, a recipient might decide to provide its own, independent interpreter, even if an LEP person wants to use his or her own interpreter as well. Extra caution should be exercised when the LEP person chooses to use a minor as the interpreter. While the LEP person's decision should be respected, there may be additional issues of competency, confidentiality, or conflict of interest when the choice involves using children as interpreters. The recipient should take care to ensure that the LEP person's choice is voluntary, that the LEP person is aware of the possible problems if the preferred interpreter is a minor child, and that the LEP person knows that a competent interpreter could be provided by the recipient at no cost.

B. Written Language Services (Translation)

Translation is the replacement of a written text from one language into an equivalent written text in another language.

What Documents Should be Translated? After applying the four-factor analysis, a recipient may determine that an effective LEP plan for its particular program or activity includes the translation of vital written materials into the language of each frequently-encountered LEP group eligible to be served and/or likely to be affected by the recipient's program. Such written materials could include, for example:

- Consent and complaint forms
- Intake forms with the potential for important consequences
- Written notices of rights, denial, loss, or decreases in benefits or services
- Notices of disciplinary action, environmental hazards, or cease and desist orders.
- Notices advising LEP persons of free language assistance
- Residential Lead-Based Paint Disclosure Program Forms and Pamphlets
- Consumption Advisories
- Written tests that do not assess English language competency, but test competency for a particular license, job, or skill for which knowing English is not required

• Applications to participate in a recipient's program or activity or to receive recipient benefits or services.

Whether or not a document (or the information it disseminates or solicits) is "vital" may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner. For instance, applications for participation in a local coalition of environmental stewards may not generally be considered vital, whereas petitions for enforcement of local environmental health rules could be considered vital. Where appropriate, recipients are encouraged to create a plan for consistently determining, over time and across its various activities, what documents are "vital" to the meaningful access of the LEP populations they serve.

Classifying a document as vital or non-vital is sometimes difficult, especially in the case of outreach materials like brochures or other information on rights and services. Awareness of rights or services is an important part of "meaningful access." Lack of awareness that a particular program, right, or service exists may effectively deny LEP individuals meaningful access. Thus, where a recipient is engaged in community outreach activities in furtherance of its activities, it should regularly assess the needs of the populations frequently encountered or affected by the program or activity to determine whether certain critical outreach materials should be translated. Community organizations may be helpful in determining what outreach materials may be most helpful to translate. In addition, the recipient should consider whether translations of outreach material may be made more effective when done in tandem with other outreach methods, including utilizing the ethnic media, schools, religious, and community organizations to spread a message.

Sometimes a document includes both vital and non-vital information. This may be the case when the document is very large or when the target audience for a document encompasses many different languages. Thus, vital information may include, for instance, the provision of information in appropriate languages other than English regarding where a LEP person might obtain an interpretation or translation of the document.

Into What Languages Should Documents be Translated? The languages spoken by the LEP individuals who are eligible to be served or directly affected by a recipient's programs or activities determine the languages into which vital documents should be translated. A distinction should be made, however, between languages that are frequently encountered by a recipient and less commonly-encountered languages. Many recipients serve communities in large cities or across the country. They regularly serve LEP persons who speak dozens of different languages. To translate all written materials into all of those languages is unrealistic. Although recent technological advances have made it easier for recipients to store and share translated documents, such an undertaking would incur substantial costs and require substantial resources. Nevertheless, well-substantiated claims of lack of resources to translate all vital documents into dozens of languages do not necessarily relieve the recipient of the obligation to translate those documents into at least several of the more frequently-encountered languages and to set benchmarks for continued translations into the remaining languages over time. As a result, the extent of the recipient's obligation to provide written translations of documents should be determined by the recipient on a case-by-case basis, looking at the totality of the circumstances in light of the four-factor analysis. Because translation is often a one-time expense, consideration should be given to whether the up-front cost of translating a document (as opposed to oral interpretation) should be amortized over the likely life span of the document when applying this four-factor analysis.

Safe Harbor. Many recipients would like to ensure with greater certainty that they comply with their obligations to provide written translations in languages other than English. Paragraphs (a) and (b) below outline the circumstances that may provide a "safe harbor" for recipients regarding the requirements for translation of written materials. A "safe harbor" means that if a recipient provides written translations under these circumstances, such action will be considered strong evidence of compliance with the recipient's written-translation obligations.

The failure to provide written translations under the circumstances outlined in paragraphs (a) and (b) does not necessarily mean there is noncompliance. Rather, they provide a common starting point for recipients to consider whether and at what point the importance of the service, benefit, or activity involved; the nature of the information sought; and the number or proportion of LEP persons served call for written translations of commonly-used forms into frequently-encountered languages other than English. Thus, these paragraphs merely provide a guide for recipients that would like greater certainty of compliance than can be provided by a fact-intensive, four-factor analysis. Even if the safe harbors are not used, if written translation of a certain document(s) would be so burdensome as to defeat the legitimate objectives of its program, the translation of the written materials is not necessary. Other ways of providing meaningful access, such as effective oral interpretation of certain vital documents, might be acceptable under such circumstances.

Safe Harbor Guides. The following actions will be considered strong evidence of compliance with the recipient's written-translation obligations:

(a) The EPA recipient provides written translations of vital documents for each eligible LEP language group that constitutes five percent or includes 1,000 members, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or

(b) If there are fewer than 50 persons in a language group that reaches the five percent trigger in (a), the recipient does not translate vital written materials but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

These safe harbor provisions apply to the translation of written documents only. They do not affect the requirement to provide meaningful access to LEP individuals through competent oral interpreters where oral language services are needed and are reasonable. For example, community coordinators should, where appropriate, ensure that permits or environmental impact statements have been explained to persons in communities in close proximity to manufacturing facilities.

Competence of Translators. As with oral interpreters, translators of written documents should be competent. Many of the same considerations apply, including the consideration that translators have knowledge in both languages of any specialized terms or concepts relevant to the program or activity. However, the skill of translating is very different from the skill of interpreting, and a person who is a competent interpreter may or may not be competent to translate.

Particularly where legal or other vital documents are being translated, competence can often be achieved by

use of certified translators. Certification or accreditation may not always be possible or necessary. Competence can often be ensured by having a second, independent translator "check" the work of the primary translator. Alternatively, one translator can translate the document, and a second, independent translator could translate it back into English to check that the appropriate meaning has been conveyed. This is called "back translation."

Translators should understand the expected reading level of the audience and, where appropriate, have fundamental knowledge about the target language group's vocabulary and phraseology. Sometimes direct translation of materials results in a translation that is written at a much more difficult level than the English language version or has no relevant equivalent meaning. Community organizations may be able to help determine whether a document is written at an appropriate level for the intended audience. Likewise, consistency in the words and phrases used to translate terms of art, legal, or other technical concepts helps avoid confusion by LEP individuals and may reduce costs. Creating or using already-created glossaries of commonly-used terms may be useful for LEP persons and translators and cost effective for the recipient. Providing translators with examples of previous accurate translations of similar material by the recipient, other recipients, or Federal agencies may be helpful.

While quality and accuracy of translation services is critical, the translator's ability can vary with the context. For instance, documents that are simple and have no legal or other consequence for LEP persons who rely on them may use translators that are less skilled than important documents with legal or other information upon which reliance has important consequences (*e.g.*, information or documents of EPA recipients regarding certain enforcement actions, health, and safety services). The permanent nature of written translations, however, imposes additional responsibility on the recipient to ensure that the quality and accuracy permit meaningful access by LEP persons.

VII. Elements of Effective Plan on Language Assistance for LEP Persons

After completing the four-factor analysis and deciding what language assistance services are appropriate, a recipient should develop an implementation plan to address the identified needs of the LEP populations they serve. Recipients have considerable flexibility in developing this plan. The development, maintenance, and use of a periodically-updated written plan on language assistance for LEP persons ("LEP plan") for use by recipient employees serving the public will likely be the most appropriate and cost-effective means of documenting compliance and providing a framework for the provision of timely and reasonable language assistance. Moreover, such written plans would likely provide additional benefits to a recipient's managers in the areas of training, administration, planning, and budgeting. These benefits should lead most recipients to document in a written LEP plan their language assistance services, and how staff and LEP persons can access those services. Despite these benefits, certain EPA recipients, such as recipients serving very few LEP persons and recipients with very limited resources, may choose not to develop a written LEP plan. However, the absence of a written LEP plan does not obviate the underlying obligation to ensure meaningful access by LEP persons to a recipient's program or activities. Accordingly, in the event that a recipient elects not to develop a written plan, it should consider alternative ways to articulate in some other reasonable manner a plan for providing meaningful access. Entities having significant contact with LEP persons, such as schools, religious organizations, community groups, and groups working with new immigrants can be very helpful in providing important input into this planning process from the beginning.

The following five steps may be helpful in designing an LEP plan and are typically part of effective implementation plans.

(1) Identifying LEP Individuals Who Need Language Assistance

The first two factors in the four-factor analysis require an assessment of the number or proportion of LEP individuals eligible to be served or encountered and the frequency of encounters. This requires recipients to identify LEP persons with whom it has contact.

One way to determine the language of communication is to use language identification cards (or "I speak cards"), which invite LEP persons to identify their language needs to staff. Such cards, for instance, might say "I speak Spanish" in both Spanish and English, "I speak Vietnamese" in both English and Vietnamese, etc. To reduce costs of compliance, the Federal government has made a set of these cards available on the Internet. The Census Bureau "I speak card" can be found and downloaded at *http://www.usdoj.gov/crt/cor/13166.htm*. When records are normally kept of past interactions with members of the public, the language of the LEP person can be included as part of the record. In addition to helping employees identify the language of LEP persons they encounter, this process will help in future applications of the first two factors of the four-factor analysis. In addition, posting notices in commonly encountered languages notifying LEP persons of language assistance will encourage them to self-identify.

(2) Language Assistance Measures

An effective LEP plan would likely include information about the ways in which language assistance will be provided. For instance, recipients may want to include information on at least the following:

- Types of language services available.
- How staff can obtain those services.
- How to respond to LEP callers.
- How to respond to written communications from LEP persons.
- How to respond to LEP individuals who have in-person contact with recipient staff.
- How to ensure competency of interpretation and translation services.

(3) Training Staff

Staff should know their obligations to provide meaningful access to information and services for LEP persons. An effective LEP plan would likely include training to ensure that:

- Staff know about LEP policies and procedures.
- Staff having contact with the public are trained to work effectively with in-person and telephone interpreters.

Recipients may want to include this training as part of the orientation for new employees. It is important to ensure that all employees in public contact positions (or having contact with those in a recipient's custody) are properly trained. Recipients have flexibility in deciding the manner in which the training is provided. The more frequent the contact with LEP persons, the greater the need will be for in-depth training. Staff with little or no contact with LEP persons may only have to be aware of an LEP plan. However, management staff, even if they do not interact regularly with LEP persons, should be fully aware of and understand the plan so they can reinforce its importance and ensure its implementation by staff.

(4) Providing Notice to LEP Persons

Once an agency has decided, based on the four factors, that it will provide language services, it is important for the recipient to let LEP persons know that those services are available and that they are free of charge. Recipients should provide this notice in a language LEP persons will understand. Examples of notification that recipients should consider include:

- Posting signs in entry areas and points. When language assistance is needed to ensure meaningful access to information and services, it is important to provide notice in appropriate languages in intake areas or initial points of contact so that LEP persons can learn how to access those language services. This is particularly true in areas with high volumes of LEP persons seeking access to certain health, safety, or environmental enforcement services or activities run by EPA recipients. For instance, signs in intake or environmental advocacy or protection offices could state that free language assistance is available. The signs should be translated into the most common languages encountered. They should explain how to get the language help.[32]
- Stating in outreach documents that language services are available from the agency or organization. Announcements could be in, for instance, brochures, booklets, and in outreach and recruitment information. These statements should be translated into the most common languages and could be "tagged" onto the front of common documents.
- Working with community-based organizations and other stakeholders to inform LEP individuals of the recipients' services, including the availability of language assistance services.
- Using a telephone voice mail menu. The menu could be in the most common languages encountered. It should provide information about available language assistance services and how to get them.
- Including notices in local newspapers in languages other than English.
- Providing notices on non-English-language radio and television stations about the available language assistance services and how to get them.
- Presentations and/or notices at schools and religious organizations.

[32] The Social Security Administration has made such signs available at *http://www.ssa.gov/multilanguage/langlist1.htm*. These signs could, for example, be modified for recipient use.

(5) Monitoring and Updating the LEP Plan

Recipients should, where appropriate, have a process for determining, on an ongoing basis, whether new documents, programs, services, and activities need to be made accessible for LEP individuals, and they may want to provide notice of any changes in services to the LEP public and to employees. In addition, recipients should consider whether changes in demographics, types of services, or other needs require annual reevaluation of their LEP plan. Less frequent reevaluation may be more appropriate where demographics, services, and needs are more static. One good way to evaluate the LEP plan is to seek feedback from the community.

In their reviews, recipients may want to consider assessing changes in:

- Current LEP populations in service area or population affected or encountered.
- Frequency of encounters with LEP language groups.
- Nature and importance of activities to LEP persons.
- Availability of resources, including technological advances and sources of additional resources, and the costs imposed.
- Whether existing assistance is meeting the needs of LEP persons.
- Whether staff knows and understands the LEP plan and how to implement it.
- Whether identified sources for assistance are still available and viale.

In addition, effective plans set clear goals, management accountability, and opportunities for community input and planning throughout the process.

VIII. Voluntary Compliance Effort

The goal for Title VI and Title VI regulatory enforcement is to achieve voluntary compliance. The requirement to provide meaningful access to LEP persons is enforced and implemented by EPA through the procedures identified in the Title VI regulations.[33] These procedures include complaint investigations, compliance reviews, efforts to secure voluntary compliance, and technical assistance.

The Title VI regulations provide in part that EPA will seek the cooperation of applicants and recipients in securing compliance. If a complaint is made, EPA will attempt to resolve it through informal means whenever possible. If a complaint is made and the matter cannot be resolved informally, EPA may secure compliance by denying, annulling, suspending, or terminating EPA assistance. If EPA discovers noncompliance, EPA engages in voluntary compliance efforts and provides technical assistance to recipients at all stages of an investigation. During these efforts, EPA expects to propose reasonable timetables for achieving compliance and consult with and assist recipients in exploring cost-effective ways of coming into compliance. In determining a recipient's compliance with the Title VI regulations with regard to LEP, EPA's primary concern is to ensure that the recipient's policies and procedures provide meaningful access for LEP persons to the recipient's programs and activities.

[33] 40 CFR part 7, subpart E.

While all recipients should work toward building systems that will ensure access for LEP individuals, EPA acknowledges that the implementation of a comprehensive system to serve LEP individuals is a process and that a system will evolve over time as it is implemented and periodically reevaluated. As recipients take reasonable steps to provide meaningful access to Federally assisted programs and activities for LEP persons, EPA expects to look favorably on intermediate steps recipients take that are consistent with this Guidance, and that, as part of a broader implementation plan or schedule, move their service delivery system toward providing full access to LEP persons. This does not excuse noncompliance but instead recognizes that full compliance in all areas of a recipient's activities and for all potential language minority groups may reasonably require a series of implementing actions over a period of time. However, in developing any phased implementation schedule, EPA recipients should ensure that the provision of appropriate assistance for significant LEP populations, or with respect to activities having a significant impact on the health, safety, legal rights, or livelihood of beneficiaries is addressed first. Recipients are encouraged to document their efforts to provide LEP persons with meaningful access to Federally assisted programs and activities.

IX. Specific Examples

EPA recipients are principally state and local government environmental programs. Their principal functions are the development and implementation of environmental regulations, policies and programs; issuance of environmental permits; and enforcement of environmental laws. Other significant recipient categories include universities, which use grant monies to fund and

conduct research and education, and public-interest non-profits, which use grant monies to organize, educate and represent communities with environmental concerns.

The promulgation of environmental regulations generally requires public notice and comment on proposals. EPA recipients, in applying the four factor analysis, will need to take reasonable steps to ensure limited English proficient persons have a meaningful opportunity to comment on proposed regulations. The mission of EPA and many of it recipients, in part, is to protect public health. EPA and its recipients should affirmatively develop and employ creative measures to eliminate or minimize communication barriers that interfere with the ability of LEP persons to meaningfully participate in and benefit from EPA and EPA recipient programs and activities.

Often, issuing environmental permits also requires public notice and, and when the permitting action affects LEP persons, the permit process is subject to the same kinds of language concerns that are present in the promulgation of environmental regulations. Indeed, language concerns may be at least as critical in environmental permitting because, while the development and implementation of environmental regulations, policies and programs largely concerns general programmatic standards and practices, environmental permitting typically concerns the application of those standards and practices in a specific geographic area that directly affects an immediate population or community.

Enforcing environmental laws often requires public input. Private citizens often file complaints and can be important sources of information—but only if they can communicate with the relevant authority for enforcing those laws. Another area of environmental enforcement that will often require language and translation services is the settlement of environmental cases. It is EPA policy that such settlements include the affected population or community. This is especially true where environmental settlements include the use of Supplemental Environmental Projects (SEPs) which provide direct services, benefits or improvements to local communities.

X. Conclusion

This LEP Guidance suggests a general framework to help recipients develop a program to provide meaningful access to LEP persons and provides an idea of how EPA will evaluate recipients efforts to ensure meaningful access. The recommendations above are not intended to be exhaustive. Recipients have considerable flexibility in determining how to comply with their Title VI legal obligation in the LEP setting, and are not required to use the suggested framework in this guidance document. However, EPA recipients should ensure meaningful access by LEP persons to their programs and activities through appropriate policies and procedures for providing language assistance to fulfill their Title VI responsibilities.

Dated: June 16, 2004.

Karen Higginbotham,

Director, Office of Civil Rights.

[FR Doc. 04–14464 Filed 6–24–04; 8:45 am]

BILLING CODE 6560–50–P

EXPORT—IMPORT BANK OF THE UNITED STATES

Sunshine Act Meeting

ACTION: Notice of a partially open meeting of the Board of Directors of the Export-Import Bank of the United States.

TIME AND PLACE: Thursday, July 1, 2004 at 9:30 a.m. The meeting will be held at Ex-Im Bank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571

OPEN AGENDA ITEM: Adoption of Ex-Im Bank's Revised Environmental Procedures & Guidelines and the Nuclear Procedures & Guidelines.

PUBLIC PARTICIPATION: The meeting will be open to public participation for Item No. 1 only.

FOR FURTHER INFORMATION CONTACT: Office of the Secretary, 811 Vermont Avenue, NW., Washington, DC 20571 (Tele. No. 202–565–3957).

Peter B. Saba,

General Counsel.

[FR Doc. 04–14616 Filed 6–23–04; 1:24 pm]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

June 18, 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 (PRA) 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 (PRA) comments should be submitted on or before August 24, 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: 3060–0798.

Title: FCC Application for Wireless Telecommunications Bureau Radio Service Authorization.

Form No.: FCC Form 601.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, individuals or household, and State, local or tribal government.

Number of Respondents: 250,520.

Estimated Time per Response: 1.25 hours.

Frequency of Response: On occasion reporting requirements, third party disclosure requirement, recordkeeping requirement, and other 10 years reporting requirement.

Total Annual Burden: 219,205 hours.

Total Annual Cost: $50,104,000.

Privacy Act Impact Assessment: Possible Impact.

Needs and Uses: FCC Form 601 is a consolidated, multi-part application or "long form" for market-based licensing and site-by-site licensing in the Wireless Telecommunications Bureau's (WTB) Radio Services' Universal Licensing System (ULS).

The information is used by the Commission to determine whether the applicant is legally, technically and financially qualified to be licensed.

The Wireless Telecommunications Bureau will begin issuing licenses for use of frequencies in the 764–776 and 794–806 MHz bands pursuant to Part 90 Subpart R.

There is no change to the estimated average burden and number of respondents at this time as it is unknown as to how additional respondents may partake in this frequency band.

OMB Control Number: 3060–1042.

Title: FCC Wireless Telecommunications Bureau Technical Support Request Form.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, individuals or household, and state, local or tribal government.

Number of Respondents: 25,500.

Estimated Time per Response: 8 minutes.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 3,400 hours.

Total Annual Cost: $343,400.

Privacy Act Impact Assessment: Yes.

Needs and Uses: The FCC Wireless Telecommunications Bureau supports several processes and systems used to support their licensing and auction services. In offering this service, the public often requests help or consultation with these systems and processes. The FCC currently receives these requests via telephone, email, and the OMB approved form listed above (*http://esupport.fcc.gov/request.htm*). This form will continue to substantially decrease public and staff burden since all the information needed to facilitate a support request will now be submitted in a standard format but be available to a wider audience. This will eliminate or at least minimize the need to follow-up with the customers to obtain all the information necessary to respond to their request. This form will also help presort requests into previously defined categories to all staff to respond more quickly.

The form is being revised to include the Bureau's entire customer base and better categorization for requests for support. This will further streamline the FCC's processes and expedite the response on all requests for support to the Bureau within one consolidated format.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–14479 Filed 6–24–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–04–57–B; DA 04–1513]

Automated Maritime Telecommunications System Spectrum Auction Scheduled for September 15, 2004; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the procedures and minimum opening bids for the upcoming auction of licenses in the Automated Maritime Telecommunications System ("AMTS") spectrum. This document is intended to familiarize prospective bidders with the procedures and minimum opening bids for this auction.

DATES: Auction No. 57 is scheduled for September 15, 2004.

FOR FURTHER INFORMATION CONTACT: Auctions and Spectrum Access Division, WTB: For legal questions: Howard Davenport at (202) 418–0660, for general auction questions: Jeff Crooks at (202) 418–0660 or Lisa Stover at (717) 338–2888. Media Contact: Lauren Patrich at (202) 418–7944.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 57 Procedures Public Notice* released on May 26, 2004. The complete text of the *Auction No. 57 Procedures Public Notice,* including attachments, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The *Auction No. 57 Procedures Public Notice* may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. ("BCPI"), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563, or you may contact BCPI at their Web site: *http://www.BCPIWEB.com.* This document is also available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions/57/.*

I. General Information

A. Introduction

1. The *Auction No. 57 Procedures Public Notice,* announces the procedures and minimum opening bids for the upcoming auction of licenses in the AMTS spectrum scheduled for September 15, 2004 (Auction No. 57). On April 5, 2004, in accordance with the Balanced Budget Act of 1997, the Wireless Telecommunications Bureau (the "Bureau") released a public notice seeking comment on reserve prices or minimum opening bids and the procedures to be used in Auction No. 57. The Bureau received two comments, three reply comments, and further comments ex parte in response to the *Auction No. 57 Comment Public Notice,* 69 FR 21110, April 20, 2004.

i. Background of Proceeding

2. The Maritime Services provide for the unique distress, operational and personal communication needs of vessels at sea and on inland waterways. AMTS is a maritime service that was established in 1981 as an alternative to VHF public coast service ("VPCS"). In the *Public Coast Second Report and Order and Second Further Notice,* 62 FR 40281, July 28, 1997, the Commission described AMTS as a specialized system of public coast stations providing integrated and interconnected marine voice and data communications, somewhat like a cellular phone system, for tugs, barges, and other commercial vessels on waterways.

3. Section 309(j)(2) of the Communications Act formerly stated that mutually exclusive applications for initial licenses or construction permits were auctionable if the principal use of the spectrum was for subscriber-based services, and competitive bidding would promote the expressed objectives of the Communications Act. The Commission concluded that the public coast service, including VPCS, high seas, and AMTS public coast stations, was a Commercial Mobile Radio Service ("CMRS") and subsequently decided that mutually exclusive applications for public coast station licenses would be resolved through competitive bidding.

4. On August 5, 1997, after release of the *Public Coast Second Report and Order and Second Further Notice,* President Clinton signed into law the Balanced Budget Act of 1997 ("Balanced Budget Act"), which expanded the Commission's auction authority by amending Section 309(j) of the Communications Act to provide that all

mutually exclusive applications for initial licenses or construction permits *shall* be auctioned, with certain exceptions not applicable here.

5. In the *Public Coast Second Report and Order and Second Further Notice,* the Commission adopted AMTS rules that permit service on land, so long as marine-originating communications receive priority. In the *Public Coast Second Memorandum Opinion and Order and Fifth Report and Order,* 67 FR 48560, July 25, 2002, the Commission adopted a geographic licensing system for AMTS with service areas ("AMTSAs") based upon maritime VPCS areas ("VPCSA"), with the modification that the inland VPCSAs would be consolidated into a single, inland geographic service area. The Commission announced that it would conduct an auction to resolve mutually exclusive applications for AMTS licenses. Additionally, the Commission concluded that the general competitive bidding rules, and the rules regarding the participation of small businesses in auctions that were applied to the auction of VPC licenses, should be used for auctioning AMTS licenses.

6. On April 5, 2004, the Wireless Telecommunications Bureau ("Bureau") released the *Auction No. 57 Comment Public Notice,* announcing that Auction No. 57 will commence on September 15, 2004, setting forth a complete list of licenses for Auction No. 57, and seeking comment on reserve prices or minimum opening bids and other auction procedures.

ii. Licenses To Be Auctioned

7. Auction No. 57 will offer 20 licenses in the AMTS Service in the 217/219 MHz bands. Two licenses will be offered in each of 10 AMTSAs. A complete list of the licenses available in Auction No. 57 is included in Attachment A of the *Auction No. 57 Procedures Public Notice.*

Block	Frequency bands (MHz)	Total bandwidth	Pairing	Geographic area type	No. of licenses
A	217.5–218.0/219.5–220.0	1 MHz	2 x 500 kHz	AMTSA	10
B	217.0–217.5/219.0–219.5	1 MHz	2 x 500 kHz	AMTSA	10

Note: The above table displays the band edges of spectrum blocks A and B using the twenty 25 kHz channels that comprise each block as listed in 47 CFR 80.385(a)(2). It should be noted that pursuant to 47 CFR 80.481, licensees are not required to use 25 kHz channelization and may choose any channelization scheme; however, regardless of the channelization scheme used, emissions at these band edges must be attenuated within the limitation that would be required under 47 CFR 80.211 if the licensee were using 25 kHz channels.

B. Rules and Disclaimers

i. Relevant Authority

8. Prospective applicants must familiarize themselves thoroughly with the Commission's rules relating to the AMTS service contained in title 47, part 80, of the Code of Federal Regulations, and those relating to application and auction procedures, contained in Title 47, Part 1, of the Code of Federal Regulations. Prospective applicants must also be thoroughly familiar with the procedures, terms and conditions (collectively, "terms") contained in *Auction No. 57 Procedures Public Notice*; the *Auction No. 57 Comment Public Notice; Public Coast Second Memorandum Opinion and Order and Fifth Report and Order* and the *Public Coast Fourth Report and Order and Third Further Notice of Proposed Rule Making,* 65 FR 77821, December 13, 2000 and 65 FR 76966, December 8, 2000 (as well as prior and subsequent Commission proceedings regarding competitive bidding procedures).

9. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in our public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to this auction.

ii. Prohibition of Collusion

10. To ensure the competitiveness of the auction process, § 1.2105(c) of the Commission's rules prohibits applicants for any of the same geographic license areas from communicating with each other during the auction about bids, bidding strategies, or settlements unless such applicants have identified each other on their FCC Form 175 applications as parties with whom they have entered into agreements under § 1.2105(a)(2)(viii). Thus, applicants for any of the same geographic license areas must affirmatively avoid all discussions with each other that affect, or in their reasonable assessment have the potential to affect, bidding or bidding strategy. This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction. For purposes of this prohibition, § 1.2105(c)(7)(i) defines applicant as including all controlling interests in the entity submitting a short-form application to participate in the auction, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application, and all officers and directors of that entity.

11. Applicants for licenses in any of the same geographic license areas are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the applicants he or she is authorized to represent in the auction. A violation could similarly occur if the authorized bidders are different individuals employed by the same organization (*e.g.,* law firm or consulting firm). In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule. However, the Bureau cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted.

12. The Commission's anti-collusion rules allow applicants to form certain agreements during the auction, provided the applicants have not applied for licenses covering the same geographic areas. In addition, applicants that apply to bid for all markets will be precluded from communicating with all other applicants until after the down payment deadline. However, all applicants may enter into bidding agreements *before* filing their FCC Form 175, as long as they disclose the existence of the agreement(s) in their Form 175. If

parties agree in principle on all material terms prior to the short-form filing deadline, those parties must be identified on the short-form application pursuant to § 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the filing deadline, an applicant would not include the names of those parties on its application, and may not continue negotiations. By signing their FCC Form 175 short-form applications, applicants are certifying their compliance with § 1.2105(c).

13. Section 1.65 of the Commission's rules requires an applicant to *maintain* the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, § 1.65 requires auction applicants that engage in communications of bids or bidding strategies that result in a bidding agreement, arrangement or understanding not already identified on their short-form applications to promptly disclose any such agreement, arrangement or understanding to the Commission by amending their pending applications. In addition, § 1.2105(c)(6) requires all auction applicants to report prohibited discussions or disclosures regarding bids or bidding strategy to the Commission in writing immediately but in no case later than five business days after the communication occurs, even if the communication does not result in an agreement or understanding regarding bids or bidding strategy that must be reported under § 1.65.

14. Any applicant found to have violated the anti-collusion rule may be subject to sanctions, including forfeiture of its upfront payment, down payment or full bid amount, and may be prohibited from participating in future auctions.

15. A summary listing of documents issued by the Commission and the Bureau addressing the application of the anti-collusion rules may be found in Attachment G of the *Auction No. 57 Procedures Public Notice.*

iii. Interference Protection

16. Incumbent AMTS site-based licensees are entitled to co-channel protection by AMTS geographic area licenses. Among other licensing and technical rules, AMTS geographic area licensees will be required to afford interference protection to incumbent systems, on a fixed separation basis as provided in § 80.385(b)(1) of the Commission's rules. Geographic area licensees must also provide co-channel interference protection to other geographic area licensees in accordance with § 80.479(b) and § 80.70(a).

17. Incumbents will be prohibited from renewing, transferring, assigning, or modifying their licenses in any manner that extends their system's service area or results in their acquiring additional frequencies, unless there is consent from each affected geographic area licensee. If an incumbent fails to construct, discontinues operations, or otherwise has its license terminated, the spectrum covered by the incumbent's authorization will automatically revert to the geographic area licensee.

18. In addition, AMTS licensees that cause interference to television reception or to the U.S. Navy SPASUR system must cure the problem or discontinue operations.

iv. Coordination Requirements

19. AMTS geographic area licensees may place stations anywhere within their service areas to serve vessels or units on land, so long as incumbent operations are protected, marine-originating traffic is given priority and certain major waterways are served. However, geographic area licensees must individually license any base station that requires an Environmental Assessment pursuant to § 1.1307 of the Commission's Rules or international coordination, or would affect the radio frequency quiet zones described in § 80.21 of the Commission's rules, or would require broadcaster notification and an engineering study described in § 80.215(h).

20. For instance, AMTS applicants proposing to locate a transmitter (i) within 169 kilometers (105 miles) of a Channel 13 television station, (ii) within 105 kilometers (80 miles) of a Channel 10 television station, or (iii) with an antenna height greater than 61 meters (200 feet), must file an application with the Commission, including an engineering study showing how harmful interference to television reception will be avoided, and must also give written notice of the application to the television stations that may be affected so that the broadcaster can comment on the proposed construction.

21. Additionally, AMTS licensees must obtain written consent from all affected licensees prior to using AMTS frequencies for mobile-to-mobile communications.

v. Due Diligence

22. Potential applicants are reminded that there are a number of incumbent licensees already licensed and operating on frequencies that will be subject to the upcoming auction, such as AMTS Station licensees. Such incumbents must be protected from harmful interference by AMTS Station geographic area licensees in accordance with the Commission's Rules. These limitations may restrict the ability of such AMTS geographic area licensees to use certain portions of the electromagnetic spectrum or provide service to certain areas in their geographic license areas. We therefore caution potential applicants in formulating their bidding strategies to investigate and consider the extent to which AMTS frequencies are occupied by incumbents.

23. Potential applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of licenses available in Auction No. 57.

24. In establishing the AMTS service, the Commission considered the potential for interference to television reception, particularly Channels 13 and 10. Consequently, geographic licensees will be required to file individual applications for authority to operate a new AMTS transmitter within 169 kilometers (105 miles) of a Channel 13 television station or 129 kilometers (80 miles) of a Channel 10 television station, or with an antenna height greater than 61 meters (200 feet) above ground. Such applications must include an engineering study showing how harmful interference to television reception will be avoided, and the applicant must notify each television station that may be affected so that the broadcaster can comment on the proposed construction. Moreover, any AMTS licensee that causes such interference must cure the problem or cease operations. AMTS licensees are permitted to construct "fill-in" sites without filing individual applications, but such sites are fully subject to the requirement that AMTS stations cause no harmful interference to television reception, and must discontinue operations if unable to meet this requirement.

25. In addition, AMTS operations must not cause harmful interference to the United States Navy's Space Surveillance System (SPASUR), which operates in the 216.880–217.080 MHz band. Also, law enforcement tracking operations are currently authorized on a primary basis in certain markets in AMTSAs 3, 4, 6, 9 and 10 on a frequency in block A. These operations are scheduled to be converted to non-AMTS frequencies by 2007. It is the responsibility of bidders to be aware of these and all other technical or

regulatory matters affecting the spectrum licenses available in this auction.

26. With respect to the geographic boundaries for Automated Maritime Telecommunications System areas (AMTSAs), the Commission defined the AMTSA boundaries to include "the adjacent waters under the jurisdiction of the United States." Regarding the boundary between AMTSA 3, which includes the west coast of Florida, and AMTSA 4, which includes the Gulf of Mexico EA-like area, we hereby clarify that, for AMTSA 3, the boundary extends only to the limit of the U.S. territorial waters in the Gulf (12-nautical mile limit); and the boundary for AMTSA 4 extends from the 12-nautical mile line outward to the broadest geographic limits consistent with international agreements.

27. To date, no existing agreements between the United States and Mexico or Canada restrict AMTS channel availability in the Mexican and Canadian border areas. Licensees will, however, be subject to any future agreements regarding international assignments and coordination of such channels; and it is the responsibility of bidders to be familiar with all relevant governing international agreements; and that such agreements and amendments thereto may affect the use, utility or value of the spectrum at issue.

28. Potential bidders should also be aware that certain pending and future applications (including those for modification), petitions for rulemaking, requests for special temporary authority ("STA"), waiver requests, petitions to deny, petitions for reconsideration, informal oppositions, and applications for review before the Commission may relate to particular applicants or incumbent licensees or the licenses available in Auction No. 57. In addition, pending and future judicial proceedings may relate to particular applicants or incumbent licensees, or the licenses available in Auction No. 57. Prospective bidders are responsible for assessing the likelihood of the various possible outcomes, and considering their potential impact on spectrum licenses available in this auction.

29. Prospective bidders should perform due diligence to identify and consider all proceedings that may affect the spectrum licenses being auctioned. We note that resolution of such matters could have an impact on the availability of spectrum for Auction No. 57. In addition, although the Commission may continue to act on various pending applications, informal objections, petitions, and other requests for Commission relief, some of these matters may not be resolved by the time of the auction.

30. Potential bidders may obtain information about licenses available in Auction No. 57 through the Bureau's licensing databases on the World Wide Web at *http://wireless.fcc.gov/uls*. Potential applicants may query the database online and download a copy of their search results if desired. Detailed instructions on using License Search (including frequency searches and the GeoSearch capability) and downloading query results are available online by selecting the "?" button at the upper right-hand corner of the License Search screen.

31. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. To the extent the Commission's databases may not include all information deemed necessary or desirable by a bidder, bidders may obtain or verify such information from independent sources or assume the risk of any incompleteness or inaccuracy in said databases. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into the database. Potential applicants are strongly encouraged to physically inspect any sites located in, or near, the service area for which they plan to bid.

vi. Bidder Alerts

32. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee in this service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular services, technologies or products, nor does an FCC license constitute a guarantee of business success. Applicants and interested parties should perform their own due diligence before proceeding, as they would with any new business venture.

33. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 57 to deceive and defraud unsuspecting investors.

34. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326–2222 and from the SEC at (202) 942–7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876–7060. Consumers who have concerns about specific proposals regarding Auction No. 57 may also call the FCC Consumer Center at (888) CALL–FCC ((888) 225–5322).

vii. National Environmental Policy Act Requirements

35. Licensees must comply with the Commission's rules regarding the National Environmental Policy Act ("NEPA"). The construction of a wireless antenna facility is a federal action and the licensee must comply with the Commission's NEPA rules for each such facility.

C. Auction Specifics

i. Auction Date

36. The auction will begin on Wednesday, September 15, 2004, as announced in the *Auction No. 57 Comment Public Notice*. We do not believe a delay of the start of Auction No. 57 would be in the public interest. Mobex argues for a four month delay in the auction schedule so that potential bidders can analyze the significant technical requirements and financial issues involved with providing maritime service on a co-primary basis and to "grasp" the heavy presence of incumbents associated with the spectrum. Additionally, Mobex argues that uncertainty regarding the subject spectrum's service rules could improperly skew the auction results and artificially restrict the optimal public interest benefit obtained through the auction process.

37. We do not find the comments arguing for a delay persuasive. Potential bidders have already had more than three years to "grasp" the heavy presence of incumbents in this spectrum, given that the Commission froze new licenses in 2000. Moreover, although they have been subject to modification since, the Commission adopted technical rules for AMTS over two years ago. Finally, the commenters that argued for delay are already providing AMTS services, and thus, already have business plans, presumably have assessed market conditions, and certainly evaluated the availability of equipment for the AMTS service. With respect to the existence of pending litigation, the Bureau has previously concluded that, in general, this is not a sufficient reason to delay an auction. We expect that applicants bidding on licenses subject to litigation take such litigation into account in

determining their bidding strategies, lowering the level of risk that results from bidding on licenses subject to pending proceedings.

38. Section 309(j)(3)(E)(ii) provides, in pertinent part, that after the issuance of bidding rules the Commission shall "ensure that interested parties have a sufficient time to develop business plans, assess market conditions, and evaluate the availability of equipment for the relevant services." The Commission decided in 2002 that the general bidding rules found in subpart Q of part 1 of the Commission's Rules should apply to the auction of public coast spectrum. We do not believe that the statutory requirement to provide prospective bidders with time to develop a business plan and evaluate the availability of equipment requires the Commission to postpone an auction until every external factor that might influence a bidder's business plan is resolved with absolute certainty. We also note that, while § 309(j)(3)(E) directs the Commission to provide interested parties adequate time to prepare prior to an auction, the statute also requires that the Commission promote several other objectives in exercising its competitive bidding authority, including the rapid deployment of new technologies and services to the public, promotion of economic opportunity and competition, recovery for the public of a portion of the value of the spectrum, and efficient and intensive use of the spectrum. In balancing these objectives, we determine that the public interest would be served by proceeding with the auction as scheduled.

39. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding on all licenses will be conducted on each business day until bidding has stopped on all licenses.

ii. Auction Title

40. Auction No. 57—AMTS.

iii. Bidding Methodology

41. The bidding methodology for Auction No. 57 will be simultaneous multiple round bidding. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. As a contingency plan, bidders may also dial in to the FCC Wide Area Network. Qualified bidders are permitted to bid telephonically or electronically.

iv. Pre-Auction Dates and Deadlines

42. The following is a list of important dates related to Auction No. 57:

Auction Seminar—July 1, 2004
Short-Form Application (FCC Form 175) Filing Window Opens—July 1, 2004; 12 p.m. ET
Short-Form Application (FCC Form 175) Filing Window Deadline—July 19, 2004; 6 p.m. ET
Upfront Payments (via wire transfer)—August 20, 2004; 6 p.m. ET
Mock Auction—September 10, 2004
Auction Begins—September 15, 2004

v. Requirements for Participation

43. Those wishing to participate in the auction must:

- Submit a short-form application (FCC Form 175) electronically by 6 p.m. ET, July 19, 2004.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6 p.m. ET, August 20, 2004.
- Comply with all provisions outlined in this *Auction No. 57 Procedures Public Notice*.

vi. General Contact Information

44. The following is a list of general contact information related to Auction No. 57:

General Auction Information, General Auction Questions, Seminar Registration.	FCC Auctions Hotline, (888) 225–5322, Press Option #2, or direct (717) 338–2888, Hours of service: 8 a.m.–5:30 p.m. ET, Monday through Friday.
Auction Legal Information, Auction Rules, Policies, Regulations	Auctions and Spectrum Access Division, Legal Branch (202) 418–0660.
Licensing Information, Rules, Policies, Regulations, Licensing Issues, Due Diligence, Incumbency Issues.	Public Safety and Critical Infrastructure Division, (202) 418–0680.
Technical Support, Electronic Filing, FCC Automated Auction System.	FCC Auctions Technical Support Hotline, (202) 414–1250, (202) 414–1255 (TTY), Hours of service: 8 a.m.–6 p.m. ET, Monday through Friday.
Payment Information, Wire Transfers Refunds	FCC Auctions Accounting Branch, (202) 418–0578, (202) 418–2843 (Fax)
Telephonic Bidding	Will be furnished only to qualified bidders
Press Information	Lauren Patrich (202) 418–7944
FCC Forms	(800) 418–3676 (outside Washington, DC), (202) 418–3676 (in the Washington Area), http://www.fcc.gov/formpage.html
FCC Internet Sites	http://www.fcc.gov, http://wireless.fcc.gov/auctions, http://wireless.fcc.gov/uls

II. Short-Form (FCC Form 175) Application Requirements

45. Guidelines for completion of the short-form (FCC Form 175) are set forth in Attachment D of the *Auction No. 57 Procedures Public Notice*.

A. Ownership Disclosure Requirements (FCC Form 175 Exhibit A)

46. All applicants must comply with the uniform Part 1 ownership disclosure standards and provide information required by §§ 1.2105 and 1.2112 of the Commission's rules. Specifically, in completing FCC Form 175, applicants will be required to file an "Exhibit A" providing a full and complete statement of the ownership of the bidding entity. The ownership disclosure standards for the short-form are set forth in § 1.2112 of the Commission's rules.

B. Consortia and Joint Bidding Arrangements (FCC Form 175 Exhibit B)

47. Applicants will be required to identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings that relate in any way to the licenses being auctioned, including any agreements relating to post-auction market structure. Applicants will also be required to certify on their short-form applications that they have not entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bids, bidding strategies, or the particular

licenses on which they will or will not bid.

48. A party holding a non-controlling, attributable interest in one applicant will be permitted to acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with other applicants for licenses in the same geographic license area provided that (i) the attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has formed a consortium or entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants. While the anti-collusion rules do not prohibit non-auction related business negotiations among auction applicants, applicants are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies.

C. Eligibility

i. Bidding Credit Eligibility (FCC Form 175 Exhibit C)

49. A bidding credit represents the amount by which a bidder's winning bids are discounted. The size of the bidding credit depends on the average of the aggregated annual gross revenues for each of the preceding three years of the bidder, its affiliates, its controlling interests, and the affiliates of its controlling interests.

50. In the *Public Coast Third Report and Order and Memorandum Opinion and Order*, 63 FR 40059, July 27, 1998, the Commission adopted bidding credits to promote and facilitate the participation of small businesses in auctions of public coast licenses. For Auction No. 57, bidding credits will be available to small businesses or consortia thereof, as follows:

- A bidder with attributed average annual gross revenues of not more than $15 million for the preceding three years ("small business") will receive a 25 percent discount on its winning bids;
- A bidder with attributed average annual gross revenues of not more than $3 million for the preceding three years ("very small business") will receive a 35 percent discount on its winning bids.

51. Small business bidding credits are not cumulative; a qualifying applicant receives the 25 percent or 35 percent bidding credit on its winning bid, but only one credit per license.

52. To encourage the growth of wireless services in federally recognized tribal lands the Commission has implemented a tribal land bidding credit. *See* Section V.E. of the *Auction Number 57 Procedures Public Notice.*

53. *Attribution for small business and very small business eligibility.* In determining which entities qualify as small businesses or very small businesses, the Commission will consider the gross revenues of the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests. The Commission does not impose specific equity requirements on controlling interest holders. Once the principals or entities with a controlling interest are determined, only the revenues of those principals or entities, the affiliates of those principals or entities, and the applicant and its affiliates, will be counted in determining small business eligibility.

54. Each consortium member of a small business or very small business must disclose its gross revenues along with those of its affiliates, its controlling interests, and the affiliates of its controlling interests.

ii. Supporting Documentation

55. Applicants should note that they will be required to file supporting documentation to their FCC Form 175 short-form applications to establish that they satisfy the eligibility requirements to qualify as small business or very small business (or consortia of small businesses or very small businesses) for this auction.

56. Applicants should further note that submission of an FCC Form 175 application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, has read the form's instructions and certifications, and that the contents of the application and its attachments are true and correct. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

57. *Small business or very small business eligibility (Exhibit C).* Entities applying to bid as small businesses or very small businesses (or consortia of small businesses or very small businesses) will be required to disclose on Exhibit C to their FCC Form 175 short-form applications, *separately and in the aggregate,* the gross revenues for the preceding three years of each of the following: (i) The applicant, (ii) its affiliates, (iii) its controlling interests, and (iv) the affiliates of its controlling interests. Certification that the average annual gross revenues for the preceding three years do not exceed the applicable limit is not sufficient. A statement of the total gross revenues for the preceding three years is also insufficient. The applicant must provide separately for itself, its affiliates, its controlling interests, and the affiliates of its controlling interests, a schedule of gross revenues for *each* of the preceding three years, as well as a statement of total average gross revenues for the three-year period. If the applicant is applying as a consortium of small businesses or very small businesses, this information must be provided for each consortium member.

D. Provisions Regarding Defaulters and Former Defaulters (FCC Form 175 Exhibit D)

58. Each applicant must certify on its FCC Form 175 application under penalty of perjury that the applicant, its controlling interests, its affiliates, and the affiliates of its controlling interests, as defined by § 1.2110, are not in default on any payment for Commission licenses (including down payments) and not delinquent on any non-tax debt owed to any Federal agency. In addition, each applicant must attach to its FCC Form 175 application a statement made under penalty of perjury indicating whether or not the applicant, its affiliates, its controlling interests, or the affiliates of its controlling interests, as defined by § 1.2110, have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency. Applicants must include this statement as Exhibit D of the FCC Form 175.

59. "Former defaulters"—*i.e.*, applicants, including their attributable interest holders, that in the past have defaulted on any Commission licenses or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies—are eligible to bid in Auction No. 57, provided that they are otherwise qualified. However, as discussed *infra* in section III.D.iii, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts.

E. Installment Payments

60. Installment payment plans will not be available in Auction No. 57.

F. Other Information (FCC Form 175 Exhibits E and F)

61. Applicants owned by minorities or women, as defined in 47 CFR 1.2110(c)(2), may attach an exhibit (Exhibit E) regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of "designated entities" in its auctions. Applicants wishing to submit additional information may do so on Exhibit F.

G. Minor Modifications to Short-Form Applications (FCC Form 175)

62. After the short-form filing deadline (6:00 p.m. ET July 19, 2004), applicants may make only minor changes to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their license selections, change the certifying official, change control of the applicant, or change bidding credits). *See* 47 CFR 1.2105. Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of exhibits. Applicants should make these modifications to their FCC Form 175 electronically and submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, at the following address: *auction57@fcc.gov*. The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 57. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

63. A separate copy of the letter should be faxed to the attention of Kathryn Garland at (717) 338–2850.

H. Maintaining Current Information in Short-Form Applications (FCC Form 175)

64. Section 1.65 of the Commission's rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Amendments reporting substantial changes of possible decisional significance in information contained in FCC Form 175 applications, as defined by 47 CFR 1.2105(b)(2), will not be accepted and may in some instances result in the dismissal of the FCC Form 175 application.

III. Pre-Auction Procedures

A. Auction Seminar

65. On Thursday, July 1, 2004, the FCC will sponsor a seminar for Auction No. 57 at the Federal Communications Commission, located at 445 12th Street, SW., Washington, DC. The seminar will provide attendees with information about pre-auction procedures, auction conduct, the FCC Automated Auction System, auction rules, and the AMTS service rules.

B. Short-Form Application (FCC Form 175)—Due July 19, 2004

66. In order to be eligible to bid in this auction, applicants must first submit an FCC Form 175 application. This application must be submitted electronically and received at the Commission no later than 6:00 p.m. ET on July 19, 2004. Late applications will not be accepted.

iii. Electronic Filing

67. Applicants must file their FCC Form 175 applications electronically. Applications may generally be filed at any time beginning at noon ET on July 1, 2004, until 6:00 p.m. ET on July 19, 2004. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline on July 19, 2004.

68. Applicants must press the "SUBMIT Application" button on the "Submission" page of the electronic form to successfully submit their FCC Form 175s. Any form that is not submitted will not be reviewed by the FCC. Information about accessing the FCC Form 175 is included in Attachment C of the *Auction No. 57 Procedures Public Notice*. Technical support is available at (202) 414–1250 (voice) or (202) 414–1255 (text telephone (TTY)); hours of service are Monday through Friday, from 8 a.m. to 6 p.m. ET. However, because the Initial application filing window for Auction 57 closes on Monday, July 19, the FCC will provide Technical Support on Saturday, July 17, and Sunday, July 18, from 9 a.m. to 5 p.m. ET. In order to provide better service to the public, *all calls to the hotline are recorded.*

iv. Completion of the FCC Form 175

69. Applicants should carefully review 47 CFR 1.2105, and must complete all items on the FCC Form 175. Instructions for completing the FCC Form 175 are in Attachment D of the *Auction No. 57 Procedures Public Notice*. Applicants are encouraged to begin preparing the required attachments for FCC Form 175 prior to submitting the form.

v. Electronic Review of FCC Form 175

70. The FCC Form 175 electronic review system may be used to locate and print applicants' FCC Form 175 information. There is no fee for accessing this system. *See* Attachment C of the *Auction No. 57 Procedures Public Notice* for details on accessing the review system.

71. Applicants may also view other applicants' completed FCC Form 175s after the filing deadline has passed and the FCC has issued a public notice explaining the status of the applications.

Note: Applicants should not include sensitive information (*i.e.*, TIN/EIN) on any exhibits to their FCC Form 175 applications.

C. Application Processing and Minor Corrections

72. After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (i) Those applications accepted for filing; (ii) those applications rejected; and (iii) those applications which have minor defects that may be corrected, and the deadline for filing such corrected applications.

D. Upfront Payments—Due August 20, 2004

73. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159 that can be printed and faxed to Mellon Bank in Pittsburgh, PA. All upfront payments must be received at Mellon Bank by 6 p.m. ET on August 20, 2004. Failure to deliver the upfront payment by the August 20, 2004, deadline will result in dismissal of the application and disqualification from participation in the auction. For specific details regarding upfront payments, *see* III.D. of the *Auction No. 57 Procedures Public Notice*.

i. Making Auction Payments By Wire Transfer

74. Wire transfer payments must be received by 6 p.m. ET on August 20, 2004. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they

plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline.

75. Applicants must fax a completed FCC Form 159 (Revised 2/03) to Mellon Bank at (412) 209–6045 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write "Wire Transfer—Auction Payment for Auction Event No. 57." In order to meet the Commission's upfront payment deadline, an applicant's payment must be credited to the Commission's account by the deadline. Applicants are responsible for obtaining confirmation from their financial institution that Mellon Bank has timely received their upfront payment and deposited it in the proper account.

ii. Amount of Upfront Payment

76. In the *Part 1 Order*, 62 FR 13540, March 21, 1997, the Commission delegated to the Bureau the authority and discretion to determine appropriate upfront payment(s) for each auction. In addition, in the *Part 1 Fifth Report and Order*, 65 FR 52323, August 29, 2000, the Commission ordered that "former defaulters," *i.e.*, applicants that have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency, be required to pay upfront payments 50 percent greater than non-"former defaulters." For purposes of this calculation, the "applicant" includes the applicant itself, its affiliates, its controlling interests, and affiliates of its controlling interests, as defined by § 1.2110 of the Commission's rules.

77. The amount of the upfront payment will determine the number of bidding units on which a bidder may place bids. In order to bid on a license, otherwise qualified bidders that applied for that license on Form 175 must have an eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the licenses applied for on Form 175, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all licenses for which the applicant has applied on Form 175, but rather to cover the maximum number of bidding units that are associated with licenses on which the bidder wishes to place bids and hold high bids at any given time.

78. For Auction No. 57 the Commission adopts upfront payments on a license-by-license basis using the following formula: $0.005 * MHz * License Area Population with a minimum of $1,000 per license.

79. The specific upfront payments and bidding units for each license are set forth in Attachment A of the *Auction No. 57 Procedures Public Notice.*

80. In calculating its upfront payment amount, an applicant should determine the *maximum* number of bidding units on which it may wish to be active (bidding units associated with licenses on which the bidder has the standing high bid from the previous round and licenses on which the bidder places a bid in the current round) in any single round, and submit an upfront payment covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all licenses on which it seeks to bid in any given round. Applicants should check their calculations carefully, as there is no provision for increasing a bidder's maximum eligibility after the upfront payment deadline.

81. Former defaulters should calculate their upfront payment for all licenses by multiplying the number of bidding units they wish to purchase by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.

iii. Applicant's Wire Transfer Information for Purposes of Refunds of Upfront Payments

82. The Commission will use wire transfers for all Auction No. 57 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information be supplied to the FCC: Name of Bank; ABA Number; Contact and Phone Number; Account Number to Credit; Name of Account Holder; FCC Registration Number (FRN); Taxpayer Identification Number; Correspondent Bank (if applicable); Account Number. All refunds will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise.

E. Auction Registration

83. Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the licenses for which they applied.

84. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, one containing the confidential bidder identification number (BIN) and the other containing the SecurID cards, both of which are required to place bids. These mailings will be sent only to the contact person at the contact address listed in the FCC Form 175.

85. Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on Wednesday, September 8, 2004, should contact the Auctions Hotline at (717) 338–2888. Receipt of both registration mailings is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

86. Qualified bidders should note that lost bidder identification numbers or SecurID cards can be replaced only by appearing *in person* at the FCC headquarters, located at 445 12th St., SW, Washington, DC 20554. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacements. Qualified bidders requiring replacements must call technical support prior to arriving at the FCC.

F. Remote Electronic Bidding

87. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. As a contingency plan, bidders may also dial in to the FCC Wide Area Network. Qualified bidders are permitted to bid telephonically or electronically. Each applicant should indicate its bidding preference—electronic or telephonic—on the FCC Form 175. In either case, each authorized bidder must have its own SecurID card, which the FCC will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID cards, while applicants with two or three authorized bidders will be issued three cards. For security purposes, the SecurID cards and the FCC Automated Auction System user manual are only mailed to the contact person at the contact address listed on the FCC Form 175. Please note that each SecurID card is tailored to a specific auction; therefore, SecurID cards issued for other auctions or

obtained from a source other than the FCC will not work for Auction No. 57. The telephonic bidding phone number will be supplied in the first overnight mailing, which also includes the confidential bidder identification number.

G. Mock Auction

88. All qualified bidders will be eligible to participate in a mock auction on Friday, September 10, 2004. The mock auction will enable applicants to become familiar with the FCC Automated Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

IV. Auction Event

89. The first round of bidding for Auction No. 57 will begin on Wednesday, September 15, 2004. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

H. Auction Structure

i. Simultaneous Multiple Round Auction

90. We conclude that it is operationally feasible and appropriate to auction the AMTS licenses through a simultaneous multiple round auction. Unless otherwise announced, bids will be accepted on all licenses in each round of the auction. This approach, we believe, allows bidders to take advantage of synergies that exist among licenses and is administratively efficient.

ii. Maximum Eligibility and Activity Rules

91. We propose that the amount of the upfront payment submitted by a bidder will determine the initial (maximum) eligibility (as measured in bidding units) for each bidder.

92. Note that each license is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A of the *Auction No. 57 Procedures Public Notice* on a bidding unit per dollar basis. The total upfront payment defines the maximum number of bidding units on which the applicant will be permitted to bid and hold high bids in a round. As there is no provision for increasing a bidder's eligibility after the upfront payment deadline, applicants are cautioned to calculate their upfront payments carefully. The total upfront payment does not affect the total dollar amount a bidder may bid on any given license.

93. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction.

94. A bidder's activity level in a round is the sum of the bidding units associated with licenses on which the bidder is active. A bidder is considered active on a license in the current round if it is either the high bidder at the end of the previous bidding round and does not withdraw the high bid in the current round, or if it submits a bid in the current round (*see* "Minimum Acceptable Bids and Bid Increments" in section IV.B.iii). The minimum required activity is expressed as a percentage of the bidder's current bidding eligibility, and increases by stage as the auction progresses. Because these procedures have proven successful in maintaining the pace of previous auctions (as set forth under "Auction Stages" in Section IV.A.iii and "Stage Transitions" in Section IV.A.iv), we adopt them for Auction No. 57.

iii. Auction Stages

95. The Commission will conduct the auction in two stages and employ an activity rule. Listed are the activity levels for each stage of the auction. The FCC reserves the discretion to further alter the activity percentages before and/or during the auction.

Stage One: During the first stage of the auction, a bidder desiring to maintain its current eligibility will be required to be active on licenses encompassing at least 80 percent of its current bidding eligibility in each bidding round. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the bidder's current activity (the sum of bidding units of the bidder's standing high bids and bids during the current round) by five-fourths (5/4).

Stage Two: During the second stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on 95 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage Two, reduced eligibility for the next round will be calculated by multiplying the bidder's current activity (the sum of bidding units of the bidder's standing high bids and bids during the current round) by twenty-nineteenths (20/19).

Caution: Since activity requirements increase in each auction stage, bidders must carefully check their current activity during the bidding period of the first round following a stage transition. This is especially critical for bidders that have standing high bids and do not plan to submit new bids. In past auctions, some bidders have inadvertently lost bidding eligibility or used an activity rule waiver because they did not re-verify their activity status at stage transitions. Bidders may check their activity against the required activity level by using the bidding system's bidding module.

96. Because the foregoing procedures have proven successful in maintaining proper pace in previous auctions, we adopt them for Auction No. 57.

iv. Stage Transitions

97. The auction would generally advance to the next stage (*i.e.*, from Stage One to Stage Two) when the auction activity level, as measured by the percentage of bidding units receiving new high bids, is below 20 percent for three consecutive rounds of bidding in each Stage. The Bureau will retain the discretion to change stages unilaterally by announcement during the auction.

98. Thus, the Bureau will retain the discretion to regulate the pace of the auction by announcement. This determination will be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. We believe that these stage transition rules are appropriate for use in Auction No. 57.

v. Activity Rule Waivers and Reducing Eligibility

99. Each bidder will be provided three activity rule waivers that may be used in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required level. An activity rule waiver applies to an entire round of bidding and not to a particular license.

100. The FCC Automated Auction System assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any round where a bidder's activity level is below the minimum required unless: (i) there are no activity rule waivers available; or (ii) the bidder overrides the automatic application of a waiver by reducing

eligibility, thereby meeting the minimum requirements. If a bidder has no waivers remaining and does not satisfy the required activity level, the current eligibility will be permanently reduced, possibly eliminating the bidder from further bidding in the auction.

101. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the round by using the reduce eligibility function in the bidding system. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described in "Auction Stages" (*see* Section IV.A.iii discussion). Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

102. Finally, a bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the FCC Automated Auction System) during a round in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. However, an automatic waiver triggered during a round in which there are no new bids or withdrawals will not keep the auction open.

Note: Once a proactive waiver is submitted during a round, that waiver cannot be unsubmitted.

vi. Auction Stopping Rules

103. For Auction No. 57, the Commission will employ a simultaneous stopping rule, and retain discretion to invoke a modified version of the stopping rule. The modified version of the stopping rule would close the auction for all licenses after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any license on which it is not the standing high bidder.

104. In addition, the Bureau may reserve the right to declare that the auction will end after a designated number of additional rounds ("special stopping rule"). If the Bureau invokes this special stopping rule, it will accept bids in the final round(s) only for licenses on which the high bid increased in at least one of the preceding specified number of rounds. The Bureau may exercise this option only in circumstances such as where the auction is proceeding very slowly, where there is minimal overall bidding activity or where it appears likely that the auction will not close within a reasonable period of time.

vii. Auction Delay, Suspension, or Cancellation

105. By public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. Exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

I. Bidding Procedures

i. Round Structure

106. The initial schedule of bidding rounds will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. Each bidding round is followed by the release of round results. Multiple bidding rounds may be conducted in a given day. Details regarding round results formats and locations will also be included in the qualified bidders public notice.

107. The FCC has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureau may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

ii. Reserve Price or Minimum Opening Bid

108. For Auction No. 57, the Bureau adopts the following license-by license formula for calculating minimum opening bids: $0.0075 * MHz * License Area Population with a minimum of $1,000 per license.

109. The Bureau sought comment on whether, consistent with the Balanced Budget Act, the public interest would be served by having no minimum opening bid or reserve price.

110. Two parties submitted comments with respect to minimum opening bids. In his comments, Havens recommends a 50% reduction of minimum opening bids. Moreover, Havens recommends that population incumbency factors be used in the minimum opening bid formula on a license-by-license basis. In reply comments, Mobex also asserts that minimum opening bid levels are too high based on high incumbency levels. Mobex also compares results from the Multichannel Video Distribution and Data Service auction (Auction No. 53) and minimum opening bids for the 24 GHz Service auction (Auction No. 56) as comparative rationale for lowering the minimum opening bids for this auction.

111. The Commission is not persuaded by the argument that adjacent spectrum values are necessarily an indicator of appropriate minimum opening bid levels for licenses with different service rules and geographical licensing schemes. Additionally, we reject the application of a license-by-license incumbency factoring of minimum opening bids. Nevertheless, upon re-examination of the proposed minimum opening bid formula, we exercise our discretion to modify it as follows: $0.005 * MHz * License Area Population with a minimum of $1,000 per license.
The revised formula cuts by one-third the initial proposal for minimum opening bids.

112. The minimum opening bids we adopt for Auction No. 57 are reducible at the discretion of the Bureau. We emphasize, however, that such discretion will be exercised, if at all, sparingly and early in the auction, *i.e.*, before bidders lose all waivers and begin to lose substantial eligibility. During the course of the auction, the Bureau will not entertain requests to reduce the minimum opening bid on specific licenses.

113. The specific minimum opening bids for each license available in Auction No. 57 are set forth in Attachment A of the *Auction No. 57 Procedures Public Notice.*

iii. Minimum Acceptable Bids and Bid Increments

114. In the *Auction No. 57 Comment Public Notice*, we will use a smoothing methodology to calculate minimum acceptable bids. The smoothing methodology is designed to vary the increment for a given license between a maximum and minimum percentage based on the bidding activity on that license. This methodology allows the increments to be tailored to the activity on a license, decreasing the time it takes for licenses receiving many bids to

reach their final prices. The formula used to calculate this increment is included as Attachment F of the *Auction No. 57 Procedures Public Notice*. We will initially set the weighting factor at 0.5, the minimum percentage increment at 0.1 (10%), and the maximum percentage increment at 0.2 (20%). Hence, at these initial settings, the percentage increment will fluctuate between 10% and 20% depending upon the number of bids for the license. The Bureau will retain the discretion to change the minimum acceptable bids and bid increments if circumstances so dictate.

115. In each round, each eligible bidder will be able to place a bid on a particular license for which it applied in any of nine different amounts. The FCC Automated Auction System will list the nine bid amounts for each license.

116. Once there is a standing high bid on a license, the FCC Automated Auction System will calculate a minimum acceptable bid for that license for the following round, as described in Attachment F of the *Auction No. 57 Procedures Public Notice*. The difference between the minimum acceptable bid and the standing high bid for each license will define the bid increment—*i.e.*, bid increment = (minimum acceptable bid)—(standing high bid). The nine acceptable bid amounts for each license consist of the minimum acceptable bid (the standing high bid plus one bid increment) and additional amounts calculated using multiple bid increments (*i.e.*, the second bid amount equals the standing high bid plus two times the bid increment, the third bid amount equals the standing high bid plus three times the bid increment, etc.).

117. At the start of the auction and until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. Corresponding additional bid amounts will be calculated using bid increments defined as the difference between the minimum opening bid times one plus the percentage increment, rounded as described in Attachment F of the *Auction No. 57 Procedures Public Notice*, and the minimum opening bid—*i.e.*, bid increment = (minimum opening bid) (1 + percentage increment) {rounded}—(minimum opening bid). At the start of the auction and until a bid has been placed on a license, the nine acceptable bid amounts for each license consist of the minimum opening bid and additional amounts calculated using multiple bid increments (*i.e.*, the second bid amount equals the minimum opening bid plus the bid increment, the third bid amount equals the minimum opening bid plus two times the bid increment, etc).

118. In the case of a license for which the standing high bid has been withdrawn, the minimum acceptable bid will equal the second highest bid received for the license. The additional bid amounts are calculated using the difference between the second highest bid times one plus the minimum percentage increment, rounded, and the second highest bid.

119. The Bureau retains the discretion to change the minimum acceptable bids and bid increments and the methodology for determining the minimum acceptable bids and bid increments if it determines that circumstances so dictate. The Bureau will do so by announcement in the FCC Automated Auction System. The Bureau may also use its discretion to adjust the minimum bid increment without prior notice if circumstances warrant.

iv. High Bids

120. At the end of each bidding round, the high bids will be determined based on the highest gross bid amount received for each license. A high bid from a previous round is sometimes referred to as a "standing high bid." A "standing high bid" will remain the high bid until there is a higher bid on the same license at the close of a subsequent round. Bidders are reminded that standing high bids are counted as activity for purposes of the activity rule.

121. In the event of identical high bids on a license in a given round (*i.e.*, tied bids). A Sybase® SQL pseudo-random number generator will be used to assign a random number to each bid. The remaining bidders, as well as the high bidder, will be able to submit a higher bid in a subsequent round. If no bidder submits a higher bid in a subsequent round, the high bid from the previous round will win the license. If any bids are received on the license in a subsequent round, the high bid will once again be determined on the highest gross bid amount received for the license.

v. Bidding

122. During a round, a bidder may submit bids for as many licenses as it wishes (subject to its eligibility), withdraw high bids from previous bidding rounds, remove bids placed in the same bidding round, or permanently reduce eligibility. Bidders also have the option of making multiple submissions and withdrawals in each round. If a bidder submits multiple bids for a single license in the same round, the system takes the last bid entered as that bidder's bid for the round. Bidders should note that the bidding units associated with licenses for which the bidder has removed or withdrawn its bid do not count towards the bidder's activity at the close of the round.

123. Please note that all bidding will take place remotely either through the FCC Automated Auction System or by telephonic bidding. (Telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. Normally, five to ten minutes are necessary to complete a bid submission).

124. A bidder's ability to bid on specific licenses in the first round of the auction is determined by two factors: (i) the licenses applied for on FCC Form 175 and (ii) the upfront payment amount deposited. The bid submission screens will allow bidders to submit bids on only those licenses for which the bidder applied on its FCC Form 175.

125. In order to access the bidding function of the FCC Automated Auction System, bidders must be logged in during the bidding round using the bidder identification number provided in the registration materials, and the password generated by the SecurID card. Bidders are strongly encouraged to print bid confirmations for each round after they have completed all of their activity for that round.

126. In each round, eligible bidders will be able to place bids on a given license in any of nine different amounts. For each license, the FCC Automated Auction System interface will list the nine acceptable bid amounts in a drop-down box. Bidders may use the drop-down box to select from among the nine bid amounts. The FCC Automated Auction System also includes an import function that allows bidders to upload text files containing bid information and a Type Bids function that allows bidders to enter specific licenses for filtering.

127. Finally, bidders are cautioned to select their bid amounts carefully because, as explained in the following section, bidders that withdraw a standing high bid from a previous round, even if the bid was mistakenly or erroneously made, are subject to bid withdrawal payments.

vi. Bid Removal and Bid Withdrawal

128. For Auction No. 57 the Commission adopts bid removal and bid withdrawal procedures. With respect to bid withdrawals, the Commission will limit each bidder to withdrawals in no more than two rounds during the course

of the auction. The rounds in which withdrawals are used will be at the bidder's discretion.

129. Procedures. Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the "remove bid" function in the bidding system, a bidder may effectively "unsubmit" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed, i.e., a bid that is removed does not count toward bidding activity. These procedures will enhance bidder flexibility during the auction.

130. Once a round closes, a bidder may no longer remove a bid. However, in later rounds, a bidder may withdraw standing high bids from previous rounds using the withdraw bid function in the FCC Automated Auction System (assuming that the bidder has not reached its withdrawal limit). A high bidder that withdraws its standing high bid from a previous round during the auction is subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). Note: Once a withdrawal is submitted during a round, that withdrawal cannot be unsubmitted.

131. The Bureau will limit the number of rounds in which bidders may place withdrawals to two rounds. These rounds will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in either of these rounds. Withdrawals during the auction will be subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). Bidders should note that abuse of the Commission's bid withdrawal procedures could result in the denial of the ability to bid on a market.

132. Calculation. Generally, the Commission imposes payments on bidders that withdraw high bids during the course of an auction. If a bidder withdraws its bid and there is no higher bid in the same or subsequent auction(s), the bidder that withdrew its bid is responsible for the difference between its withdrawn bid and the high bid in the same or subsequent auction(s). In the case of multiple bid withdrawals on a single license, within the same or subsequent auctions(s), the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any of the intervening subsequent withdrawn bids, in either the same or subsequent auctions(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any withdrawal payments if there is a subsequent higher bid in the same or subsequent auction(s).

133. In instances in which bids have been withdrawn on a license that is not won in the same auction, the Commission will assess an interim withdrawal payment equal to 3 percent of the amount of the withdrawn bids. The 3 percent interim payment will be applied toward any final bid withdrawal payment that will be assessed after subsequent auction of the license. The Part 1 Fifth Report and Order provides specific examples showing application of the bid withdrawal payment rule.

vii. Round Result

134. Bids placed during a round will not be made public until the conclusion of that bidding period. After a round closes, the Bureau will compile reports of all bids placed, bids withdrawn, current high bids, new minimum acceptable bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders' identities for Auction No. 57 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

viii. Auction Announcements

135. The FCC will use auction announcements to announce items such as schedule changes and stage transitions. All FCC auction announcements will be available by clicking a link on the FCC Automated Auction System.

V. Post-Auction Procedures

A. Down Payments and Withdrawn Bid Payments

136. After bidding has ended, the Commission will issue a public notice declaring the auction closed and identifying winning bidders, down payments, final payments, and any withdrawn bid payments due.

137. Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction No. 57 to 20 percent of the net amount of its winning bids (gross bids less any applicable small business or very small business bidding credits). In addition, by the same deadline, all bidders must pay any bid withdrawal payments due under 47 CFR 1.2104(g), as discussed in "Bid Removal and Bid Withdrawal," Section IV.B.vi. (Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.)

B. Final Payments

138. Each winning bidder will be required to submit the balance of the net amount of its winning bids within 10 business days after the deadline for submitting down payments.

C. Long-Form Application (FCC Form 601)

139. Within ten business days after release of the auction closing notice, winning bidders must electronically submit a properly completed long-form application (FCC Form 601) and required exhibits for each license won through Auction No. 57. Further filing instructions will be provided to auction winners at the close of the auction.

D. Default and Disqualification

140. Any high bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). In such event the Commission may re-auction the license or offer it to the next highest bidder (in descending order) at its final bid. In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant.

E. Refund of Remaining Upfront Payment Balance

141. All applicants that submit upfront payments but are not winning bidders for a license in Auction No. 57 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from the applicant after any applicable bid withdrawal payments have been paid. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise.

142. Bidders that drop out of the auction completely may be eligible for

a refund of their upfront payments before the close of the auction. Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a high bid during the auction must submit a written refund request. If you have completed the refund instructions electronically, then only a written request for the refund is necessary. If not, the request must also include wire transfer instructions, Taxpayer Identification Number (TIN) and FCC Registration Number (FRN). Send refund request to: Federal Communications Commission, Financial Operations Center, Auctions Accounting Group, Gail Glasser, 445 12th Street, SW., Room 1–C864, Washington, DC 20554.

143. Bidders are encouraged to file their refund information electronically using the refund information portion of the FCC Form 175, but bidders can also fax their information to the Auctions Accounting Group at (202) 418–2843. Once the information has been approved, a refund will be sent to the party identified in the refund information.

Note: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Gail Glasser at (202) 418–0578.

Federal Communications Commission.

Gary Michaels,

Deputy Chief, Auction and Spectrum Access Division, WTB.

[FR Doc. 04–14478 Filed 6–24–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Acting Federal Reserve Clearance Officer – Michelle Long, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

OMB Desk Officer – Mark Menchik, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Final approval under OMB delegated authority of the extension for three years, without revision, of the following reports:

1. *Report title:* Notice of Proposed Stock Redemption

Agency form number: FR 4008

OMB Control number: 7100–0131

Frequency: On occasion

Reporters: Bank holding companies

Annual reporting hours: 171 hours

Estimated average hours per response: 15.5 hours

Number of respondents: 11

General description of report: This information collection is mandatory (12 U.S.C. § 1844(c)) and is generally not given confidential treatment.

Abstract: The Federal Reserve requires certain bank holding companies (BHCs), based on an amount of redemptions over a defined period, to give written notice to the appropriate Reserve Bank before purchasing or redeeming their equity securities. There is no formal reporting form. The Federal Reserve uses the information to fulfill its statutory obligation to supervise BHCs.

2. *Report title:* Filings Related to the Gramm–Leach–Bliley Act

Agency form number: FR 4010, FR 4011, FR 4012, FR 4017, FR 4019

OMB Control number: 7100–0292

Frequency: On occasion

Reporters: Bank holding companies, including financial holding companies foreign banking organizations, and state member banks

Annual reporting hours: 3,142 hours

Estimated average hours per response: FR 4010: BHC 3 hours, FBOs 3.5 hours; FR 4011: Activities financial in nature, or incidental or complementary to financial activities 10 hours, Advisory opinions 10 hours; FR 4012: BHCs decertified as FHCs 1 hour, FHCs back into compliance 10 hours; FR 4017: SMBs 4 hours; FR 4019: Regulatory relief requests 1 hour, Portfolio company notification 1 hour; Recordkeeping: 50 hours

Number of respondents: FR 4010: BHC 58, FBOs 5; FR 4011: Activities financial in nature, or incidental or complementary to financial activities 2, Advisory opinions 2; FR 4012: BHCs decertified as FHCs 13, FHCs back into compliance 27; FR 4017: SMBs 5; FR 4019: Regulatory relief requests 5, Portfolio company notification 5; Recordkeeping: 52

General description of report: These collections of information are required to obtain a benefit and are authorized under:

FR 4010: Section 4(l)(1)(C) of the BHC Act (12 U.S.C. § 1843(1)(l)(C)), section 8(a) of the International Banking Act (12 U.S.C. § 3106(a)), and sections 225.82 and 225.91 of Regulation Y (12 C.F.R. 225.82 and 225.91);

FR 4011: Section 4(k) of the BHC Act (12 U.S.C. § 1843(k)) and sections 225.88(b) and (e) and 225.89 of Regulation Y (12 C.F.R. 225.88(b) and (e) and 225.89);

FR 4012: Section 4(m) of the BHC Act (12 U.S.C. § 1843(m)), section 8(a) of the International Banking Act (12 U.S.C. § 3106(a)), and sections 225.83 and 225.93 of Regulation Y (12 C.F.R. 225.83 and 225.93);

FR 4017: Section 9 of the Federal Reserve Act (12 U.S.C. § 335) and section 208.76 of Regulation H (12 C.F.R. 208.76);

FR 4019: Section 4(k)(7) of the BHC Act (12 U.S.C. § 1843(k)(7)) and sections 225.171(e)(3), 225.172(b)(4), and 225.173(c)(2) of Regulation Y (12 C.F.R. 225.171(e)(3), 225.172(b)(4), and 225.173(c)(2));

Recordkeeping: Section 4(k)(7) of the BHC Act (12 U.S.C. § 1843(k)(7)) and sections 225.171(e)(4) and 225.175 of Regulation Y (12 C.F.R. 225.171(e)(4) and 225.171).

A company may request confidentiality for the information contained in these information collections pursuant to section (b)(4) and (b)(6) of the Freedom of Information Act (5 U.S.C. 552 (b)(4) and (b)(6)).

Abstract: Each BHC or FBO seeking FHC status must file the FR 4010 declaration, which includes information needed to verify eligibility for FHC status. By filing the FR 4011 a requestor may ask the Board to determine that an activity is financial in nature, to issue an advisory opinion that an activity is within the scope of an activity previously determined to be financial in nature, or to approve engagement in an activity complementary to a financial activity. Any FHC ceasing to meet capital or managerial prerequisites for

FHC status must notify the Board, by filing the FR 4012 notice, of the deficiency, and often must submit plans to the Board to cure the deficiency. Any SMB seeking to establish a financial subsidiary must seek the Board's prior approval by submitting the FR 4017 requirements. Any FHC seeking to extend the 10–year holding period for a merchant banking investment must submit the FR 4019 requirements to apply for the Board's prior approval, and a FHC also must notify the Board if it routinely manages or operates a portfolio company for more than nine months. All FHCs engaging in merchant banking activities must keep records of those activities, and make them available to examiners. There are no formal reporting forms for these event–generated filings.

3. Report title: Notice Claiming Status as an Exempt Transfer Agent
Agency form number: FR 4013
OMB Control number: 7100–0137
Frequency: On occasion
Reporters: Banks, bank holding companies (BHCs), and certain trust companies
Annual reporting hours: 6 hours
Estimated average hours per response: 2 hours
Number of respondents: 3
General description of report: This information collection is voluntary (15 U.S.C. 78q–1(c)(1)) and the Federal Reserve is authorized to collect this data (15 U.S.C. 78c (a)(34)(B)(ii)). The data collected are not given confidential treatment.

Abstract: Banks, BHCs, and trust companies subject to the Federal Reserve's supervision that are low–volume transfer agents voluntarily file the notice on occasion with the Federal Reserve. Transfer agents are institutions that provide securities transfer, registration, monitoring, and other specified services on behalf of securities issuers. The purpose of the notice, which is effective until the agent withdraws it, is to claim exemption from certain rules and regulations of the Securities and Exchange Commission (SEC). The Federal Reserve uses the notices for supervisory purposes because the SEC has assigned to the Federal Reserve responsibility for collecting the notices and verifying their accuracy through examinations of the respondents. The notice is made by letter; there is no reporting form.

4. Report title: Notice of Branch Closure
Agency form number: 4031
OMB control number: 7100–0264
Frequency: On occasion
Reporters: State member banks
Annual reporting hours: 783
Estimated average hours per response: 2 hours for reporting requirements; 1 hour for disclosure requirements; 8 hours for recordkeeping requirements
Number of respondents: 239
General description of report: This information collection is mandatory (12 U.S.C. 1831r–l(a)(1)) and may be given confidential treatment upon request (5 U.S.C. 552(b)(4)).

Abstract: The mandatory reporting, recordkeeping, and disclosure requirements regarding the closing of any branch of an insured depository institution are imposed by section 228 of the Federal Deposit Insurance Corporation Improvement Act of 1991. There is no reporting form associated with the reporting portion of this information collection; state member banks notify the Federal Reserve by letter prior to closing a branch. The Federal Reserve uses the information to fulfill its statutory obligation to supervise state member banks.

5. Report title: Reports Related to Securities of State Member Banks as Required by Regulation H
Agency form number: Reg H–1
OMB Control number: 7100–0091
Frequency: Quarterly and on occasion
Reporters: State member banks
Annual reporting hours: 1,390 hours
Estimated average hours per response: 5.11 hours
Number of respondents: 16
General description of report: This information collection is mandatory (15 U.S.C. 781(i)) and is not given confidential treatment.

Abstract: The Federal Reserve's Regulation H requires certain state member banks to submit information relating to their securities to the Federal Reserve on the same forms that bank holding companies and nonbank entities use to submit similar information to the Securities and Exchange Commission. The information is primarily used for public disclosure and is available to the public upon request.

Final approval under OMB delegated authority of the extension for three years, with revision, of the following report:

1. Report title: Consolidated Report of Condition and Income for Edge and Agreement Corporations
Agency form number: FR 2886b
OMB control number: 7100–0086
Frequency: Quarterly
Reporters: Edge and agreement corporations
Annual reporting hours: 3,173 hours
Estimated average hours per response: 14.7 banking corporations, 8.5 investment corporations
Number of respondents: 21 banking corporations, 57 investment corporations
General description of report: This information collection is mandatory (12 U.S.C. §§ 602 and 625). For Edge corporations engaged in banking, information collected on schedules E and L are held confidential pursuant to Section (b)(4) of the Freedom of Information Act (5 U.S.C. § 552(b)(4)). For investment Edge corporations only information collected on Schedule E is given confidential treatment pursuant to Section (b)(4) of the Freedom of Information Act (5 U.S.C. § 552(b)(4)).

Abstract: This report collects a balance sheet, income statement, and ten supporting schedules, and it parallels the commercial bank Reports of Condition and Income (Call Report) (FFIEC 031; OMB No. 7100–0036). The Federal Reserve uses the data collected on the FR 2886b to supervise Edge corporations, identify present and potential problems, and monitor and develop a better understanding of activities within the industry.

Current action: The Federal Reserve has approved the proposed changes to the FR 2886b. The proposed revisions included aligning FR 2886b schedule titles, identifiers, and ordering of line items with the Call Report, effective with the September 30, 2004 report date. In addition, the Federal Reserve proposed to modify the FR 2886b report consistent with any applicable revisions to the Call Report, ultimately adopted by the FFIEC for implementation in March 2005.

Board of Governors of the Federal Reserve System, June 21, 2004.

Jennifer J. Johnson

Secretary of the Board.

[FR Doc. 04–14417 Filed 6–24–04; 8:45 am]
BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 19, 2004.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. SunTrust Banks, Inc., Atlanta, Georgia; to merge with National Commerce Financial Corporation, Memphis, Tennessee, and thereby indirectly acquire voting shares of National Bank of Commerce, Memphis, Tennessee.

In connection with this application, Applicant also has applied to acquire NBC Bank, FSB, Memphis, Tennessee, and thereby engage in operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

In connection with this application, Applicant also has applied to acquire First Market Bank, FSB, Memphis, Tennessee, and thereby engage in operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

In connection with this application, Applicant also has applied to acquire First Mercantile Trust Company, Memphis, Tennessee, and thereby engage in operating nonbank depository institutions and to engage in financial and investment advisory activities, pursuant to sections 225.28(b)(4)(i) and 225.28(b)(6)(i) of Regulation Y.

In connection with this application, Applicant also has applied to acquire FMT Capital Management, Inc., Memphis, Tennessee, and thereby engage in financial and investment advisory activities, pursuant to section 225.28(b)(6)(i) of Regulation Y.

In connection with this application, Applicant also has applied to acquire TransPlatinum Service Corp., Nashville, Tennessee, and thereby engage in data processing activities, pursuant to section 225.28(b)(14)(i) of Regulation Y.

In connection with this application, Applicant also has applied to acquire Commerce Capital Management, Inc., Memphis, Tennessee, and thereby engage in financial and investment advisory activities, pursuant to section 225.28(b)(6)(i) of Regulation Y.

In connection with this application, Applicant also has applied to acquire USI Alliance Corp., Memphis, Tennessee, and thereby engage in leasing personal or real property activities, and community development activities, pursuant to sections 225.28(b)(3) and 225.28(b)(12)(i) of Regulation Y.

In connection with this application, Applicant also has applied to acquire Senior Housing Crime Prevention Foundation Investment Corporation, Memphis, Tennessee, and thereby engage in community development activities, pursuant to section 225.28(b)(12)(i) of Regulation Y.

In connection with this application, Applicant also has applied to acquire Brooks, Montague & Associates, Inc., Chattanooga, Tennessee, and thereby engage in financial and investment advisory activities, pursuant to section 225.28(b)(6)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, June 21, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–14416 Filed 6–24–04; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–NEW]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

#1 Type of Information Collection Request: Existing collection in use without OMB Control Number;

Title of Information Collection: Federal wide Assurance (FWA)

Form/OMB No.: OS–0990–;

Use: The FWA is designed to provide a simplified procedure for institutions engaged in HHS-conducted or supported research to satisfy the assurance requirements of Section 491(a) of the Public Health Service Act and of HHS regulations for the protection of human subjects at 45 CFR 46.103. The respondents are institutions engaged in human subjects research conducted or supported by HHS.

Frequency: On occasion, Reporting;

Affected Public: Individuals or households, business or other for-profit, Not-for-profit institutions, Federal, State, local, or tribal governments;

Annual Number of Respondents 15,000;

Total Annual Responses: 30,000;

Average Burden Per Response: 2 hours;

Total Annual Hours: 22,500;

#2 Type of Information Collection Request: Existing collection in use without an OMB control number;

Title of Information Collection: Institutional Review Board/Independent Ethics Committee Registration Form

Form/OMB No.: OS–0990–NEW;

Use: The Institutional Review Board (IRB)/Independent Ethics committee (IEC) Registration Forms designed to provide a simplified procedure for institutions engaged in HHS-conducted or supported research to satisfy the assurance requirements of Section 491(a) of the Public Health Service Act and of HHS regulations for the protection of human subjects at 45 CFR 46.103. The respondents are IRBs or IECs designed by an Institution under an assurance of compliance approved for federal wide use by the Office for Human Research Protections (OHRP), under HHS protection of human subjects regulations at 45 CFR 46.103(a), and that review human subjects research conducted or supported by HHS.

Frequency: On occasion, Reporting;

Affected Public: Individuals or households, business or other for-profit, Not-for-profit institutions, Federal, State, local, or tribal governments;

Annual Number of Respondents: 5,000;

Total Annual Responses: 5,000;

Average Burden Per Response: 2 hours;

Total Annual Hours: 3,500;

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Naomi.Cook@hhs.gov*. or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer at the address below:

OMB Desk Officer: John Kraemer. OMB Human Resources and Housing Branch, Attention: (OMB #0990–NEW), New Executive Office Building, Room 10235, Washington DC 20503.

Dated: June 17, 2004.

Robert Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 04–14476 Filed 6–24–04; 8:45 am]

BILLING CODE 4168–17–P

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:

Regina D. Horvat, Ph.D., Northwestern University: Based on the report of an inquiry conducted by Northwestern University (NU Report), the respondent's admission, and additional analysis conducted by ORI in its oversight review, the U.S. Public Health Service (PHS) found that Regina D. Horvat, Ph.D., former Postdoctoral Fellow, Department of Cell and Molecular Biology at NU, engaged in scientific misconduct in research supported in part by the following National Institute of Child Health and Human Development (NICHD), National Institutes of Health (NIH) grants: F32 HD041309, RO1 HD38060–01A1, and T32 HD007068.[1]

Specifically, PHS found that:

- Dr. Horvat falsified a western blot of an immunoprecipitation (IP) assay presented as Figure 5B in a manuscript ("Inhibition of Luteinizing Hormone Receptor Desensitization Suppresses the Induction of Ovulatory Response Genes in Granulosa Cells") submitted to Molecular Endocrinology. Dr. Horvat falsely labeled an autoradiogram in her laboratory notebook with a piece of tape to misrepresent the data from a different IP experiment that was actually conducted on October 31, 2001, as the experiment described in Figure 5B. Further, Dr. Horvat falsely used Figure 5B in an oral presentation at a national scientific meeting; and
- Dr. Horvat falsified the intensity of the band in Lane 6 of a luteinizing hormone receptor (LHR) Western blot experiment to quantitate the level of LHR immunoprecipitated with an arrestin2 antibody in cells treated with hCG for 30 minutes in the PowerPoint figure, prepared in response to the initial review of the Molecular Endocrinology manuscript. This manuscript was withdrawn.

Dr. Horvat has entered into a Voluntary Exclusion Agreement (Agreement) in which she has voluntarily agreed for a period of three (3) years, beginning on June 2, 2004:

(1) 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; and

(2) That any institution which submits an application for PHS support for a research project on which the Respondent's participation is proposed or which uses the Respondent in any capacity on PHS supported research, or that submits a report of PHS-funded research in which the Respondent is involved, must concurrently submit a plan for supervision of the Respondent's duties to the funding agency for approval. The supervisory plan must be designed to ensure the scientific integrity of the Respondent's research contribution. Respondent agrees to ensure that a copy of the supervisory plan is also submitted to ORI by the institution. Respondent agrees that she will not participate in any PHS-supported research until such a supervision plan is submitted to and accepted by ORI.

[1] The T32 award cited in the manuscript was T32 HD21021. A search of the CRISP database showed the correct grant number was T32 HD007068.

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. 04–14475 Filed 6–24–04; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Trauma Information and Exchange Program

Announcement Type: New.

Funding Opportunity Number: 04272.

Catalog of Federal Domestic Assistance Number: 93.136.

Application Deadline: July 26, 2004.

I. Funding Opportunity Description

Authority: This program is authorized under sections 301(a) and 317(k)(2) of the Public Health Act, [42 U.S.C. sections 241(a) and 247b(k)(2)] as amended.

Purpose: The purpose of the Trauma Information and Exchange Program (TIEP) is the continuation of its work fostering the exchange and use of information to improve trauma care. This program will make information on trauma care in the U.S. accessible to a broad spectrum of individuals and organizations, including trauma care professionals, trauma centers, other acute care hospitals, EMS systems, injury researcher, public health agencies, health care payers and the general public. This program addresses the "Healthy People 2010" focus area(s) of Injury and Violence Prevention.

Measurable outcomes of the program will be in alignment with one (or more) of the following performance goal(s) for the National Center for Injury Prevention and Control: Increase the capacity of injury prevention and control programs to address the prevention of injuries and violence.

Activities: Awardee activities for this program are as follows:

- Own, maintain and update an inventory of 3,000+ trauma center and trauma system resources in the United States, including the development of information and educational materials and resources.
- Develop tools to assess the availability of trauma care across the country, and measure access and use of trauma centers by special populations.
- Establish a network of trauma care providers and provide guidance,

information and resources to them in conducting research to evaluate the benefits of trauma centers and the optimal configuration of trauma care systems.

• Develop mechanisms to inform policy makers, the trauma community, and the general public about the status, contributions and needs of trauma care systems.

• Provide information to CDC and other agencies concerned with homeland security on medical preparedness for terrorism.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

• Provide technical advice and assistance in the development of systems to identify potential issues of interest. This includes assisting recipient to ascertain the extent to which trauma care centers and systems are involved in initiatives to improve preparedness and response capacities.

• Assist the recipient with identifying and sharing any innovations with interested parties both within and outside of CDC that may have potential application to this project.

• Provide ongoing consultation, and scientific and technical assistance and guidance in strategic planning and implementation of project elements.

• Work with the recipient to identify opportunities for collaboration between them and appropriate partners who address similar issues.

• Provide program and policy information for dissemination to award recipient.

II. Award Information

Type of Award: New Cooperative Agreement.

CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2004.

Approximate Total Funding: $491,219.

Approximate Number of Awards: One.

Approximate Average Award: $491,219 (This amount is for the first 12-month budget period, and includes both direct and indirect costs).

Floor of Award Range: None.

Ceiling of Award Range: $491,219.

Anticipated Award Date: September 29, 2004.

Budget Period Length: 12 months.

Project Period Length: Three years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private nonprofit and for profit organizations and by governments and their agencies, such as:

- Public nonprofit organizations
- Private nonprofit organizations
- For profit organizations
- Small, minority, women-owned businesses
- Universities
- Colleges
- Research institutions
- Hospitals
- Community-based organizations
- Faith-based organizations
- Federally recognized Indian tribal governments
- Indian tribes
- Indian tribal organizations
- State and local governments or their Bona Fide Agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau)
- Political subdivisions of States (in consultation with States)

A Bona Fide Agent is an agency/organization identified by the state as eligible to submit an application under the state eligibility in lieu of a state application. If you are applying as a bona fide agent of a state or local government, you must provide a letter from the state or local government as documentation of your status. Place this documentation behind the first page of your application form.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive, and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

Other Eligibility Requirements: If your application is incomplete or non-responsive to the requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity use application Form PHS 5161. Application forms and instructions are available on the CDC web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.* If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

Application: You must submit a project narrative with your application forms. The narrative must be submitted in the following format:

- Maximum number of pages: 20
- If your narrative exceeds the page limit, only the first pages, which are within the page limit, will be reviewed.
- Font size: 12 point unreduced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed only on one side of page

Held together only by rubber bands or metal clips; not bound in any other way.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

- Plan
- Methods
- Objectives
- Timeline
- Staff
- Need
- Performance Measures

Budget Justification [the budget justification will not be counted as part of the stated page limit.]

Guidance for completing your budget can be found on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

Additional information may be included in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information includes:

- Curriculum Vitas
- Resumes
- Organizational Charts
- Letters of Support

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.*

If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

IV.3. Submission Dates and Times

Application Deadline Date: July 26, 2004.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. eastern time on the deadline date.

If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

This announcement is the definitive guide on application submission address and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that your application did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

None

IV.6. Other Submission Requirements

Application Submission Address: Submit the original and two hard copies of your application by mail or express delivery service to: Technical Information Management—PA# 04272, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the "Purpose" section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Applications will be evaluated against the following criteria:

1. Background and Need (40 Percent)

Applicants should describe the background and need for a comprehensive trauma information program including; development, current challenges in organizing and delivering trauma care, challenges of developing and maintaining trauma systems. Additionally, applicants should: (a) Develop a plan to implement and evaluate their program; (b) provide a detailed plan for maintenance and updating of the information contained in the trauma center database; (c) develop a plan to exchange information and link resources of trauma centers; and (d) describe a plan for creating a uniform surveillance system.

2. Methods (30 Percent)

Applicants should provide a detailed description of all proposed activities required to implement a comprehensive trauma information and exchange program including letters of support, and collaboration needed to achieve each objective and the overall program goal(s). Applicants should provide a reasonable, logically sequenced and complete schedule for implementing all activities. Applicants should include position descriptions, lines of command, and collaborations that are appropriate to accomplishing the program goal(s) and objectives. Applicants should describe a plan for implementation and dissemination of available trauma information.

3. Evaluation (20 Percent)

The proposed evaluation plan should be detailed and capable of documenting program process and outcome measures. Applicants should demonstrate staff and/or collaborator availability, expertise, and capacity to perform the evaluation.

4. Staff and Resources (10 Percent)

Applicants should provide details regarding adequate facilities, staff and/or collaborators, including a full-time coordinator and resources to accomplish the proposed goal(s) and objectives during the project period. Applicants should demonstrate staff and/or collaborator availability, expertise, previous experience, and capacity to perform the undertaking successfully.

5. Budget and Justification (Not Scored)

Provide itemized budget and justification for the estimated costs of the contract; specify the period of performance, and method of selection. A detailed budget and narrative justification consistent with the stated objectives and planned program activities should be included. CDC may not approve or fund all proposed activities. The applicant should be precise about the program purpose of each budget item. Proposed contracts should identify the name of the contractor, if known; describe the services to be performed; provide an itemized budget and justification for the estimated costs of the contract; and specify the period of performance, and method of selection.

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff, and for responsiveness by the National Center for Injury Prevention and Control. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

An objective review panel is formed with a Chairperson, to provide process

guidance for a total of three reviewers primary, secondary, and tertiary for each application reviewed to evaluate complete and responsive applications according to the criteria listed in the "V.1. Criteria" section above. After review of the applications, rating scores will be compared, and the application with the highest rating score is selected to receive funding. There are no preferential factors involved.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–1 Human Subjects Requirements
- AR–9 Paperwork Reduction Act Requirements
- AR–10 Smoke-Free Workplace Requirements
- AR–11 Healthy People 2010
- AR–12 Lobbying Restrictions
- AR–25 Release and Sharing of Data

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting Requirements

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Budget.

e. Additional Requested Information.

f. Measures of Effectiveness.

2. Financial status report no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period. These reports must be mailed to the Grants Management or Contract Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

For general questions about this announcement, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, contact: Phyllis C. McGuire, Project Officer, Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, 4770 Buford Highway, NE Mailstop F–41, Atlanta, GA 30341–3724, Telephone: 770–488–1275, e-mail: *pcm1@cdc.gov.*

For financial, grants management, or budget assistance, contact: Angie Tuttle, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2719, e-mail: *AEN4@cdc.gov.*

Dated: June 21, 2004.

William P. Nichols, MPA,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–14469 Filed 6–24–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Publication of Closed Meeting Summary of the Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH)

Committee Purpose: This board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this Program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Background: The Advisory Board on Radiation and Worker Health met on June 3, 2004, in closed session to discuss the Proposed Independent Government Cost Estimate (IGCE) for the Board's Task Order contract and a submitted proposal of work. This contract, once awarded, will provide technical support to assist the Board in fulfilling its statutory duty to advise the Secretary, HHS, regarding the dose reconstruction efforts under the Energy Employees Occupational Illness Compensation Program Act. A Determination to Close the meeting was approved and published, as required by the Federal Advisory Committee Act.

Summary of the Meeting: Attendance was as follows:

Board Members:
Paul L. Ziemer, PhD, Chair;
Larry J. Elliott, Executive Secretary;
Antonio Andrade, PhD, Member;
Roy L. DeHart, M.D., M.P.H., Member;
Richard L. Espinosa, Member;
Michael H. Gibson, Member;
Mark A. Griffon, Member;
James M. Melius, M.D., Dr.P.H., Member;
Wanda I. Munn, Member;
Robert W. Presley, Member;
Genevieve S. Roessler, PhD, Member;

NIOSH Staff:
Cori Homer, Liz Homoki-Titus, and Jim Neton;
Ray S. Green, Court Recorder.

Summary/Minutes

Dr. Ziemer called to order the ABRWH in closed session on June 3, 2004, at 1:30 p.m. The purpose of the closed meeting was to discuss the Proposed IGCE for the Board's Task Order contract and a submitted proposal of work.

General topics discussed:

- Closed session procedures.
- IGCE for task proposals of the task order contract.

Dr. Paul Ziemer adjourned the closed session of the ABRWH meeting at 1:40 p.m. with no further business being conducted by the ABRWH.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Executive Secretary, ABRWH, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513/533–6825, fax 513/533–6826.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: June 17, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–14470 Filed 6–24–04; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10082 and CMS–10114]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* CMSO Survey of States: Performance Measurement Reporting Capability; *Form No.:* CMS–10082 (OMB# 0938–0898); *Use:* Because of the wide variability of Medicaid and SCHIP financing and service delivery approaches, there is little common ground from which to develop uniform reporting on performance measures by states. While CMS has decided on the first seven measures to be used, the ability of states to calculate those measures using HEDIS directly or HEDIS specifications (*e.g.*, when calculating measures from fee-for-service claims data) is highly variable. Current efforts are focused on assessing the capability of each state to report on the selected measures and on helping states to make necessary adjustments in order to be able to report measures uniformly so that state-to-state comparisons can be made. To accomplish this, states will be requested to report available numerator and denominator data for the seven core HEDIS measures via a survey instrument created for this purpose. The data will be requested for each state's Medicaid and SCHIP programs by delivery system; *Frequency:* Once; *Affected Public:* State, local, or tribal government; *Number of Respondents:* 51; *Total Annual Responses:* 51; *Total Annual Hours:* 2,360.

2. *Type of Information Collection Request:* New collection; *Title of Information Collection:* National Provider Identifier (NPI) Application and Update Form and Supporting Regulation in 45 CFR 142.408, 162.406, and 162.408; *Form No.:* CMS–10114 (OMB# 0938–NEW); *Use:* The form will be used by health care providers to apply for NPIs and to update the information collected from them whenever it changes.; *Frequency:* On occasion and/or one-time; *Affected Public:* Business or other for-profit, Not-for-profit institutions and Federal Government; *Number of Respondents:* 2,534,902; *Total Annual Responses:* 1,339,830; Total Annual Hours: 442,143.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://www.cms.hhs.gov/regulations/pra/*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Melissa Musotto, Room C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: June 18, 2004.

John P. Burke, III,

Paperwork Reduction Act Team Leader, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 04–14537 Filed 6–24–04; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–R–290 and CMS–R–308]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Program: Process for Making National Coverage Determinations; *Form No.:* CMS–R–290 (OMB# 0938–0776); *Use:* These information collection requirements provide the process CMS uses to make a national coverage decision for a specific item or service under sections 1862 and 1871 of the Social Security Act. This streamlines our decision making process and increases the opportunities for public participation in making national coverage decisions.; *Frequency:* Other: as needed; *Affected Public:* Business or other for-profit, Not-for-profit

institutions; *Number of Respondents:* 200; *Total Annual Responses:* 200; *Total Annual Hours:* 8,000.

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* The State Children's Health Insurance Program and Supporting Regulations in 42 CFR 431.636, 457.50, 457.60, 457.70,457.340, 457.350, 457.431, 457.440, 457.525, 457.560, 457.570, 457.740, 457.750, 457.810, 457.940, 457.945, 457.965, 457.985, 457.1005, 457.1015, and 457.1180; *Form No.:* CMS–R–308 (OMB# 0938–0841); *Use:* States are required to submit title XXI plans and amendments for approval by the Secretary pursuant to section 2102 of the Social Security Act in order to receive funds for initiating and expanding health insurance coverage for uninsured children. States are also required to submit State expenditure and statistical reports, annual reports and State evaluations to the Secretary as outlined in title XXI of the Social Security Act and furnish assorted notices to recipients; *Frequency:* Annually; *Affected Public:* State, Local, or Tribal Government; *Number of Respondents:* 426; *Total Annual Responses:* 12,629,586; *Total Annual Hours:* 864,973.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/regulations/pra/*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Christopher Martin, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: June 18, 2004.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances.

[FR Doc. 04–14538 Filed 6–24–04; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2189–CN]

RIN 0938–ZA46

Medicaid Program; Real Choice Systems Change Grants; Correction Notice

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice; correction.

SUMMARY: This document corrects technical errors that appeared in the notice published in the **Federal Register** on May 18, 2004 entitled "Medicaid Program; Real Choice Systems Change Grants."

DATES: *Effective Date:* May 18, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Guy, (410) 786–2772.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 04–11241 of May 18, 2004 (69 FR 28133), there were technical errors that are identified and corrected in the Correction of Errors section below. The provisions in this correction notice are effective as if they had been included in the document published May 18, 2004. Accordingly, the corrections are effective May 18, 2004.

II. Correction of Errors

In FR Doc. 04–11241 of May 18, 2004 (69 FR 28133), make the following corrections:

1. On page 28139, in column 2, "Application Deadline," of the table entitled, "Table of Real Choice Systems Change Grants—FY 2004," "OFR—Insert 60 days after the date of publication in the **Federal Register**" is removed, and "July 19, 2004" is added in its place wherever it appears.

2. On page 28140, in column 2, "Application Deadline," of the table entitled, "Table of Real Choice Systems Change Grants—FY 2004," "OFR—Insert 60 days after the date of publication in the **Federal Register**" is removed, and "July 19, 2004" is added in its place wherever it appears.

III. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a notice such as this take effect. We can waive this procedure, however, if we find good cause that a notice and comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporate a statement of the finding and its reasons in the notice issued.

We find it unnecessary to undertake notice and comment rulemaking because this notice merely provides technical corrections and does not make any substantive policy changes. Therefore, for good cause, we waive notice and comment procedures.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: June 16, 2004.

Mark B. McClellan.

Administrator, Centers for Medicare & Medicaid.

[FR Doc. 04–14053 Filed 6–24–04; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–9022–N]

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—January 2004 Through March 2004

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice lists CMS manual instructions, substantive and interpretive regulations, and other **Federal Register** notices that were published from January 2004 through March 2004, relating to the Medicare and Medicaid programs. This notice provides information on national coverage determinations affecting specific medical and health care services under Medicare. Additionally, this notice identifies certain devices with investigational device exemption (IDE) numbers approved by the Food and Drug Administration (FDA) that potentially may be covered under Medicare. Finally, this notice also includes listings of all approval numbers from the Office of Management and Budget for collections of information in CMS regulations.

Section 1871(c) of the Social Security Act requires that we publish a list of Medicare issuances in the **Federal Register** at least every 3 months. Although we are not mandated to do so by statute, for the sake of completeness of the listing, and to foster more open and transparent collaboration efforts, we are also including all Medicaid

issuances and Medicare and Medicaid substantive and interpretive regulations (proposed and final) published during this 3-month time frame.

FOR FURTHER INFORMATION CONTACT: It is possible that an interested party may have a specific information need and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing information contact persons to answer general questions concerning these items. Copies are not available through the contact persons. (See Section III of this notice for how to obtain listed material.)

Questions concerning items in Addendum III may be addressed to Karen Bowman, Office of Strategic Operations and Regulatory Affairs, Centers for Medicare & Medicaid Services, C5–16–03, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–5252.

Questions concerning Medicare National Coverage Determinations (NCDs) in Addendum V may be addressed to Patricia Brocato-Simons, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–0261.

Questions concerning FDA-approved Category B IDE numbers listed in Addendum VI may be addressed to Eileen Davidson, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, S3–26–10, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–6874.

Questions concerning approval numbers for collections of information in Addendum VII may be addressed to Dawn Willinghan, Office of Strategic Operations and Regulatory Affairs, Regulations Development and Issuances Group, Centers for Medicare & Medicaid Services, C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–6141.

Questions concerning all other information may be addressed to Gwendolyn Johnson, Office of Strategic Operations and Regulatory Affairs, Regulations Development Group, Centers for Medicare & Medicaid Services, C5–12–26, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–6954.

SUPPLEMENTARY INFORMATION:

I. Program Issuances

The Centers for Medicare & Medicaid Services (CMS) is responsible for administering the Medicare and Medicaid programs. These programs pay for health care and related services for 39 million Medicare beneficiaries and 35 million Medicaid recipients. Administration of the two programs involves (1) furnishing information to Medicare beneficiaries and Medicaid recipients, health care providers, and the public and (2) maintaining effective communications with regional offices, State governments, State Medicaid agencies, State survey agencies, various providers of health care, all Medicare contractors that process claims and pay bills, and others. To implement the various statutes on which the programs are based, we issue regulations under the authority granted to the Secretary of the Department of Health and Human Services under sections 1102, 1871, 1902, and related provisions of the Social Security Act (the Act). We also issue various manuals, memoranda, and statements necessary to administer the programs efficiently.

Section 1871(c)(1) of the Act requires that we publish a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations at least every 3 months in the **Federal Register**. We published our first notice June 9, 1988 (53 FR 21730). Although we are not mandated to do so by statute, for the sake of completeness of the listing of operational and policy statements, and to foster more open and transparent collaboration, we are continuing our practice of including Medicare substantive and interpretive regulations (proposed and final) published during the respective 3-month time frame.

II. How to Use the Addenda

This notice is organized so that a reader may review the subjects of manual issuances, memoranda, substantive and interpretive regulations, national coverage determinations (NCDs), and Food and Drug Administration (FDA)-approved investigational device exemptions (IDEs) published during the subject quarter to determine whether any are of particular interest. We expect this notice to be used in concert with previously published notices. Those unfamiliar with a description of our Medicare manuals may wish to review Table I of our first three notices (53 FR 21730, 53 FR 36891, and 53 FR 50577) published in 1988, and the notice published March 31, 1993 (58 FR 16837). Those desiring information on the Medicare National Coverage Determination Manual (NCDM, formerly the Medicare Coverage Issues Manual (CIM)) may wish to review the August 21, 1989, publication (54 FR 34555). Those interested in the revised process used in making NCDs under the Medicare program may review the September 26, 2003, publication (68 FR 55634).

To aid the reader, we have organized and divided this current listing into six addenda:

- Addendum I lists the publication dates of the most recent quarterly listings of program issuances.
- Addendum II identifies previous **Federal Register** documents that contain a description of all previously published CMS Medicare and Medicaid manuals and memoranda.
- Addendum III lists a unique CMS transmittal number for each instruction in our manuals or Program Memoranda and its subject matter. A transmittal may consist of a single or multiple instruction(s). Often, it is necessary to use information in a transmittal in conjunction with information currently in the manuals.
- Addendum IV lists all substantive and interpretive Medicare and Medicaid regulations and general notices published in the **Federal Register** during the quarter covered by this notice. For each item, we list the—

—Date published;
—**Federal Register** citation;
—Parts of the Code of Federal Regulations (CFR) that have changed (if applicable);
—Agency file code number; and
—Title of the regulation

- Addendum V includes completed NCDs, or reconsiderations of completed NCDs, from the quarter covered by this notice. Completed decisions are identified by the section of the NCDM in which the decision appears, the title, the date the publication was issued, and the effective date of the decision.
- Addendum VI includes listings of the FDA-approved IDE categorizations, using the IDE numbers the FDA assigns. The listings are organized according to the categories to which the device numbers are assigned (that is, Category A or Category B), and identified by the IDE number.
- Addendum VII includes listings of all approval numbers from the Office of Management and Budget (OMB) for collections of information in CMS regulations in title 42; title 45, subchapter C; and title 20 of the CFR.

III. How To Obtain Listed Material

A. Manuals

Those wishing to subscribe to program manuals should contact either the Government Printing Office (GPO) or the National Technical Information

Service (NTIS) at the following addresses:

Superintendent of Documents, Government Printing Office, ATTN: New Orders, P.O. Box 371954, Pittsburgh, PA 15250–7954, Telephone (202) 512–1800, Fax number (202) 512–2250 (for credit card orders); or

National Technical Information Service, Department of Commerce, 5825 Port Royal Road, Springfield, VA 22161, Telephone (703) 487–4630.

In addition, individual manual transmittals and Program Memoranda listed in this notice can be purchased from NTIS. Interested parties should identify the transmittal(s) they want. GPO or NTIS can give complete details on how to obtain the publications they sell. Additionally, most manuals are available at the following Internet address: *http://cms.hhs.gov/manuals/default.asp.*

B. Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. Interested individuals may purchase individual copies or subscribe to the **Federal Register** by contacting the GPO at the address given above. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

The **Federal Register** is also available on 24x microfiche and as an online database through *GPO Access*. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is *http://www.gpoaccess.gov/fr/index.html*, by using local WAIS client software, or by telnet to swais.gpoaccess.gov, then log in as guest (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then log in as guest (no password required).

C. Rulings

We publish rulings on an infrequent basis. Interested individuals can obtain copies from the nearest CMS Regional Office or review them at the nearest regional depository library. We have, on occasion, published rulings in the **Federal Register**. Rulings, beginning with those released in 1995, are available online, through the CMS Home Page. The Internet address is *http://cms.hhs.gov/rulings.*

D. CMS' Compact Disk-Read Only Memory (CD–ROM)

Our laws, regulations, and manuals are also available on CD–ROM and may be purchased from GPO or NTIS on a subscription or single copy basis. The Superintendent of Documents list ID is HCLRM, and the stock number is 717–139–00000–3. The following material is on the CD–ROM disk:

- Titles XI, XVIII, and XIX of the Act.
- CMS-related regulations.
- CMS manuals and monthly revisions.
- CMS program memoranda.

The titles of the Compilation of the Social Security Laws are current as of January 1, 1999. (Updated titles of the Social Security Laws are available on the Internet at *http://www.ssa.gov/OP_Home/ssact/comp-toc.htm.*) The remaining portions of CD–ROM are updated on a monthly basis.

Because of complaints about the unreadability of the Appendices (Interpretive Guidelines) in the State Operations Manual (SOM), as of March 1995, we deleted these appendices from CD–ROM. We intend to re-visit this issue in the near future and, with the aid of newer technology, we may again be able to include the appendices on CD–ROM.

Any cost report forms incorporated in the manuals are included on the CD–ROM disk as LOTUS files. LOTUS software is needed to view the reports once the files have been copied to a personal computer disk.

IV. How To Review Listed Material

Transmittals or Program Memoranda can be reviewed at a local Federal Depository Library (FDL). Under the FDL program, government publications are sent to approximately 1,400 designated libraries throughout the United States. Some FDLs may have arrangements to transfer material to a local library not designated as an FDL. Contact any library to locate the nearest FDL.

In addition, individuals may contact regional depository libraries that receive and retain at least one copy of most Federal Government publications, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library.

For each CMS publication listed in Addendum III, CMS publication and transmittal numbers are shown. To help FDLs locate the materials, use the CMS publication and transmittal numbers. For example, to find the Medicare Benefit Policy publication titled "Restoring Composite Rate Exceptions for Pediatric Facilities Under the End-Stage Renal Disease Composite Rate System," use CMS-Pub. 100–02, Transmittal No. 07.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance, Program No. 93.774, Medicare—Supplementary Medical Insurance Program, and Program No. 93.714, Medical Assistance Program)

Dated: June 14, 2004.

Jacquelyn Y. White,

Director, Office of Strategic Operations and Regulatory Affairs.

Addendum I

This addendum lists the publication dates of the most recent quarterly listings of program issuances.

January 10, 2000 (65 FR 1400)
May 30, 2000 (65 FR 34481)
June 28, 2002 (67 FR 43762)
September 27, 2002 (67 FR 61130)
December 27, 2002 (67 FR 79109)
March 28, 2003 (68 FR 15196)
June 27, 2003 (68 FR 38359)
September 26, 2003 (68 FR 55618)
December 24, 2003 (68 FR 74590)
March 26, 2004 (69 FR 15837)

Addendum II—Description of Manuals, Memoranda, and CMS Rulings

An extensive descriptive listing of Medicare manuals and memoranda was published on June 9, 1988, at 53 FR 21730 and supplemented on September 22, 1988, at 53 FR 36891 and December 16, 1988, at 53 FR 50577. Also, a complete description of the former CIM (now the NCDM) was published on August 21, 1989, at 54 FR 34555. A brief description of the various Medicaid manuals and memoranda that we maintain was published on October 16, 1992, at 57 FR 47468.

ADDENDUM III—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS

[January 2004 Through March 2004]

Transmittal No.	Manual/Subject/Publication No.
	Medicare General Information (CMS-Pub. 10001)
02	Scheduled Release for April Updates to Software and Pricing/Codes Files
03	New Part B Annual Deductible
	Medicare Benefit Policy (CMS-Pub. 10002)
07	Restoring Composite Rate Exceptions for Pediatric Facilities Under the End-Stage Renal Disease Composite Rate System
08	Policy Changes to Reflect Billing for Darbepoetin Alfa and Epoetin
	Medicare National Coverage Determinations (CMS-Pub. 10003)
07	Electrical Stimulation and Electromagnetic Therapy for the Treatment of Wounds
08	Current Perception Threshold/Sensory Nerve Conduction Threshold Test
09	Cardiac Output Monitoring by Thoracic Electrical Bioimpendance
	Medicare Claims Processing (CMS-Pub. 10004)
60	Manualization of 2632, New Computer-Aided Detection Codes for Screening and Diagnostic Digital Mammography Services Health Common Procedure Coding System and Diagnosis Codes for Mammography Services Computer-Aided Detection Addon Codes Computer-Aided Detection Billing Charts Outpatient Hospital Mammography Payment Table Payment for Computer Add-on Diagnostic and Screening Mammograms for Fiscal Intermediary and Carriers Critical Access Hospital Payment Critical Access Hospital Mammography Payment Table Skilled Nursing Facility Mammography Payment Table Rural Health Claim/Federally Qualified Health Center Claims with Dates of Service on or After January 1, 2002 Fiscal Intermediary Data for Common Working File and the Provider Statistical and Reimbursement Report Carrier Processing Requirements Part B Carrier Claim Record for Common Working File Carrier and Common Working File Edits Mammograms Performed with New Technologies
61	Revises Diagnosis Coding Instructions for Requests for Anticipated Payment and Claims to Conform with Health Insurance Portability and Accountability Act of 1996 Requirements
62	Correction to January 2004 Annual Update of Health Common Procedure Coding System Codes Used for Home Health Consolidated Billing Enforcement
63	Special Rules for Critical Access Hospital Outpatient Billing
64	Coding Change for Ventricular Assist Devices for Beneficiaries in a Medicare+Choice Plan
65	ANSI X12 Transaction 835 Companion Document Change for Carriers, Durable Medical Equipment Regional Carriers, and Intermediaries
66	Quarterly Update to Correct Coding Initiative Edits, Version 10.1, Effective April 1, 2004
67	Revision to Change Request 2912: Coding, Testing, and Implementation Phases of Change Request 2631 for Jurisdiction
68	New Requirements for Critical Access Hospitals. These Changes Have Been Established with the Medicare Prescription Drug Improvement, and Modernization Act of 2003, PL 108173
69	Criteria for Using the CB Modifier
70	Implementation of the Annual Desk Review Program for Hospital Wage Data: Cost Reporting Periods Beginning On or After October 1, 2000, Through September 30, 2001 (Fiscal Year 2005 Wage Index)
71	Changes to the Laboratory National Coverage Determination Edit Software for April 2004
72	Update of Address for the Railroad Retirement Board
73	Medicare Code Editor and IPPS Transfers between Hospitals
74	Intravenous Immune Globulin
75	Medicare Modernization Act Pricing File Clarifications
76	Manualization of Skilled Nursing Facilities Inpatient Part A Billing Services Included in Part A PPS Payment Not Billable Separately by the Skilled Nursing Facility Services Beyond the Scope of the Part A Skilled Nursing Facility Benefit Carrier Claims Processing for Consolidated Billing for Physician and Non-Physician Practitioner Services Rendered to Beneficiaries in a Part A Skilled Nursing Facility Stay Correct Place of Service Code for Skilled Nursing Facility Claims Common Working File Edits Reject and Unsolicited Response Edits Utilization Edits Duplicate Edits Edit for Ambulance Services Edit for Clinical Social Workers Common Working File Override Codes Coding Files and Updates

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78	Update to Medicare Secondary Payment Module to Apportion Prospective Payment System Outlier Amounts to All Service and APC Lines That are Pricer Related
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79	End Stage Renal Disease Reimbursement for Automated MultiChannel Chemistry Test(s)
80	Extend Medicare Coverage for Certain Colorectal Cancer Screenings at Skilled Nursing Facility
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81	Report Of Admission Date and Additional Edit Requirements for the X12N 837 Coordination of Benefits Transaction
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82	EndStage Renal Disease Data for Use In Adjudicating Claims
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83	New "K" Codes for Wheelchair Cushions
84	Additional Guidelines for Implementing the National Council for Prescription Drug Program
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85	Payment of Skilled Nursing Facility Claims for Beneficiaries Disenrolling From Terminating Medicare+Choice
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87	Coverage and Billing for Home Prothrombin Time International Normalized Ratio
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88	Implementation of Section 414 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003
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91	CR 3077, Processing NonCovered Home Health Prospective Payment System Charges
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92	CR 3070, April Quarterly Update to Jan 2004 Annual Update of Health
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130	Chapter 32, Section 60 ff
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49	Chapter 4—Benefits and Beneficiary Protections
	Access and Availability Rules for Coordinated Care Plans
	Rules for All Medicare+Choice Organizations to Ensure Continuity of Care
50	Chapter 20—Plan Communications Guide
	View Beneficiary Factors (Option 9)
	System Description
	GROUCH Options
	Downloading Your Group Health Plan Monthly Report
	The Common Working File
	Logging Onto Common Working File
	Beneficiary Eligibility Data
51	Revisions to Chapter 2—Medicare+Choice Enrollment and Disenrollment
	End-Stage Renal Disease
	End-Stage Renal Disease and Enrollment
	Effective Date
	Medicare Business Partners Systems Security (CMS-Pub. 100–17)
04	Federal Laws
	Introduction
	The (Principal) Systems Security Officer
	IT Systems Security Program Management
	System Security Plan
	Risk Assessment
	Certification
	Information Technology Systems Contingency Plan
	Annual Compliance Audit
	Corrective Action Plan
	Computer Security Incident Response
	Information Security Levels
	Level 4: High Criticality and National Security Interest
	Sensitive Information Protection Requirements
	Restricted Area
	Security Room
	Secured Interior/Secured Perimeter
	Container
	Locked Container
	Security Container
	Safe/Vaults
	Locking Systems for Secured Areas and Security Rooms
	Intrusion Detection Equipment
	Internet Security
	Core Security Requirements and the Contractor Assessment Security Tool
	CMS Core Set of Security Requirements
	Medicare Information Technology Systems Contingency Planning
	An Approach to Fraud Control
	Glossary
	One Time Notification (CMS Pub. 10020)
56	Program Integrity Management Reporting System for Part A Phase 4
57	Instructions for Fiscal Intermediary Standard System and MultiCarrier System Healthcare Integrated General Ledger Accounting Systems Changes
58	Program Integrity Management Reporting System Fiscal Year 2004 H and T Codes
59	Temporary 5 % Payment Increase for Home Health Services Furnished in a Rural Area CR 3085
60	Instructions for Fiscal Intermediary Standard System and MultiCarrier System Healthcare Integrated General Ledger Accounting System Changes

ADDENDUM III—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[January 2004 Through March 2004]

Transmittal No.	Manual/Subject/Publication No.
61	FY 2004 Graduate Medical Education Payments as Required by the Medicare Modernization Act of 2003
62	Physician SelfReferral Prohibition 12/22/2003 18Month Moratorium on Physician Investment in Specialty Hospitals CR 3036
63	Durable Medical Equipment Regional Carriers DeWall Posture Protector
64	Implementation of Sections 401, 402, 504, and 508(a) of the Medicare Modernization Act of 2003
65	Implementation of Sec. 508(f) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003
66	CWF Corrections to the 270/271 Transaction

ADDENDUM IV.—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER

(January 2004 Through March 2004)

Publication date	FR vol. 69 page number	CFR parts affected	File code	Title of regulation
January 6, 2004	820	42 CFR Part 419	CMS–1371–IFC.	Medicare Program; Hospital Outpatient Prospective Payment System; Payment Reform for Calendar Year 2004.
January 6, 2004	665		CMS–4065–N	Medicare Program; Meeting of the Advisory Panel on Medicare Education.
January 6, 2004	661		CMS–1373–N	Medicare Program; Notice of One-Time Appeal Process for Hospital Wage Index Classification.
January 6, 2004	565	42 CFR Part 447	CMS–2188–P	Medicaid Program; Time Limitation on Recordkeeping Requirements Under the Drug Rebate Program.
January 7, 2004	508	42 CFR Part 447	CMS–2175–IFC.	Medicare Program; Time Limitation on Recordkeeping Requirements Under the Drug Rebate Program.
January 7, 2004	1084	42 CFR Parts 405 and 414	CMS–1372–IFC.	Medicare Program; Changes to Medicare Payment for Drugs and Physician Fee Schedule Payments for Calendar Year 2004.
January 23, 2004	3434	45 CFR Part 162	CMS–0045–F	HIPAA Administrative Simplification: Standard Unique Health Identifier for Health Care Providers.
January 23, 2004	3371		CMS–1362–N	Medicare Program; February 23–24, 2004, Meeting of the Practicing Physicians Advisory Council.
January 23, 2004	3370		CMS–1375–N	Medicare Program; Request for Nominations to the Advisory Panel on Ambulatory Payment Classifications Group.
January 30, 2004	4820	42 CFR Part 412	CMS–1263–P	Medicare Program; Prospective Payment System for Long-Term Care Hospitals: Proposed Annual Payment Rate Updates and Policy Changes.
January 30, 2004	4464	42 CFR Parts 412, 413, and 424	CMS–1213–N	Medicare Program; Prospective Payment System for Inpatient Psychiatric Facilities; Extension of Comment Period.
February 13, 2004	7340		CMS–1373–N2	Medicare Program; Revisions to the One-Time Appeal Process for Hospital Wage Index Classification.
February 27, 2004	9326		CMS–2200–N	Medicare Program; Request for Nominations for the State Pharmaceutical Assistance Transition Commission.
February 27, 2004	9324		CMS–1268–N	Medicare Program; Town Hall Meeting on the Fiscal Year 2005 Applications for New Medical Services and Technologies Add-on Payments Under the Hospital Inpatient Prospective Payment.
February 27, 2004	9323		CMS–4090–N	Medicare Program; Town Hall Meeting on Proposed Collection—Comment Request for Skilled Nursing Facility Advance Beneficiary Notice.
February 27, 2004	9322		CMS–3112–N	Medicare Program; Calendar Year 2004 Review of the Appropriateness of Payment Amounts for New Technology Intraocular Lenses (NTIOLs) Furnished by Ambulatory Surgical Centers (ASCs).
February 27, 2004	9321		CMS–4070–N	Medicare Program; Request for Nominations for the Advisory Panel on Medicare Education.
February 27, 2004	9282	42 CFR Part 473	CMS–3121–P	Medicare and Medicaid Programs; Requirements for Long Term Care Facilities; Nursing Services; Posting of Nurse Staffing Information.
March 5, 2004	10455		CMS–2200–N2	Medicare Program; Establishment of the State Pharmaceutical Assistance Transition Commission.

ADDENDUM IV.—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER—Continued
(January 2004 Through March 2004)

Publication date	FR vol. 69 page number	CFR parts affected	File code	Title of regulation
March 26, 2004	16054	42 CFR Parts 411 and 424	CMS–1810–IFC.	Medicare Program; Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships.
March 26, 2004	15884		CMS–4071–N	Medicare Program; Listening Session on Performance Measures for Public Reporting on the Quality of Hospital Care—April 27, 2004.
March 26, 2004	15850		CMS–2062–N	Medicaid Program; Disproportionate Share Hospital Payments.
March 26, 2004	15837		CMS–9020–N	Medicare and Medicare Programs; Quarterly Listing of Program Issuances—October 2003 Through December 2003.
March 26, 2004	15835		CMS–2183–N	Funding Opportunity Title: Medicaid Program; Medicaid Infrastructure Grant Program To Support the Competitive Employment of People With Disabilities.
March 26, 2004	15755	42 CFR Part 421	CMS–1219–P	Medicare Program; Durable Medical Equipment Regional Carrier (DMERC) Service Areas and Related Matters.
March 26, 2004	15729	42 CFR Parts 410 and 414	CMS–1476–CN2.	Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2004; Correction.
March 26, 2004	15703	42 CFR Parts 405 and 414	CMS–1372–CN.	Medicare Program; Changes to the Medicare Payment for Drugs for Calendar Year 2004, Correction.

Addendum V—National Coverage Determinations [January 2004 Through March 2004]

A national coverage determination (NCD) is a determination by the Secretary with respect to whether or not a particular item or service is covered nationally under Title XVIII of the Social Security Act, but does not include a determination of what code, if any, is assigned to a particular item or service covered under this title, or determination with respect to the amount of payment made for a particular item or service so covered. We include below all of the NCDs that were issued during the quarter covered by this notice. The entries below include information concerning completed decisions as well as sections on program and decision memoranda, which also announce pending decisions or, in some cases, explain why it was not appropriate to issue an NCD. We identify completed decisions by the section of the NCDM in which the decision appears, the title, the date the publication was issued, and the effective date of the decision. Information on completed decisions as well as pending decisions has also been posted on the CMS Web site at *http://cms.hhs.gov/coverage*.

NATIONAL COVERAGE DETERMINATIONS
(January 2004 Through March 2004)

100–03	Title	Issue date	Effective date
270.1	Electrical Stimulation and Electromagnetic Therapy for the Treatment of Wounds	03/19/04	07/01/04
20.16	Cardiac Output Monitoring by Thoracic Electrical Bioimpedance	01/23/04	02/23/04
160.23	Current Perception Threshold/Sensory Nerve Conduction Threshold Test	03/19/04	04/01/04

100–04	Title	Issue date	Effective date
TR 71	Clinical Lab Table Update for April 2004	01/23/04	04/05/04

Addendum VI—FDA-Approved Category B IDEs

Under the Food, Drug, and Cosmetic Act (21 U.S.C. 360c) devices fall into one of three classes. To assist CMS under this categorization process, the FDA assigns one of two categories to each FDA-approved IDE. Category A refers to experimental IDEs, and Category B refers to nonexperimental IDEs. To obtain more information about the classes or categories, please refer to the **Federal Register** notice published on April 21, 1997 (62 FR 19328).

The following list includes all Category B IDEs approved by FDA during the 1st quarter, January 2004 Through March 2004.

IDE	Category
G010093	B
G020138	B
G020290	B
G030194	B
G030235	B
G030261	B
G030263	B
G030264	B
G030265	B
G030267	B
G030268	B
G030269	B

IDE	Category
G040001	B
G040005	B
G040007	B
G040008	B
G040009	B
G040012	B
G040013	B
G040014	B
G040016	B
G040018	B
G040019	B
G040021	B
G040022	B
G040024	B
G040025	B
G040027	B
G040028	B
G040029	B
G040030	B
G040031	B

Addendum VIIApproval Numbers for Collections of Information

Below we list all approval numbers for collections of information in the referenced sections of CMS regulations in Title 42; Title 45, Subchapter C; and Title 20 of the Code of Federal Regulations, which have been approved by the Office of Management and Budget:

OMB Control Numbers—Approved CFR Sections in Title 42, Title 45, and Title 20 (Note: Sections in Title 45 are preceded by "45 CFR," and sections in Title 20 are preceded by "20 CFR")

OMB number	Approved CFR sections
0938–0008 ...	414.40, 424.32, 424.44
0938–0022 ...	413.20, 413.24, 413.106
0938–0023 ...	424.103
0938–0025 ...	406.28, 407.27
0938–0027 ...	486.100–486.110
0938–0033 ...	405.807
0938–0035 ...	407.40
0938–0037 ...	413.20, 413.24
0938–0041 ...	408.6, 408.22
0938–0042 ...	410.40, 424.124
0938–0045 ...	405.711
0938–0046 ...	405.2133
09380050	413.20, 413.24
0938–0062 ...	431.151, 435.1009, 440.220, 440.250, 442.1, 442.10–442.16, 442.30, 442.40, 442.42, 442.100–442.119, 483.400–483.480, 488.332, 488.400, 498.3–498.5
0938–0065 ...	485.701–485.729
0938–0074 ...	491.1–491.11
0938–0080 ...	406.7, 406.13
0938–0086 ...	420.200–420.206, 455.100–455.106
0938–0101 ...	430.30
0938–0102 ...	413.20, 413.24
0938–0107 ...	413.20, 413.24
0938–0146 ...	431.800, 431.865
0938–0147 ...	431.800–431.865
0938–0151 ...	493.1405, 493.1411, 493.1417, 493.1423, 493.1443, 493.1449, 493.1455, 493.1461, 493.1469, 493.1483, 493.1489
0938–0155 ...	405.2470
0938–0170 ...	493.1269–493.1285
0938–0193 ...	430.10–430.20, 440.167
0938–0202 ...	413.17, 413.20
0938–0214 ...	411.25, 489.2, 489.20
0938–0236 ...	413.20, 413.24
0938–0242 ...	442.30, 488.26
0938–0245 ...	407.10, 407.11
0938–0246 ...	431.800–431.865
0938–0251 ...	406.7
0938–0266 ...	416.41, 416.47, 416.48, 416.83
0938–0267 ...	410.65, 485.56, 485.58, 485.60, 485.64, 485.66
0938–0269 ...	412.116, 412.632, 413.64, 413.350, 484.245
0938–0270 ...	405.376
0938–0272 ...	440.180, 441.300–441.305
0938–0273 ...	485.701–485.729
0938–0279 ...	424.5
0938–0287 ...	447.31
0938–0296 ...	413.170, 413.184
0938–0300 ...	431.800
0938–0301 ...	413.20, 413.24
0938–0302 ...	418.22, 418.24, 418.28, 418.56, 418.58, 418.70, 418.74, 418.83, 418.96, 418.100
0938–0313 ...	418.1–418.405
0938–0328 ...	482.12, 482.13, 482.21, 482.22, 482.27, 482.30, 482.41, 482.43, 482.45, 482.53, 482.56, 482.57, 482.60, 482.61, 482.62, 482.66, 485.618, 485.631
0938–0334 ...	491.9, 491.10
0938–0338 ...	486.104, 486.106, 486.110
0938–0354 ...	441.60
0938–0355 ...	442.30, 488.26
0938–0357 ...	409.40–409.50, 410.36, 410.170, 411.4–411.15, 421.100, 424.22, 484.18, 489.21
0938–0358 ...	412.20–412.30
0938–0359 ...	412.40–412.52
0938–0360 ...	488.60
0938–0365 ...	484.10, 484.11, 484.12, 484.14, 484.16, 484.18, 484.20, 484.36, 484.48, 484.52
0938–0372 ...	414.330
0938–0378 ...	482.60–482.62
0938–0379 ...	488.26, 442.30
0938–0382 ...	488.26, 442.30
0938–0386 ...	405.2100–405.2171
0938–0391 ...	488.18, 488.26, 488.28
0938–0426 ...	476.104, 476.105, 476.116, 476.134
0938–0429 ...	447.53
0938–0443 ...	473.18, 473.34, 473.36, 473.42
0938–0444 ...	1004.40, 1004.50, 1004.60, 1004.70
0938–0445 ...	412.44, 412.46, 431.630, 456.654, 466.71, 466.73, 466.74, 466.78
0938–0447 ...	405.2133
0938–0448 ...	405.2133, 45 CFR 5, 5b; 20 CFR Parts 401, 422E
0938–0449 ...	440.180, 441.300–441.310
0938–0454 ...	424.20
0938–0456 ...	412.105
0938–0463 ...	413.20, 413.24, 413.106
0938–0467 ...	431.17, 431.306, 435.910, 435.920, 435.940–435.960
0938–0469 ...	417.107, 417.478
0938–0470 ...	417.143, 417.800–417.840, 422.6
0938–0477 ...	412.92
0938–0484 ...	424.123
0938–0501 ...	406.15
0938–0502 ...	433.138
0938–0512 ...	486.304, 486.306, 486.307
0938–0526 ...	475.102, 475.103, 475.104, 475.105, 475.106
0938–0534 ...	410.38, 424.5
0938–0544 ...	493.1–493.2001
0938–0564 ...	411.32
0938–0565 ...	411.20–411.206
0938–0566 ...	411.404, 411.406, 411.408
0938–0573 ...	412.230, 412.256
0938–0578 ...	447.534
0938–0581 ...	493.1–493.2001
0938–0599 ...	493.1–493.2001
0938–0600 ...	405.371, 405.378, 413.20
0938–0610 ...	417.436, 417.801, 422.128, 430.12, 431.20, 431.107, 434.28, 483.10, 484.10, 489.102
0938–0612 ...	493.801, 493.803, 493.1232, 493.1233, 493.1234, 493.1235, 493.1236, 493.1239, 493.1241, 493.1242, 493.1249, 493.1251, 493,1252, 493.1253, 493.1254, 493.1255, 493.1256, 493.1261, 493.1262, 493.1263, 493.1269, 493.1273, 493.1274, 493.1278, 493.1283, 493.1289, 493.1291, 493.1299
0938–0618 ...	433.68, 433.74, 447.272
0938–0653 ...	493.1771, 493.1773, 493.1777
0938–0657 ...	405.2110, 405.2112
0938–0658 ...	405.2110, 405.2112
0938–0667 ...	482.12, 488.18, 489.20, 489.24
0938–0679 ...	410.38
0938–0685 ...	410.32, 410.71, 413.17, 424.57, 424.73, 424.80, 440.30, 484.12
0938–0686 ...	493.551–493.557
0938–0688 ...	486.304, 486.306, 486.307, 486.310, 486.316, 486.318, 486.325
0938–0690 ...	488.4–488.9, 488.201
0938–0691 ...	412.106
0938–0692 ...	466.78, 489.20, 489.27
0938–0701 ...	422.152
0938–0702 ...	45 CFR 146.111, 146.115, 146.117, 146.150, 146.152, 146.160, 46.180
0938–0703 ...	45 CFR 148.120, 148.124, 148.126, 148.128
0938–0714 ...	411.370–411.389
0938–0717 ...	424.57
0938–0721 ...	410.33
0938–0722 ...	422.370–422.378

OMB number	Approved CFR sections
0938–0723 ...	421.300–421.318
0938–0730 ...	405.410, 405.430, 405.435, 405.440, 405.445, 405.455, 410.61, 415.110, 424.24
0938–0732 ...	417.126, 417.470
0938–0734 ...	45 CFR 5b
0938–0739 ...	413.337, 413.343, 424.32, 483.20
0938–0742 ...	422.300–422.312
0938–0749 ...	424.57
0938–0753 ...	422.000–422.700
0938–0754 ...	441.152
0938–0758 ...	413.20, 413.24
0938–0760 ...	484 Subpart E, 484.55
0938–0761 ...	484.11, 484.20
0938–0763 ...	422.1–422.10, 422.50–422.80, 422.100–422.132, 422.300–422.312, 422.400–422.404, 422.560–422.622
0938–0768 ...	417.800–417.840
0938–0770 ...	410.2
0938–0778 ...	422.64, 422.111
0938–0779 ...	417.126, 417.470, 422.64, 422.210
0938–0781 ...	411.404–411.406, 484.10
0938–0786 ...	438.352, 438.360, 438.362, 438.364
0938–0787 ...	406.28, 407.27
0938–0790 ...	460.12, 460.22, 460.26, 460.30, 460.32, 460.52, 460.60, 460.70, 460.71, 460.72, 460.74, 460.80, 460.82, 460.98, 460.100, 460.102, 460.104, 460.106, 460.110, 460.112, 460.116, 460.118, 460.120, 460.122, 460.124, 460.132, 460.152, 460.154, 460.156, 460.160, 460.164, 460.168, 460.172, 460.190, 460.196, 460.200, 460.202, 460.204, 460.208, 460.210
0938–0792 ...	491.8, 491.11
0938–0798 ...	413.24, 413.65, 419.42
0938–0802 ...	419.43
0938–0818 ...	410.141, 410.142, 410.143, 410.144, 410.145, 410.146, 414.63
0938–0829 ...	422.620, 422.624, 422.626
0938–0832 ...	489
0938–0833 ...	483.350–483.376
0938–0841 ...	431.636, 457.50, 457.60, 457.70, 457.340, 457.350, 457.431, 457.440, 457.525, 457.560, 457.570, 457.740, 457.750, 457.810, 457.940, 457.945, 457.965, 457.985, 457.1005, 457.1015, 457.1180
0938–0842 ...	412.23, 412.604, 412.606, 412.608, 412.610, 412.614, 412.618, 412.626, 413.64
0938–0846 ...	411.1, 411.350–411.357, 424.22
0938–0857 ...	419
0938–0860 ...	419
0938–0866 ...	45 CFR Part 162
0938–0872 ...	413.337, 483.20
0938–0873 ...	422.152
0938–0874 ...	45 CFR Parts 160 and 162
0938–0878 ...	422
0938–0883 ...	45 CFR Parts 160 and 164
0938–0887 ...	45 CFR 148.316, 148.318, 148.320
0938–0897 ...	412.22, 412.533
0938–0907 ...	412.230, 412.304, 413.65
0938–0910 ...	422.620, 422.624, 422.626
0938–0911 ...	426.400, 426.500
0938–0916 ...	483.16
0938–0920 ...	438.6, 438.8, 438.10, 438.12, 438.50, 438.56, 438.102, 438.114, 438.202, 438.206, 438.207, 438.240, 438.242, 438.404, 438.406, 438.408, 438.410, 438.414, 438.416, 438.710, 438.722, 438.724, 438.810

[FR Doc. 04–14274 Filed 6–24–04; 8:45 am]
BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3134–N]

Medicare Program; Town Hall Meeting on Potential Facility Qualifications for Expanded Coverage of Percutaneous Transluminal Angioplasty for Carotid Stenting Procedures

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a Town Hall meeting to discuss potential facility qualifications and requirements to ensure that expanded Medicare coverage of Percutaneous Transluminal Angioplasty (PTA) for carotid stenting procedures would be safe, reasonable and necessary. Topics to be addressed include, but are not limited to, the degree of facility experience required, types of provider training programs to be developed and the rigor of these programs, supporting staff and specialty requirements, and specific stipulations that must be in place to ensure the correct use of this procedure in the appropriate patient population. Interventional radiologists, radiologists, neurological surgeons, cardiologists, neuro-radiologists, interventional cardiologists, interventional neurologists, vascular surgeons, neurologists, and other interested individuals are invited to this meeting to present their individual views on carotid stenting procedures. The opinions and alternatives provided during this meeting will assist us as we evaluate our policy on carotid stenting procedures for high-risk patients. The meeting is open to the public, but attendance is limited to space available.

DATES: The Town Hall meeting will be held on Tuesday August 17, 2004 at 8:30 a.m., e.s.t.

ADDRESSES: The Town Hall meeting will be held in the auditorium at the Centers for Medicare and Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244.

Written Questions or Statements: Interested persons may send written comments by mail or electronically. We will accept written testimony, questions, or other statements, not to exceed 2–3 single-spaced, typed pages prior to, or within 14 days after the meeting. This time frame will allow us sufficient time for serious consideration and review of the submitted materials. Send written testimony, questions, or other statements to Rana Hogarth, OCSQ/CAG, C1–09–06, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244–1850 or to *Rana.Hogarth@cms.hhs.gov*.

FOR FURTHER INFORMATION CONTACT: Rana Hogarth, (410) 786–2112. You may also send inquires about this meeting via e-mail to *MEllis@cms.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Medicare currently covers Percutaneous Transluminal Angioplasty of the Carotid Artery Concurrent with Stenting (CAG–00085N) in the context of Food and Drug Administration (FDA) approved Category B Investigational Device Exemption (IDE) Clinical Trials. Performance of Percutaneous Transluminal Angioplasty in the carotid artery used to treat obstructive lesions outside of these clinical trials is noncovered. Currently, Medicare is considering opening a National Coverage Determination to review coverage of carotid stenting procedures outside of the clinical trial setting. It is important that we establish facility qualifications and experience requirements that will ensure that carotid stenting procedures are performed in a manner which is safe, reasonable and necessary, and that would ensure beneficiaries needed pre- and post-procedure care.

II. Meeting Format

The initial portion of the meeting will be designed to elicit information on the appropriate experience requirements for facilities intending to offer carotid stenting procedures, suggestions for developing training programs, the rigor of these programs, and specific stipulations or limitations that must be in place to ensure appropriate use of this procedure. The remainder of the

meeting will be reserved for questions from interested persons.

Time for participants to make a statement will be limited according to the number of registered participants. Therefore, individuals who wish to make a statement must contact the individuals identified in the **FOR FURTHER INFORMATION CONTACT** section of this notice as soon as possible to register. Comments from individuals not registered will be heard after scheduled statements only, if time permits.

Written submissions will also be accepted.

III. Registration Instructions

The Coverage and Analysis Group is coordinating meeting registration. While there is no registration fee, individuals must register to attend. You may register by contacting Maria Ellis at 410–786–0309, mailing address: Coverage and Analysis Group, OCSQ; Centers for Medicare & Medicaid Services; 7500 Security Boulevard; Mailstop: C1–09–06; Baltimore, Maryland 21244, or by e-mail at *Mellis@cms.hhs.gov*. Please provide your name, address, telephone number, and, if available, e-mail address and fax number.

You will receive a registration confirmation with instructions for your arrival at the CMS complex. You will be notified if the seating capacity has been reached.

Because this meeting will be located on Federal property, for security reasons, any persons wishing to attend this meeting must register by close of business on August 10, 2004. In order to gain access to the building and grounds, participants must show to the Federal Protective Service or guard service personnel government-issued photo identification and a copy of their registration confirmation. Individuals who have not registered in advance will not be allowed to enter the building to attend the meeting.

Individuals requiring sign language interpretation or other special accommodations must provide that information upon registering for the meeting.

Authority: (Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 17, 2004.

Mark B. McClellan,

Administrator, Centers for Medicare and Medicaid Services.

[FR Doc. 04–14273 Filed 6–24–04; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Conference Grants to Support State Food Safety Task Force Meetings; Availability of Funds Grants; Request for Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) in collaboration with the Centers for Disease Control and Prevention (CDC) is announcing the availability of conference grant funding for meetings of State Food Safety and Food Security Task Forces. The original announcement of availability of funding for State Food Safety Task Force Meetings, published in the **Federal Register** of January 24, 2000 (65 FR 3720), is superseded by this announcement. This revised announcement provides new policies that apply to the State Food Safety and Food Security Task Force Meetings Conference Grant Program. FDA views this program as an ongoing program announcement, contingent on the availability of funds. FDA anticipates providing approximately $350,000 in direct costs only in support of this program in fiscal year (FY) 2004. It is anticipated that 50 awards will be made for up to $7,000 per award.

DATES: The application receipt date is August 9, 2004, for the first year and March 15 for each subsequent year this program is in effect.

ADDRESSES: Application forms are available from, and completed applications should be submitted to Cynthia M. Polit, Grants Management Specialist, Division of Contracts and Grants Management (HFA–531), Food and Drug Administration, 5600 Fishers Lane, rm. 2129, Rockville, MD 20857, 301–827–7180, e-mail: *cpolit@oc.fda.gov*. Application forms PHS 5161–1 are available via the internet at: *http://www.psc.gov/forms* (Revised 7/00). Applications handcarried or commercially delivered should be addressed to 5630 Fishers Lane (HFA–531), rm. 2129, Rockville, MD 20857. An application not received by FDA in time for orderly processing will be returned to the applicant without consideration. FDA cannot receive an application electronically.

FOR FURTHER INFORMATION CONTACT:

Regarding the administrative and financial management aspects of this notice: Cynthia M. Polit (see **ADDRESSES**).

Regarding the programmatic aspects of this notice: Stephen Toigo, Division of Federal-State Relations (DFSR), Office of Regulatory Affairs, Food and Drug Administration (HFC–150), 5600 Fishers Lane, rm. 12–07, Rockville, MD 20857, 301–827–6906, or access the Internet at: *http://www.fda.gov/ora/fed_state/default.htm*.

SUPPLEMENTARY INFORMATION:

I. Introduction

FDA and CDC view State-based Food Safety and Food Security Task Forces as important mechanisms for promoting food safety, food security program coordination, and information exchanges within each State. This grant announcement is intended to encourage the development of a Task Force within each State and to provide funding for Task Force meetings. Conference grant funding is available to States that have an existing Food Safety and Food Security Task Force, as well as to States that are in the process of developing such a Task Force. State Food Safety Task Force meetings should foster communication and cooperation among State and local public health and food safety agencies and other interested parties. Under this grant announcement, States may be awarded grants for up to 3 years for a maximum of $7,000 per year in direct costs only, contingent on the availability of funds. Only one grant will be awarded per State per year.

Before submission of an application, the State shall designate one State public health or food safety agency to lead, coordinate, and host the Food Safety and Food Security Task Force and its meetings. The formation of Food Safety and Food Security Task Force meetings shall not interfere with existing federal-state advisory mechanisms.

Meetings covered by this notice will be supported under section 1701–1706 (42 U.S.C. 300u–300u–5) of the Public Service Health (PHS) Act. FDA's Conference Grant Program is described in the Catalog of Federal Domestic Assistance, No. 93–103. Applicants are limited to one State government agency per State. Applications submitted under this program are subject to the requirements of Executive Order 12372.

FDA urges applicants to submit workplans that address specific objectives of "Healthy People 2010." Applicants may obtain a paper copy of the "Healthy People 2010" objectives, Volumes I and II, for $70 ($87.50 foreign) S/N 017–000–00550–9, by writing to the Superintendent of Documents, P.O. Box 371954,

Pittsburgh, PA 15250–7954. Telephone orders can be placed to 202–512–2250. The document is also available in CD-ROM format, S/N 017–001–00549–5 for $19 ($23 foreign) as well as on the Internet at *http://www.health.gov/healthypeople/*. Internet viewers should proceed to "Publications."

II. Background

FDA's ORA is the inspection component of FDA and has 1,000 investigators and inspectors who cover the approximately 95,000 FDA-regulated businesses in the United States and inspect more than 15,000 facilities a year. In addition to the standard inspection program, FDA's investigators and inspectors conduct special investigations, food inspection recall audits, and perform consumer complaint inspections and sample collections. In the past FDA has relied on the States in assisting with the previously mentioned duties through formal contracts, partnership agreements, and other informal arrangements. The inspection demands on both the agency and the States are expected to increase. Accordingly, procedures need to be reviewed and innovative changes made that will increase effectiveness, efficiency, and conserve resources. Examples of support include providing effective and efficient compliance of regulated products and providing high quality, science-based work that maximizes consumer protection.

CDC is a non-regulatory Federal public health agency that works closely with FDA food safety regulatory and other agencies to prevent foodborne disease. CDC leads Federal efforts to gather data on foodborne illnesses, investigate foodborne illnesses and outbreaks, and monitor the effectiveness of prevention and control efforts. CDC also plays an ongoing role in identifying prevention strategies and building State and local health department epidemiology, laboratory, and environmental health capacity to support foodborne disease surveillance and outbreak response. CDC data assists in documenting whether food safety interventions are leading to reductions in the incidence of foodborne illness.

Although the United States has one of the safest food supplies in the world, the public health burden of foodborne disease in the nation is substantial. Foodborne disease causes an estimated 76 million illnesses, 325,000 hospitalizations, and 5,000 deaths in the United States each year, and an estimated $6.9 billion in economic costs. New challenges continue to arise, including the globalization of the food supply and the emergence of new pathogens in foods.

These facts reinforce the importance of this State Food Safety and Security Task Force program. The focus of these grant-sponsored meetings should be to discuss and resolve issues at the State and local levels relating to the following areas: (1) State/local agency roles and responsibilities; (2) capacity and resource needs; (3) Outbreak coordination and investigations; (4) information sharing and data collection; (5) uniform regulatory standards; (6) communications and education; (7) state/local laboratory operations and coordination; (8) adoption/implementation of FDA's Food Code; (9) uniform standards for foodborne illness and outbreak reporting investigation and response; and (10) state and local training needs for epidemiology, outbreak investigation, etc.

III. Project Goals, Definitions, and Examples

The purpose of the Food Safety and Food Security Task Force meetings is to foster communication and cooperation within the States among State and local food safety regulatory agencies. The meetings should cover the following objectives: (1) Provide a forum for all the stakeholders of the food safety system—regulatory agencies, academia, industry, consumers, State legislators, and other interested parties; (2) assist in adopting or implementing FDA's Food Code; and (3) promote the integration of an efficient statewide food safety system that maximizes the protection of the public health through early detection and containment of foodborne illness.

Conference grant funds will be awarded only for direct costs incurred to secure meeting facility rental expenses, supplies, publication costs, and in-state travel expenses for meeting attendees. Each Task Force shall develop its own guidelines for work, consensus decision-making, size and format, at its initial meeting. Federal agency representatives may be invited to be nonmember liaisons or advisors at the meetings. Conference Grant funds may not be used for Federal employees to travel to these meetings.

FDA's DFSR will provide meeting guidelines and organization documents as requested.

FDA will consider funding meetings for up to 3 years. Funding after the first year will be at an amount that will be negotiated at the time of the initial competitive segment. Thus, the budgets for all 3 years of requested support must be fully justified in the original application.

Continued funding of a noncompetitive segment is contingent upon satisfactory progress as determined annually by FDA procedures, the receipt of a noncompeting continuation application, and availability of federal funds. The noncompeting continuation will consist of a Standard Form 424 (SF424) face page, a financial status report, and conference proceedings for all conferences held the previous budget period. A decrease in the amount of the noncompetitive segment may occur if there is an unobligated balance from the prior year, in which case prior year funds can be used as an offset for the current year award.

Following are the allowable costs: (1) Salaries in proportion to the time or effort spent directly on the conference, (2) rental of necessary equipment, (3) travel and per diem, (4) supplies needed to conduct the meeting, (5) conference services, (6) publication costs, (7) registration fees, and (8) speaker's fees.

Nonallowable costs include but are not limited to: (1) Purchase of equipment; (2) transportation costs exceeding coach class fares; (3) entertainment; (4) tips; (5) bar charges; (6) personal telephone calls; (7) laundry charges; (8) travel or expenses other than local mileage for local participants; (9) organization dues; (10) honoraria or other payments for the purpose of conferring distinction or communicating respect, esteem, or admiration; (11) alterations or renovations; (12) indirect costs; and (13) travel or per diem costs for Federal employees.

IV. Reporting Requirements

A final progress report of the meeting(s) or conference proceedings and a final financial status report (FSR) (SF–269) are required within 90 days of the expiration date of the project period as noted on the Notice of Grant Award. An original and two copies of each report shall be submitted to FDA's Grants Management Office (see **ADDRESSES**). The following items should be included in the report of the meeting: (1) The grant number; (2) the title, date and place of the meeting; (3) the name of the person shown on the application as the conference director, principal investigator, or program director; (4) the name of the organization that conducted the meeting; (5) a list of individuals, and their institutional affiliations, who participated as speakers or facilitators in the formally planned sessions of the meeting; and (6) a summary of topics discussed, next steps and conclusions.

An FSR and a progress report are also required no later than 90 days after the close of the budget period. The progress

report should contain a description of a specific plan for the next meeting, as well as all criteria listed in the previous paragraph.

Program monitoring of recipients will be conducted on an ongoing basis and written reports will be reviewed and evaluated at least semiannually by the project officer. Project monitoring may also be in the form of telephone conversations between the project officer/grants management specialist and the principal investigator and/or a site visit with appropriate officials of the recipient organization. The results of these monitoring activities will be recorded in the official file and may be available to the recipient upon request.

V. Mechanism of Support

A. Award Instrument

Support for this program will be in the form of a grant. These grants will be subject to all policies and requirements that govern the Conference Grant Programs of the PHS, including the provisions of 42 CFR part 52 and 45 CFR parts 74 and 92. The regulations issued under Executive Order 12372 also apply to this program and are implemented through the Department of Health and Human Service's (HHS) regulations at 45 CFR part 100. Executive Order 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. A current listing of SPOCs is included in the application kit. The SPOC should send any State review process recommendations to FDA's Grants Management Office (see **ADDRESSES**). The due date for the State process recommendations is no later than 60 days after the deadline date for the receipt of applications. FDA does not guarantee availability to accommodate or explain SPOC comments that are received after the 60-day cutoff.

B. Eligibility

These grants are available to State public health and food safety agencies. (See section V.A of this document.)

C. Length of Support

It is anticipated that FDA will fund these grants at a level requested but not exceeding $7,000 total direct costs only for the first year. An additional 2 years of support up to approximately $7,000 (direct costs only) each year will be available, depending upon fiscal year appropriations and successful performance.

D. Funding Plan

Federal funds are currently available from FDA for this program. However, awards are subject to the condition that, in addition to FDA funds, augmenting funds are transferred to FDA from CDC to fully support this program. As the lead Federal agency, FDA intends to collect funds from CDC through an Interagency Agreement. An estimated amount of $100,000 is available in FY 2004 through the Interagency Agreement for a total of $350,000. The number of grants funded will depend on the quality of the applications received, their relevance to FDA's mission, priorities, and the availability of funds.

VI. Review Procedure and Criteria

All applications submitted in response to this request for applications (RFA) will first be reviewed for responsiveness by grants management and program staff. Responsiveness is defined as submission of a complete application with original signatures on or before the required submission date as listed in the previous paragraphs. If applications are found to be nonresponsive, they will be returned to the applicant without further consideration.

Responsive applications will be reviewed and evaluated for scientific and technical merit by an ad hoc panel of experts. Final funding decisions will be made by the Commissioner of Food and Drugs or his or her designee, in consultation with the CDC Director and his or her designee.

Applicants are strongly encouraged to contact FDA to resolve any questions regarding criteria before the submission of their application. All technical or programmatic questions must be directed to the ORA program staff (see **ADDRESSES**). All administrative or financial questions must be directed to the Grants Management Staff (see **ADDRESSES**).

Applications will be given an overall score and judged based on all of the following criteria: (1) The content/subject matter and how current and appropriate it is for the missions of FDA; (2) the conference plan and how thorough, reasonable, and appropriate it is for the intended audience; (3) the experience, training, and competence of the principal investigator/director and availability of support staff; (4) the adequacy of the facilities; and (5) the reasonableness of the proposed budget given the total conference plan, program, speakers, travel, and facilities.

VII. Submission Requirements

The original and two copies of the completed grant application Form PHS–5161–1 (Revised 07/00) for State and local governments should be delivered to the Grants Management Office (see **ADDRESSES**). The application receipt date is August 9, 2004, for the first year and March 15 for each subsequent year this program is in effect. No supplemental material or addenda will be accepted after the receipt date.

VIII. Method of Application

A. Submission Instructions

Applications will be accepted during working hours, 8 a.m. to 4:30 p.m., Monday through Friday, on or before the established receipt date. Applications will be considered received on time if sent or mailed on or before the receipt date as evidenced by a legible U.S. Postal Service dated postmark or a legible date receipt from a commercial carrier, unless they arrive too late for orderly processing. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications not received on time will not be considered for review and will be returned to the applicant. Applicants should note that the U.S. Postal Service does not uniformly provide dated postmarks. Before relying on this method, applicants should check with their local post office.

Do not send applications to the National Institutes of Health's (NIH) Center for Scientific Review. Any application sent to NIH that is then forwarded to FDA and not received in time for orderly processing will be deemed unresponsive and returned to the applicant. FDA is unable to receive applications via the Internet.

The outside of the mailing package and item 2 of the application face page should be labeled "Response to Food Safety Task Force Conference Grant Program." You must submit only one application (an original and two copies) per package.

B. Format for Application

When using Form PHS 5161–1 (Revised 07/00), all instructions for the enclosed SF424 should be followed using the nonconstruction application pages.

Both the face page of the application and the outside of the mailing package should be labeled "Response to Food Safety Task Force Conference Grant Program." Submit applications on SF424 and include the following: (1)

Title, which has the term "state food safety task force meetings," "conference," "council," "workshop," "alliance" or other similar description to assist in the identification of the request; (2) location of the conference; (3) expected number of registrants and type of audience expected with their credentials; (4) dates of conference(s); (5) conference format and projected agenda(s), including list of principal areas or topics to be addressed; (6) physical facilities required for the conduct of the meeting; (7) justification of the conference(s), including the problems it intends to clarify and any developments it may stimulate; (8) brief biographical sketches of individuals responsible for planning the conference(s) and details concerning adequate support staff; (9) information about all related conferences held on this subject during the last 3 years (if known); (10) details of proposed per diem/subsistence rates, transportation, printing, supplies and facility rental costs; and (11) the necessary checklist and assurances pages provided in each application package. A properly formatted sample application for grants can be accessed on the Internet at: *http://www.fda.gov/ora/fed_state/Innovative_Grants.html.*

Data included in the application, if restricted with the legend (see section X. of this document), may be entitled to confidential treatment as trade secret or confidential commercial information within the meaning of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(4)) and FDA's implementing regulations (21 CFR 20.61).

Information collection requirements requested on PHS Form 5161–1 were approved and issued under the Office of Management and Budget Circular A–102.

IX. Dun and Bradstreet Number (DUNS) Requirement

As of October 1, 2003, applicants are now required to have a DUNS number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a 9-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, call 1–866–705–5711. Be certain that you identify yourself as a Federal grant applicant when you contact Dun and Bradstreet.

X. Legend

Unless disclosure is required by FOIA as amended (5 U.S.C. 552), as determined by the FOI officials of HHS or by a court, data contained in the portions of an application which have been specifically identified by page number, paragraph, etc., by the applicant as containing restricted and/or proprietary information shall not be used or disclosed except for evaluation purposes.

Dated: June 18, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–14395 Filed 6–24–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 2004M–0024, 2004M–0147, 2004M–0145, 2004M–0031, 2004M–0022, 2004M–0012, 2004M–0064, 2004M–0116, 2004M–0084, 2004M–0090, 2004M–0134]

Medical Devices; Availability of Safety and Effectiveness Summaries for Premarket Approval Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of premarket approval applications (PMAs) that have been approved. This list is intended to inform the public of the availability of safety and effectiveness summaries of approved PMAs through the Internet and the agency's Division of Dockets Management.

ADDRESSES: Submit written requests for copies of summaries of safety and effectiveness to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Please cite the appropriate docket number as listed in table 1 of this document when submitting a written request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the summaries of safety and effectiveness.

FOR FURTHER INFORMATION CONTACT: Thinh Nguyen, Center for Devices and Radiological Health (HFZ–402), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2186.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 30, 1998 (63 FR 4571), FDA published a final rule that revised 21 CFR 814.44(d) and 814.45(d) to discontinue individual publication of PMA approvals and denials in the **Federal Register**. Instead, the agency now posts this information on the Internet on FDA's home page at *http://www.fda.gov*. FDA believes that this procedure expedites public notification of these actions because announcements can be placed on the Internet more quickly than they can be published in the **Federal Register**, and FDA believes that the Internet is accessible to more people than the **Federal Register**.

In accordance with section 515(d)(4) and (e)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(4) and (e)(2)), notification of an order approving, denying, or withdrawing approval of a PMA will continue to include a notice of opportunity to request review of the order under section 515(g) of the act. The 30-day period for requesting reconsideration of an FDA action under § 10.33(b) (21 CFR 10.33(b)) for notices announcing approval of a PMA begins on the day the notice is placed on the Internet. Section 10.33(b) provides that FDA may, for good cause, extend this 30-day period. Reconsideration of a denial or withdrawal of approval of a PMA may be sought only by the applicant; in these cases, the 30-day period will begin when the applicant is notified by FDA in writing of its decision.

The regulations provide that FDA publish a quarterly list of available safety and effectiveness summaries of PMA approvals and denials that were announced during that quarter. The following is a list of approved PMAs for which summaries of safety and effectiveness were placed on the Internet from January 1, 2004, through March 31, 2004. There were no denial actions during this period. The list provides the manufacturer's name, the product's generic name or the trade name, and the approval date.

TABLE 1.—LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMAS MADE AVAILABLE FROM JANUARY 1, 2004, THROUGH MARCH 31, 2004

PMA No./Docket No.	Applicant	Trade Name	Approval Date
P970020(S40)/2004M–0024	Guidant Corp.	ACS MULTI–LINK RX/OTW DUET CORONARY STENT SYSTEMS	August 6, 2002
P890064(S9)/2004M–0147	Digene Corp.	DIGENE HYBRID CAPTURE 2 (HC2) HIGH-RISK HPV DNA TEST	March 31, 2003
P020006/2004M–0145	Enteric Medical Technologies, Inc.	ENTERYX PROCEDURE KIT	April 22, 2003
P020031/2004M–0031	Microsulis Corp.	MICROSULIS MICROWAVE ENDOMETRIAL ABLATION	September 23, 2003
P010059/2004M–0022	Morcher GMBH	MORCHER CAPSULAR TENSION RING, TYPES 14, 14A, and 14C	October 23, 2003
P030002/2004M–0012	Eyeonics, Inc.	CRYSTALENS MODEL AT–45 ACCOMMODATING POSTERIOR CHAMBER INTRAOCULAR LENS	November 14, 2003
P030005/2004M–0064	Guidant Corp.	CONTAK RENEWAL MODELS H125 and H120 WITH MODEL 2865 VERSION 1.8 APPLICATION SOFTWARE	January 26, 2004
P030006/2004M–0116	Celsion Corp.	PROLIEVE THERMODILATION SYSTEM	February 19, 2004
H030004/2004M–0084	Menssana Research, Inc.	HEARTSBREATH	February 24, 2004
H030003/2004M–0090	MicroMed Technology, Inc.	DEBAKEY VAD CHILD LEFT VENTRICULAR ASSIST SYSTEM	February 25, 2004
P010018(S5)/2004M–0134	Refractec, Inc.	VIEWPOINT CK SYSTEM	March 16, 2004

II. Electronic Access

Persons with access to the Internet may obtain the documents at *http://www.fda.gov/cdrh/pmapage.html.*

Dated: June 7, 2004.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 04–14439 Filed 6–24–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[USCG–2004–16860]

Gulf Landing LLC Liquefied Natural Gas Deepwater Port License Application; Draft Environmental Impact Statement

AGENCY: Coast Guard, DHS; and Maritime Administration, DOT.

ACTION: Notice of availability; notice of public meeting; and request for public comments.

SUMMARY: The Coast Guard and the Maritime Administration announce the availability of the draft environmental impact statement for the Gulf Landing, LLC Deepwater Port License Application. The proposed Gulf Landing liquefied natural gas deepwater port would be located in the Gulf of Mexico approximately 38 miles south of Cameron, Louisiana. The Coast Guard and the Maritime Administration solicit public input on this draft environmental impact statement.

DATES: The draft environmental impact statement (DEIS) will be available on June 25, 2004, and comments must reach the Coast Guard on or before August 9, 2004. Additionally, an informational open house will be held in Lafayette, Louisiana on July 15, 2004, from 2 p.m. until 4 p.m., and a formal public meeting from 5 p.m. until 7 p.m.

ADDRESSES: The informational open house/public meeting location is: Courtyard by Marriott, 214 East Kaliste Saloon Road, Lafayette, LA 70508, telephone number 337–232–5005.

You may submit comments, identified by Coast Guard docket number USCG–2004–16860, to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Web site: http://dms.dot.gov.*
(2) *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001.
(3) *Fax:* 202–493–2251.
(4) *Delivery:* Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.
(5) *Federal eRulemaking Portal: http://www.regulations.gov.*

The Docket Management Facility maintains the public docket for this notice. Comments will become part of this docket and will be available for inspection or copying in Room PL–401, located on the Plaza Level of the Nassif Building at the above address between 9 a.m. and 5 p.m., Monday through Friday, except for Federal holidays. You may also view this docket, including this notice and comments, on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, the project, or the meeting, call Lieutenant Derek Dostie at 202–267–0662, or e-mail at *ddostie@comdt.uscg.mil.* If you have questions on viewing or submitting material to the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to submit comments on the DEIS. You may submit comments and related materials on this notice, the public meeting, or concerning the license application. Persons submitting comments should include their name and address, the docket number (USCG–2004–16860), and the reasons for each comment. You may submit your comments and materials by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address given under **ADDRESSES;** but please submit your comments and materials by only one means. If you choose to submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, and suitable for copying and electronic filing. If you submit them by mail and would like to know if they reach the facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and materials received during the comment period. All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use their Docket Management Facility. Please see DOT's "Privacy Act" paragraph below.

Viewing Comments and Documents

To view comments, the DEIS, or other materials relating to this license application, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Public Meeting/Informational Open House

The Coast Guard and the Maritime Administration will host an informational open house from 2 p.m. to 4 p.m. on Thursday, July 15, 2004, at the Courtyard by Marriott, 214 East Kaliste Saloon Road, Lafayette, LA 70508, telephone number 337–232–5005. A public meeting will be held from 5 p.m. until 7 p.m., following the informational open house. We invite the public and representatives of interested agencies to attend and provide their views on the proposed action and the evaluation contained in the DEIS. If you plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, please contact the person named in **FOR FURTHER INFORMATION CONTACT** and we will try to make reasonable accommodations for your needs. We ask that any requests be made at least three (3) business days prior to the scheduled meeting and include a contact person's name, telephone number, your specific need, and a TDD number (for those with hearing impairments).

Proposed Action

The application plan calls for construction of a deepwater port and associated anchorages in an area situated in the Gulf of Mexico, approximately 38 miles south of Cameron, Louisiana, in outer continental shelf block West Cameron 213, in water depth of approximately 55 feet, and adjacent to an existing shipping fairway servicing the Calcasieu River and area ports.

Gulf Landing's terminal would be capable of storing up to 200,000 cubic meters of LNG and vaporizing up to 1.2 billion cubic feet per day. Gulf Landing proposes to construct, own, and operate 5 pipelines that would interconnect with existing natural gas pipelines located in the Gulf of Mexico. Gas would then be delivered to the onshore national pipeline grid for delivery to any consumption market east of the Rocky Mountains.

The project would consist of two concrete gravity based structures (GBSs) housing the LNG containment facilities, along with topside unloading and vaporization structures, living quarters, and a ship berthing system.

The terminal would be able to receive LNG carriers with cargo capacities between 125,000 and 200,000 cubic meters and unload up to 135 LNG carriers per year. LNG carrier arrival frequency would be planned to match specified terminal gas delivery rates. All marine systems, communication, navigation aids and equipment necessary to conduct safe LNG carrier operations and receiving of cargo during specified atmospheric and sea states would be provided at the port.

The regasification process would consist of lifting the LNG from storage tanks, pumping the cold liquid to pipeline pressure, subsequent vaporization of the LNG across heat exchanging equipment, and send-out through custody transfer metering to the gas pipeline network. No gas conditioning is required at the terminal since the incoming LNG would be pipeline quality.

Five offshore pipelines, ranging from 16 to 36 inches in diameter, would be constructed and would transverse a combined 65.7 nautical miles. Each pipeline would transport gas from the terminal to an existing transmission pipeline where it would deliver the gas to the onshore U.S. gas pipeline network. On average, Gulf Landing expects the terminal would vaporize and deliver 1 billion cubic feet per day (Bcfd) of natural gas to the pipelines; with a peak daily send-out rate of 1.2 Bcfd.

Alternatives

The DEIS examines the preferred location, an alternative site and a no-action alternative. The alternative project site is West Cameron block 183.

The DEIS will assess the impacts of the alternatives—including approving, approving with conditions, or not approving (No Action Alternative) the license application to construct and operate Gulf Landing—on the natural and human environment.

As required by the National Environmental Policy Act, the Coast Guard also will analyze the No Action Alternative as a baseline for comparing the impacts of the proposed project. For the purposes of this project, the No Action Alternative is defined as not approving the Gulf Landing LLC Deepwater Port License Application.

Dated: June 21, 2004.

Howard L. Hime,

Acting Director of Standards, Marine Safety, Security, and Environmental Protection, U.S. Coast Guard.

Raymond R. Barberesi,

Director, Office of Ports and Domestic Shipping, U.S. Maritime Administration.

[FR Doc. 04–14456 Filed 6–22–04; 1:22 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[USCG–2004–17659]

Compass Port LLC Liquefied Natural Gas Deepwater Port License Application; Preparation of Environmental Impact Statement

AGENCY: Coast Guard, DHS; and Maritime Administration, DOT.

ACTION: Notice of intent; notice of public meeting; and request for public comments.

SUMMARY: The U.S. Coast Guard and the Maritime Administration announce that the Coast Guard intends to prepare an environmental impact statement as part of the environmental review of the license application for the proposed Compass Port deepwater port, to be located approximately 11 miles south of Dauphin Island, Alabama. Publication of this notice begins a public scoping process that will help determine the scope of issues to be addressed in the environmental impact statement and identify the significant environmental issues related to this license application. Finally, this notice solicits public involvement in the scoping process, and announces public meetings and a public comment period to facilitate that involvement.

DATES: The public meetings will be held July 12, 13, and 14, 2004, from 3 p.m. to 7 p.m. in Dauphin Island, Alabama, Mobile, Alabama, and Pascagoula, Mississippi, respectively. Each meeting will consist of an informational open house from 3 p.m. to 4:30 p.m. and a public scoping meeting from 5 p.m. to 7 p.m. Comments and related material must reach the docket on or before July 26, 2004.

ADDRESSES:

The Dauphin Island meetings will be held at:
Dauphin Island Chamber of Commerce, 402 La Vente Street, Dauphin Island, Alabama 36528, 251–861–5524.

The Mobile meetings will be held at:
Mobile Government Plaza, 205 Government Street, Mobile, Alabama 36644, 251–574–5058.

The Pascagoula meetings will be held at:
Jackson County Fairgrounds Fair Hall, 2902 Shortcut Road, Pascagoula, Mississippi 39567, 228–762–6043.

All meeting spaces will be wheelchair-accessible.

You need not attend the meetings in order to comment. You may also submit comments identified by docket number USCG–2004–17659 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) Electronically through the Web site for the Docket Management System, at *http://dms.dot.gov.*

(2) By mail to the Docket Management Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) By delivery to Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(5) By the Federal eRulemaking Portal at *http://www.regulations.gov/.*

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public will become part of this docket and will be available for inspection or copying in Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, from 9 a.m. to 5 p.m. Monday through Friday, except Federal holidays. This docket may also be found on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on the application, this notice, or the meetings, or if you want to be notified when the draft and final environmental impact statements become available, call Mr. Kenneth Smith at 202–267–0578, or email at *KNSmith@comdt.uscg.mil.* If you have questions on viewing or submitting material to the docket, call Ms. Andrea M. Jenkins, Program Manager, Docket Operations, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION:

Scoping Meetings and Request for Comments

We seek public review of and comment on this license application, particularly with respect to the environmental review discussed in this notice. Public input on environmental concerns related to the application, suggested sources of relevant data, and suggested methods for environmental analysis are especially welcome.

The Coast Guard will hold informational open houses and scoping meetings for interested members of the public, as described under **DATES** and **ADDRESSES.** Meeting facilities are wheelchair accessible. If you need other special assistance in order to participate in these sessions (for example, sign language interpretation), please contact the person named in **FOR FURTHER INFORMATION CONTACT,** and we will try to make reasonable accommodation for your needs. We ask that you make such requests at least three (3) business days before the scheduled meeting. Include a contact person's name and telephone number, your specific need, and (for persons with hearing impairments) a TDD number.

If you submit comments or related material to the docket (see **DATES** and **ADDRESSES**), please make your comment as specific as possible and give us the reasons for each comment. If you mail or hand-deliver printed documents, please submit them unbound and in a format suitable for copying and electronic filing, no larger than 8½ by 11 inches. If you submit comments or material by mail and want confirmation that it has reached the facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. All comments received will be posted, without change, to *http://dms.dot.gov/* and will include any personal information you have provided.

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on

behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov/*.

Environmental Review

Deepwater ports for the transportation, storage, or further handling of oil or natural gas must be licensed in accordance with the Deepwater Port Act of 1974, as amended, 33 U.S.C. 1501 *et seq.* ("the Act"). The Coast Guard and the Maritime Administration (MARAD) jointly process applications for deepwater port licenses. A notice of application for a proposed Compass Port liquefied natural gas deepwater port, to be located in the Gulf of Mexico approximately 11 miles south of Dauphin Island, Alabama, was published in the **Federal Register** on May 20, 2004 (69 FR 29142). That notice contains a fuller description of the proposed deepwater port. In addition to information previously published in the **Federal Register**, the applicant has identified five locations as possible fabrication sites for the concrete Gravity Based Structures (GBS's) which would be used to contain the LNG storage tanks. The proposed locations are:

Big Bend Site, Freeport, TX;
Zachary Construction Site, Harbor Island, TX;
Gulf Marine Fabrications, Ingleside, TX;
Kiewit Construction Site, Ingleside, TX;
Port of Altamira, Mexico.

The complete application, including environmental documentation provided by the applicant, is available in the public docket (see "Viewing Comments and Dockets," above).

The Act establishes a licensing process for proposed deepwater ports, and that process includes review of the proposed port's natural and human environmental impacts. Consistent with the DWPA, this environmental review must comply with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332, and with the following authorities: Coast Guard regulations in 33 CFR part 148, Council on Environmental Quality regulations in 40 CFR parts 1500–1508, DOT Order 5610.1C (Procedures for Considering Environmental Impacts), and Coast Guard Commandant's Instruction (COMDTINST) M16475.1D. Environmental review includes public involvement, and consultation with States deemed adjacent to the proposed port (in this case, Alabama and Mississippi). The Coast Guard is the lead agency for determining the required scope of environmental review, and in this case the Coast Guard has determined that an environmental impact statement (EIS) must be prepared. Therefore, we are publishing the notice of intent described in 40 CFR 1508.22, to announce our intention to prepare and consider an EIS, and to describe our proposed action and possible alternatives, describe the scoping process required by 40 CFR 1501.7, and provide contact information. Contact information is provided above, under **FOR FURTHER INFORMATION CONTACT.**

The proposed action requiring environmental review is the Federal licensing of the Compass Port deepwater port application. The alternatives to licensing approval are licensing with conditions (including conditions designed to mitigate environmental impact), and denying the application, which for purposes of environmental review is the "no-action" alternative.

Public scoping is an early and open process for determining the scope of issues to be addressed in an EIS and for identifying the significant issues related to a proposed action. The scoping process begins with publication of this notice, extends through the public comment period (see *DATES*), and ends when the Coast Guard completes the following actions:

- Invites the participation of Federal, State, and local agencies, any affected Indian tribe, the applicant, and other interested persons;
- Determines the actions, alternatives, and impacts described in 40 CFR 1508.25;
- Identifies and eliminates from detailed study those issues that are not significant or that have been covered elsewhere;
- Allocates responsibility for preparing EIS components;
- Indicates any related environmental assessments or environmental impact statements that are not part of the EIS;
- Identifies other relevant environmental review and consultation requirements;
- Indicates the relationship between timing of the environmental review and other aspects of the application process; and
- At its discretion, exercises options provided in 40 CFR 1501.7(b).

Once the scoping process is complete, the Coast Guard will prepare a draft EIS, and we will publish a **Federal Register** notice announcing its public availability. If you want to be mailed or emailed the draft EIS notice of availability, please contact the person named in **FOR FURTHER INFORMATION CONTACT.** We will provide the public with an opportunity to review and comment on the draft EIS. After the Coast Guard considers those comments, we will prepare the final EIS and similarly announce its availability and solicit public review and comment.

Dated: June 21, 2004.

Howard L. Hime,

Acting Director of Standards, Marine Safety, Security, and Environmental Protection, U.S. Coast Guard.

Raymond R. Barberesi,

Director, Office of Ports and Domestic Shipping, U.S. Maritime Administration.

[FR Doc. 04–14455 Filed 6–22–04; 1:21 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1520–DR]

Indiana; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Indiana (FEMA–1520–DR), dated June 3, 2004, and related determinations.

DATES: *Effective Date:* June 17, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Indiana is hereby amended to include the Public Assistance program for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 3, 2004:

Benton, Clark, Crawford, Floyd, Harrison, Martin, Miami, Orange, Perry, Spencer, Tippecanoe, Warren, Warrick, and Washington Counties for Public Assistance (already designated for Individual Assistance.)

Greene and Owen Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment

Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–14424 Filed 6–24–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1518–DR]

Iowa; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Iowa (FEMA–1518–DR), dated May 25, 2004, and related determinations.

DATES: *Effective Date:* June 14, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Iowa is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 25, 2004:

Carroll, Mills, and Page Counties for Individual Assistance.

Fremont County for Individual Assistance (already designated for Public Assistance.)

Dubuque, Webster, and Wright Counties for Public Assistance (already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–14422 Filed 6–24–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1523–DR]

Kentucky; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Kentucky (FEMA–1523–DR), dated June 10, 2004, and related determinations.

EFFECTIVE DATE: June 10, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 10, 2004, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the Commonwealth of Kentucky, resulting from severe storms, tornadoes, flooding, and mudslides beginning on May 26, 2004, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the Commonwealth of Kentucky.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas, and Hazard Mitigation throughout the Commonwealth. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Michael E. Bolch, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of Kentucky to have been affected adversely by this declared major disaster:

Bell, Bourbon, Boyle, Breathitt, Breckinridge, Bullitt, Butler, Caldwell, Carroll, Casey, Christian, Clark, Clay, Crittenden, Edmonson, Elliott, Estill, Fayette, Floyd, Franklin, Garrard, Grayson, Hardin, Harlan, Hart, Henderson, Henry, Hopkins, Jefferson, Jessamine, Johnson, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Fletcher, Lincoln, Madison, Magoffin, Martin, McLean, Menifee, Montgomery, Morgan, Muhlenberg, Ohio, Oldham, Owen, Owsley, Perry, Pike, Powell, Pulaski, Rockcastle, Rowan, Scott, Shelby, Spencer, Trimble, Union, Webster, Whitley, Wolfe, and Woodford Counties for Individual Assistance.

Clay, Daviess, Floyd, Grayson, Henry, Johnson, Knox, Leslie, Magoffin, Martin, Morgan, Oldham, Owsley, Perry, Pike, Powell, and Webster Counties for Public Assistance.

All counties within the Commonwealth of Kentucky are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–14426 Filed 6–24–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1524–DR]

Missouri; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Missouri (FEMA–1524–DR), dated June 11, 2004, and related determinations.

EFFECTIVE DATE: June 11, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 11, 2004, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Missouri, resulting from severe storms, tornadoes, and flooding on May 18–31, 2004, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Missouri.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Libby Turner, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Missouri to have been affected adversely by this declared major disaster:

Adair, Andrew, Bates, Benton, Buchanan, Caldwell, Carroll, Cass, Cedar, Chariton, Clay, Clinton, Daviess, DeKalb, Gentry, Grundy, Harrison, Henry, Hickory, Jackson, Johnson, Knox, Linn, Livingston, Macon, Mercer, Monroe, Nodaway, Platte, Polk, Randolph, Ray, Shelby, St. Clair, Sullivan, Vernon, and Worth Counties for Individual Assistance.

All counties within the State of Missouri are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050, Individual and Household Program-Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–14427 Filed 6–24–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1515–DR]

North Dakota; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Dakota (FEMA–1515–DR), dated May 5, 2004, and related determinations.

EFFECTIVE DATE: June 14, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective June 14, 2004.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–14421 Filed 6–24–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1519–DR]

Ohio; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Ohio (FEMA–1519–DR), dated June 3, 2004, and related determinations.

DATES: *Effective Date:* June 18, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Ohio is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a

major disaster by the President in his declaration of June 3, 2004:

Hocking, Mahoning, and Portage Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–14423 Filed 6–24–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1525–DR]

Virginia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Virginia (FEMA–1525–DR), dated June 15, 2004, and related determinations.

EFFECTIVE DATE: June 15, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 15, 2004, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the Commonwealth of Virginia, resulting from severe storms, tornadoes, and flooding beginning on May 24, 2004, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the Commonwealth of Virginia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and the Other Needs Assistance under section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Thomas Davies, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of Virginia to have been affected adversely by this declared major disaster:

Lee, Russell, and Tazewell Counties for Individual Assistance.

Lee, Russell, and Tazewell Counties in the Commonwealth of Virginia are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–14420 Filed 6–24–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1522–DR]

West Virginia; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of West Virginia (FEMA–1522–DR), dated June 7, 2004, and related determinations.

EFFECTIVE DATE: June 17, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of West Virginia is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 7, 2004:

Mercer County for Public Assistance (already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–14425 Filed 6–24–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4901–N–26]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: June 25, 2004.

FOR FURTHER INFORMATION CONTACT: Kathy Burruss, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless.

Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: June 17, 2004.

Mark R. Johnston,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 04–14129 Filed 6–24–04; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Draft Comprehensive Conservation Plan and Environmental Assessment for Kern and Pixley National Wildlife Refuges

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that a Draft Comprehensive Conservation Plan and Environmental Assessment (Draft CCP/EA) for Kern and Pixley National Wildlife Refuges (Refuges) is available for review and comment. This Draft CCP/EA, prepared pursuant to the National Wildlife Refuge System Administration Act, as amended, and the National Environmental Policy Act of 1969, describes the Service's proposal for managing the Refuges for the next 15 years. The draft compatibility determinations for several public uses are also available for review with the Draft CCP/EA.

DATES: Written comments must be received at the address below by July 30, 2004.

ADDRESSES: Comments on the Draft CCP/EA should be addressed to: David Hardt, Project Leader, Kern and Pixley National Wildlife Refuges, P.O. Box 670, Delano, California 93216. Comments may also be submitted at the public meetings or via electronic mail to *FW1PlanningComments@fws.gov*. Please type "Kern CCP" in the subject line.

FOR MORE INFORMATION CONTACT: David Hardt, Project Leader, Kern and Pixley National Wildlife Refuges, P.O. Box 670, Delano, CA 93216, phone: (661) 725–2767 or Mark Pelz, Planning Team Leader, CA/NV Refuge Planning Office, 2800 Cottage Way, W–1916, Sacramento, CA, 95825, phone (916) 414–6504.

SUPPLEMENTARY INFORMATION: Copies of the Draft CCP/EA may be obtained by writing to the U.S. Fish and Wildlife Service, Attn: Mark Pelz, CA/NV Refuge Planning Office, 2800 Cottage Way, W–1916, Sacramento, CA 95825. Copies of the Draft CCP/EA may be viewed at this address or at Kern National Wildlife Refuge, 10811 Corcoran Road, Delano, California 93215. The Draft CCP/EA will also be available for viewing and downloading online at *http://pacific.fws.gov/planning*. Printed documents will also be available for review at the following libraries: Beale Memorial Library, 701 Truxtun Avenue, Bakersfield, California, and the Kern County Library, Delano Branch, 925 10th Avenue, Delano, California.

Background

Kern National Wildlife Refuge is located in the southern portion of California's San Joaquin Valley, in Kern County. It was established in 1960 to provide wintering habitat for waterfowl in the southern San Joaquin Valley. Kern Refuge consists of a single, 10,618-acre unit owned by the Service. Kern Refuge's seasonal wetlands are an important wintering area for Pacific Flyway waterfowl and other waterbirds, and a popular destination for southern California hunters. The Refuge's grassland, alkali scrub, and riparian communities support four endangered species and several other special status species.

Pixley National Wildlife Refuge is located northeast of Kern Refuge in Tulare County. Pixley Refuge was set aside in 1959 to provide wintering habitat for waterfowl. Later, it was expanded to protect the habitat for the endangered blunt-nosed leopard lizard and Tipton kangaroo rat. The Pixley Refuge acquisition boundary contains about 10,300 acres, of which about 62 percent is owned by the Federal government. Pixley Refuge protects mostly grassland and smaller amounts of alkali playa, saltbush scrub, vernal pools, and riparian habitat. Pixley Refuge also has 756 acres of moist soil wetlands that are managed for wintering waterfowl and sandhill cranes.

Purpose and Need for Action

The purpose of the CCP is to provide a coherent, integrated set of management actions to help attain the Refuges' establishing purposes, and vision, goals, and objectives. The CCP identifies the Refuges' role in support of the mission of the National Wildlife Refuge System, describes the Service's management actions, and provides a basis for the Refuges' budget requests.

Alternatives

The Draft CCP/EA identifies and evaluates four alternatives for managing Kern and Pixley Refuges for the next 15 years. The proposed action is to implement Alternative C as described in the EA. Alternative C best achieves Kern and Pixley Refuges' purposes, vision, and goals; contributes to the Refuge System mission; addresses the significant issues and relevant mandates; and is consistent with principles of sound fish and wildlife management.

Under Alternative A: No Action, the Kern and Pixley Refuges would continue to be managed as they have in the recent past. In general, management of the Refuges would be guided by Master Plans completed in 1986. Existing habitat management practices would continue and no new habitat restoration projects would occur. The existing hunting, wildlife observation, photography, environmental education, and interpretation programs would remain unchanged.

Under Alternative B, improvements at Kern Refuge would focus on improving habitat for migratory waterfowl and increasing waterfowl hunting opportunities. Under this alternative, the Service would rehabilitate 1,150

acres of seasonal marsh and restore seven acres of riparian vegetation. In addition, the Service would open an additional 187 acres to free-roam hunting, 1,330 acres to hunting from 18 new designated blinds, and open the Refuge to hunting on Sundays (in addition to Wednesday and Saturday). Alternative B would also expand Kern Refuge's environmental education and interpretation programs and an outdoor recreation planner would be hired. Changes at Pixley Refuge under Alternative B would focus on improving and expanding the Refuge's existing threatened and endangered species management and environmental education and interpretation programs. The Service would pursue acquisition of the remaining natural lands within the Refuge's approved acquisition boundary and expand surveying and monitoring for special status species. The Service would also expand aerial surveys for waterfowl and restore five acres of riparian vegetation.

Under Alternative C (the proposed action), the management focus for Kern Refuge would change to providing wintering habitat for a variety of migratory birds and contributing to the recovery of targeted special status species. Under this alternative, the Service would rehabilitate 1,330 acres of seasonal marsh; expand aerial surveys of waterfowl and ground surveys of shorebirds, waterbirds, raptors, and special status species; strengthen levees to protect upland units from flooding; eradicate 90 percent of the salt cedar on the Refuge within 10 years; restore 440 acres of saltbush scrub; restore 15 acres of riparian vegetation; prepare a comprehensive surveying and monitoring plan for special status species; and prepare a grassland management plan. The Service would also expand Kern Refuge's hunt area and add nine new spaced blinds, expand the environmental education and interpretation programs substantially, construct a new tour route, and build two new photo blinds. Changes at Pixley Refuge under Alternative C would be similar to those under Alternative B. In addition, the Service would substantially expand its surveying, monitoring, and research program for threatened and endangered species and prepare a grassland management plan. The Refuge would also seek approval to prepare a land protection plan that explores options for providing linkages between Pixley Refuge units and State-owned habitat to the south. Alternative C would also include developing a 272-acre grain unit to provide foraging habitat for sandhill cranes, restoring 10 acres of riparian habitat, and expanding surveys for waterbirds and raptors. Pixley Refuge's environmental education and interpretation programs would be expanded and a new pullout and interpretive displays would be developed.

Changes under Alternative D at Kern and Pixley Refuges are similar to those described under Alternative C, with the following exceptions. The Service would substantially modify management of moist soil units at both Refuges to encourage native waterfowl food plants and improve habitat for shorebirds. In addition, the size of the hunt area at Kern Refuge would be reduced by about 38 percent and two new tour routes would be constructed. The Service would also restore more riparian habitat under Alternative D–30 acres at Kern Refuge and 20 acres at Pixley Refuge.

Public Comments

After the review and comment period ends for this Draft CCP/EA, comments will be analyzed by the Service and addressed in the Final CCP. All comments received from individuals, including names and addresses, become part of the official public record and may be released. Requests for such comments will be handled in accordance with the Freedom of Information Act, the Council on Environmental Quality's NEPA regulations and other Service and Departmental policies and procedures.

Dated: June 21, 2004.

David G. Paullin,

Manager, California/Nevada Operations, Sacramento, California.

[FR Doc. 04–14528 Filed 6–24–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Preparation of an Environmental Impact Statement for Issuance of an Incidental Take Permit Associated With a Habitat Conservation Plan (HCP) for the Federally Endangered California Condor

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), the U.S. Fish and Wildlife Service (Service) advises the public that we intend to gather information necessary to prepare an Environmental Impact Statement (EIS) on the proposed habitat conservation plan (HCP) for the federally endangered California condor (*Gymnogyps californianus*) (Tejon Ranch Condor HCP). The proposed Tejon Ranch Condor HCP is being prepared under section 10(a)(1)(B) of the Endangered Species Act, as amended. The Tejon Ranch Corporation (Tejon Ranchcorp), located in Kern and Los Angeles Counties, California, intends to request a permit for the incidental take of the endangered California condor. The permit is needed to authorize the incidental take of this species as a result of implementing activities covered under the proposed HCP.

We provide this notice to: (1) Describe the proposed action and possible alternatives; (2) advise other Federal and State agencies, affected Tribes, and the public of our intent to prepare an EIS; (3) announce the initiation of a 30-day public scoping period; and (4) obtain suggestions and information on the scope of issues and alternatives to be included in the EIS.

DATES: Public meetings will be held on: Tuesday, July 13, 2004, from 3 p.m. to 5 p.m. and 7 p.m. to 9 p.m. Written comments should be received on or before July 26, 2004.

ADDRESSES: The public meetings will be held at Cuddy Hall, 335 Lakewood Place, Frazier Park, CA. Information, written comments, or questions related to the preparation of the EIS and the NEPA process should be submitted to Rick Farris, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California 93003; *fw1condorHCP@r1.fws.gov;* or fax (805) 644–1766.

FOR FURTHER INFORMATION CONTACT: Rick Farris at the above Ventura address, or at (805) 644–1766.

SUPPLEMENTARY INFORMATION:

Reasonable Accommodation

Persons needing reasonable accommodations in order to attend and participate in the public meeting should contact Jane Touth of the Ventura Fish and Wildlife Office at (805) 644–1766 as soon as possible. In order to allow sufficient time to process requests, please call no later than 1 week before the public meeting. Information regarding this proposed action is available in alternative formats upon request.

Background

Section 9 of the Endangered Species Act, as amended (Act) (16 U.S.C. 1531 *et seq.*) and Federal regulations prohibit the "take" of a fish or wildlife species

listed as endangered or threatened. Under the Act, the following activities are defined as take: harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed animal species, or attempt to engage in such conduct (16 U.S.C. 1538). However, under section 10(a) of the Act, we may issue permits to authorize "incidental take" of listed species. Incidental take is defined by the Act as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing permits for threatened and endangered species, respectively, are at 50 CFR 13 and 50 CFR 17.

California Condor

The Tejon Ranchcorp is requesting a permit for incidental take of the California condor on lands included in the Tejon Ranch Condor HCP. The Tejon Ranch Condor HCP includes all lands within the boundaries of the Tejon Ranch that are owned by the Tejon Ranchcorp or its affiliates that lie outside the San Joaquin Valley floor area, and encompass approximately 340 square miles. For the purposes of the Tejon Ranch Condor HCP, the Ranch is divided into three major sections: the Antelope Valley Floor, the Tehachapi Mountain Uplands, and the Tunis and Winters Ridge Area. The Tunis and Winters Ridge Area is the area designated in the Tejon Ranch Condor HCP as the "Condor Study Area." The Tejon Ranch Condor HCP is designed principally to avoid the take of the California condor, but includes provisions to minimize and mitigate the impacts of any take that may occur.

Activities covered by the proposed Tejon Ranch Condor HCP (Covered Activities) include ranchwide activities, such as livestock grazing and range management, motion picture filming, construction and maintenance of all underground utilities including any oil, gas, water, or other pipelines and fiber optic cables; and recreational activities such as fishing, fishing-related construction, equestrian activities, bicycling events, boating, sailing, swimming, camping, hiking, four-wheel driving, bird watching, and other nature-based activities. Proposed Covered Activities that occur in the Antelope Valley Floor area include construction, maintenance, and operation of highway commercial facilities, general commercial facilities, heavy and light industrial facilities, antennae, high-tension power lines, resorts, indoor and outdoor entertainment and recreational facilities and parks, residential subdivisions, roads, and other infrastructure necessary to these activities. Proposed Covered Activities in the Condor Study Area include ranchwide activities and limited construction activities. Covered Activities that could occur in the Tehachapi Mountain Uplands include the possible future development of a recreational complex uphill of the Old Headquarters area of the Ranch. Low-density, low-profile residential and destination resort development in the Tejon Lake-Beartrap Area of the Ranch would occur in this area as well.

The Tejon Ranch Condor HCP describes how the effects of the Ranch's activities on the California condor will be minimized and mitigated through the implementation of take avoidance, minimization, mitigation, and monitoring measures. Under the proposed HCP, development on the Ranch over the proposed 50-year permit term, will occur in areas that are rarely used by the California condors and the development will be designed to maintain the value of areas used by California condors.

Environmental Impact Statement

The Tejon Ranchcorp and the Service have selected LSA Associates, Inc. to prepare the EIS. The document will be prepared in compliance with the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*). The LSA Associates, Inc. will prepare the EIS under the supervision of the Service, who is responsible for the scope and content of the document.

The EIS will consider the proposed action, the issuance of a section 10(a)(1)(B) permit under the Act, and a reasonable range of alternatives. A detailed description of the impacts of the proposed action and each alternative will be included in the EIS. Several alternatives will be considered and analyzed, representing varying levels of conservation, impacts, and permit area configurations. A No Action alternative will be included in the analysis of the alternatives considered. The No Action alternative means that the Service would not issue a section 10(a)(1)(B) permit.

The EIS will also identify potentially significant direct, indirect, and cumulative impacts on biological resources, land use, air quality, water quality, water resources, economics, and other environmental issues that could occur with the implementation of the proposed actions and alternatives. For all potentially significant impacts, the EIS will identify avoidance, minimization, and mitigation measures to reduce these impacts, where feasible, to a level below significance.

Review of the EIS will be conducted in accordance with the requirements of the NEPA Council on the Environmental Quality Regulations (40 CFR 1500–1508), the Administrative Procedures Act, other applicable regulations, and the Service's procedures for compliance with those regulations. This notice is being furnished in accordance with 40 CFR 1501.7 of NEPA to obtain suggestions and information from other agencies and the public on the scope of issues and alternatives to be addressed in the EIS. The primary purpose of the scoping process is to identify important issues raised by the public, related to the proposed action. Written comments from interested parties are welcome to ensure that the full range of issues related to the permit request is identified. While written comments are encouraged, we will accept both written and oral comments at the public meetings. In addition, you may submit written comments by mail, e-mail, or facsimile transmission (*see* **ADDRESSES**). All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

Dated: June 18, 2004.

Paul Henson,

Acting Deputy Manager, California/Nevada Operations Office, U.S. Fish and Wildlife Service.

[FR Doc. 04–14314 Filed 6–24–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Final Determination Against Federal Acknowledgement of the Webster/Dudley Band Chaubunagungamaug Nipmuck Indians

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of final determination.

SUMMARY: Pursuant to 25 CFR 83.10(m), notice is given that the Principal Deputy Assistant Secretary—Indian Affairs declines to acknowledge a group known as the Webster/Dudley Band of Chaubunagungamaug Nipmuck Indians, Petitioner 69B, c/o Mr. Edwin Morse, Sr., 265 West Main Street, P.O. Box 275, Dudley, Massachusetts 01501, as an Indian tribe within the meaning of Federal law. This notice is based on a final determination that the petitioning group does not satisfy all seven of the criteria set forth in Part 83 of Title 25 of the Code of Federal Regulations, specifically criteria 83.7(a), (b), and (c), and, therefore, the petitioner does not meet the requirements for a government-

to-government relationship with the United States.

DATES: This determination is final and will become effective on September 23, 2004, pursuant to 25 CFR 83.10(l)(4), unless a request for reconsideration is filed pursuant to 25 CFR 83.11.

FOR FURTHER INFORMATION CONTACT: R. Lee Fleming, Director, Office of Federal Acknowledgment, (202) 513–7650.

SUPPLEMENTARY INFORMATION: Under delegated authority, the Secretary of the Interior (Secretary) ordered, through the Assistant Secretary—Indian Affairs (AS–IA), the Principal Deputy Assistant—Secretary (PD AS–IA) "to execute all documents, including regulations and other **Federal Register** notices, and perform all other duties relating to Federal recognition of Native American tribes." Pursuant to this order, the PDAS–IA makes the determination regarding the petitioner's status, as defined in the acknowledgment regulations as one of the duties delegated by the Secretary to the AS–IA (209 Department Manual 8), and from the AS–IA to the PDAS–IA (Secretarial Order No. 3252).

The Nipmuc Tribal Council, Hassanamisco Reservation, in Grafton, Massachusetts, submitted a letter of intent to petition for Federal Acknowledgment on April 22, 1980, and was designated as petitioner 69. The "Nipmuck Indian Council of Chaubunagungamaug" [Chaubunagungamaug Band (CB)], which was created in 1981, was nominally included in petitioner 69 as a single organization. Under the leadership of Edwin W. Morse, Sr., the CB withdrew from petitioner 69, submitted a separate letter of intent to petition for Federal acknowledgment on May 31, 1996, and was designated petitioner 69B. The remaining group, now called the Nipmuc Nation, was designated as petitioner 69A. The formal name of petitioner 69B, as of December 10, 1996, is the Webster/Dudley Band of Chaubunagungamaug Nipmuck Indians.

A notice of a proposed finding (PF) to decline to acknowledge petitioner 69B was published in the **Federal Register** on October 1, 2001. The notice was based on a determination that petitioner 69B did not satisfy three of the seven mandatory criteria set forth in Part 83 of Title 25 of the Code of Federal Regulations (25 CFR 83.7). Specifically, for criterion 83.7(a), the available evidence did not show that petitioner 69B had been identified as an American Indian entity since 1900. For 83.7(b), the available evidence did not demonstrate that petitioner 69B had been a distinct community from historical times to the present. For 83.7(c), the available evidence did not demonstrate that petitioner 69B had maintained political influence or authority over its members from historical times to the present. Therefore, petitioner 69B did not meet the requirements for a government-to-government relationship with the United States.

Petitioner 69B submitted comments in response to the PF on September 30, 2002. The State of Massachusetts and the State of Connecticut are interested parties to petitioners 69A and 69B. Connecticut submitted comments and exhibits on September 30, 2002. Massachusetts did not submit comments, but the Town of Sturbridge, Massachusetts, submitted comments pertaining to both petitions on October 10, 2001. Petitioner 69B responded to third party comments on December 2, 2002.

The PF found that from 1900 to 1978 there were occasional external identifications of individuals and single families as descendants of the Dudley/Webster Indians, but there were "no external identifications of petitioner 69B or any group antecedent to petitioner 69B as an American Indian entity" (66 FR 49971). The PF also found that in many instances the identifications of individuals as Dudley/Webster descendants were of individuals who did not have descendants in 69B; therefore, the identifications did not pertain to the petitioner. There were external identifications of petitioner 69B, which was an organization that the PF concluded consisted essentially only of one extended family, as an American Indian entity only from 1981 to the present.

For the FD, 69B submitted a considerable amount of documentation, the majority of which was retrospective, dealing with Dudley/Webster Indians who lived during the 19th century, rather than identifications of a Dudley/Webster entity that continued to exist from 1900 to the present as required by the regulations. Petitioner 69B submitted a number of 20th century "last of the Nipmuck" articles, many of which identified an individual as having Nipmuc ancestry, often specifying Dudley/Webster Nipmuc ancestry, but none of them identified any continuing Nipmuc entity, group, settlement, or community to which the individual was a part. Many of the items cited in the petitioner's response to third party comments dated before 1891 and since 1978. Criterion 83.7(a) requires external identification only since 1900. The PF found that 69B met criterion 83.7(a) only from 1981 to the present.

The petitioner also argued that "racial discrimination" was a form of identification of a Dudley/Webster Nipmuc "entity," citing the testimony of individuals in the petitioner's membership as evidence that "Dudley/Webster Nipmucks themselves clearly identify racism leveled against them as a substantial force in their lives. Their accounts span the entire twentieth century." However, the testimony, which comes almost entirely from within the petitioner's membership, is a form of self-identification and relevant to criterion 83.7(b), rather than to 83.7(a). Petitioner 69B has not presented any contemporary primary documents showing external identifications of an entity composed of their ancestors between 1900 and 1980, whether racially-based or not.

This FD reexamined the evidence for two events that might have provided external identifications of an existing Dudley/Webster entity: the formation of the Algonquian Indian Council of New England, a pan-Indian organization, in 1923 and the formation of a Worcester County chapter of the National Algonquin Indian Council (NAIC), another New England pan-Indian group, in 1950. However, neither event provided identification of a Dudley/Webster entity comprising the antecedents of the petitioner 69B. All but one of the Dudley/Webster descendants mentioned in connection with these organizations were from families now associated with the Nipmuc Nation, petitioner 69A. The articles describing the 1950 NAIC organization also did not refer to an existing Dudley/Webster entity.

Petitioner 69B asserted that Zara CiscoeBrough, head of the Hassanamisco group recruited Edith (Morse) Hopewell, sister of Edwin W. Morse Sr., "to compile a list of Indian families who lived in the area," and because she was able to find descendants of the Dudley/Webster Indian families, it was "an indicator of community continuity and of her knowledge of its parameters." The *Indian Census Notebook,* compiled in 1976 by Mrs. Hopewell, is a listing of persons claiming Indian descent from Nipmuc tribes and other Indian tribes who resided in central Worcester County, Massachusetts, in the mid-1970's; however, it did not identify the antecedents of petitioner 69B as a separate group, other than listing the descendants of Elizabeth (Henries) Morse, the compiler's mother, together.

The additional evidence submitted for the FD, like that previously reviewed in

the PF, does not provide substantially continuous external identification of an American Indian entity antecedent to petitioner 69B from 1900 to the present. Specifically there is no evidence of a continuing Dudley/Webster entity after 1891 that was antecedent to the Chaubunagungamaug Band (now petitioner 69B) that organized in 1981. The conclusion of the PF stands. Petitioner 69B does not meet the requirements of criterion 83.7(a).

In regard to criterion 83.7(b), the PF found that the historical Dudley/Webster Indian tribe met criterion 83.7(b) from first sustained European contact through 1870, primarily because of the residence of more than 50 percent of the membership on a state-supervised reservation. For the period 1870 through 1891, the evidence for community among Dudley/Webster descendants as a whole was minimal, but the group was found to have met criterion 83.7(b). The PF found that the evidence from 1891 through the 1970's did not demonstrate community between the extended Morse family and other Dudley Nipmuc Indian families, including other sub-lines of the Sprague/Henries family of which the Morse line is one sub-line.

Petitioner 69B, currently known as the Webster/Dudley Band of Chaubunagungamaug Nipmuck Indians (CB), was created in 1981. It initially consisted essentially of only part of one family line of the Dudley/Webster descendants, the Sprague/Henries/Morse family. The Morse family still comprises more than 42 percent of the membership. Beginning in the mid-1980's, a portion of another Dudley/Webster line was added, as well as a portion of a third family line. About 18 percent of the present membership does not have documented Dudley/Webster ancestry.

Although the CB petitioner was nominally included in a single organization of Nipmucs (petitioner 69), until it withdrew from the Nipmuc Nation (now petitioner 69A) in 1996, in practice the CB, or petitioner 69B, functioned as a separate organization from its inception in 1981. Consequently, for purposes of this evaluation the CB, petitioner 69B, is treated as a separate entity from 69A.

This FD concludes that petitioner 69B did not constitute a community either before or since 1980. Evidence did not support the petitioner's view that the group was simply a formalization of an existing community made up of three "traditional family lines." Although the present membership is largely drawn from three genealogically definable "family lines," there is no evidence to demonstrate that these families formed a single community before 1980, or evidence that they form a community now. Interview evidence indicates that members of the two lines added in the 1980's did not know the Morse family, who had created the CB organization, before they joined it.

The organization's primary events, which have been held annually since 1980, were "Indian-style" gatherings that were largely attended by non-CB individuals. Non-CB individuals, with the status of "associate members," also played a substantial role in the CB organization's activities before 1993, and two non-Nipmuc individuals played important leadership roles, including the organization of "community events," before 1987. The importance of these two individuals and the associate members provides evidence against the existence of a community that limits itself to individuals of long-standing association or close social ties with each other. The organization's formal membership requirements do not require any demonstration of social relationships in a community, but are open to anyone who descends from one of the Dudley/Webster Indians identified on the 1861 *Earle Report* or the 1891 Dudley/Webster distribution list of assets from the sale of the Dudley/Webster reservation land. Thus, the character of the enrollment processes does not provide positive evidence of the existence of a community. Petitioner 69B does not meet the requirements of criterion 83.7(b).

The evidence in the record for the FD does not show any political influence or authority for a group antecedent to petitioner 69B from 1891 through 1980. The data presented by the petitioner for the period from 1891 through 1980 pertained either to intra-family activities or to pan-Indian activities. There is no evidence that the petitioner's ancestors were "a group" at any level beyond that of the individual extended families which was "able to mobilize significant numbers of members and significant resources from its members for group purposes" (83.7(c)(1)(i)). There is no indication in the data that throughout that period, "most of the membership consider[ed] issues acted upon or actions taken by group leaders or governing bodies to be of importance (83.7(c)(1)(ii)). There is no evidence that there was "widespread knowledge, communication and involvement in political processes by most of the group's members" (83.7(c)(1)(iii)). There were no "conflicts showing controversy over valued goals, properties, policies, and/or decisions" (83.7(c)(1)(v)).

For the entire period from 1891 through 1980, there is no contemporary, primary evidence in the record that shows political authority or influence among the ancestors of petitioner 69B's members as a distinct community. Some of the evidence the petitioner cites has been taken entirely from certain oral histories (interviews), which were gathered at dates much later than the activities were claimed to have occurred. Some interviews contain statements that are in conflict with other evidence in the record. There is no evidence that the speaker was either a member of the claimed community or a direct observer of the group, at the time the events would have occurred. The petitioner did not provide corroboration of these interview statements by primary, documentary evidence.

The available evidence indicates that there was not a community within which political influence or authority, leadership, or a bilateral relationship between leaders and followers existed before 1980. The petitioner itself concludes that before 1980 there were only individual leaders of the separate family lines, and does not claim that there were any overall leaders. Oral history interviews of persons who are now political leaders of 69B and whose direct ancestors would have constituted its antecedents contain specific statements that there was not, prior to 1980, any group antecedent to petitioner 69B, contrary to the claims asserted by the petitioner. The creation of the organization in 1981 was not the formalization of a preexisting system of informal, family leadership as petitioner 69B asserts.

The primary focus of the petitioner 69B's argument for political influence from 1981 to the present is the organization's conflicts with petitioner 69A over membership requirements and definitions that occurred before the two organizations separated. Several times officers of the CB attacked the other part of the combined petitioner 69, now petitioner 69A, as having too broad a membership definition and including as members individuals without demonstrable Nipmuc ancestry of any kind. There was little evidence, however, that these attacks were anything other than the opinions of these officers, as opposed to being issues of political importance to the CB membership in general.

There was little evidence to demonstrate, even in the past several years, that the petitioner's claimed process of political "appointment" by the claimed three "traditional families" has occurred, nor is there evidence that these named "traditional families" are

vehicles for substantial political communication. There is little evidence that the members who are in each of the three genealogically defined family lines comprise actual social or political units. No elections by the membership have ever been held to fill political offices. The councils have been essentially self-appointed.

There was some limited evidence of internal conflicts within the CB organization that were more than simply conflicts between individuals. These conflicts tended to focus on the control of the group by Edwin Morse, Sr., and his immediate family. There was not enough evidence in the record to demonstrate substantial membership interest in the conflicts, or in the associated issues, to demonstrate knowledge and involvement of the group as a whole in political processes.

Petitioner 69B has not demonstrated that there was a Dudley/Webster Indian group or community that continued to exist after 1891, within which political influence or authority was exercised, that was antecedent to the CB that formed in 1981. Petitioner 69B has not demonstrated that that it has exercised political influence or authority over its membership since it formed in 1981. Therefore, petitioner 69B does not meet the requirements of criterion 83.7(c).

The PF found that 69B had a constitution dated August 8, 1996, but questioned whether it had been "validly adopted" and asked that the petitioner submit a copy of the "complete current governing document so designated and formally certified by the full governing body." For the FD the petitioner submitted a new constitution dated November 9, 2001, which was certified by 69B's council resolution on September 20, 2002.

Article I of the 2001 constitution states that individuals who provide "adequate documentary evidence of direct lineal descent from a person identified as Chaubunagungamaug Nipmuck Indian" on either the 1861 *Earle Report* or the 1890 Dudley/Webster disbursement list, "excluding any amendments or supplements thereto" were eligible for membership. Article II of the 2001 constitution deals with governance. It describes two governing bodies: a "Tribal Sachem/Elders Council" to "provide continuity of the heritage, language and spiritual roots" and a "Tribal council" to administer the group's business affairs.

Petitioner 69B has provided a copy of its most recent governing document that describes the group's membership criteria and governing procedures; therefore, petitioner 69B meets criterion 83.7(d).

The PF found that petitioner 69B met criterion 83.7(e): it provided a copy of its membership list, dated 1997 with 212 names on it, and it provided evidence that about 87 percent (185 of 212) of the members descended from at least one individual who had been identified as a Dudley/Webster Indian in the 1861 *Earle Report*. For the FD, petitioner 69B submitted a new membership list dated September 2002 with 357 people on it. There are 212 individuals on the 2002 list who were on the 1997 membership list and for the most part the new members are the children, grandchildren, siblings, nieces or nephews, or cousins of individuals on the previous list. Eighty-two percent of the people on the 2002 membership list descend from at least one ancestor who was identified as a Dudley Indian on the 1861 *Earle Report*. About 79 percent of the members have descent from the Sprague/Henries and Sprague/Nichols families identified in the PF, including over 42 percent who descend from the Sprague/Henries/Morse family. Two other family lines identified on the 1861 *Earle Report* are each represented with 4 descendants in petitioner 69B's membership (1 percent each). The petitioner has not submitted any new evidence to demonstrate Dudley/Webster ancestry for the descendants of Martha (Dorus) Hewitt, who are members of 69B (17 percent, 62 of 357). Neither she, nor her parents, nor her children were listed on the 1861 *Earle Report* or the 1891 Dudley/Webster distribution list, although there is a reasonable likelihood that she was of Indian descent and a collateral relative of a Dudley/Webster family. Petitioner 69B has not documented the ancestry of four other individuals (1 percent) on the 2002 membership list; therefore, 18 percent of the petitioner's members do not have documented descent from the historical Dudley/Webster tribe. However, 82 percent of the members have documented descent from the historical tribe that was identified in 1861, which is within precedents for meeting the criterion. Therefore, petitioner 69B meets criterion 83.7(e).

Petitioner 69B does not have any members who are known to be enrolled with any acknowledged North American Indian tribe; therefore, petitioner 69B meets criterion 83.7(f). Neither petitioner 69B nor its members are the subjects of congressional legislation that terminated or forbade the Federal relationship; therefore, the petitioner 69B meets the requirements of criterion 83.7(g).

Under Section 83.10(m), the PDAS–IA is required to decline to acknowledge that a petitioner is an Indian tribe if the petitioner fails to satisfy any one of the seven mandatory criteria for Federal acknowledgment. The evidence in the record, including new evidence submitted by petitioner 69B, does not demonstrate that it meets criteria 83.7(a), (b), and (c), and, therefore, does not satisfy the requirements to be acknowledged as an Indian tribe in order to establish a government-to-government relationship with the United States.

This determination is final and will become effective September 23, 2004, unless a request for reconsideration is filed pursuant to section 83.11. The petitioner or any interested party may file a request for reconsideration of this determination with the Interior Board of Indian Appeals (section 83.11(a)(1)). These requests must be received no later than 90 days after publication of the PDAS–IA's determination in the **Federal Register** (section 83.11(a)(2)).

Dated: June 18, 2004.

Aurene M. Martin,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 04–14393 Filed 6–24–04; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Final Determination Against Federal Acknowledgment of the Nipmuc Nation

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of final determination.

SUMMARY: Pursuant to 25 CFR 83.10(m), notice is given that the Principal Deputy Assistant Secretary—Indian Affairs declines to acknowledge a group known as The Nipmuc Nation, petitioner 69A, c/o Mr. Walter Vickers, 156 Worcester-Providence Road, Suite 32, Sutton Place Mall, Sutton, Massachusetts 01590, as an Indian tribe within the meaning of Federal law. This notice is based on a final determination that the petitioner does not satisfy all seven of the criteria set forth in part 83 of title 25 of the Code of Federal Regulations (25 CFR part 83), specifically criteria 83.7(a), (b), (c), and (e), and, therefore, does not meet the requirements for a government-to-government relationship with the United States.

DATES: Unless a request for reconsideration is filed pursuant to 25 CFR 83.11, this determination is final and will become effective on September 23, 2004, pursuant to 25 CFR 83.10(l)(4).

FOR FURTHER INFORMATION CONTACT: R. Lee Fleming, Director, Office of Federal Acknowledgment, (202) 513–7650.

SUPPLEMENTARY INFORMATION: Under delegated authority, the Secretary of the Interior (Secretary) ordered, through the Assistant Secretary—Indian Affairs (AS–IA), the Principal Deputy Assistant Secretary—Indian Affairs (PD AS–IA) "to execute all documents, including regulations and other **Federal Register** notices, and perform all other duties relating to Federal recognition of Native American tribes." Pursuant to this order, the PD AS–IA makes the determination regarding the petitioner's status, as defined in the acknowledgment regulations, as one of the duties delegated by the Secretary to the AS-IA (209 Department Manual 8), and from the AS–IA to the PD AS–IA (Secretarial Order No. 3252).

A notice of a proposed finding (PF) to decline to acknowledge petitioner 69A was published in the **Federal Register** on October 1, 2001. The notice was based on a determination that petitioner 69A did not satisfy all seven of the mandatory criteria set forth in part 83 of title 25 of the Code of Federal Regulations (25 CFR part 83), specifically criteria 83.7(a), (b), (c) and (e), and, therefore, did not meet the requirements for a government-to-government relationship with the United States.

The petitioner and third parties, Connecticut, the Town of Sturbridge, Massachusetts, and Peter Silva submitted comments in response to the PF on September 30, 2002. The petitioner submitted a response to the third party comments on November 11, 2002. The petitioner at the same time submitted a response to petitioner 69B's comments on its own PF, treating them as a comment on the 69A PF.

This FD rejects petitioner 69A's argument that it has had continuous State recognition with a reservation. For at least 107 years, there was no State recognized Indian entity and no State supervision. The State relationship with the Hassanamisco Indians (as well as with the Dudley/Webster Indians) ended with the Massachusetts Enfranchisement Act of 1869. A limited relationship was created between petitioner 69A and Massachusetts after the establishment of the Massachusetts Commission on Indian Affairs (MCIA) in 1976. In addition, most of the petitioner's current membership does not descend from the Hassanamisco Indians (also known as the Grafton Indians) (only 2 percent of petitioner 69A's current members have Hassanamisco ancestry).

The Sisco family, one of the families in petitioner 69A retains ownership, as a family, of 2 1/2 acres of the land originally reserved for the Hassanamisco Indians. The Hassanamisco reservation was sold in 1727, except for 500 acres, which was divided in 1727–1730 among seven Hassanamisco proprietary families, who were given individual title. The land was not the common property of a tribal entity and the State did not hold title to the reserved Hassanamisco property. There was no common fund, but, rather, each proprietary family owned a share in the funds received from sale of the land. The continuous State recognition with a reservation in the Historical Eastern Pequot and Schaghticoke Tribal Nation final determinations is clearly distinct from that alleged by petitioner 69A concerning its relationship with Massachusetts.

The evidence in the record for this FD does not include continuous external identifications of a Hassanamisco Nipmuc entity broader than the Hassanamisco proprietary descendants for the period 1900–1979. An external identification of this Hassanamisco entity is not the same as an external identification of the current petitioner. Petitioner 69A is substantially different from the entity that was being identified, the Hassanamisco descendants constituting only 11 of the petitioner's 526 members (*see* further discussion under criterion 83.7(e)).

The majority of the external identifications from 1900 through 1979 only referred to the Sisco family property called the "Hassanamisco Reservation" in Grafton, Massachusetts, and to some of its residents. Some external identifications also referred by name to descendants of the other Hassanamisco proprietary families, none of whose descendants are enrolled in petitioner 69A. Therefore, this documentation does not provide identifications of the petitioner. It provides substantially continuous identification of a continuing Hassanamisco entity only in the limited sense of identifying some Hassanamisco descendants, of whom only the Sisco family are part of the petitioner, from 1900 through 1979.

Occasional associations of Dudley/Webster Nipmuc descendants with Hassanamisco are mentioned by external observers during the period from 1900 to 1979, but these occurred primarily in the context of pan-Indian activities in New England rather than being identifications of an Indian entity which was antecedent to the current petitioner, 69A.

External identifications of an entity that comprised the various elements of petitioner 69A (and, for some portions of the period, additional elements no longer included in the petitioner's membership) were found by the PF to exist only from the mid-1970s to the present. The FD affirms this conclusion.

The ancestors of the large majority of the present membership of petitioner 69A were not part of the Hassanamisco entity identified by external observers during the period from 1900 through the mid-1970s. Consequently, those identifications do not apply to petitioner 69A as defined by its current membership list. They were not otherwise identified separately as an Indian entity. Therefore, petitioner 69A does not meet the requirements of criterion 83.7(a).

The evidence submitted for the FD indicates that from 1785 to 1869 and from 1869 through the early 1950s there continued to be a limited community made up of some of the descendants of the original Hassanamisco proprietary families, not including the Gigger (Hassanamsico) family line. The focus of this community of Hassanamisco descendants was not in Grafton, although the "Hassanamisco Reservation" property owned by the Sisco family continued to be an important symbol, but rather among the descendants residing in the city of Worcester, Massachusetts.

Some tenuous ties were re-established between the Sisco family and the Giggers beginning in the 1920s, and some ties were established between the Siscos and one Dudley/Webster family by the 1920s.

The evidence does not bear out the petitioner's argument that a community of Dudley/Webster descendants had "coalesced" around some of the Hassanamisco families by the 1920s. The only family of Dudley/Webster descent which had clearly become associated with, and interacted socially with, any of the Hassanamisco proprietary families by the 1920s was that of George Wilson and his siblings (Pegan/Wilson family line), who had moved to Worcester prior to World War I. This association continued through the 1930s, 1940s, and 1950s. However, from 1900 to 1930 there is little or no evidence showing interaction between the Pegan/Wilson family members and other Dudley/Webster descendants or between Pegan/Wilson family members and petitioner 69A's other ancestors who are not descendants of either Hassanamisco or Dudley/Webster (*e.g.*, Curliss/Vickers). Thus most of the petitioner's ancestors were not associated with the community of some

Hassanamisco descendants focused around Worcester, nor were they documented to be interacting among themselves elsewhere.

Sisco family interaction with two other Dudley/Webster families (Jaha and Belden) during the 1920s and 1930s appears to have taken place only in the context of pan-Indian organizations rather than within a community context. The membership of these organizations also included non-Nipmuc Indians and non-Indians.

The other family lines of Dudley/Webster descent who now have members in petitioner 69A are not documented to have associated with Hassanamisco by the 1920s at all (for example, Sprague/Henries, Sprague/Nichols). There is no evidence in the record for this FD that any of these family lines developed any significant social ties to any Hassanamisco entity prior to the activities of Zara CiscoeBrough in the 1960s and 1970s. There is also little evidence for social ties between Hassanamisco and the large body of Curliss/Vickers descendants during this period. The Curliss/Vickers descend from an individual identified in the 1861 *Earle Report* as a "Miscellaneous Indian," not part of Hassanamisco, Dudley/Webster or any other tribe.

The attenuated Worcester-based community which was continuous with the Hassanamisco proprietary entity ceased to exist with the deaths of several of the older members in the 1950s. The children and grandchildren of these older members did not play any significant role in the organizations that formed under the leadership of Zara CiscoeBrough from the early 1960s onward, and were not part of the petitioner as it existed from the mid-1970s until it greatly expanded its membership in the 1990s. The evidence does not show interaction from 1900 to 1953 between the Hassanamisco descendants described above and the ancestors of most of the Dudley/Webster or Curliss/Vickers descendants who comprise most of the petitioner's current membership. At the same time, the large majority of the persons who were shown to have been interacting during that period do not have descendants in petitioner 69A.

Of the original Hassanamisco proprietary families, the only one that has continued to function more or less continuously within the 69A petitioner as it has evolved, and its immediate antecedents since the 1950s, is the Sisco family itself (11 individuals out of 526 members). Descendants of the Gigger line and two other Hassanamisco lines, the Scott and Hemenway families, did not appear on the membership lists of the 69A petitioner until 1996 or 1997, respectively. These three Hassanamisco families were dropped from its membership list by the petitioner in 2002 because the petitioner determined that these family lines did not meet its membership requirement, which it created after the PF, to demonstrate participation in the petitioner's community as the petitioner defined it for the FD.

The contemporary documentation concerning Zara CiscoeBrough's creation of lists of Nipmuc in the 1960s and 1970s does not provide good evidence to show that she viewed this process as enrolling an existing community, as the petitioner contends. The evolving "governing documents" of the period are consistent with the process of expanding the definition of the Nipmuc group she was using beyond the Hassanamisco to include families with which she had little or no previous contact.

Petitioner 69A's argument concerning community from the mid-1970s to the present rests in part on the argument that the "historical community" that they describe as existing from the 1920s to the mid-1970s continued to exist up until the present. The petitioner argues that this community continued to exist after the sharp membership expansion that began in 1990 under the Nipmuc Tribal Acknowledgment Project (NTAP) which more than doubled the size of the petitioner. The resulting expanded membership list, of 1,602 names, dated 1997, was in place at the time of the PF and was only reduced in 2002, by petitioner 69A, shortly before the petitioner's submission of its comments on the PF. Petitioner 69A's comments and the accompanying documentation do not show that the persons on the 2002 69A membership list, who are claimed to be a continuation of the 1920s community, made a distinction between themselves and those who were on the much larger 69A membership list from 1990 to 2002 and were subsequently removed from the membership list.

Petitioner 69A states that the 2002 list was created by reducing the 1997 list through a process of research in which the petitioner considered evidence to demonstrate social ties as well as ancestry from specific family lines. This final determination concludes that the petitioner, as defined by the 2002 membership list, does not demonstrate sufficient social ties to meet the requirements of criterion 83.7(b). Many of the examples that petitioner 69A listed as showing informal social interaction and social relationships among the present membership actually concerned formal meetings or political participation, or only involved close kin of the speaker and, thus, did not provide evidence for community for 69A as a whole. There were some examples which indicate broader social ties, between family lines, but these examples were too limited in extent to demonstrate that the petitioner meets criterion 83.7(b). There was relatively little information to demonstrate these ties for the substantial body of Curliss/Vickers descendants, a third of the membership. The family lines themselves are genealogical constructs, categories of individuals sharing a common ancestor, and were not demonstrated to be social units whose members interacted. The evidence in the record does not substantiate the petitioner's claims of distinct, shared cultural traditions within the membership.

The conclusion in the PF that the petitioner does not exist as a community is affirmed as applying to petitioner 69A, even as it has redefined itself for the FD. Petitioner 69A does not meet the requirements of criterion 83.7(b).

The evidence does not indicate that political influence and authority existed within a Hassanamisco entity between 1785 and 1900 at a level sufficient to meet criterion 83.7(c). The community that existed among the Hassanamisco proprietary descendants during the periods from 1785 through 1869 and from 1869 to 1900 was not at a sufficiently high level to provide carry-over evidence under criterion 83.7(c)(3).

The other major components or families antecedent to petitioner 69A (Dudley/Webster and Curliss/Vickers desendants) were not associated with Hassanamisco when the tribe was identified in the official State report (*Earle Report*) in 1861. They have not been shown to have amalgamated with all or part of the Hassanamisco subsequent to 1861 and prior to 1900 within the meaning of the 25 CFR part 83 regulations. Therefore, petitioner 69A does not meet criterion 83.7(c) prior to 1900.

For the period from 1900 to 1961, the evidence in the record does not demonstrate that a Hassanamisco tribal community that included the majority of the ancestors of petitioner 69A, as currently defined, existed in any definable sense. Through the late 1950s, there continued to be a tenuous community of descendants of the Hassanamisco proprietary families (excluding the Giggers) who maintained a connection with one another as well as maintaining a public identity in connection with the "Hassanamisco

reservation" and the annual Indian Fairs held there. Within this group, the evidence clearly indicates that the Sisco family had a certain primacy of place. However, there is no indication that they maintained a bilateral political relationship with the other proprietary descendants, much less with the larger group of Dudley/Webster and Curliss/Vickers descendants antecedent to the family lines currently comprising most of the petitioner's membership.

Most of the "political" events and activities cited by the petitioner took place, from the 1920s through the late 1950s, in the context of pan-Indian organizations in New England. The leaders of these organizations did not exercise political authority or influence over the people who would have been in the "1920s community" as now defined by petitioner 69A, nor is there evidence that the ancestors of most of petitioner 69A's members belonged to these organizations. The majority of the people who were in these organizations do not have descendants in petitioner 69A. Thus, they did not provide a venue for any bilateral political relationship among leaders and followers antecedent to petitioner 69A.

Zara CiscoeBrough from the 1960s to 1980 sought to expand the Hassanamisco Foundation, an organization limited to the immediate Sisco family, that she had created in 1961 to control the Hassanamisco land and support a museum. CiscoeBrough expanded the foundation, beginning in 1969, in order to ensure that the Sisco family's land remained in Indian hands after her death. The revised 1969 Hassanamisco Foundation bylaws and the circa 1980 Hassanamisco-Nipmuc Tribe governing documents expanded the membership beyond the Sisco family to include anyone of any kind of Nipmuc descent. The lists created in 1975 and 1977 by Zara CiscoeBrough in concert with this effort were not the enrollment of an extant community which maintained a bilateral political relationship with the Hassanamisco Foundation or the Hassanamisco council.

Although the petitioner nominally included the Chaubunagungamaug Band (CB) organization, petitioner 69B, from the latter's formation in 1981 until its withdrawal from the Nipmuc Nation in 1996, in practice the CB functioned as a separate organization. Consequently, for purposes of this evaluation, the CB is treated as a separate entity. Evidence concerning political influence within petitioner 69A is evaluated in terms of the Hassanamisco organization until 1990. After 1990 until 2002, evidence concerning political influence is evaluated in terms of the greatly expanded organization which was created beginning in 1990 and which continued until the membership was reduced by approximately two-thirds in 2002.

Concerning the Hassanamisco council from 1978 to 1996, there is little data in the record to show a connection between the council and the general memberships of the Hassanamisco or Nipmuc Nation organizations. There was at best limited evidence to show that council members were "family representatives," or that there was communication from them to anyone other than immediate family members. Although for some years there were annual membership meetings of the Hassanamisco organization, the evidence is that attendance at these meetings was small and primarily limited to council members. There was only limited evidence that the issues dealt with by the Hassanamisco council were of importance to the members.

There was no evidence in the record that the expansion of the petitioner's membership under NTAP beginning in 1990, to more than twice the estimated size of the Hassanamisco organization in 1988, was a political issue for those within the Hassanamisco membership as it had been defined beginning in the mid-to late 1970s. The narrowing of the enrollment in 2002 came about as a response to the PF against acknowledgment of petitioner 69A, which concluded that this expanded membership was not a community, not as the result of membership opinion. There was no evidence in the record that the reduction was made along the lines of a division within an existing community. Additional evidence that the Hassanamisco council did not exercise political influence in an existing community was there was no evidence there was any membership comments or questions concerning its dissolution in 1996 in favor of the larger Nipmuc Nation Tribal Council (NNTC). Thus, there is no evidence in the record that the Hassanamisco organization as it existed before the expansion was itself a community within which political influence existed.

The evaluation of evidence for political influence within petitioner 69A from 1961 to the present must take into account both the lack of evidence for a community at any point and the greatly fluctuating nature and size of the membership, the claimed "ommunity" in which political influence might have been exercised. This FD finds that there was no community over which political influenced was exercised by Zara CiscoeBrough from the 1960s to 1982, nor, following her, by the Hassanamisco council until its dissolution in 1996, nor, by NTAP and the NNTC over the expanded membership between 1990 and 2002, nor for the present membership, by the present governing body of petitioner 69A.

The limited available information about membership opinion, possible political issues, and participation in conflicts from 1990 to 2002 is not relevant political data to demonstrate political processes within the "Hassanamisco community." Many of the largest and most active meetings drew from the broader membership, as it was presented for the PF, which is no longer part of petitioner 69A and was not part of the Hassanamisco organization before 1990. This broader membership consisted in large part of persons who were not of either Hassanamisco, Dudley/Webster or Curliss/Vickers ancestry, nor did they descend from the petitioner's claimed 1920s community. A number of petitioner 69A's leaders from 1990 until 2002 were drawn from this broader membership, which was the majority of petitioner 69A's members during that time span.

There was only limited evidence in the record to show that conflicts were over issues of concern to the membership and that interest in them was widespread among the members of the Hassanamisco, CB, and NTAP organizations. Even if there was sufficient evidence that there were conflicts over issues of concern to the membership, these conflicts would not provide evidence under criterion 83.7(c) because there is no evidence to show either that these conflicts occurred within a community or that they were "xternal conflicts" between two communities.

The evidence for this FD is that none of the three units that combined into the Nipmuc Nation under the NNTC in 1994 (Hassanamisco, CB and NTAP) were communities nor exercised political influence within their respective memberships, nor was the overall Nipmuc Nation membership as it was defined by the 1997 69A membership list a community within which political influence was exercised. There is no evidence in the record that the Hassanamisco council and NTAP represented different political constituencies which might have expressed different views.

Although there is some evidence from 1990 to 1998 of conflict and membership opinion concerning the development of a governing document, and the definition of membership used under NTAP and NNTC, there was no

evidence that leaders of NTAP, its predecessor, the Federal Recognition Committee, or the NNTC had any followers or represented any constituency within the membership as it was defined at any point.

The conclusion in the PF is affirmed. Therefore, petitioner 69A does not meet the requirements of criterion 83.7(c).

Petitioner 69A has submitted a copy of its current governing document, a 2001 Constitution, and membership criteria, including a "Nipmuc Nation Tribal Roll Policies and Procedures" manual that was approved by the council on January 14, 2002. Therefore, petitioner 69A meets criterion 83.7(d).

Petitioner 69A submitted a revised membership list which listed 526 individuals as members. The list was certified by resolution of petitioner 69A's governing council on September 23, 2002. Applying the revised membership requirements contained in the 2001 constitution and the 2002 "Policies and Procedures" manual, the petitioner reduced its membership from 1,602 at the time of the PF to 526 members for the FD.

With respect to criterion 83.7(e), the requirement under the regulations is that: "The petitioner's membership consists of individuals who descend from a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity." In this case, there was no amalgamation by which two tribes combined and functioned as a single autonomous political entity.

Petitioner 69A argues that their ancestors living in the 1920s constituted a community that had "oalesced" around Hassanamisco by the 1920s. Their position is that the community included their ancestors, living in the 1920s, who descended from the Dudley Indians identified on the 1861 *Earle Report*, descended from the "Miscellaneous Indian" category on the 1861 *Earle Report*, descended from Connecticut Indians, or descended from a few other Indian ancestors living in the 1920s, as well as their ancestors living in the 1920s who descended from the Hassanamisco Indians identified on the 1861 *Earle Report*. The evidence does not support the assertion that such a "oalesced" entity had come into being by the 1920s (*see* previous discussion under criteria 83.7(b) and 83.7(c)).

The available evidence indicates that the Dudley/Webster Indians and the Hassanamisco Indians were separate tribes which did not combine into one tribe historically. The members of these two separate historical tribes were identified in the *Earle Report* of 1861.

The evidence for this FD demonstrates that 2 percent of the members (11 of 526) have Indian ancestry from Arnold/Sisco family who were part of the historical Hassanamisco/Grafton Nipmuc tribe that was identified in 1861. The evidence for this FD demonstrates that 53 percent of its members (277 of 526) descend from six families (Jaha, Humphrey, Belden, Pegan/Wilson, Pegan, and Sprague) who were identified as Dudley/Webster Indians in 1861. Neither the 2 percent of the members who descend from the Hassanamisco tribe as it existed in 1861, nor the 53 percent that descend from the separate Dudley/Webster tribe as it existed in 1861, is sufficient, based on precedent, to meet the requirements of criterion 83.7(e) for descent from a historical tribe.

Thirty-four percent of the petitioner's members have Indian ancestry from an individual identified as a "Miscellaneous Indian" on the *Earle Report*, 8 percent have Indian descent from individuals identified as Connecticut Indians, and 3 percent have other Indian ancestry. Therefore, 45 percent of the petitioner's membership do not have documented ancestry from either the historical Hassanamisco tribe or the historical Dudley/Webster tribe.

The petitioner has not demonstrated descent from a single historical tribe or from tribes that combined or amalgamated historically and therefore does not meet criterion 83.7(e).

No members of petitioner 69A are known to be dually enrolled with any federally acknowledged American Indian tribe. Therefore, petitioner 69A meets criterion 83.7(f).

There has been no Federal termination legislation with regard to petitioner 69A. Therefore petitioner 69A meets criterion 83.7(g).

Under section 83.10(m), the PD AS-IA is required to decline to acknowledge that a petitioner exists as an Indian tribe if the petitioner fails to satisfy any one of the seven mandatory criteria for Federal acknowledgment. The evidence in the record, including the evidence submitted by petitioner 69A, did not demonstrate that it meets criteria 83.7(a), (b), (c), and (e). Therefore, petitioner 69A, The Nipmuc Nation, does not satisfy the requirements to be acknowledged as an Indian tribe with a government-to-government relationship with the United States.

This determination is final and will become effective September 23, 2004, unless a request for reconsideration is filed pursuant to section 83.11. The petitioner or any interested party may file a request for reconsideration of this determination with the Interior Board of Indian Appeals (section 83.11(a)(1)). These requests must be received no later than 90 days after publication of the PD AS–IA's determination in the **Federal Register** (section 83.11(a)(2)).

Dated: June 18, 2004.

Aurene M. Martin,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 04–14394 Filed 6–24–04; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–960–1060–PF–01–24 1A]

OMB Control Number 1004–0042; Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has sent a request to extend the current information collection to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On March 7, 2003, the BLM published a notice in the **Federal Register** (68 FR 11124) requesting comments on this information collection. The comment period ended on May 6, 2003. BLM received no comments. You may obtain copies of the proposed collection of information and related forms and explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

The OMB must respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirements should be directed within 30 days to the Office of Management and Budget, Interior Department Desk Officer (1004–0042), at OMB–OIRA via facsimile to (202) 395–6566 or e-mail to *OIRA_DOCKET@omb.eop.gov*. Please provide a copy of your comments to the Bureau Information Collection Clearance Officer (WO–630), Bureau of Land Management, Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

Nature of Comments: We specifically request your comments on the following:

1. Whether the Collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of our estimates of the information collection burden,

including the validity of the methodology and assumptions we use;

3. Ways to enhance the quality, utility and clarity of the information we collect; and

4. Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Application for Adoption of Wild Horse(s) or Burro(s) (43 CFR 4700).

OMB Approval Number: 1004–0042.

Bureau Form Number: 4710–10.

Abstract: BLM collections specific information from individuals who wish to adopt a wild horse or burro. BLM uses this information to determine if the individuals qualify and are eligible to provide humane care and proper treatment of these animals.

Frequency: Once, on occasion.

Description of Respondents: Respondents are individuals who wish to adopt a wild horse or burro from the BLM.

Estimated Completion Time: 10 minutes.

Annual Responses: 30,000.

Filing Fee Per Response: $125 (this fee is not considered a filing fee, but we use the money for room, board, and veterinary care of the animal while under BLM management).

Annual Burden Hours: 5,000.

Bureau Clearance Officer: Michael Schwartz, (202) 452–5033.

Dated: April 16, 2004.

Michael H. Schwartz;

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 04–14403 Filed 6–24–04; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–220–1020–PB–24 1A]

OMB Control Number 1004–0051; Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has sent a request to extend the current information collection to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). On February 7, 2003, the BLM published a notice in the **Federal Register** (68 FR 6506) requesting comment on this information collection. The comment period ended on April 8, 2003. BLM received no comments. You may obtain copies of the collection of information and related forms and explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

The OMB must respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirements should be directed within 30 days to the Office of Management and Budget, Interior Department Desk Officer (1004–0051), at OMB–OIRA via facsimile to (202) 395–6566 or e-mail to *OIRA_DOCKET@omb.eop.gov*. Please provide a copy of your comments to the Bureau Information Collection clearance Officer (WO–630), Bureau of Land Management, Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

3. Ways to enhance the quality, utility and clarity of the information we collect; and

4. Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Authorizing Grazing Use (43 CFR 4130).

OMB Control Number: 1004–0051.

Bureau Form Number(s): 4130–5.

Abstract: The Bureau of Land Management (BLM) uses the information to administer the grazing use on public lands program.

Frequency: Annually.

Description of Respondents: Holders of BLM-issued grazing leases and permits.

Estimated Completion Time: 25 minutes.

Annual Responses: 15,000.

Application Fee Per Response: 0.

Annual Burden Hours: 6,250.

Bureau Clearance Officer: Michael Schwartz, (202) 452–5033.

Dated: May 25, 2004.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 04–14404 Filed 6–24–04; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–1430–PF–01–24 1A]

Extension of Approved Information Collection, OMB Control Number 1004–0190

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is requesting the Office of Management and Budget (OMB) to extend and existing approval to collect certain information from Indians eligible to apply for an allotment with the BLM office that has jurisdiction over the lands covered by the application. BLM uses Form 2530–3, Indian Allotment Application, to collect this information to determine if the Indian applicant qualifies for an Indian allotment on public lands and public domain lands within national forests. The regulations at 43 CFR 2530 authorize BLM to issue an Indian allotment to eligible Indians who apply and qualify.

DATES: You must submit your comments to BLM at the address below on or before August 24, 2004. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Bureau of Land Management, (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov*. Please include "ATTN: 1004–0190" and your name and return address with your comments.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Alzata L. Ransom, Realty Use Group, on (202) 452–7772 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Ms. Ransom.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Section 4 of the Indian General Allotment Act of February 8, 1887 (43 U.S.C. 1740) provides that, if you are an eligible Indian you may apply for an allotment. To establish you are eligible, you must furnish documentation from the Bureau of Indian Affairs (BIA) showing you are an Indian who meets the requirements of the Act. If you are eligible, your minor child also qualifies to file for an allotment under the Act. You must apply to the BLM office having jurisdiction over the lands covered by your application.

BLM uses Form 2530–3 to collect the following information:

(1) The name and address of the applicant; if a minor child, the name, age of child, and the applicant's relationship to the child;

(2) The name of the Indian tribe to which the applicant belongs or is eligible to belong;

(3) A Certificate of Indian Blood from the BIA and the name of the recognized Indian tribe to which you claim membership of be eligible for membership to a recognized Indian tribe;

(4) A legal land description of the lands applied for (by township, range, meridian, section, subdivision, and State);

(5) A plan of development that describes the proposed agricultural or grazing land use and a description of the improvements that the applicant plans to place on the lands;

(6) Any allotments that the applicant received previously from BLM; and

(7) The applicant must certify their knowledge of the lands, is the person named in the BIA Certificate of Indian Blood, and makes true, accurate, and good faith statements on the application.

BLM uses the information to determine whether or not to issue an Indian allotment. Without this information, BLM would not be able to properly administer Indian allotments on public lands and public domain lands within national forests.

Based upon BLM experience and recent tabulations of activity, we estimate it takes 2 hours to complete. The estimated number of responses per year is 6 and the total annual information burden is 12 hours.

Any member of the public may request and obtain, without charge, a copy of Form 2530–3 by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: June 22, 2004.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 04–14443 Filed 6–24–04; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–305–1430–PF–01–24 1A]

Extension of Approved Information Collection, OMB Control Number 1004–0189

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is requesting the Office of Management and Budget (OMB) to extend an existing approval to collect certain information from entities desiring a right-of-way across public lands under 43 CFR 2800 and 43 CFR 2880. BLM and several other agencies use Form 299, Application for Transportation and Utility System and Facility, to determine whether or not applicants qualify to hold right-of-way grants across public lands and several other purposes.

DATES: You must submit your comments to BLM at the address below on or before August 24, 2004. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Bureau of Land Management, (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov*. Please include "ATTN: 1004–0189" and your name and return address with your comments.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Alzata L. Ransom, Realty Use Group, on (202) 452–7772 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Ms. Ransom.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden. including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title XI of the Alaska National Interest Lands Conservation Act of December 2, 1980, requires that the Departments of Agriculture, Interior, and Transportation use a consolidated form in connection with rights-of-way for transportation and utility. the Federal Land Policy and Management Act of 1976, the Mineral Leasing Act, and the regulations at 43 CFR 2800 and 43 CFR 2880 authorize BLM to use Form 299. BLM will use Form 299 to colllect information to:

(1) Determine if the applicant qualifies for a right-of-way grant;

(2) Identify and communicate with the applicant on its right-of-way application;

(3) Identify the project location;

(4) Determine and compare existing and proposed land uses; and

(5) Determine if alternate routes and modes are available to the applicant on the right-of-way application.

Without this information, BLM would not be able to properly administer its right-of-way program.

Based upon BLM experience and recent tabulations of activity, we process approximately 5,066 applications each year. The public reporting information collection burden takes 25 hours to complete. The estimated number of responses per year is 5,066 and annual information burden is 126,650 hours.

Any member of the public may request and obtain, without charge, a copy of Form 299 by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: June 22, 2004.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 04–14444 Filed 6–24–04; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–320–1330–PB–24 1A]

Extension of Approved Information Collection, OMB Control Number 1004–0169

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is requesting the Office of Management and Budget (OMB) to extend an existing approval to collect information from mining claimants concerning use and occupancy of their mining claims on public lands. The nonform information under 43 CFR 3715 authorizes BLM to manage the use and occupancy on public lands for developing the mineral deposits by mining claimants.

DATES: You must submit your comments to BLM at the address below on or before August 24, 2004. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Bureau of Land Management, (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov*. Please include "Attn: 1004–0169" and your name and return address with your comments.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact T. Scott Murrellwright on (202)785–6568 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Mr. Murrellwright.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The General Mining Law (30 U.S.C. 612), Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733), and the regulations under 43 CFR 3715 authorize BLM to manage use and occupancy of mining claims on public lands. The nonform information in the regulations under 43 CFR 3715 authorizes BLM to collect information concerning proposed mining development activities on public lands. Without this information, BLM would not be able to analyze and approve mining claimants' proposed use and occupancy activities.

Mining claimants planning to occupy their mining claims on public lands under the mining laws must submit the following information to BLM:

(1) A detailed map that identifies the site and shows the place of temporary and permanent structures for occupancy, the location of and reason for the structures intended to exclude the public, and the location of reasonable public passage or access routes through or around the area adjacent to public lands;

(2) A written description of the proposed occupancy that describes in detail how the proposed occupancy is reasonably incident to mining and how the proposed occupancy meets the conditions of 43 CFR 3715.2 and 3715.2–1; and

(3) An estimate of the period of use of the structures which excludes the public and a schedule for removing them and reclaiming the lands when the operations end.

Based upon BLM experience with mining claims use and occupancy activity, we estimate the public reporting information collection burden takes 2 hours to complete. The respondents are mining claimants and operators of prospecting, exploration, mining, and processing operations. The estimated number of responses per year is 150 and the total annual burden is 300 hours. BLM will summarize all responses to this notice and include them in the request OMB approval. All comments will become a matter of public record.

Dated: June 22, 2004.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 04–14445 Filed 6–24–04; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BC–621–1830–PF–24 1A]

Extension of Approved Information Collection, OMB Control Number 1004–0187

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) requests the Office of Management and Budget (OMB) to extend an existing approval to collect social security numbers or taxpayer identification numbers (SSN/TIN) from entities doing business with BLM. The BLM needs this information is case an entity fails to timely pay money owed, in which case BLM may refer the matter to the Treasury Department for collection. BLM uses Form 1372–6 to collect this information for debt collection purposes

only under the Debt Collection Improvement Act of 1996.

DATES: You must submit your comments to BLM at the address below on or before August 24, 2004. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Regulatory Affairs Group (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov*. Please include "Attn: 1004–0187" and your name and address with your comments.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Alice Sonne, National Business Center, Denver, Colorado, on (303) 236–6332 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Ms. Sonne.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The Debt Collection Improvement Act of 1996 (DCIA), 31 U.S.C. 3701, contains a number of provisions that affect how BLM does business. One of the more significant provisions allows BLM to refer debts delinquent over 180 days to the Treasury Department for collection. Another provision gives the Treasury Department increased flexibility in seeking to collect the debts by various offsets of payments, including tax refunds.

The DCIA requires that all Federal disbursements include the payee's SSN/TIN. This information aids the Treasury Department in matching debtors to payments and in seeking payments from the debtors. BLM uses Form 1372–6 to collect the payee's full name, address, and the SSN/TIN. We protect the SSN/TIN data under the Privacy Act.

Based on BLM's experience administering this program, we estimate the public reporting burden is 1 minute to complete Form 1372–6. These estimates include the time spent on research, gathering, and assembling information, reviewing instructions, and completing the respective form. BLM estimates 5,000 respondents with a total annual information collection burden of 83 hours. Respondents are those entities who do business with BLM. Entities include licensees, permittees, lessees, and contract holders. Individuals who pay one-time recreation fees do not have to complete this form.

Any member of the public may request and obtain, without charge, a copy of BLM Form 1372–6 by contacting the person identified under **FOR FURTHER INFORMATION CONTACT**.

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of a public record.

Dated: June 22, 2004.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 04–14446 Filed 6–24–04; 8:45 am]

BILLING CODE 4310–84–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–449]

In the Matter of Certain Abrasive Products Made Using a Process for Powder Preforms, and Products Containing Same; Notice of Commission Decision to Vacate Limited Exclusion Order and Cease and Desist Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has vacated the limited exclusion order and cease and desist order issued at the conclusion of the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Michael K. Haldenstein, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3041. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Copies of the public documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on February 5, 2001, based upon a complaint filed on January 5, 2001, by 3M Company of St. Paul, Minnesota and Ultimate Abrasive Systems, LLC ("UAS") of Atlanta, Georgia. 66 FR 9720 (Feb. 9, 2001). The complaint named Kinik Company ("Kinik") of Taipei, Taiwan and Kinik Corporation of Anaheim, California as respondents. Kinik Corporation was subsequently terminated from the investigation.

Complainants alleged that respondents had violated section 337 of the Tariff Act of 1930 by importing into the United States, selling for importation, and selling within the United States after importation certain abrasive products that are made using a process for making powder preforms that is covered by claims 1, 4, 5, and 8 of U.S. Patent No. 5,620,489 ("the '489 patent"), owned by UAS and exclusively licensed to 3M. The complaint further alleged that an industry in the United States exists as required by subsection (a)(2) of section 337. On February 8, 2002, the ALJ issued his final initial determination ("ID"), in which he determined that Kinik's accused DiaGrid abrasive products infringed claims 1, 4, 5, and 8 of the '489 patent and that the '489 patent is valid and enforceable. Based upon these findings, he found a violation of section 337.

On February 21, 2002, Kinik petitioned for review of the ALJ's final ID. Kinik also appealed Order No. 40, issued by the ALJ on October 12, 2001. That order precluded Kinik from asserting 35 U.S.C. 271(g) as a non-infringement defense. On February 28, 2002, 3M and the Commission investigative attorney filed oppositions

to Kinik's petition for review and its appeal of Order No. 40.

On March 29, 2002, the Commission determined not to review the ALJ's final ID, which therefore became the determination of the Commission. The Commission also issued an opinion affirming the ALJ's Order No. 40.

On August 16, 2002, Kinik appealed the Commission's determination to the U.S. Court of Appeals for the Federal Circuit. 3M intervened in the appeal and the parties filed briefs with the Court. The Federal Circuit issued an opinion on March 25, 2004. The Court construed claim 1 more narrowly than had the Commission and reversed the Commission's finding of infringement. 3M filed a petition for a panel rehearing and hearing *en banc* with the Court on April 20, 2004. However, the Federal Circuit denied the petitions and issued the mandate on May 20, 2004. As the Federal Circuit has reversed the Commission's finding of infringement with respect to Kinik's process, the Commission determined that there was no longer a basis for the limited exclusion order or the cease and desist order issued in this investigation, and therefore vacated the orders.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337.

By order of the Commission.
Issued: June 21, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–14507 Filed 6–24–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–515]

In the Matter of Certain Injectable Implant Compositions; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on May 26, 2004 under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Inamed Corporation of Santa Barbara, California. An amended complaint was filed on June 16, 2004, and a letter supplementing the amended complaint was filed on June 17, 2004. The amended complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain injectable implant compositions by reason of infringement of claims 1, 2, 7, 12, 18, 20, 25, 26, 30, 31, 32, 33 and 34 of U.S. Patent No. 4,803,075. The amended complaint further alleges that an industry in the United States exists, or is in the process of being established, as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and permanent cease-and-desist orders.

ADDRESSES: The amended complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket imaging system (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: Karin J. Norton, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2606.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2003).

Scope of Investigation: Having considered the amended complaint, the U.S. International Trade Commission, on June 21, 2004, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain injectable implant compositions by reason of infringement of claims 1, 2, 7, 12, 18, 20, 25, 26, 30, 31, 32, 33 or 34 of U.S. Patent No. 4,803,075, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Inamed Corporation, 5540 Ekwill Street, Santa Barbara, CA 93111.

(b) The respondents are the following companies alleged to be in violation of section 337, and are parties upon which the complaint is to be served:

Q–Med Aktiebolag, Seminariegatan 21, 752 28 Uppsala, Sweden.

Medicis Aesthetics, Inc., 8125 North Hayden Road, Scottsdale, AZ 85258.

(c) Karin J. Norton, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(4) For the investigation so instituted, the Honorable Delbert R. Terrill, Jr. is designated as the presiding administrative law judge.

A response to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting the responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter a final determination containing such findings, and may result in the issuance of a limited exclusion order or cease-and-desist order or both directed against such respondent.

By order of the Commission.

Issued: June 22, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–14508 Filed 6–24–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–500]

In the Matter of Certain Purple Protective Gloves; Notice of Commission Determination Not To Review an Initial Determination Terminating the Investigation as to the Delta Respondents on the Basis of a Consent Order; Issuance of Consent Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") (ALJ Order No. 16) of the presiding administrative law judge ("ALJ") in the above-captioned investigation terminating the investigation as to respondents the Delta Group; Delta Hospital Supply, Inc.; Delta Medical Systems, Inc.; and Delta Medical Supply Group, Inc. (collectively, the "Delta Respondents") on the basis of a consent order.

FOR FURTHER INFORMATION CONTACT: Michael Diehl, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3095. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: On November 26, 2003, the Commission instituted an investigation into alleged violations of section 337 of the Tariff Act of 1930 in the importation and sale of certain purple protective gloves by reason of infringement of U.S. Registered Trademark Nos. 2,596,539, 2,533,260, and 2,593,382.

On May 14, 2004, complainants Kimberly-Clark Corporation and Safeskin Corporation (collectively "K–C/Safeskin") and the Delta Respondents jointly moved to terminate the investigation as to the Delta Respondents based on a confidential settlement agreement, consent order stipulation, and proposed consent order. On May 26, 2004, the Commission investigative attorney filed a response in support of the joint motion. No other responses were received.

On June 1, 2004, the ALJ issued an ID (Order No. 16) granting the joint motion. No party petitioned for review of the ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E. Street, SW., Washington, DC 20436, telephone 202–205–2000.

Issued: June 22, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–14509 Filed 6–24–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–500]

In the Matter of Certain Purple Protective Gloves; Notice of Commission Determination Not To Review an Initial Determination Terminating the Investigation as to Respondents Medtexx Partners and Latexx Partners on the Basis of a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") (ALJ Order No. 15) of the presiding administrative law judge ("ALJ") in the above-captioned investigation terminating the investigation as to respondents Medtexx Partners ("Medtexx") and Latexx Partners ("Latexx") on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Michael Diehl, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3095. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E. Street, SW., Washington, DC 20436, telephone 202–205–2000.

SUPPLEMENTARY INFORMATION: On November 26, 2003, the Commission instituted an investigation into alleged violations of section 337 of the Tariff Act of 1930 in the importation and sale of certain purple protective gloves by reason of infringement of U.S. Registered Trademark Nos. 2,596,539, 2,533,260, and 2,593,382.

On April 28, 2004, complainants Kimberly-Clark Corporation and Safeskin Corporation (collectively "K–C/Safeskin") and respondents Medtexx and Latexx jointly moved to terminate the investigation as to Medtexx and Latexx based on a confidential settlement agreement. K–C/Safeskin supplemented the joint motion on April 30, 2004. On May 11, 2004, the Commission investigative attorney filed a response in support of the joint motion. No other responses were received.

On May 24, 2004, the ALJ issued an ID (Order No. 15) granting the joint motion. No party petitioned for review of the ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

By order of the Commission.

Issued: June 22, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–14510 Filed 6–24–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701–TA–380 (Review)]

Stainless Steel Sheet and Strip From France

AGENCY: United States International Trade Commission.

ACTION: Rescission of five-year review concerning the countervailing duty order on stainless steel sheet and strip from France.

EFFECTIVE DATE: June 25, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: On June 1, 2004, the Commission published notice that it had instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the countervailing duty and antidumping duty orders on stainless steel sheet and strip from France, Germany, Italy, Japan, Korea, Mexico, Taiwan, and the United Kingdom would be likely to lead to continuation or recurrence of material injury.[1] The countervailing duty order on stainless steel sheet and strip from France, however, was revoked by the Department of Commerce, effective November 7, 2003, in its notice of implementation under Section 129 of the Uruguay Round Agreements Act.[2] Although the Department of Commerce had also initiated a five-year review of this order on June 1, 2004, we have been notified that the Department of Commerce is publishing concurrently with this notice the rescission of its five-year review on the countervailing duty order on stainless steel sheet and strip in coils from France. Therefore, we are rescinding the five-year review of the countervailing duty order on stainless steel sheet and strip from France. The five-year review of the antidumping duty order on stainless steel sheet and strip from France will continue.

Authority: This notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.
Issued: June 21, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–14491 Filed 6–24–04; 8:45 am]

BILLING CODE 7020–02–P

[1] 69 FR 30958 (June 1, 2004).

[2] 68 FR 64858 (November 17, 2003).

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Gaming Standards Association

Notice is hereby given that, on May 7, 2004, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Gaming Standards Association ("GSA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Intralot S.A., Athens, GREECE; Kare Technology, Moscow, RUSSIA; Nick Farley & Associates, Solon, OH; NRT Technology Corporation, Toronto, Ontario, CANADA; Revive Partners, LLC, Las Vegas, NV; and SGC-Link Corporation, Edmonton, Alberta, CANADA have been added as parties to this venture. Boyd Gaming Corporation, Las Vegas, NV; Cirsa Interactive Terrassa, SPAIN; Ensico d.o.o. Ljubljana, SLOVENIA; Octavian International LTD, Guildford, Surrey, UNITED KINGDOM; Sigma Game, Inc. Las Vegas, NV; and Soanar Croydon, Victoria, AUSTRALIA have been dropped as parties to this venture. Also, MIS-Group is now doing business as Atronic Systems, Park Place Entertainment is now doing business as Caesars Entertainment, and Unidesa is now doing business as Unidesa Gaming & Systems.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research remains open, and GSA intends to file additional written notification disclosing all changes in membership.

On March 6, 2003, GSA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on April 1, 2003 (68 FR 15743).

The last notification was filed with the Department on January 27, 2004. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 4, 2004 (69 FR 10262).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–14543 Filed 6–24–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Collaboration Agreement for High Performance Buildings

Notice is hereby given that, on May 25, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), United Technologies Corporation, on behalf of the Collaboration Agreement for High Performance Buildings, has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are United Technologies Corporation, acting through United Technologies Research Center, East Hartford, CT; and Oculus Technologies Corporation, Boston, MA. The nature and objectives of the venture are to engage in cooperative research and development in the area of integrated design methods and tools for high performance, safe buildings. The aforementioned parties will not individually engage in production of the resulting product under this joint research and development venture.

Membership in the program remains open, and the Collaboration Agreement for High Performance Buildings intends to file additional notifications disclosing

all changes in membership or planned activities.

Dorothy B. Fountain;

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–14542 Filed 6–24–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act; Lower Living Standard Income Level

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of determination of lower living standard income level.

SUMMARY: Under Title I of the Workforce Investment Act (WIA) of 1998 (Pub. L. 105–220), the Secretary of Labor annually determines the Lower Living Standard Income Level (LLSIL) for uses described in the Law. WIA defines the term "Low Income Individual" as one who qualifies under various criteria, including an individual who received income for a six-month period that does not exceed the higher of the poverty line or 70 percent of the lower living standard income level. This issuance provides the Secretary's annual LLSIL for 2004 and references the current 2004 Health and Human Services (HHS) "Poverty Guidelines."

EFFECTIVE DATE: This notice is effective on June 25, 2004.

ADDRESSES: Send written comments to: Mr. Haskel Lowery, Employment and Training Administration, Department of Labor, Room N–4464, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. Haskel Lowery, Telephone (202) 693–3608; Fax (202) 693–3532 (these are not toll free numbers).

SUPPLEMENTARY INFORMATION: It is the purpose of the Workforce Investment Act of 1998 "to provide workforce investment activities, through statewide and local workforce investment systems, that increase the employment, retention, and earnings of participants, and increase occupational skill attainment by participants, and, as a result, improve the quality of the workforce, reduce welfare dependency, and enhance the productivity and competitiveness of the Nation."

The LLSIL is used for several purposes under WIA: specifically, WIA Section 101(25) defines the term "low income individual" for eligibility purposes, Sections 101(24) defines the term LLSIL, 127(b)(2)(C) and 132(b)(1)(IV) define the terms "disadvantaged adult," and "disadvantaged youth" "" terms of the poverty line or LLSIL for purpose of State formula allotments. The Governor and State/Local Workforce Investment Boards use the LLSIL for determining eligibility for youth, eligibility for employed adult workers for certain services, and for the Work Opportunity Tax Credit (WOTC). We encourage the Governors and State/local Workforce Investment Boards to consult WIA and its regulations and preamble at 29 CFR part 652, 660–671 (published at 65 FR 49294 (Aug. 11, 2000)) *et al.*, for more specific guidance in applying the LLSIL to program requirements. The Department of Health and Human Services published the annual 2004 update of the poverty-level guidelines in the **Federal Register** at 69 FR 7335, (Feb. 13, 2004). The HHS 2004 Poverty guidelines may also be found on the Internet at: [*http://www.aspe.hhs.gov/poverty/04fedreg.htm*].

The Employment and Training Administration (ETA) plans to have the 2004 LLSIL available on its Web site at: [*http://www.doleta.gov/llsil/*].

WIA Section 101(24) defines the LLSIL as "that income level (adjusted for regional, metropolitan, urban, and rural differences and family size) determined annually by the Secretary [of Labor] based on the most recent lower living family budget issued by the Secretary." The most recent lower living family budget was issued by the Secretary of Labor in the fall of 1981. The four-person urban family budget estimates, previously published by the Bureau of Labor Statistics (BLS) provided the basis for the Secretary to determine the LLSIL. BLS terminated the four-person family budget series in 1982, after publication of the fall 1981 estimates. Currently BLS provides the data from which ETA develops the LLSIL tables.

ETA published the 2003 updates to the LLSIL in the **Federal Register** of May 30, 2003, at 68 FR 32549. This notice again updates the LLSIL to reflect cost of living increases for 2003, by applying the percentage change in the December 2003 Consumer Price Index for All Urban Consumers (CPI–U), compared with the December 2002, CPI–U to each of the May 30, 2003 LLSIL figures. Those updated figures for a family-of-four are listed in Table 1 below by region for both metropolitan and nonmetropolitan areas. Figures in all of the accompanying tables are rounded up to the nearest ten. Since "low income individual," "disadvantaged adult," and "disadvantaged youth" may be determined by family income at 70 percent of the LLSIL, pursuant to WIA Sections, 101(25), 127(b)(2)(C) and 132(b)(1)(B)(v)(IV), respectively, those figures are listed below as well.

Jurisdictions included in the various regions, based generally on Census Divisions of the U.S. Department of Commerce, are as follows:

Northeast: Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virgin Islands.

Midwest: Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Wisconsin.

South: Alabama, American Samoa, Arkansas, Delaware, District of Columbia, Florida, Georgia, Northern Marianas, Oklahoma, Palau, Puerto Rico, South Carolina, Kentucky, Louisiana, Marshall Islands, Maryland, Micronesia, Mississippi, North Carolina, Tennessee, Texas, Virginia, West Virginia.

West: Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming.

Additionally, separate figures have been provided for Alaska, Hawaii, and Guam as indicated in Table 2 below.

For Alaska, Hawaii, and Guam, the year 2004 figures were updated from the May 30, 2003, "State Index" based on the ratio of the urban change in the State (using Anchorage for Alaska and Honolulu for Hawaii and Guam) compared to the West regional metropolitan change, and then applying that index to the West regional metropolitan change.

Data on 23 selected Metropolitan Statistical Areas (MSAs) are also available. These are based on semiannual CPI-U changes for a 12-month period ending in December 2003. The updated LLSIL figures for these MSAs and 70 percent of the LLSIL are reported in Table 3 below.

Table 4 below lists each of the various figures at 70 percent of the updated 2004 LLSIL for family sizes of one to six persons. For families larger than six persons, an amount equal to the difference between the six-person and the five-person family income levels should be added to the six-person family income level for each additional person in the family. Where the poverty level for a particular family size is greater than the corresponding LLSIL figure, the figure is indicated in parentheses. Table 5, 100 percent of LLSIL, is used to determine self-sufficiency as noted at 20 CFR 663.230 of WIA Regulations and WIA section 134(d)(3)(A)(ii).

Use of These Data

Governors should designate the appropriate LLSILs for use within the State from Tables 1 through 3. Tables 4 and 5 may be used with any of the levels designated. The Governor's designation may be provided by disseminating information on Metropolitan Statistical Areas (MSAs) and metropolitan and nonmetropolitan areas within the State, or it may involve further calculations. For example, the State of New Jersey may have four or more LLSIL figures: for Northeast metropolitan, for Northeast nonmetropolitan, for portions of the State in the New York City MSA, and for those in the Philadelphia MSA. If a workforce investment area includes areas that would be covered by more than one figure, the Governor may determine which is to be used.

Under 20 CFR 661.220, a State's policies and measures for the workforce investment system shall be accepted by the Secretary to the extent that they are consistent with the WIA and the WIA regulations.

Disclaimer on Statistical Uses

It should be noted that the publication of these figures is only for the purpose of meeting the requirements specified by WIA as defined in the law and regulations. BLS has not revised the lower living family budget since 1981, and has no plans to do so. The four-person urban family budget estimates series has been terminated. The CPI-U adjustments used to update the LLSIL for this publication are not precisely comparable, most notably because certain tax items were included in the 1981 LLSIL, but are not in the CPI-U. Thus, these figures should not be used for any statistical purposes, and are valid only for those purposes under WIA as defined in the law and regulations.

Signed at Washington, DC, this 17th day of June 2004.

Grace Kilbane,

Administrator, Office of Workforce Investment.

BILLING CODE 4510–30–P

Attachments

Table 1: Lower Living Standard Income Level (for a family of four persons) by Region[1]

Region[2]	2004 Adjusted LLSIL	70 percent LLSIL
Northeast		
Metro	$ 32,640	$ 22,850
Non-Metro[3]	$ 31,370	$ 21,960
Midwest		
Metro	$ 29,720	$ 20,810
Non-Metro	$ 27,860	$ 19,500
South		
Metro	$ 28,050	$ 19,640
Non-Metro	$ 26,520	$ 18,570
West		
Metro	$ 32,130	$ 22,490
Non-Metro[4]	$ 31,140	$ 21,800

[1]For ease of use, these figures have been rounded to the next highest ten

[2]Metropolitan area measures were calculated from the weighted average CPI-Us for city size classes A and B/C. Non-metropolitan area measures were calculated from

[3]Non-metropolitan area percent changes for the Northeast region are no longer available. The Non-metropolitan percent change was calculated using the U.S.

[4]Non-metropolitan area percent changes for the West region are

Table 2: Lower Living Standard Income Level (for a family of four persons) -- Alaska, Hawaii and Guam[1]

Region	2004 Adjusted LLSIL	70 percent LLSIL
Alaska		
Metro	$ 39,920	$ 27,940
Non-Metro[2]	$ 39,080	$ 27,360
Hawaii, Guam		
Metro	$ 40,550	$ 28,380
Non-Metro[2]	$ 41,730	$ 29,210

[1]Rounded to next highest ten dollars.

[2]Non-Metropolitan percent changes for Alaska, Hawaii and Guam were calculated from the CPI-Us for city size Class D in the Western Region.

Table 3: Lower Living Standard Income Level (for a family of four persons) 23 MSAs[1]

Metropolitan Statistical Areas (MSAs)	2004 Adjusted LLSIL	70 percent LLSIL
Anchorage, AK	$ 39,920	$ 27,940
Atlanta, GA	$ 28,230	$ 19,760
Boston--Brockton--Nashua, MA/NH/ME/CT	$ 36,330	$ 25,430
Chicago--Gary--Kenosha, IL/IN/WI	$ 31,320	$ 21,920
Cincinnati--Hamilton, OH/KY/IN	$ 29,880	$ 20,920
Cleveland--Akron, OH	$ 30,630	$ 21,450
Dallas--Ft. Worth, TX	$ 27,340	$ 19,140
Denver--Boulder--Greeley, CO	$ 31,760	$ 22,230
Detroit--Ann Arbor--Flint, MI	$ 29,410	$ 20,590
Honolulu, HI	$ 40,550	$ 28,380
Houston--Galveston--Brazoria, TX	$ 26,100	$ 18,270
Kansas City, MO/KS	$ 28,950	$ 20,270
Los Angeles--Riverside--Orange County, CA	$ 32,920	$ 23,050
Milwaukee--Racine, WI	$ 29,660	$ 20,760
Minneapolis--St. Paul, MN/WI	$ 30,110	$ 21,080
New York--Northern NJ--Long Island, NY/NJ/CT/PA	$ 34,240	$ 23,970
Philadelphia--Wilmington--Atlantic City, PA/NJ/DE/MD	$ 31,370	$ 21,960
Pittsburgh, PA	$ 29,880	$ 20,920
St. Louis, MO/IL	$ 28,370	$ 19,860
San Diego, CA	$ 35,970	$ 25,180
San Francisco--Oakland--San Jose, CA	$ 34,860	$ 24,400
Seattle--Tacoma--Bremerton, WA	$ 35,450	$ 24,820
Washington--Baltimore, DC/MD/VA/WV[2]	$ 34,490	$ 24,140

[1] Rounded to next highest ten dollars.

[2] Baltimore and Washington are now calculated as a single metropolitan statistical area

Table 4 - Seventy Percent of Updated 2004 Lower Living Standard Income Level (LLSIL), by Family Size

To use the seventy percent LLSIL value, where it is stipulated for WIA programs, individuals must begin by locating the region or metropolitan area where they reside. These are listed in Tables 1, 2 and 3. Individuals must locate their region or metropolitan statistical area and then find the seventy percent LLSIL amount for that location. The seventy percent LLSIL figures are listed in the last column to the right on each of the three tables. These figures apply to a family of four. Larger and smaller family eligibility is based on a percentage of the family of four. To determine eligibility for other size families consult the table below.

To use Table 4, locate the seventy percent LLSIL value that applies to the individual's region or metropolitan area from Tables 1, 2 or 3. Find the same number in the "family of four" column of Table 4. Move left or right across that row to the size that corresponds to the individual's family unit. That figure is the maximum household income the individual is permitted in order to qualify as economically disadvantaged under WIA.

Where the HHS poverty level for a particular family size is greater than the corresponding LLSIL figure, the LLSIL figure is indicated in a shaded block. Individuals from these size families may consult the 2004 HHS poverty guidelines found in the Federal Register, Vol. 69, No. 30, February 13, 2004, pp. 7335-7338 (on the Internet at http://www.aspe.hhs.gov/poverty/04fedreg.htm) to find the higher eligibility standard. Individuals from Alaska and Hawaii should consult the HHS guidelines for the generally higher poverty levels that apply in their states.

Family of One	Family of Two	Family of Three	Family of Four	Family of Five	Family of Six
$ 6,580	$10,780	$14,800	$ 18,270	$21,560	$25,220
$ 6,690	$10,960	$15,050	$ 18,570	$21,920	$25,630
$ 6,900	$11,300	$15,510	$ 19,140	$22,590	$26,420
$ 7,020	$11,510	$15,800	$ 19,500	$23,010	$26,910
$ 7,080	$11,590	$15,910	$ 19,640	$23,180	$27,110
$ 7,120	$11,660	$16,010	$ 19,760	$23,320	$27,270
$ 7,150	$11,720	$16,090	$ 19,860	$23,440	$27,410
$ 7,300	$11,960	$16,420	$ 20,270	$23,920	$27,980
$ 7,420	$12,150	$16,680	$ 20,590	$24,300	$28,420
$ 7,480	$12,250	$16,820	$ 20,760	$24,500	$28,650
$ 7,500	$12,280	$16,860	$ 20,810	$24,560	$28,720
$ 7,540	$12,350	$16,950	$ 20,920	$24,690	$28,870
$ 7,590	$12,440	$17,080	$ 21,080	$24,880	$29,100
$ 7,730	$12,660	$17,380	$ 21,450	$25,320	$29,610
$ 7,850	$12,870	$17,660	$ 21,800	$25,730	$30,090
$ 7,900	$12,940	$17,760	$ 21,920	$25,870	$30,250
$ 7,910	$12,960	$17,790	$ 21,960	$25,920	$30,310
$ 8,010	$13,120	$18,010	$ 22,230	$26,240	$30,680
$ 8,100	$13,270	$18,220	$ 22,490	$26,540	$31,040
$ 8,230	$13,490	$18,510	$ 22,850	$26,970	$31,540
$ 8,300	$13,600	$18,680	$ 23,050	$27,200	$31,810
$ 8,630	$14,150	$19,420	$ 23,970	$28,290	$33,080
$ 8,700	$14,250	$19,560	$ 24,140	$28,490	$33,320
$ 8,790	$14,400	$19,770	$ 24,400	$28,800	$33,680
$ 8,940	$14,650	$20,110	$ 24,820	$29,290	$34,260
$ 9,070	$14,860	$20,400	$ 25,180	$29,720	$34,750
$ 9,160	$15,010	$20,600	$ 25,430	$30,010	$35,100
$ 9,850	$16,150	$22,170	$ 27,360	$32,290	$37,760
$10,060	$16,490	$22,640	$ 27,940	$32,970	$38,560
$10,220	$16,750	$22,990	$ 28,380	$33,490	$39,170
$10,520	$17,240	$23,670	$ 29,210	$34,470	$40,310

Table 5 - Updated 2004 LLSIL (100%), By Family Size

To use the LLSIL to determine the minimum level for establishing self-sufficiency criteria at the state or local level, begin by locating the metropolitan area or region from Table 1, 2 or 3. The individual must locate their region or metropolitan statistical area and then find the 2004 Adjusted LLSIL amount for that location. These figures apply to a family of four. Locate the corresponding number in the family of four column below. Move left or right across that row to the size that corresponds to the individual's family unit. That figure is the minimum figure States must set for determining whether employment leads to self-sufficiency under WIA programs.

Family of One	Family of Two	Family of Three	Family of Four	Family of Five	Family of Six
$ 9,400	$15,400	$21,150	$26,100	$30,800	$36,020
$ 9,550	$15,650	$21,490	$26,520	$31,300	$36,600
$ 9,850	$16,140	$22,150	$27,340	$32,270	$37,730
$10,030	$16,440	$22,570	$27,860	$32,880	$38,450
$10,100	$16,550	$22,730	$28,050	$33,100	$38,710
$10,170	$16,660	$22,870	$28,230	$33,320	$38,960
$10,220	$16,740	$22,980	$28,370	$33,480	$39,160
$10,430	$17,090	$23,450	$28,950	$34,170	$39,960
$10,590	$17,360	$23,830	$29,410	$34,710	$40,590
$10,680	$17,500	$24,030	$29,660	$35,000	$40,940
$10,700	$17,540	$24,080	$29,720	$35,070	$41,020
$10,760	$17,630	$24,210	$29,880	$35,260	$41,240
$10,840	$17,770	$24,390	$30,110	$35,530	$41,560
$11,030	$18,080	$24,820	$30,630	$36,150	$42,270
$11,220	$18,380	$25,230	$31,140	$36,750	$42,980
$11,280	$18,480	$25,370	$31,320	$36,960	$43,230
$11,300	$18,510	$25,410	$31,370	$37,020	$43,300
$11,440	$18,740	$25,730	$31,760	$37,480	$43,830
$11,570	$18,960	$26,030	$32,130	$37,920	$44,340
$11,760	$19,260	$26,440	$32,640	$38,520	$45,050
$11,860	$19,430	$26,670	$32,920	$38,850	$45,430
$12,330	$20,210	$27,740	$34,240	$40,410	$47,260
$12,420	$20,350	$27,940	$34,490	$40,700	$47,600
$12,550	$20,570	$28,240	$34,860	$41,140	$48,110
$12,770	$20,920	$28,720	$35,450	$41,840	$48,930
$12,950	$21,230	$29,140	$35,970	$42,450	$49,640
$13,080	$21,440	$29,430	$36,330	$42,870	$50,140
$14,070	$23,060	$31,660	$39,080	$46,120	$53,940
$14,380	$23,560	$32,340	$39,920	$47,110	$55,090
$14,600	$23,930	$32,850	$40,550	$47,850	$55,960
$15,030	$24,630	$33,810	$41,730	$49,250	$57,590

[FR Doc. 04–14430 Filed 6–24–04; 8:45 am]
BILLING CODE 4510–30–C

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 533 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register,** or on the date written notice is received by the agency, whichever, is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut
- CT030001 (Jun. 13, 2003)
- CT030003 (Jun. 13, 2003)
- CT030004 (Jun. 13, 2003)

Volume II

District of Columbia
- DC030001 (Jun. 13, 2003)
- DC030003 (Jun. 13, 2003)

Maryland
- MD030021 (Jun. 13, 2003)
- MD030048 (Jun. 13, 2003)
- MD030057 (Jun. 13, 2003)

Pennsylvania
- PA030001 (Jun. 13, 2003)
- PA030002 (Jun. 13, 2003)
- PA030003 (Jun. 13, 2003)
- PA030004 (Jun. 13, 2003)
- PA030005 (Jun. 13, 2003)
- PA030007 (Jun. 13, 2003)
- PA030008 (Jun. 13, 2003)
- PA030009 (Jun. 13, 2003)
- PA030010 (Jun. 13, 2003)
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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service *(http://davisbacon.fedworld.gov)of* the National Technical Information Service (NTIs) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January of February) which includes all current general wage determinations of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 17th day of June, 2004.

Terry Sullivan,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 04–14106 Filed 6–24–04; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Penn Big Bed Slate Company, Inc.

[Docket No. M–2004–006–M]

Penn Big Bed Slate Company, Inc., 8450 Brown Street, P.O. Box 184, Slatington, Pennsylvania 18080 has filed a petition to modify the application of 30 CFR 56.19012 (Grooved drums) (MSHA I.D. No. 36–00207) located in Lehigh County, Pennsylvania. The petitioner requests a modification of the standard concerning the oversized grooves on the drums for cranes used at the Manhattan Quarry. The petitioner states that the 5/8-inch size rope does not flatten nor restrict the free sliding action of the wires and strands. The petitioner further states that the rope has 30 to 65 feet cut-off to ensure that the rope is safe. The petitioner has listed specific terms and conditions in this petition for modification to support the use of its proposed alternative method. The petitioner asserts that the oversized grooves will not create any unsafe conditions, and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. Eastern Associated Coal Corporation

[Docket No. M–2004–023–C]

Eastern Associated Coal Corporation, 1970 Barrett Court, P.O. Box 1990, Henderson, Kentucky 42420 has filed a petition to modify the application of 30 CFR 75.364(b) (Weekly examination) to its Federal No. 2 Mine (MSHA I.D. No. 46–01456) located in Monogalia County, West Virginia. Due to deteriorating conditions in portions of the main return air courses (North Airways and South Airways) in the C Shaft area, the petitioner proposes to establish evaluation points to monitor the air moving through the affected areas. The petitioner will establish two evaluation points in the North airways at the outby end of the area, and in the inby end of the North Airways due to roof falls; establish one evaluation point in the South Airway at the intake end near 2 East Mains due to massive roof falls in the south area of the C Shaft and use current evaluation points at the C Shaft to monitor for harmful gases; and establish one evaluation point in 1 East Mains at the inby end of the affected area. The petitioner states that a certified person will check the evaluation points at least every 7 days to determine the quantity and quality of air in the affected area, and record their initials, the date, and time of the examination(s) on a date board that will be located at each evaluation point; and that methane in excess of 2.0 percent will not be allowed to accumulate in any airway. If methane increases 0.5 percent or more, an immediate investigation will be conducted in the affected area. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard and will eliminate the hazard of people working in the affected area.

3. Consolidation Coal Company

[Docket No. M–2004–024–C]

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (Weekly examination) to its Loveridge No. 22 Mine (MSHA I.D. No. 46–01433) located in Marion County, West Virginia. The petitioner requests a modification of the existing standard which requires a certified person to make a weekly examination of the return air course from the Sugar Run seals to the 3 North Bleeder seals. Due to deteriorating rib and roof conditions, traveling the entire area of the Sugar Run 3 North Bleeder seals to make weekly examinations would expose personnel to hazardous conditions. The petitioner proposes to establish evaluation check points 1 and 2 to evaluate and confirm the proper ventilation between the Sugar Run seals and the 3 North Bleeder seal areas through the Main North headings. The petitioner states that these check points will be maintained in a safe condition at all times; and the quality and quantity of air at the check points will be measured on a weekly basis by a certified person who will record his/her initials, the date, and the time of the examinations in a record book that will be kept on the surface for six months and made available for inspection by

interested persons. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to *comments@msha.gov*, by fax at (202) 693–9441, or by regular mail to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before July 26, 2004. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia this 18th day of June 2004.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 04–14399 Filed 6–24–04; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (04–076)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that BTS Holdings, LLC, having offices in Houston, Texas, has applied for an exclusive license to practice the inventions described and claimed in pending U.S. Patent Application entitled "Real-Time High Frequency QRS Electrocardiograph," NASA Case No. MSC–23154–1; pending U.S. Patent Application entitled, "Method and Apparatus for Diagnosis of Coronary Artery Disease, Acute Coronary Syndromes, Cardiomyopathy and Other Cardiac Conditions," NASA Case No. MSC–23449–1; and corresponding foreign patent applications. Each of the above-listed applications are assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to the Johnson Space Center. NASA has not yet made a determination to grant the requested license and may deny the requested license even if no objections are submitted within the comment period.

DATES: Responses to this notice must be received by July 26, 2004.

FOR FURTHER INFORMATION CONTACT: James Cate, Patent Attorney, NASA Johnson Space Center, Mail Stop HA, Houston, TX 77058–8452; telephone (281) 483–1001.

Dated: June 14, 2004.

Keith T. Sefton,

Chief of Staff, Office of the General Counsel.

[FR Doc. 04–14437 Filed 6–24–04; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until August 24, 2004.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer listed below:

Clearance Officer: Mr. Neil McNamara, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6669, E-mail: *mcnamara@ncua.gov*. 1

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

Title: Management Official Interlocks.

OMB Number: 3133–0152.

Form Number: None.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Description: Part 711 of NCUA's Rules and Regulations directs federally insured credit unions that want to share a management official with another financial institution to either apply for approval from the NCUA Board or maintain records to show the eligibility for a small market share exemption.

Respondents: All federally insured credit unions.

Estimated No. of Respondents/ Recordkeepers: 1.

Estimated Burden Hours Per Response: 3 hours.

Frequency of Response: Recordkeeping. Upon application.

Estimated Total Annual Burden Hours: 3.

Estimated Total Annual Cost: $0.

Dated: By the National Credit Union Administration Board on June 17, 2004.

Becky Baker,

Secretary of the Board.

[FR Doc. 04–14407 Filed 6–24–04; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until August 24, 2004.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer listed below:

Clearance Officer: Neil McNamara, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6669, E-mail: *mcnamara@ncua.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

Title: Leasing—Statistical Documentation Required for a Guarantor of a Residual Value.

OMB Number: 3133–0151.

Form Number: None.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Description: Part 714 of NCUA's Rules and Regulations directs federal credit unions to evaluate whether a guarantor of a residual value has the financial resources to meet the guarantee.

Respondents: All Federal credit unions.

Estimated No. of Respondents/ Recordkeepers: 380.

Estimated Burden Hours Per Response: 2 hours.

Frequency of Response: Recordkeeping.

Estimated Total Annual Burden Hours: 760.

Estimated Total Annual Cost: $13,300.

By the National Credit Union Administration Board on June 17, 2004.

Becky Baker,

Secretary of the Board.

[FR Doc. 04–14408 Filed 6–24–04; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Reinstatement, Without Change, of a Previously Approved Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until August 24, 2004.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer listed below:

Clearance Officer: Mr. Neil McNamara, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6669, E-mail: *mcnamara@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request, should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

Title: Payment on Shares by Public Units and Nonmembers.

OMB Number: 3133–0114.

Form Number: N/A.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Description: 5 CFR 701.32 limits nonmember and public unit deposits in federally insured credit unions to 20 percent of their shares or $1.5 million, whichever is greater. The collection of information requirement is for those credit unions seeking an exemption from the above limit.

Respondents: Credit Unions seeking an exemption from the limits on share deposits by public unit and nonmember accounts set by 5 CFR 701.32.

Estimated No. of Respondents/ Recordkeepers: 20.

Estimated Burden Hours Per Response: 2 hours.

Frequency of Response: Other. As exemption is requested.

Estimated Total Annual Burden Hours: 40.

Estimated Total Annual Cost: N/A.

Dated: By the National Credit Union Administration Board on June 17, 2004.

Becky Baker,

Secretary of the Board.

[FR Doc. 04–14409 Filed 6–24–04; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until August 24, 2004.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer listed below:

Clearance Officer: Mr. Neil McNamara, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6669, E-mail: *mcnamara@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

Title: Production of Nonpublic Records and Testimony of Employees in Legal Proceedings.

OMB Number: 3133–0146.

Form Number: None.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Respondents: Respondents will most likely be persons involved in legal proceedings.

Estimated No. of Respondents/ Recordkeepers: 36.

Estimated Burden Hours Per Response: 2.

Frequency of Response: On occasion.

Estimated Total Annual Burden Hours: 72.

Estimated Total Annual Cost: None.

Dated: By the National Credit Union Administration Board on June 7, 2004.

Becky Baker,

Secretary of the Board.

[FR Doc. 04–14410 Filed 6–24–04; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until August 24, 2004.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. Neil McNamara, National Credit Union

Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6669, E-mail: *mcnamara@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request, should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0140.

Form Number: N/A.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Title: Secondary Capital for Low-Income Designated Credit Unions.

Description: Low-income designated credit unions that offer secondary capital accounts must adopt a written plan, send a copy of the plan to their NCUA Regional director, and have account contract documents and disclosure forms.

Estimated No. of Respondents/ Recordkeepers: 913.

Estimated Burden Hours Per Response: 3 hours.

Frequency of Response: Recordkeeping, third party disclosure, and reporting, on occasion.

Estimated Total Annual Burden Hours: 93.

Estimated Total Annual Cost: $0.

By the National Credit Union Administration Board on June 17, 2004.

Becky Baker,

Secretary of the Board.

[FR Doc. 04–14411 Filed 6–24–04; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until August 24, 2004.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer listed below:

Clearance Officer: Mr. Neil McNamara, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. (703) 518–6669, E-mail: *mcnamara@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0101.

Form Number: NA.

Type of Review: Extension of a currently approved collection.

Title: 12 CFR Parts 723.5—Develop written loan policies—and 723.11—Provide waiver requests.

Description: The general purpose of the requirements imposed by the rule is to ensure that loans are made, documented, and accounted for properly and for the ultimate protection of the National Credit Union Share Insurance Fund. Respondents are federally insured credit unions who make business loans as defined in the regulation.

Respondents: Federally Insured Credit Unions.

Estimated No. of Respondents/ Recordkeepers: 1,500.

Estimated Burden Hours Per Response: 4 hours.

Frequency of Response: Recordkeeping.

Estimated Total Annual Burden Hours: 6000 hours.

Estimated Total Annual Cost: $0.

By the National Credit Union Administration Board on June 17, 2004.

Becky Baker,

Secretary of the Board.

[FR Doc. 04–14412 Filed 6–24–04; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Reinstatement, Without Change, of a Previously Approved Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until August 24, 2004.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer:

Clearance Officer: Mr. Neil McNamara, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6669, E-mail: *mcnamara@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request, should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0138.

Form Number: N/A.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Title: Community Development Revolving Loan Program for Credit Union Application for Funds.

Description: NCUA requests this information from credit unions to assess financial ability to repay the loans and to ensure that the funds are used to benefit the institution and the community it serves. The respondents are financial institutions that serve specific membership groups.

Estimated No. of Respondents/ Recordkeepers: 25.

Estimated Burden Hours Per Response: 8 hours.

Frequency of Response: Reporting, on occasion.

Estimated Total Annual Burden Hours: 200 hours.

Estimated Total Annual Cost: $ 0.

By the National Credit Union Administration Board on June 17, 2004.

Becky Baker,

Secretary of the Board.

[FR Doc. 04–14413 Filed 6–24–04; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Reinstatement, Without Change, of a Previously Approved Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until July 26, 2004.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer listed below:

Clearance Officer: Mr. Neil McNamara, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6669, E-mail: *mcnamara@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

Title: Charter Conversions.

OMB Number: 3133–0153.

Form Number: None.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Description: Part 708 of NCUA's Rules and Regulations directs credit unions to provide members with information to evaluate a charter conversion proposal. NCUA needs the information to fulfill its statutory duty to administer the membership vote.

Respondents: Federally insured credit unions.

Estimated No. of Respondents/ Recordkeepers: 10.

Estimated Burden Hours per Response: 20 hours.

Frequency of Response: Reporting, Third Party Disclosure. Other, one time only.

Estimated Total Annual Burden Hours: 200.

Estimated Total Annual Cost: $0.

By the National Credit Union Administration Board on June 17, 2004.

Becky Baker,

Secretary of the Board.

[FR Doc. 04–14414 Filed 6–24–04; 8:45 am]

BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR Part 11—Criteria and Procedures for Determining Eligibility for Access to or Control Over Special Nuclear Material.

3. *The form number if applicable:* None.

4. *How often the collection is required:* New applications, certifications, and amendments may be submitted at any time. Applications for renewal are submitted every 5 years.

5. *Who will be required or asked to report:* Employees (including applicants for employment), contractors and consultants of NRC licensees and contractors whose activities involve access to or control over special nuclear material at either fixed sites or in transportation activities.

6. *An estimate of the number of responses:* 5.

7. *The estimated number of annual respondents:* 5 NRC licensees.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* Approximately 0.25 hours annually per response, for an industry total of 1.25 hours annually.

9. *An indication of whether section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* NRC regulations in 10 CFR part 11 establish requirements for access to special nuclear material, and the criteria and procedures for resolving questions concerning the eligibility of individuals to receive special nuclear material access authorization. Personal history information which is submitted on applicants for relevant jobs is provided to OPM, which conducts investigations. NRC reviews the results of these investigations and makes determinations of the eligibility of the applicants for access authorization.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC World Wide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.hmtl.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by July 26, 2004. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

OMB Desk Officer, Office of Information and Regulatory Affairs (3150–0062), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated in Rockville, Maryland, this 21st day of June, 2004.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 04–14429 Filed 6–24–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–247 and 50–286; License Nos. DPR–26 and DPR–64]

Entergy Nuclear Operations, Inc.; Notice of Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a Director's Decision with regard to a Petition dated September 8, 2003, filed by the Union of Concerned Scientists and

Riverkeeper, Inc., hereinafter referred to as the "Petitioners." The Petition was supplemented on September 22 and October 29, 2003. The Petition concerns the operation of the Indian Point Nuclear Generating Unit Nos. 2 and 3 (IP2 and 3).

The Petition requested that the Nuclear Regulatory Commission (NRC): (1) take immediate enforcement action against Entergy Nuclear Operations, Inc. (Entergy), the licensee for IP2 and 3, by issuing an Order requiring Entergy to immediately shut down IP2 and 3 and maintain the reactors shutdown until the containment sumps are modified to resolve Generic Safety Issue 191 (GSI–191), and (2) as an alternative, should the NRC deny the request to require IP2 and 3 to shut down immediately, issue an Order to prevent plant restart following each plant's next refueling outage until such time that the containment sumps are modified to resolve GSI–191. If this alternative is chosen, the Petitioners further requested a requirement to be included within the Order for Entergy to (a) maintain all equipment needed for monitoring leakage of reactor coolant pressure boundary components within containment fully functional and immediately shut down the affected reactor upon any functional impairment to leakage monitoring equipment, and (b) refrain from any activity under 10 CFR 50.59, 10 CFR 50.90, Section VII.C of the NRC's Enforcement Policy, or Generic Letter 91–18, Revision 1, that increases or could increase the probability of a loss-of-coolant accident (LOCA).

As the basis for this request, the Petitioners stated that there is a lack of reasonable assurance that the IP2 and 3 containment sumps will be able to perform their function during a LOCA. The Petitioners, conclusions regarding the containment sumps were based on their analysis of publicly available reports that were prepared for the NRC by the Los Alamos National Laboratory (LANL). The NRC has stated that the potential for sump clogging in pressurized-water reactors is an issue that is currently being evaluated by the NRC through the NRC's Generic Issue Program. In particular, the NRC-sponsored studies that formulate the basis for your requested enforcement actions were performed in support of the NRC staff's review of GSI–191.

On September 24, 2003, the Petitioners met with the staff's Petition Review Board (PRB) to discuss the Petition and provide additional details in support of this request.

The NRC sent a copy of the Proposed Director's Decision to the Petitioners and to the licensee for comment on February 19, 2004. The Petitioners responded with comments on March 30, 2004, and the licensee had no comments. The Petitioners' comments and the NRC staff's response to them are included with the Director's Decision.

The Director of the Office of Nuclear Reactor Regulation has determined that the request to order the licensee to suspend operations of IP2 and 3 be denied. The reasons for this decision, along with the reasons for decisions regarding the remaining Petitioners' requests, are explained in the Director's Decision pursuant to 10 CFR 2.206 (DD 04–02), the complete text of which is available in the Agencywide Documents Access and Management System (ADAMS) for inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area O–1F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and from the NRC Web site (*http://www.nrc.gov/reading-rm.html*) on the World Wide Web, under the "Public Involvement" icon.

As stated in its letter to the Petitioners on October 22, 2003, the NRC staff told the Petitioners that the request that the NRC issue an Order to immediately shut down IP2 and 3 was denied. Consistent with the generic issue process, the NRC is currently developing guidance to be used by individual plants to evaluate the potential for sump clogging. Although many plants have taken steps to further ensure adequate sump recirculation in the event of a LOCA, an NRC-approved methodology for evaluating each plant's sump performance is intended to (1) ensure that each plant evaluates the potential for debris-clogging in a consistent manner based on state-of-the-art, staff-approved methods and plant-specific information; and (2) provide the NRC with the technical basis for ensuring that any proposed solution adequately addresses the issue. The data reviewed by the staff to date, including the Petition and the Parametric Study, does not support the actions requested by the Petitioners. If, at any time during the resolution of the generic issue, the NRC should determine that unsafe conditions exist at Indian Point or any other plant, immediate actions will be taken to ensure the continued health and safety of the public.

A copy of the Director's Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206 of the Commission's regulations. As provided for by this regulation, the Director's Decision will constitute the final action of the Commission 25 days after the date of the decision, unless the Commission, on its own motion, institutes a review of the Director's Decision in that time.

Dated in Rockville, Maryland, this 18th day of June, 2004.

For the Nuclear Regulatory Commission.

Brian W. Sheron,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 04–14428 Filed 6–24–04; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Submission for OMB Review; Comment Request

AGENCY: Overseas Private Investment Corporation.

ACTION: Request for Comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that the Agency is preparing an information collection request for OMB review and approval and to request public review and comment on the submission. OPIC published it first **Federal Register** Notice on this information collection request on April 23, 2004, in Vol. 69, No. 79 FR 22103, at which time a 60-day comment period was announced. This comment period ended June 22, 2004. No comments were received in response to this notice.

This information collection submission has now been submitted to OMB for review. Comments are again being solicited on the need for the information; the accuracy of the Agency's burden estimate; the quality, practical utility and clarity of the information to be collected; and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form, OMB control number 3420–0001, under review is summarized below.

DATES: Comments must be received within 30 calendar days of this Notice.

ADDRESSES: Copies of the subject form and the request for review prepared for submission to OMB may be obtained from the Agency submitting officer. Comments on the form should be submitted to the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer: Bruce I. Campbell, Records Management Officer, Overseas Private Investment Corporation, 1100 New York Avenue,

NW., Washington, DC 20527; 202/336–8563.

OMB Reviewer: David Rostker, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503; 202/395–3897.

Summary Form Under Review

Type of Request: Form Renewal.
Title: Request for Registration for Political Risk Investment Insurance.
Form Number: OPIC–50.
Frequency of Use: Once per investor per project.
Type of Respondents: Business or other institution (except farms); individuals.
Description of Affected Public: U.S. companies or citizens investing overseas.
Reporting Hours: ½ hours per project.
Number of Responses: 343 per year.
Federal Cost: $1,000.
Authority for Information Collection: Sections 231, 234(a), 239(d), and 240A of the Foreign Assistance Act. of 1961, as amended.
Abstract (Needs and Uses): The OPIC 50 form is submitted by eligible investors to register their intent to make international investments, and ultimately, to seek OPIC political risk insurance. By submitting Form 50 to OPIC prior to making and irrevocable commitment, the incentive effect of OPIC is demonstrated.

Dated: June 21, 2004.

Eli Landy,

Senior Counsel, Administrative Affairs, Department of Legal Affairs.

[FR Doc. 04–14471 Filed 6–24–04; 8:45 am]

BILLING CODE 3210–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Designation of Contact Officials.
(2) *Form(s) submitted:* G–117a.
(3) *OMB Number:* 3220–NEW.
(4) *Expiration date of current OMB clearance:* N.A.
(5) *Type of request:* New collection.
(6) *Respondents:* Business or other for-profit.
(7) *Estimated annual number of respondents:* 100.
(8) *Total annual responses:* 100.
(9) *Total annual reporting hours:* 25.
(10) *Collection description:* The Railroad Retirement Board (RRB) requests that railroad employers designate employees to act as liaison with the RRB on a variety of Railroad Retirement Act and Railroad Unemployment Insurance Act matters.

FOR FURTHER INFORMATION CONTACT: Copies of the forms and supporting documents can be obtained by contacting Charles Mierzwa, the agency clearance officer, at (312) 751–3363 or *Charles.Mierzwa@RRB.GOV.*

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 or *Ronald.Hodapp@RRB.GOV* and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 04–14465 Filed 6–24–04; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[(Release No. 35–27859)]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

DATES: June 18, 2004.

Notice is hereby given that the following filing(s) has/haven been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 13, 2004, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant application(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After July 13, 2004, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Cinergy Services, Inc. (70–10228)

Cinergy Service, Inc., a Delaware corporation ("Cinergy Services" or "Applicant"), 139 East Fourth Street, Cincinnati, Ohio 45202, a service company subsidiary of Cinergy Corporation ("Cinergy"), a registered holding company, has filed an application ("Application") with the Commission under section 13(b) of the Act and rules 54, 90, 91, and 93(d) under the Act.

Cinergy Services requests a waiver from the requirement under the rule 93 of the Act that service companies maintain their books and records as prescribed by 17 CFR part 257 in accordance with the accounts established in the Commission's *Uniform System of Accounts for Mutual Service Companies and Subsidiary Service Companies*("System of Accounts").[1] Specifically, Cinergy Services requests a waiver under rule 93(d) to use the chart of accounts in the Federal Energy Regulatory Commission's ("FERC") *Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to Provisions of the Federal Power Act*("FERC Chart of Accounts"),[2] Instead of the System of Accounts, for all purposes for which Cinergy Services would otherwise use the System of Accounts. Cinergy Services states that the proposed adoption of the FERC Chart of Accounts, which contains additional accounts relevant to Cinergy Services functions not included in the System of Accounts, will permit the Cinergy system to realize process improvements and other efficiencies in its accounting system.[3] Cinergy Services also requests authority to amend its existing service agreements to make conforming textual revisions reflecting the proposed use of the FERC Chart of Accounts. In all other respects, Cinergy Services states that it will continue to

[1] *See* 17 CFR 256.00–1, *et seq.*

[2] *See* 18 CFR 101.

[3] *See Energy East Corp.*, HCAR No. 27729; Sept. 30, 2003 (allowing a comparable use of the FERC Chart of Accounts).

comply fully with rule 93 and the System of Accounts.[4]

Cinergy Services was organized to act as a service company subsidiary for Cinergy in connection with the merger that created the Cinergy holding company system.[5] Cinergy Services renders its services under separate Commission-approved service agreements with Cinergy's utility and nonutility subsidiaries.[6]

Applicant states that the Cinergy system intends to implement a new accounting and reporting system in early 2005. Currently, the system maintains multiple charts of account, including the System of Accounts for Cinergy Services and the FERC Chart of Accounts for the FERC-jurisdictional companies. Under the proposed accounting system, the multiple charts of accounts now used throughout the system will consolidated into a single chart of accounts. Applicant states that the decision to consolidate the various charts of account into a single chart of accounts reflects Cinergy's view of industry "best practices", including avoidance of account rollup structures,[7] and is expected to yield a number of other system benefits, including: (1) Improving internal processes; (2) standardizing and streamlining processes; and (3) enhancing reporting system performance. Cinergy Services states that the proposed transactions only affect account-record keeping and reporting presentations and will provide greater transparency regarding its various reporting requirements.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–14449 Filed 6–24–04; 8:45 am]

BILLING CODE 8010–01–M

[4] By implementing this change, the Cinergy system;s FERC reporting will not change; rather, Cinergy Services' reporting will be modified to include FERC functionalized accounts.

[5] *See Cinergy Corp.*, HCAR No. 26146; Oct. 21, 1994 ("Merger Order"). Cinergy directly or indirectly owns all the outstanding common stock of five public utility companies. the most significant of which are PSI Energy, Inc. ("PSI"), an Indiana electric utility, and The Cincinnati Gas & Electric Company ("CG&E") a combination Ohio electric and gas utility and holding company. PSI and CG&E (including the utility subsidiaries of CG&E, the most significant of which is The Union Light, Heat and Power Company, a Kentucky combination electric and gas utility) collectively provide electric and gas service to approximately 1.6 million retail and wholesale customers in parts of Indiana, Ohio and Kentucky. The Cinergy system also includes numerous nonutility subsidiaries engaged in energy-related business and other nonutility businesses authorized under the Act, by Commission order or otherwise.

[6] The Commission approved the Service Agreements in the Merger Order. In 1997, the Commission authorized an amendment to the Nonutility Services Agreements under which Cinergy Services was authorized to provide an expanded roster of services to associated nonutility companies (HCAR No. 2662; Feb. 7, 1997).

[7] For example, because the System of Accounts requires Cinergy Services to record operating and maintenance expenses in the administrative and general expense accounts, while under the broader FERC System of Accounts the same type of expenses incurred by FERC-jurisdictional companies are recorded in more specialized functional accounts, Cinergy Services currently maintains a duplicate set of account rollup structures in order to facilitate proper reporting for both Commission and FERC purposes.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49886; File No. SR–BSE–2004–15]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change, and Amendment Nos. 1 and 2 Thereto, By the Boston Stock Exchange, Inc., Relating to Handling of Principal Acting as Agent Orders Under Linkage

June 17, 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 27, 2004, the Boston Stock Exchange, Inc. (the "Exchange" or the "BSE") filed with the Securities and Exchange Commission the proposed rule change as described in Items I and II below, which items have been prepared by the BSE. The BSE submitted Amendment No. 1 to the proposed rule change on May 21, 2004.[3] The BSE submitted Amendment No. 2 to the proposed rule change on June 9, 2004.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change, as amended

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Glenn J. Verdi, Chief Regulatory Officer, Boston Options Exchange Regulation LLC, BSE to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated May 20, 2004 ("Amendment No. 1"). Amendment No. 1 replaced and superceded the original filing in its entirety.

[4] *See* Letter from Glenn J. Verdi, Chief Regulatory Officer, Boston Options Exchange Regulation LLC, BSE to Nancy Sanow, Assistant Director, Division, Commission, dated June 8, 2004 ("Amendment No. 2"). In Amendment No. 2, the Exchange made a technical correction to the proposed rule text submitted to the Commission.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE is proposing to amend Ch. XII, Section 2(c)(ii) of the BSE rules related to the intermarket options linkage ("Linkage").

The text of the proposed rule change is available at the Exchange and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to implement proposed Joint Amendment No. 10 to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan").[5] That Plan amendment, together with the instant proposed rule change, would clarify the manner in which BOX Options Participants may send principal acting as agent orders ("P/A Orders")[6] that are larger than the Firm Customer Quote Size ("FCQS"). The FCQS, among other things, is the minimum size for which an exchange that is a participant in the Linkage Plan must provide an execution in its automatic execution system for a P/A Order, if the exchange's auto-ex system is available.[7]

Currently, Linkage Plan Section 7(a)(ii)(B) and Ch. XII, Section 2(c)(ii) of the BSE Rules ("BSE Rule") provide a BOX Options Participant with two ways to handle orders that are larger than the FCQS. First, the BOX Options

[5] *See* Securities Exchange Act Release No. 49689 (May 12, 2004), 69 FR 28953 (May 19, 2004) (File No. 4–429) (Notice of filing Joint Amendment No. 10 to the Linkage Plan).

[6] A P/A Order is an order for the account of a Market Maker that is authorized to represent Customer orders, reflecting the terms of a related Customer order for which the Market Maker is acting as agent. *See* Section 2(16)(a) of the Linkage Plan.

[7] *See* Sections 7(a)(ii)(A) & (B) of the Linkage Plan.

Participant may send a P/A Order larger than the FCQS for manual processing at the receiving exchange. Second, the BOX Options Participant may send an initial P/A Order for up to the FCQS to be executed in the automatic execution system of the receiving exchange, if available. If the BOX Options Participant then seeks to send another P/A Order, it must send an order for the lesser of the entire remaining size of the underlying customer order or 100 contracts.

This proposed rule change addresses the handling of orders if the BOX Options Participant chooses the second alternative, the sending of multiple P/A Orders. As currently drafted, the Linkage Plan and the BSE Rule do not recognize the possibility that an exchange's disseminated quotation may be for less than either the remaining size of the customer order or 100 contracts. Thus, this proposal specifies that a BOX Options Participant sending a second P/A Order may limit such order to the lesser of: the remaining size of the customer order; 100 contracts; or the size of the receiving exchange's disseminated quotation.

In addition, there is a practical issue if multiple exchanges are displaying the same bid or offer. In that case, the Linkage Plan is unclear as to whether a BOX Participant must send the entire order to one exchange or can send orders to multiple exchanges, as long as they are for the size of the entire order, or 100 contracts, in the aggregate. This proposed rule change clarifies the BSE Rule to specify that a BOX Options Participant may send P/A Orders to multiple exchanges, as long as all such orders, in the aggregate, are for the lesser of the entire remaining size or 100 contracts. However, as is the case when only one exchange is at the NBBO, a BOX Options Participant may limit the size of any single additional order to the size of the receiving market's disseminated quotation.

2. Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[8] in general, and Section 6(b)(5) of the Act,[9] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–BSE–2004–15 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–BSE–2004–15. 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 offices of the BSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BSE–2004–15 and should be submitted on or before July 16, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act[11] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest. The Commission believes that the proposed rule change should clarify the specialist's obligations in handling P/A Orders, which should facilitate the efficient handling of P/A Orders through the Linkage.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of the notice thereof in the **Federal Register**. As noted above, the proposed rule change incorporates changes into the BSE Rules that correspond to changes made to the Linkage Plan through Joint Amendment No. 10, which was published for comment on May 19, 2004.[12] The Commission received no comments on the substance of that Amendment. The Commission believes that no new issues of regulatory concern are being raised by BSE's proposed rule change. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with Sections 6 and 19(b) of the Act.[13]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change, as amended, (SR–

[10] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

[12] *See supra* note 5.

[13] 15 U.S.C. 78f and 78s(b).

[14] 15 U.S.C. 78s(b)(2).

BSE–2004–15) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–14451 Filed 6–24–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49887; File No. SR–CBOE–2004–31]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by Chicago Board Options Exchange, Inc., Relating to Handling of Principal Acting as Agent Orders Under Linkage

June 17, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 11, 2004, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules regarding transmission of certain linkage orders. The text of the proposed rule change is available at the Office of the Secretary, the CBOE and 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, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to conform CBOE's linkage rules to Joint Amendment No. 10 to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan") regarding the manner in which a member of an options exchange may send Principal Acting as Agent Orders ("P/A Orders") that are larger than the Firm Customer Quote Size ("FCQS").[3] A P/A Order is an order for the account of a market maker authorized to handle agency orders (on CBOE, Designated Primary Market Makers or "DPMs") reflecting the terms of an unexecuted customer order the DPM holds. The FCQS is the minimum size for which an exchange must provide an execution in its automatic execution system for a P/A Order, if the exchange's auto-ex system is available.

Currently, Linkage Plan Section 7(a)(ii)(B) and CBOE Rule 6.81 provide a DPM with two ways to send such orders. First, the DPM may send a P/A Order larger than the FCQS for manual processing at the receiving exchange. Second, the DPM may send an initial P/A Order for up to the FCQS. If the DPM then seeks to send another P/A Order, it must send an order for the lesser of the entire remaining size of the underlying customer order or 100 contracts.

The proposed rule change addresses the handling of orders if the DPM chooses the second alternative, the sending of multiple P/A Orders. Currently, CBOE Rule 6.81 does not recognize the possibility that an exchange's disseminated quotation may be for less than either the remaining size of the customer order or 100 contracts. Thus, the proposed rule change specifies that a DPM sending a second P/A Order may limit such order to the lesser of: (1) The remaining size of the customer order; (2) 100 contracts; or (3) the size of the receiving exchange's disseminated quotation.

In addition, there is a practical issue if multiple exchanges are displaying the same bid or offer. In that case, the Linkage Plan is unclear as to whether a DPM must send the entire order to one exchange or whether it can send orders to multiple exchanges, as long as they are for the size of the entire order, or 100 contracts, in the aggregate. This proposed rule change seeks to amend CBOE Rule 6.81 to specify that a DPM may send P/A Orders to multiple exchanges, as long as all such orders, in the aggregate, are for the lesser of the entire remaining size or 100 contracts. However, a DPM always may limit the size of any single additional order to the size of the receiving market's disseminated quotation.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act[4] in general and furthers the objectives of Section 6(b)(5)[5] in particular in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

A. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

B. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2004–31 on the subject line.

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 49689 (May 12, 2004), 69 FR 28953 (May 19, 2004) (File No. 4–429) (Notice of Filing of Joint Amendment No. 10 to the Linkage Plan).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CBOE–2004–31. 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 offices of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2004–31 and should be submitted on or before July 16, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act[7] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest. The Commission believes that the proposed rule change should clarify the DPM's obligations in handling P/A Orders, which should facilitate the efficient handling of P/A Orders through the Linkage.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice thereof in the **Federal Register**. As noted above, the proposed rule change incorporates changes into the CBOE Rules that correspond to changes made to the Linkage Plan through Joint Amendment No. 10, which was published for comment on May 19, 2004.[8] The Commission received no comments on the substance of that Amendment. The Commission believes that no new issues of regulatory concern are being raised by CBOE's proposed rule change. Therefore, the Commission believes that granting accelerated approval of the proposed rule change is appropriate and consistent with Sections 6 and 19(b) of the Act.[9]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–CBOE–2004–31) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–14452 Filed 6–24–04; 8:45 am]

BILLING CODE 8010–01–P

[6] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] *See* note 3, *supra.*

[9] 15 U.S.C. 78f and 78s(b).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49898; File No. SR–NASD–2004–091]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Discontinue the Use of the Nasdaq NEWS Feature of the Nasdaq Workstation II, and To Provide a Different Standard for the Beginning and End of a Trading Halt

June 21, 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 June 15, 2004, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), 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 Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to discontinue the Nasdaq NEWS feature of the Nasdaq Workstation II ("NWII"). Should the Commission approve the proposed rule change, Nasdaq intends to implement the proposed rule change during August 2004, and will inform market participants of the exact implementation date via a Head Trader Alert on *http://www.nasdaqtrader.com.*

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.[3]

4120. Trading Halts

(a) No change.

(b) Procedure for Initiating a Trading Halt

(1)–(3) No change.

(4) Should Nasdaq determine that a basis exists under Rule 4120(a) for initiating a trading halt, the commencement of the trading halt will be effective [simultaneously with appropriate notice in the Nasdaq "NEWS" frame] *at the time specified by Nasdaq in a notice posted on a publicly available Nasdaq website. In addition, Nasdaq shall disseminate notice of the commencement of a trading halt through major wire services.*

(5) Trading in a halted security shall resume *at the time specified by Nasdaq in a notice posted on a publicly available Nasdaq website* [upon notice via the Nasdaq "NEWS" frame that a trading halt is no longer in effect]. *In addition, Nasdaq shall disseminate notice of the resumption of trading through major wire services.*

(6)–(7) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The proposed rule change is marked to show changes from the rule as it appears in the electronic NASD Manual available at *www.nasd.com.*

the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq 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

As part of an effort to streamline its operations, Nasdaq proposes to eliminate the Nasdaq NEWS function of the NWII. This function provides information that is readily available through other sources. Accordingly, Nasdaq has concluded that the function is not needed by NWII users.

Nasdaq NEWS is a "window" on the NWII that users can open to retrieve security-specific information on corporate actions such as stock splits, name or symbol changes, additions to or deletions from the roster of Nasdaq-listed securities, or trade halt status, as well as information about the status of Nasdaq systems. The information provided through Nasdaq NEWS is available to market participants through other sources, however; depending on the nature of the information, these sources include major financial wire services and Nasdaq Web sites. Accordingly, the elimination of the service will not affect the quality or quantity of information that is readily available to market participants. Moreover, it should be noted that Nasdaq NEWS is currently provided automatically only to users of the NWII "presentation device," the desktop terminal provided by Nasdaq. It is available to market participants that access Nasdaq through a customized application programming interface ("API") or through a service bureau only if the market participant or service bureau chooses to program for its availability, and it is Nasdaq's understanding that many such market participants do not in fact receive Nasdaq NEWS. Finally, Nasdaq NEWS is not accessible to market participants that access the market through the computer-to-computer interface ("CTCI") or Financial Information Exchange ("FIX") protocols.

The Nasdaq NEWS function is currently referenced in NASD Rule 4120, concerning trading halts. Specifically, the rule provides that a trading halt commences simultaneously with the posting of a notice in Nasdaq NEWS, and that a trading halt ends at the time specified in a notice via Nasdaq NEWS. Accordingly, in order to reflect the elimination of the function, Nasdaq proposes to amend the rule to provide a different standard for the beginning and end of a trading halt.

Nasdaq currently provides notice of trading halts not only through Nasdaq NEWS, but also through releases on major wire services, through the cessation of quotation dissemination through external vendor feeds, and through notices on *www.nasdaqtrader.com*. Nasdaq NEWS does not provide an audible or visual alert to Nasdaq Workstation subscribers; rather, a user would become aware of notices provided through Nasdaq NEWS only if the user opened the Nasdaq NEWS frame on the user's workstation and read the notices posted there. Moreover, as noted above, Nasdaq NEWS is not available to many market participants that access Nasdaq through CTCI, FIX, or service bureaus, or who opt not to program their API to access it. Accordingly, Nasdaq NEWS does not provide a faster or more reliable method of providing notice about trading halts than the other methods currently in use. Given these alternatives, Nasdaq is proposing to amend NASD Rule 4120 to provide that trading halts will begin and end at the time specified by Nasdaq in a notice posted on a publicly available Nasdaq Web site.[4] In addition, the rule provides that Nasdaq will provide notice of the commencement and termination of trading halts through releases disseminated through major wire services. It should be noted, however, that such wire service notices generally do not contain the time of the commencement and termination; rather, they alert market participants to the fact of the halt and put them on notice to access the Web site for the relevant times. Accordingly, in the case of a trading halt commencing at 10:30 a.m., a notice (with the effective time of 10:30 a.m.) would be posted on a Nasdaq Web site, and a wire service release (without the effective time) would be disseminated. In the case of the termination of a trading halt, a notice stating, for example, that quoting in the halted stock would resume at 1:15 p.m. and trading would resume at 1:20 p.m., would be posted on a Nasdaq Web site, and a wire service release (without these times) would be disseminated. Nasdaq believes the timeliness and breadth of dissemination of information provided to market participants through these methods will be indistinguishable from the status quo, in that the same information provided through Nasdaq NEWS is, and will in the future, be provided through a Nasdaq Web site.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[5] in general, and with Section 15A(b)(6) of the Act,[6] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposal will allow Nasdaq to eliminate an obsolete communications functionality without impairing Nasdaq's ability to communicate with market participants concerning trading halts.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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.

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 self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

[4] The Web site currently used for this purpose is *www.nasdaqtrader.com*. However, Nasdaq is not specifically referring to this Web site in the text of NASD Rule 4120, to avoid the need to amend the rule at a later date if a different Web site is used for this purpose in the future. Nasdaq would, of course, provide advance notice to market participants if a change in the Web site used for this purpose was ever made.

[5] 15 U.S.C. 78o–3.

[6] 15 U.S.C. 78o–3(b)(6).

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 No. SR–NASD–2004–091 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–NASD–2004–091. 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 NASD. 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 No. SR–NASD–2004–091 and should be submitted on or before July 16, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–14450 Filed 6–24–04; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3586]

State of Ohio (Amendment #1)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective June 18, 2004, the above numbered declaration is hereby amended to include Hoçking, Mahoning, and Portage Counties as disaster areas due to damages caused by severe storms, and flooding occurring on May 18, 2004, and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Pickaway, Ross, and Trumbull in the State of Ohio; and Mercer County in the Commonwealth of Pennsylvania may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is August 2, 2004, and for economic injury the deadline is March 3, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: June 21, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–14536 Filed 6–24–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3594]

State of Wisconsin

As a result of the President's major disaster declaration on June 19, 2004, I find that Columbia, Dodge, Fond du Lac, Jefferson, Kenosha, Ozaukee and Winnebago Counties in the State of Wisconsin constitute a disaster area due to damages caused by severe storms and flooding occurring on May 19, 2004, and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on August 18, 2004 and for economic injury until the close of business on March 21, 2005 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Adams, Calumet, Dane, Green Lake, Juneau, Marquette, Milwaukee, Outagamie, Racine, Rock, Sauk, Sheboygan, Walworth, Washington, Waukesha, Waupaca and Waushara in the State of Wisconsin; and Lake and McHenry counties in the State of Illinois.

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 359406. For economic injury the number is 9ZJ800 for Wisconsin; and 9ZJ900 for Illinois.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: June 21, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–14535 Filed 6–24–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4750]

Finding of No Significant Impact and Summary Environmental Assessment; Brownsville/Matamoros West Rail Relocation Project—Cameron County, TX

The proposed action is to issue a Presidential Permit to Cameron County, Texas (the "Sponsor"), for the Brownsville/Matamoros West Rail

[7] 17 CFR 200.30–3(a)(12).

Relocation Project ("West Rail Project"), which will include the construction, operation and maintenance of an international rail bridge across the Rio Grande River from Brownsville, Texas to Matamoros, Mexico.

I. Background

The Department of State is charged with the issuance of Presidential Permits for the construction of international bridges between the United States and Mexico under the International Bridge Act of 1972, 33 U.S.C. 535 *et. seq.*, and Executive Order 11423, 33 FR 11741 (1968), as amended by Executive Order 12847 of May 17, 1993, 58 FR 29511 (1993), Executive Order 13284 of January 23, 2003, 68 FR 4075 (2003), and Executive Order 13337 of April 30, 2004, 69 FR 25299 (2004).

A draft environmental assessment of the proposed West Rail Project was prepared by Raba-Kistner Consultants, Inc. and HNTB, Inc. on behalf of the Presidential Permit applicant, Cameron County, Texas, under the guidance and supervision of the U.S. Department of State (the "Department"). The Department placed a notice in the **Federal Register** (68 FR 141 (July 23, 2003)) regarding the availability for inspection of Cameron County's permit application and related documents. No comments were received in response to this notice.

Consistent with its regulations for the implementation of the National Environmental Policy Act ("NEPA") and in the context of its responsibilities with respect to Presidential permits, the Department has conducted its own, independent review of the draft environmental assessment. Numerous Federal and non-federal agencies have also independently reviewed the draft environmental assessment, offered comments and/or qualifications, and approved or accepted the draft environmental assessment. These "cooperating agencies" are: the Department of Commerce, the Department of Defense (U.S. Army Corps of Engineers), the Department of Homeland Security (Bureau of Customs and Border Protection, the Federal Emergency Management Agency, and the United States Coast Guard), the Department of Health and Human Services (Food and Drug Administration), the Department of the Interior (Fish and Wildlife Service), the Department of Justice, the Department of Transportation (the Surface Transportation Board, Federal Highway Administration, Federal Railway Administration), the Department of State, the Environmental Protection Agency, the Council of Environmental Quality, the General Services Administration, the International Boundary and Water Commission, the State of Texas, Texas Parks and Wildlife Department, the Texas Historical Commission, and the Texas Commission on Environmental Quality. All comments received by these cooperating agencies were responded to directly by the Sponsor or Raba-Kistner Consultants, Inc., including by expanding the analysis contained in the draft environmental assessment and/or through the development of appropriate mitigation measures.

The Sponsor has worked closely with the Federal and state agencies that have participated in the environmental assessment to address their concerns about the possible environmental impacts of this project. The results of Cameron County's meetings and other contacts with agencies were recorded in correspondence and described in the draft environmental assessment and addenda. After examining six alternatives rail routes, Cameron County ultimately proposed the preferred alignment that sought to minimize direct and indirect impacts to the human environment and that represented lower design and construction costs. The draft environmental assessment, as amended and supplemented, together with the comments submitted by Federal and state agencies, responses to these comments, and all correspondence between the agencies and the Sponsor addressing the agencies' concerns, constitute the final environmental assessment.

Based on the final environmental assessment, including mitigation measures that Cameron County has or is prepared to undertake, information developed during the review of Cameron County's application and comments received from Federal and state agencies, and the Department's independent review of that assessment, the Department has concluded that issuance of the Presidential Permit authorizing construction, operation and maintenance of the West Rail Bypass and international railway bridge would not have a significant impact on the quality of the human environment within the United States. Accordingly, a Finding of No Significant Impact ("FONSI") is adopted and an environmental impact statement will not be prepared, in accordance with the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, Council of Environmental Quality Regulations, 40 CFR 1501.4 and 1508.13, and with Department of State Regulations, 22 CFR 161.8(c).

II. Summary Environmental Assessment

A. The Proposed Project

Cameron County, Texas has applied to the Department for a Presidential permit authorizing the relocation of the Union Pacific Railroad (UPRR) line approximately 6 miles west of the City of Brownsville, Texas and the construction of a new international rail bridge approximately 15 river miles upstream of an existing rail bridge, which together constitute the West Rail Relocation Project. A single rail line will be constructed from the existing rail junction adjacent to U.S. Highway 77/83 and run to the Rio Grande River. It will claim a minimum right of way of 100 feet. Union Pacific Railroad (UPRR) will assume control of the new rail line once construction has been completed. UPRR will maintain operating rights to the new rail line in the United States. It is anticipated that, upon completion of the project, the Sponsor will request the Department of State to transfer the permit to the B&M Bridge Company, which will take over ownership of the U.S. portion of the international rail bridge.

The West Rail project involves the construction of a new international rail bridge that will pass over International Boundary and Water Commission (IBWC) levees and the Rio Grande River and into Matamoros, Tamaulipas, Mexico. The single-track bridge will span the Rio Grande River's floodway located between the flood control levees of the U.S. and Mexican sections of land managed by the IBWC. The proposed bridge will be located approximately at Rio Grande River Mile 71.7 and have a total span of 2,940 linear feet. The length of the U.S. portion of the bridge is approximately 840 feet. The bridge design will include a vertical clearance above the levees in accordance with IBWC requirements.

The rail bridge design, structure, and construction will adhere to UPRR engineering standards. An approach embankment will terminate at the north right of way of U.S. Highway 281and tie into the abutment of the international rail bridge. The bridge will cross U.S. Highway 281 at a minimum elevation of 16.5 feet and continue over the IBWC levee and the Rio Grande River. Provisions for future widening of U.S. Highway 281 will be included in the design. A geotechnical study will determine the necessary bridge foundations and spacing of the columns for each pier. Schematics reflect the design flood elevation based on a flood flow of 20,000 cubic feet per second for this reach of the river. In addition, an 8

feet 3 inch, curved, chain-linked fence will be constructed at the edges of the bridge's superstructure to prevent pedestrian falls and illegal immigration. There will be no illumination under the bridge. Gate controls across the bridge will also be included. Land areas below the bridge will be replanted according to United States Fish and Wildlife Service (USFWS) specifications.

The engineering design phase will include hydraulic studies of the Rio Grande River that will be completed upon the issuance of a Presidential Permit. The hydraulic studies will assess the hydraulic impact of the bridge on the river flow and the impact of a potential relocation of the levee in Mexico to a location nearer to the river and will be presented to the U.S. and Mexican sections of the IBWC for review.

As the project involves the construction of an international rail bridge, the Department of Homeland Security has been consulted regarding border control and inspection needs. The Department of Homeland Security and the General Services Administration have outlined guidelines for the construction of all facilities related to the West Rail project, and Cameron County has agreed to adhere to the criteria in these guidelines.

The West Rail Project offers several advantages to communities of Brownsville and throughout Cameron County, which include improvements to the general human environment:

- Removal of the existing rail system from residential and downtown areas of Brownsville and Matamoros, thereby improving safety and reducing congestion and noise.
- Elimination of at-grade road crossings, reducing air pollution from vehicles idling while awaiting passage of trains.
- Creation of improved transportation corridors to handle traffic volumes more efficiently and allow for the redevelopment of the city's downtown area.
- Greater competitiveness, given the reduction in rail freight travel time between Brownsville and Monterrey, Mexico by approximately 2½ hours and the elimination of heavy traffic conditions at peak travel times.
- Facilitation of expected economic growth in the Brownsville area.
- Reduction in the community's immediate exposure to potential derailment-related Hazmat accidents and railcar explosions.

B. Alternatives Considered

In its review, the Department considered 6 alternatives described in detail in the draft environmental assessment and in a summary fashion below:

1. (The Project) Originates at the rail intersection adjacent to U.S. Highway 77/83, proceeds west, just north of the Resaca de la Palma wildlife refuge, turns south, passing 2,000 feet west of the World Birding Center, and crosses U.S. Highway 281 and the Rio Grande River.

2. Originates at the rail intersection adjacent to U.S. Highway 77/83, proceeds west, circumnavigating the Resaca de la Palma wildlife refuge further to the north than Alternative 1. The route then turns south, passing 2,000 feet west of the World Birding Center and crosses U.S. Highway 281 and the Rio Grande River.

3. Originates at the rail intersection adjacent to U.S. Highway 77/83 and continues west, north of the Resaca de la Palma wildlife refuge, proceeds an additional 3 miles, then turns south, crossing U.S. Highway 281 and the Rio Grande River.

4. (a), (b). Both Alternatives 4a and 4b originate at the rail intersection adjacent to U.S. Highway 77/83 and proceed south between the Resaca de la Palma refuge and the Cameron County Irrigation District Main Reservoir. At this point, Alternative 4a continues over U.S. Highway 281 and the Rio Grande River. Alternative 4b turns and proceeds west, south of the World Birding Center, along the same alignment as Alternative 1, crossing U.S. Highway 281 and the Rio Grande River.

5. Originates at the rail intersection adjacent to U.S. Highway 77 and proceeds north to the town of Rancho Viejo using existing rail lines. North of Rancho Viejo, the route turns southwest, then due south, and proceeds across U.S. Highway 281 and the Rio Grande River. This route abuts the western boundary of the World Birding Center.

6. The "No Build" Alternative: The international rail bridge is a common design element to all of the considered alternatives, other than the "No Build" alternative.

Alternative 2 was viewed as not preferred because it required approximately 51 additional acres of prime farmland. It would further require two grade separations for the future Merryman Road, a major street on the Brownsville thoroughfare plan.

Alternative 3 was viewed as not preferred because it would require the acquisition of additional acreage of prime farmlands (approximate 96 acres), a grade separation at the future FM 1421, a skewed overpass crossing at U.S. Highway 281, increased international bridge length (total of 0.19 miles), the displacement of 4–5 residential structures, the bisection of a residential community, and the location of 132 residences within 1,000 feet of the proposed rail line.

Both Alternatives 4a and 4b were viewed as not preferred for the reasons stated below. Alternative 4a, with a railroad embankment on the west side of the Cameron Country Irrigation District main reservoir, would require, at minimum, sheet pilings along the west side of the reservoir for approximately 2,100 linear feet. A geotechnical analysis may reflect the need to complete bridging along a greater section of the reservoir. The pilings, estimated to reach depths of 50 feet below grade surface, would add costs of approximately $3.15 million to the project in addition to the costs of installing the embankment, ballast, and rail tracks. The alignment would continue south across U.S. Highway 281 and bisect the Riverbend Subdivision and the Villa Nueva Community. The U.S. Highway 281 overpass would add approximately $5 million, according to the Texas Department of Transportation. From U.S. Highway 281 the rail line would proceed with a vertical rise of 15 feet over the IBWC levee and remain elevated across the floodway leading to the Rio Grande River. This segment across the floodway would add approximately $12 million. Construction of this alternative would encroach on the eastern boundary of the World Birding Center. The Texas Parks and Wildlife Department (TPWD) has opposed this route.

Alternative 4b would require, at minimum, sheet pilings along the west side of the Cameron Country Irrigation District main reservoir for approximately 2,100 linear feet. A geotechnical analysis may reflect the need to complete bridging along a greater section of the reservoir. The pilings, estimated to reach depths of 50 feet below grade surface, would add costs of approximately $3.15 million to the project in addition to the cost of installing the embankment, ballast, and rail tracks. Rail bridges over U.S. Highway 281 and New Carmen Road would include approximately 2,750 feet of additional railroad bridge compared to Alternative 1 at an additional cost of $5.5 million. The international rail bridge between the IBWC levee and the river would be the same as that constructed under Alternative 1. An additional bridge may be required for the Resaca crossing south of the Las Palmas Wildlife Management Area.

Construction of this alternative would also encroach on the eastern boundary of the World Birding Center. The TPWD has opposed Alternative 4b. Cameron County identifies another major difficulty with this alternative is the diagonal crossing of privately owned land parcels between U.S. Highway 281 and the wildlife management area.

Alternative 5 was not viewed as a preferred alternative because it would involve increased travel time of trains from one switching yard to another, required construction of two more overpasses, and would bring the rail line with 1,000 feet of a significant number of homes.

Alternative 6, the "No Build" alternative, would leave the existing rail system in place and achieve none of the described project objectives. Potential industrial and commercial growth associated with the West Rail Project would be curbed as the area would lack a safer, more direct route to the major transportation corridor. At-grade rail/roadway safety crossing issues would remain, as would traffic delays and idling times for traffic and their associated emissions. Such emissions are currently contributing to the degradation of air quality. Train noise in the downtown Brownsville area would persist.

None of the above alternatives provided avoidance or mitigation of any of the unavoidable impacts attributable to the selected project, and in addition, created higher costs in terms of land usage and overall costs. For this reason, the Department concluded that these options were not preferred alternatives.

III. Summary of the Assessment of the Potential Environment Impacts Resulting From the Proposed Action

The final environmental assessment provides detailed information on the environmental effects of the construction and use of the alternatives described above, including the proposed project. The proposed project was determined to be the preferred alternative, in view of the lower construction costs and the low extent of community and environmental impact as compared to the other alternatives.

On the basis of the final environmental assessment, the Department reached the following conclusions on the impact of construction of the railway bypass and bridge at the proposed location:

Farmlands: The proposed project requires the acquisition of approximately 46 acres of farmland that may be considered prime farmland under the Farmland Protection Policy Act, 7 U.S.C. 4201, *et seq.* The amount of farmland acquired does not include acreage to be negotiated with the USFWS for the construction of a buffer zone north of the World Birding Center, the dimensions of which have been determined through consultation with the U.S. Fish and Wildlife Service. The proposed project requires one at-grade crossing at New Carmen Road. Right-of-way at this crossing will be secured by Cameron County, should an overpass at this the site be desired in the future.

Wetlands: Given appropriate mitigation measures agreed to by the Sponsor and coordination with appropriate Federal and state agencies, the Department expects the proposed project's impact on wetland areas to be negligible. Specific wetland impacts will be influenced by the final bridge design selected for the several areas where the relocation project will traverse waterways, such as the Resaca del Rancho Viejo, Resaca de la Palma, and the Rio Grande. All wetland issues will be coordinated with the appropriate federal and state agencies, as outlined below. The construction plans will include a storm water runoff protection plan to eliminate the introduction of exotic weedy species. Much of the proposed route, according to the National Wetlands Inventory (NWI), falls within upland agricultural areas. The final environmental assessment estimates a total of 0.33 acres of wetlands will be impacted by this project.

The project crosses two resacas (Resaca del Rancho Viejo and Resaca de la Palma). Both are normally filled with water and may fall under the jurisdiction of the U.S. Army Corps of Engineers (USACE). The project will also cross various drainage and irrigation ditches. As described in the final environmental assessment, wetland delineation will be conducted as necessary in support of a Section 404 permit issued pursuant to the Clean Water Act, 33 U.S.C. 1251, *et seq.*, in accordance with USACE and Department of the Army specifications.

As the project enters the engineering design phase, mitigation measures regarding the impact on vegetative and aquatic habitats falling within the project area—such as affected areas of the Resaca Rancho Viejo and Resaca de la Palma—will be developed. This step will involve coordination with the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, and the Texas Parks and Wildlife Department to not only protect defined jurisdictional wetlands but also to secure necessary permits for crossing these areas.

Floodplains, Floods, and the River Channel: While the rail line and international bridge will cross portions of an identified 100-year shallow floodplain, negative impacts to the floodplain are not expected.

The design for the international rail bridge requires a 15 feet elevation above the floodplain of the Rio Grande River with bents located in the floodplain itself. The bents are not expected to impede the free flow of floodwater within the river or its levees. Flood levels should remain unchanged.

The railway approach to the international bridge will be at grade level. The design is anticipated to include free flow box culverts and/or bridges at resacas and irrigation crossings. These features should not impede the free flow of floodwaters. The design will include proper slope drainage and free flow of waters off the railway surface to be directed toward natural drainage gradients.

The project is not expected to require dredging, tunneling, or trenching. Should the design call for the installation of bridge bents in the river's channel, a temporary cofferdam may be used. Once the bent installation is finished, all non-native materials in the channel will be promptly removed.

Air Quality: While project-related activities, which may include, but are not limited to, construction, demolition, repair, or rehabilitation, are expected to create higher levels of dust and airborne particles and involve additional exhaust emitted from machinery and trucks, these impacts are expected to only be short-term and should pose no significant impact upon general air quality. Moreover, the project will include best management practices (BMP) to mitigate fugitive dust emissions throughout the construction process. For dust control, timely application of water will be used as necessary, or as excessive emissions are produced.

The West Rail Project lies within the Brownsville-Laredo Intrastate Air Quality Control Region (AQCR 213), which is in attainment of National Air Quality Standard air pollutants. Therefore, the Texas Commission on Environment Quality (TCEQ) in a letter dated March 21, 2003 contained in Appendix D of the Environmental Assessment indicated that no special measures need to be taken in regards to this project other than standard dust mitigation techniques by the construction contractors.

Listed, Threatened, and Endangered Species: Several listed and endangered species could potentially be impacted by the project. To mitigate these impacts, the Department expects the Sponsor to comply with a series of

recommendations from the USFWS and the TPWD.

Two species of federally protected cats, the ocelot and the jaguarundi, are found in the general project region along with one bird species, the Northern aplomado falcon, and two plant species, the Texas Ayenia and the South Texas Ambrosia. Surveys of the project site, however, found that vegetation there is less dense than in areas typically occupied by those species. Therefore, their regular presence within the immediate project area is considered unlikely. In addition to federally listed species, 15 state-listed, threatened, or endangered species may use portions of the project route because of the presence of potentially suitable habitat.

In letters contained in Appendix C of the environmental assessment and in subsequent correspondence, the USFWS and TPWD made a number of recommendations with which Cameron County has agreed to comply. These include replanting with native species disturbed areas of vegetation and trees, fulfillment of the World Birding Center Revegetation Mitigation Plan (Appendix L of the draft Environmental Assessment), a monitoring program with annual reports to USFWS on fulfillment of Revegetation Mitigation Plan, use of specific train operating procedures to minimize train noise, and ownership by Cameron County in perpetuity of the buffer zones and Right of Ways for the rail line and placement in the deeds for these areas restricted conditions regarding future clearing, construction and development. Additionally a qualified biologist, as provided for in the draft environmental assessment, will survey the project area prior to construction to determine if state and federally-listed, threatened, or endangered species are present. If encountered, these species will be relocated to avoid any direct impact. Record of exotic species removed from the area will be documented, as requested by the Texas Parks and Wildlife Department. In light of the Migratory Bird Treaty Act and population decline of many migratory bird species, the Department expects that precautions will be taken throughout the construction process to avoid or minimize the loss of critical vegetation during migratory bird's general nesting season from March through September. In conformance with the Act, a survey will be conducted to identify nesting sites and species prior to construction near the Resaca de la Palma refuge, thus avoiding inadvertent destruction of nests, eggs, etc.

Habitat and Vegetation: The construction phase will cause some loss of habitat and clearing of vegetation. Approximately 18 acres of wooded and scrub vegetation will be cleared, particularly along the Resaca de la Palma wildlife refuge where mature mesquite, huisache, and spiny hackberry trees will be removed throughout the 100 feet right of way. The use of defoliating agents and/or herbicides is not anticipated.

Cameron County, throughout the project, has coordinated closely with USFWS and TPWD on the re-vegetation of disturbed areas. As a consequence, mitigation efforts will include the revegetation of areas along the project route and the creation of a buffer zone between the railway and the Resaca de la Palma refuge. North of the refuge, the County will implement the "World Birding Center Revegetation Mitigation Plan, Appendix L of the draft environmental assessment, to minimize noise and visual impacts and create further bio-diversity in regards to the future World Birding Center. This plan calls for the creation of a 13-acre mitigation area sited 30 ft north of Lower Rio Grande National Wildlife Refuge (LRGV–NWR). This mitigation area will include approximately a 6.5-acre vegetative area and an approximately 6.5 acre clear zone. The Mitigation Plan seeks to increase diversity in the current cultivated land by the addition of woody deciduous tree and shrub diversity, and improve the visual aesthetics of the project and reduce its noise impact. The area encompassed by the mitigation plan and the railway right-of-way will remain under the ownership of Cameron County, and that deed restriction as far as clearing, construction and future development will be filed with the County Clerk to remain in perpetuity.

Potential Land Use Conflicts: The Department examined long- and short-term concerns relating to land use and determined that the project will be consistent with defined land usage. The proposed project requires the least acreage and minimizes impact to the land, compared to other alternatives, and largely avoids community and residential areas. The draft environmental assessment notes that roughly 75% of the land falling within the project area has already been altered by human activities. Development and construction phases of the project are expected to alter land forms and will temporarily modify the natural drainage pattern throughout the project area.

Land types to be used in this project include levee areas of the Rio Grande River, scrubland, and farmland. The project should not cause significant impact to the levee area or agricultural lands. Access to agricultural land will remain open.

Projected acquisitions include private land. No relocations or displacement of homes or businesses will be necessary. The acquisition of private lands will be limited to the requirements of the project, such as the 100 to 300 feet right of way for the railway, the international rail bridge, and any roadway overpasses. Upon completion of the project, lands acquired through the project will be transferred to Union Pacific Railroad (UPRR).

Alteration of land and the removal of vegetation are not expected to affect erosion within the general project area greater than any similar construction project. Measures will be adopted as fully as possible throughout the construction period to minimize erosion, including undertaking construction in dry seasons and completion of Storm Water Pollution Prevention Plan, compliance with requirements imposed by the U.S. Army Corps of Engineers and other agencies, returning disturbed lands to their previous contours, and revegetation efforts. The TPWD has issued recommendations to moderate erosion, including the use of weed free hay bales and silt screens to prevent siltation into wetlands, which the Sponsor has committed to undertake.

Historical and Archeological Resources: A survey conducted by Anthony and Brown Consulting and approved by the Texas Historical Commission indicates that no archeological or historical sites will be impacted by the proposed project. One archeological site, 41CF185, was found, but it is completely destroyed and is neither eligible for the National Register of Historic Places nor for designation as a State Archeological Landmark. No evidence of buried prehistoric sites was found.

Cameron County made a "reasonable and good faith" effort to identify Native American groups that may have historical ties to the area and to invite these groups to participate in the consultation process, in accordance with the Native American Graves Protection and Repatriation Act, Executive Order 12875, and the Advisory Council for Historic Preservation. Using the Native American Consultation Database, maintained by the Department of the Interior, no federally recognized Native American groups were identified.

Water Quality: Significant impacts to current water supply and use are not anticipated, nor are adverse effects to

the interbasin transfer of ground water. Impacts to the quality of storm water run off, surface water, and ground water will be minimal.

Noise: The Department identified two broad categories of noise resulting from the proposed project: short-term construction-related noise and longer-term noise associated with passing trains and horn blasts. The proposed project is located within a sparsely populated area of Cameron County (the draft environmental assessment notes only two residential structures within 1,000 feet of the construction). However, portions of the Resaca de la Palma wildlife refuge and World Birding Center may be affected by noise related to rail traffic, but those impacts are not expected to be significant and will be minimized by implementation of the World Birding Center Revegetation Mitigation Plan.

While levels of construction noise will vary according to the nature of the construction work in progress, such noise is expected to be short term and will not exceed noise limits imposed by federal, state, and local laws and ordinances.

Noise resulting from rail traffic is not expected to have a significant impact on the surrounding environment, including the Resaca de la Palma wildlife refuge and the World Birding Center. A horn noise analysis conducted for the New Carmen Road at-grade crossing indicates that horn noise will not have any impact on the surrounding environment, as defined by the FTA (Federal Transit Administration).

Similarly, interim criteria for the threshold of disturbance for birds established by the FTA will not be exceeded either by regular train traffic or by train horns.

While a USFWS standard for peak hour noise will be slightly exceeded, the impact is not expected to be significant since the noise level will not exceed the USFWS limit 200 feet from the tracks and highway noise in the area frequently is recorded well above the USFWS peak hour noise level. Noise impacts will also be minimized by a ban against trains idling on the tracks, and maintenance of minimum speed of trains passing through the area of approximately 40 mph.

It should be noted that the proposed project will reduce noise levels along the existing corridor significantly, an important benefit for the higher numbers of homes located on the existing corridor.

Environmental Justice/Socio-Economic Concerns: In accordance with Executive Order 12898 of February 11, 1994, the project is not expected to have a disproportionate impact on the minority or low-income communities in the immediate vicinity of the project, in view the of location of the project and the sparsely-populated nature of the land.

Energy Requirements and Conservation Potentials: The construction of the proposed project should be considered as a short-term use of the environment during which energy and labor will be expended. This energy cost will, in the long-term, be offset by reduced vehicle congestion in downtown Brownsville and the more efficient movement of commerce and cargo between the United States and Mexico.

Any Irreversible and Irretrievable Commitment of Resources: The project has not involved irreversible and irretrievable commitment of resources.

Health and Safety: The project should contribute to the health and safety of the Brownsville community through lessening vehicle emissions, reducing the potential for vehicle-train collisions at existing at-grade crossings, and minimizing the potential for the railroad accidents in densely-populated areas involving hazardous materials.

Cumulative Impacts: The Department also considered cumulative environmental impacts resulting from the project.

As stated above, the proposed project will improve the quality of life for city and area residents by (a) the relocation of rail lines outside the Brownsville; (b) the reduction of vehicle waiting times and improvement of air quality in the downtown sections of the city; (c) the reduced impact of train noise to city residents; (d) the diversion of the transport of hazardous cargo from downtown Brownsville to less populated areas outside the city; and, (e) the elimination of numerous at-grade crossings.

Environmental disruption throughout the construction process and in the operation of the rail line will be minimized through appropriate mitigation measures, discussed above, and coordination between Cameron County with Federal and state agencies such as the IBWC, USACE, USFWS, and TPWD in the development and implementation of those mitigation measures.

IV. Conclusion: Analysis of the Final Environmental Assessment

On the basis of the final environmental assessment, information developed during the review of the Cameron County's application and environmental assessment, and comments received, a Finding of No Significant Impact ("FONSI") is adopted and an environmental impact statement will not be prepared.

The Final Environmental Assessment prepared by the Department addressing this action is on file and may be reviewed by interested parties at the Department of State, 2201 C Street NW, Room 4258, Washington, DC (Attn: Mr. Dennis Linskey, Tel 202–647–8529).

Dated: June 18, 2004.

Dennis Linskey,

Coordinator, U.S.—Mexico Border Affairs, Office of Mexican Affairs, Department of State.

[FR Doc. 04–14468 Filed 6–24–04; 8:45 am]

BILLING CODE 4710–29–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST–2004–18488]

Notice of Renewal of a Previously Approved Collection

AGENCY: Office of the Secretary.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Department of Transportation's (DOT) intention to request extension of a previously approved information collection.

DATES: Comments on this notice must be received by August 24, 2004.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number OST–2004–18488 by any of the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information

on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading under Regulatory Notes.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: David Walterscheid, Realty Specialist, FHWA HQ Office of Real Estate Services—HEPR, 555 Zang Street, Room 400, Lakewood, CO 80228, (303) 969–5772, ext. 333, (303) 969–6727 (fax).

SUPPLEMENTARY INFORMATION:

Title: Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted Programs.

OMB Number: 2105–0508.

Type of Request: Extension without change, of a previously approved collection.

Abstract: This regulation implements amendments to 42 U.S.C. 4602 *et seq.* concerning acquisition of real property and relocation assistance for displaced persons for Federal and federally-assisted programs. It prohibits the provision of relocation assistance and payments to persons not legally in the United States (with certain exceptions). The information collected consists of a certification of residency status from affected persons to establish eligibility for relocation assistance and payments. Displacing agencies will require each person who is to be displaced by a Federal or federally-assisted project, as a condition of eligibility for relocation payments or advisory assistance, to certify that he or she is lawfully present in the United States.

Respondents: State highway agencies, local government highway agencies, and airport sponsors receiving financial assistance for expenditures of Federal funds on acquisition and relocation payments and required services to displaced persons.

Estimated Number of Respondents: 1,443 for file maintenance and 52 state highway agencies for statistical reports.

Estimated Total Burden on Respondents: 29,043 hours.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information collection; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

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.

Issued in Washington, DC, on June 13, 2004.

Susan B. Lauffer,

Director, Office of Real Estate Services, Federal Highway Administration.

[FR Doc. 04–14501 Filed 6–24–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2004–18464]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel DEALER'S CHOICE.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–18464 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before August 24, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2004–18464. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION:

As described by the applicant the intended service of the vessel *DEALER'S CHOICE is:*

Intended Use: "Charter fishing, hunting and sight seeing tours."

Geographic Region: "Prince William Sound, including Whittier, Valdez, Cordova and Seward."

Dated: June 21, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–14401 Filed 6–24–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34495]

Buckingham Branch Railroad Company—Lease—CSX Transportation, Inc.

AGENCY: Surface Transportation Board, DOT.

ACTION: Decision No. 2 in STB Finance Docket No. 34495; Notice of Acceptance of Railroad Lease Application; Issuance of Procedural Schedule.

SUMMARY: The Surface Transportation Board (Board) is accepting for consideration the BBRR–1/CSXT–1 application (referred to as the BBRR/

CSXT application) filed May 26, 2004, by Buckingham Branch Railroad Company (BBRR, a Class III railroad) and CSX Transportation, Inc. (CSXT, a Class I railroad) (BBRR and CSXT are referred to collectively as "applicants").[1] The BBRR/CSXT application seeks Board approval and authorization under 49 U.S.C. 11321–26 for: (1) The lease by BBRR of an approximately 199.7-mile CSXT line (referred to as the C&O Line) that runs between Clifton Forge, VA, and AM Junction, VA (near Richmond, VA); and (2) the assumption by BBRR of CSXT's lease of a 9.1-mile Norfolk Southern Railway Company (NS) line that runs between Gordonsville, VA, and Orange, VA (referred to as the Orange Line).[2] The Board finds that the BBRR/CSXT transaction proposed in the BBRR/CSXT application is a "minor transaction" under 49 CFR 1180.2(c), and the Board adopts, for the consideration of the BBRR/CSXT application, a 163-day procedural schedule (under which the Board's final decision will be issued on November 5, 2004, the 163rd day after the day on which the application was filed).

DATES: The effective date of this decision is June 25, 2004. Any person who wishes to participate in this proceeding as a party of record (POR) must file, no later than July 9, 2004, a notice of intent to participate. All comments, protests, requests for conditions, and any other evidence and argument in opposition to the BBRR/CSXT application, including filings by the U.S. Department of Justice (DOJ) and the U.S. Department of Transportation (DOT), must be filed by August 24, 2004. Responses to comments, protests, requests for conditions, and other opposition, and rebuttal in support of the BBRR/CSXT application must be filed by September 23, 2004. If a public hearing or oral argument is held, it will be held the week of October 4, 2004. The Board will issue its final decision on November 5, 2004. For further information respecting dates, *see* Appendix A (Procedural Schedule).

ADDRESSES: Any filing submitted in this proceeding must be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should comply with the instructions found on the Board's *http://www.stb.dot.gov* Web site, at the "E-FILING" link. Any person submitting a filing in the traditional paper format should send an original and 10 paper copies of the filing (and also an IBM-compatible floppy disk with any textual submission in any version of either Microsoft Word or WordPerfect) to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each filing in this proceeding must be sent to each of the following (any such copy may be sent by e-mail, but only if service by e-mail is acceptable to the recipient): (1) Secretary of the United States Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590; (2) Attorney General of the United States, c/o Assistant Attorney General, Antitrust Division, Room 3645, Department of Justice, Washington, DC 20530; (3) Keith G. O'Brien (BBRR's representative), Rea, Cross & Auchincloss, 1707 L Street, NW., Suite 570, Washington, DC 20036; (4) Louis E. Gitomer (CSXT's representative), Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005; and (5) any other person designated as a POR on the service list notice (as explained below, the service list notice will be issued as soon after July 9, 2004, as practicable).

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 565–1655. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.)

SUPPLEMENTARY INFORMATION: Two CSXT rail lines cross Virginia in a generally east-west direction between Clifton Forge, in the west, and Richmond, in the east. The more northerly of the two lines is referred to as the C&O Line (the line that runs via Staunton, Waynesboro, and Charlottesville). The more southerly of the two lines is referred to as the James River Line (the line that runs via Lynchburg). The BBRR/CSXT application contemplates BBRR's lease of the C&O Line.

BBRR owns and operates a 17-mile line of railroad that runs between Dillwyn, VA, and Bremo, VA, and connects with the James River Line at Bremo. The interchange between BBRR and CSXT is actually conducted at Strathmore, VA, a point on the James River Line located 2 miles west of Bremo. BBRR, which was founded in 1989, has increased freight traffic on its Dillwyn-Bremo Line from about 800 carloads per year in 1989 to 2,400 carloads per year during BBRR's best year. BBRR now provides regular scheduled freight service 3 days per week and additional service as requested and needed by its customers. BBRR advises that the Commonwealth of Virginia's Rail Preservation Program as well as profits from operations have enabled BBRR to upgrade track and bridges on the Dillwyn-Bremo Line from Federal Railroad Administration (FRA) excepted classification to FRA class 1 track standards[3] in preparation for a shipper that, when it locates, as anticipated, on the Dillwyn-Bremo Line, will ship 3,000 carloads per year via that line. BBRR adds that it owns and controls 5 locomotives (4 owned, 1 leased), 62 revenue service cars, 4 cabooses, and 11 pieces of self-propelled maintenance-of-way equipment. In addition to rolling stock, BBRR owns a station house and general office building at Dillwyn, a slide table at Dillwyn Yard, and several pieces of equipment used to make intermodal transfers at two points on the Dillwyn-Bremo Line.

The BBRR/CSXT application contemplates the extension of BBRR's operations to CSXT's C&O Line (to which BBRR's Dillwyn-Bremo Line does not connect) and to NS's Orange Line (which branches off from the C&O Line at Gordonsville). The 199.7-mile C&O Line consists of: (1) The 75.1-mile Piedmont Subdivision between AM Junction near Richmond (MP 85.5) and Gordonsville (MP CA 160.6); (2) the 28.5-mile Washington Subdivision between Gordonsville (MP CA 160.6) and Charlottesville (MP CA 180), which includes NS's 9.1-mile Orange Line between Gordonsville (MP CAA 9.1) and South Orange (MP CAA 0.0);[4] and (3) the 96.1-mile North Mountain Subdivision between Charlottesville (MP CA 180) and Clifton Forge (JD Cabin) (MP CA 276.1). The BBRR/CSXT application contemplates that, with the exception of one shipper, Martin Marietta at Verdon (which would continue to be served by CSXT), BBRR would assume the common carrier obligation on the C&O Line and will replace CSXT as the railroad serving local customers on the C&O Line,

[1] The Board's regulations divide railroads into three classes based on annual carrier operating revenues. Class I railroads are those with annual carrier operating revenues of $250 million or more (in 1991 dollars); Class II railroads are those with annual carrier operating revenues of more than $20 million but less than $250 million (in 1991 dollars); and Class III railroads are those with annual carrier operating revenues of $20 million or less (in 1991 dollars). *See* 49 CFR part 1201, General Instruction 1–1(a).

[2] The 9.1-mile length of the Orange Line is included in the 199.7-mile length of the C&O Line (*i.e.*, the length of the C&O Line without the Orange Line would be 190.6 miles).

[3] There are six classes of track typically applicable to rail transportation of freight under the FRA Track Safety Standards. An upgrade from excepted track to class 1, with a maximum allowable speed of 10 miles per hour, removes certain limitations on operations.

[4] The 9.1-mile length of the Orange Line is included in the 28.5-mile length of the Washington Subdivision (*i.e.*, the length of the Washington Subdivision without the Orange Line would be 19.4 miles).

including customers located at the following points in Virginia (listed in a generally west-to-east order): Goshen, Craigsville, Fordwick, Staunton, Waynesboro, Afton, Crozet, Ivy, Charlottesville, Keswick, Lindsay, Gordonsville, Orange, South Orange, Louisa, Mineral, Pendleton, Frederick Hall, Beaver Dam, Hewlett, Verdon, Doswell, North Doswell, Bear Island, Hanover, Atlee, Ellerson, and Ruffin. The BBRR/CSXT application further contemplates: that the lease would have a 20-year term, with one mutual 5-year extension option; that BBRR would take over local service (except as respects certain Martin Marietta traffic) and would maintain the line; that, after 2 years, BBRR would also assume the maintenance of the signal system and dispatching on the line; that CSXT would interchange traffic with BBRR (in the west at Clifton Forge, and in the east at Doswell) and would maintain competitive routes and rates for traffic moving from/to points on the C&O Line; that BBRR would pay CSXT annual rent of $140,000 per year, and also additional rent under certain circumstances when interchange of traffic is with a carrier other than CSXT; and that BBRR would maintain the C&O Line at the present FRA track class standards, and would provide service with two GP–16 locomotives that it currently owns and two GP–40 locomotives that it proposes to acquire.

BBRR indicates that it intends to operate a scheduled railroad based upon interchange times agreed upon with CSXT. BBRR explains that it would operate four round-trip trains per day, 5 days per week (more frequent service than the line's shippers now have). BBRR advises: That it would operate from two locations (Doswell in the east, and Staunton in the west); that, at the eastern end of the line, a morning train would operate between Doswell and Ruffin and an evening train would operate between Doswell and Gordonsville; and that, at the western end of the line, a morning train would operate between Staunton and Clifton Forge and an evening train would operate between Staunton and Orange. BBRR further advises that each train would pick up and set out cars for BBRR's customers; and that BBRR would also provide additional service as needed by its customers.

The BBRR/CSXT application contemplates that CSXT would retain limited overhead trackage rights and limited local trackage rights over the C&O line. The retained overhead trackage rights would allow CSXT to conduct westbound overhead movements of empty open-top hopper cars and empty covered hopper cars. These overhead trackage rights would allow CSXT to return these westbound empty trains, including empty coal trains, to their origins. The retained local trackage rights would allow CSXT to move unit aggregate trains from Martin Marietta's quarry at Verdon (about 29.5 miles from the eastern end of the C&O Line) to points on CSXT's lines in the vicinity of Newport News, VA, and would also allow CSXT to move empty unit aggregate trains in the reverse direction. Furthermore, CSXT would enter into a detour agreement with BBRR to detour loaded eastbound coal trains over the C&O Line in case of an emergency or maintenance on the James River Line.

BBRR projects that it would handle about 11,700 carloads annually over the C&O Line, consisting of 6,200 carloads of local traffic, 1,000 carloads for interchange with NS and the Eastern Shore Railroad, Inc., and 4,500 CSXT non-revenue carloads. CSXT projects that it would annually move through its retained overhead trackage rights about 156,000 westbound empty cars and through its retained local trackage rights about 7,900 revenue carloads of rock from the Martin Marietta quarry at Verdon.

Financial Arrangements. CSXT advises that it does not plan any new financial arrangements in connection with the BBRR/CSXT transaction. BBRR advises that, although it does not plan to issue any new securities in connection with the BBRR/CSXT transaction, it does expect to obtain some unsecured short term financing to meet operating capital needs in the early stages of operation.

Passenger Service Impacts. Applicants advise that the BBRR/CSXT transaction would have no impact on commuter operations, because there are no such operations over the C&O Line or over the Orange Line. Applicants note, however, that an Amtrak train (the Cardinal) operates over part of the C&O Line (between Clifton Forge and Gordonsville) and all of the Orange Line (between Gordonsville and Orange). Applicants indicate: That Amtrak operates two trains per day over the line on Sunday, Wednesday, and Friday of each week, one eastbound (Train No. 50) and one westbound (Train No. 51); that both trains stop at Charlottesville, Staunton, and Clifton Forge; and that, to minimize delays, BBRR plans to schedule operations around the scheduled times for Amtrak's trains. Furthermore, applicants indicate that BBRR plans to seek approval from FRA and Amtrak, as necessary, to abandon the Train Control System (TCS, a signal system) currently in place on the North Mountain and Washington Subdivisions between Clifton Forge and Orange; that CSXT would maintain the TCS and would manage train dispatching for the lines covered by the lease for up to 2 years while BBRR seeks such abandonment authority; that, upon approval of the abandonment of the TCS, or 2 years after commencement of the lease, whichever occurs first, BBRR intends to dispatch the line; and that, if the TCS system is not abandoned, BBRR and CSXT would assess the situation to the mutual satisfaction of both parties.

Public Interest Considerations. The C&O Line is paralleled by Interstate Highway 64 and is crossed by Interstate Highway 81, both of which provide major highway access for truck traffic from/to customers on the line and, therefore, according to BBRR, significant competition to railroad traffic, especially intermodal traffic. BBRR advises that it plans to compete fiercely with trucks for traffic moving from/to points on the C&O Line. BBRR contends that it could effectively compete with motor carriers for freight traffic moving from/to points on the C&O Line by providing more frequent rail service and local sales, marketing, and operating personnel. BBRR indicates that it intends to have local people marketing its services to the customers on the line to build a relationship that would encourage the shift of truck shipments to rail.

Applicants contend that, because the BBRR/CSXT transaction would enable BBRR to increase the frequency and quality of rail service on the C&O Line, the BBRR/CSXT transaction would improve the adequacy of transportation service to the shipping public and increase intermodal competition as well as intramodal competition. Applicants further contend that there would not likely be, as a result of the BBRR/CSXT transaction, any lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States.

Applicants advise that they expect the BBRR/CSXT transaction to result in operating economies, improved service, and improved financial viability. Applicants explain: That they do not anticipate any changes to routes and rates as BBRR takes over the service; that, rather, BBRR would provide more frequent and responsive service to the local customers; that the additional traffic that BBRR expects to generate would improve BBRR's financial viability; and that the rationalization of the CSXT system would improve CSXT's financial viability, by enabling

CSXT to reduce its operating expenses and to save on some capital expenditures. Applicants add that, although they have resolved many specific items, it is difficult to estimate savings until all of the specific terms of the lease are resolved between CSXT and BBRR.

Environmental Impacts. Applicants contend that no environmental documentation is required because there will be no operational changes that would exceed the thresholds established in 49 CFR 1105.7(e)(4) or (5) and there will be no action that would normally require environmental documentation. Applicants therefore conclude that the BBRR/CSXT application does not require environmental documentation under 49 CFR 1105.6(b)(4) and (c)(2)(i).

Historic Preservation Impacts. Applicants contend that an historic report is not required because BBRR will operate the line and will require further Board approval to discontinue any service, and because there are no plans to dispose of or alter properties subject to Board jurisdiction that are 50 years old or older. Applicants therefore conclude that the BBRR/CSXT application does not require an historic report under 49 CFR 1105.8(b)(1).

Labor Impacts. CSXT projects that 35 CSXT employees would be affected by BBRR's lease of the C&O Line. CSXT projects, in particular: that 7 trainmen represented by the United Transportation Union would be displaced; that 4 engineers represented by the Brotherhood of Locomotive Engineers would be displaced; that 14 maintenance-of-way employees represented by the Brotherhood of Maintenance of Way Employees would be displaced; and that 7 signal and communications employees represented by the Brotherhood of Railroad Signalmen would be displaced, and an additional 3 such signal and communications employees would be relocated. CSXT explains that the trainmen, the engineers, and the maintenance-of-way employees would be affected because local work now performed by CSXT employees would be performed, post-transaction, by BBRR employees. As respects the signal and communications employees, CSXT explains that it has agreed to continue to maintain the signal system on the C&O Line and to dispatch the line, and to defer displacing employees, for up to 2 years after consummation of the transaction, if approved. CSXT also explains that it might cease maintaining the signal system and dispatching the line at an earlier date if FRA and Amtrak, as necessary, approve the abandonment of the signal system. CSXT adds: that it does not expect any dispatchers to be impacted by the BBRR/CSXT transaction; that it has not yet obtained any implementing agreements; and that, because CSXT's projections respecting employee impacts are based on conditions prior to the date of the BBRR/CSXT application, those projections may change based upon conditions existing at the time of consummation of the BBRR/CSXT transaction.

BBRR projects that it would hire at least 21 employees and might hire up to 27 employees in connection with its lease of the C&O Line. BBRR explains that it intends to hire, on consummation of the lease, 5 trainmen, 5 engineers, 8 maintenance-of-way employees, 2 mechanical employees, and 1 clerical employee. BBRR adds that, in the interest of operating in the most efficient manner possible, it expects to cross-train many of these employees to perform other functions. BBRR advises that, if the signal system on the line has not been approved for abandonment by FRA and Amtrak, as necessary, 2 years after consummation of the lease, BBRR expects to hire approximately 6 signal and communications employees to operate the signal system. If FRA and Amtrak, as necessary, authorize abandonment of the signal system, BBRR notes that it would not hire any signal and communications employees. BBRR indicates that it plans to consider for employment qualified local CSXT employees whose positions would be abolished as a result of the BBRR/CSXT transaction and who make proper application for employment. Since no existing employees of BBRR would be adversely affected by the BBRR/CSXT transaction, and because all the employees that BBRR would need to operate and maintain the line and equipment would be new hires, BBRR does not intend to enter into any implementing agreements with rail labor. Further, because BBRR's projections are based on conditions prior to the date of the BBRR/CSXT application, BBRR states that its projections may change based upon conditions existing at the time of consummation of the BBRR/CSXT transaction.

CSXT and BBRR contend that, to provide the level of labor protection mandated by 49 U.S.C. 11326, the Board should impose the "Mendocino Coast" labor protective conditions set forth in *Mendocino Coast Ry., Inc.—Lease and Operate*, 354 I.C.C. 732 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980), *aff'd sub nom. Railway Labor Executives' Ass'n* v. *United States*, 675 F.2d 1248 (D.C. Cir. 1982), as clarified in *Wilmington Term. RR, Inc.—Pur. & Lease—CSX Transp., Inc.*, 6 I.C.C.2d 799, 814–826 (1990), *aff'd sub nom. Railway Labor Executives' Ass'n* v. *I.C.C.*, 930 F.2d 511 (6th Cir. 1991). In support, CSXT and BBRR cite to *Portland & Western Railroad, Inc.—Lease and Operation Exemption—Burlington Northern Railroad Company*, Finance Docket No. 32766 (ICC served January 5, 1996), a similar type of transaction, in that it involved both the lease by a Class III railroad of lines of a Class I railroad and also the retention by the Class I railroad of the right to conduct certain operations over the leased lines.

BBRR/CSXT Application Accepted. The Board agrees with applicants that the proposed BBRR/CSXT transaction would be a "minor transaction" under 49 CFR 1180.2(c), and the Board is accepting the BBRR/CSXT application for consideration because it is in substantial compliance with the applicable regulations governing minor transactions. *See* 49 U.S.C. 11321–26; 49 CFR part 1180. The Board reserves the right to require the filing of supplemental information, if necessary to complete the record in this matter.

Public Inspection. The BBRR/CSXT application is available for inspection in the Docket File Reading Room (Room 755) at the offices of the Surface Transportation Board, 1925 K Street, NW., in Washington, DC. In addition, the application may be obtained from applicants' representatives (Mr. O'Brien for BBRR, and Mr. Gitomer for CSXT) at the addresses indicated above.

Procedural Schedule. The Board has considered applicants' BBRR–3/CSXT–3 petition (filed May 26, 2004) suggesting a 166-day procedural schedule. Under that proposed schedule, the Board would issue its final decision on November 8, 2004, and that decision would become effective on December 8, 2004. Applicants explain that their proposed schedule would allow applicants to close the BBRR/CSXT transaction by December 20, 2004, and would thus allow the changeover in operations to occur before year-end over a non-holiday weekend.

The Board is adopting a 163-day procedural schedule that is essentially the same as applicants' proposed 166-day schedule, except that the Board's schedule provides for the issuance of a final decision on November 5, 2004. The evidentiary proceedings in this matter will be concluded on September 23rd (the due date for filing responses and rebuttal) if neither a public hearing nor an oral argument is held the week of October 4th. Therefore, issuance of the

final decision on November 5th will allow the Board to meet the applicable statutory deadline, which requires a final decision no later than the 45th day after the date on which the evidentiary proceedings are concluded.

Under the 163-day procedural schedule adopted by the Board: any person who wishes to participate in this proceeding as a POR must file, no later than July 9, 2004, a notice of intent to participate; all comments, protests, requests for conditions, and any other evidence and argument in opposition to the BBRR/CSXT application, including filings by DOJ and DOT, must be filed by August 24, 2004; and responses to comments, protests, requests for conditions, and other opposition and rebuttal in support of the BBRR/CSXT application must be filed by September 23, 2004. As in past proceedings, DOJ and DOT will be allowed to file, on the response due date (here, September 23rd), their comments in response to the comments of other parties, and applicants will be allowed to late-file (as quickly as possible) a response to any such comments of DOJ and/or DOT. Under this schedule, a public hearing or oral argument may be held the week of October 4, 2004. To allow the Board to meet the applicable statutory deadline, which requires the Board to conclude any evidentiary proceedings by the 105th day after the date of **Federal Register** publication of notice of the acceptance of the application, a public hearing or oral argument must be held, if at all, no later than October 8th. Furthermore, under this procedural schedule, the Board will issue its final decision on November 5, 2004 (the 163rd day after May 26th, the day on which the BBRR/CSXT application was filed with the Board). This schedule would allow applicants to close the BBRR/CSXT transaction by December 20th if the application is approved. For further information respecting dates, *see* Appendix A (Procedural Schedule).

Notice of Intent to Participate. Any person who wishes to participate in this proceeding as a POR must file with the Board, no later than July 9, 2004, a notice of intent to participate, accompanied by a certificate of service indicating that the notice has been properly served on the Secretary of the United States Department of Transportation, the Attorney General of the United States, and applicants' representatives (Mr. O'Brien for BBRR, and Mr. Gitomer for CSXT).

Service List Notice. The Board will serve, as soon after July 9, 2004, as practicable, a notice containing the official service list (the service list notice). Each POR will be required to serve upon all other PORs, within 10 days of the service date of the service list notice, copies of all filings previously submitted by that party (to the extent such filings have not previously been served upon such other parties). Each POR also will be required to file with the Board, within 10 days of the service date of the service list notice, a certificate of service indicating that the service required by the preceding sentence has been accomplished. Every filing made by a POR after the service date of the service list notice must have its own certificate of service indicating that all PORs on the service list have been served with a copy of the filing. Members of the United States Congress (MOCs) and Governors (GOVs) are not parties of record and need not be served with copies of filings, unless any such Member or Governor has requested to be, and is designated as, a POR.

Comments, Protests, Requests for Conditions, and Other Opposition Evidence and Argument, Including Filings by DOJ and DOT. All comments, protests, requests for conditions, and any other evidence and argument in opposition to the BBRR/CSXT application, including filings by DOJ and DOT, must be filed by August 24, 2004.

Because the proposed BBRR/CSXT transaction has been determined to be a minor transaction, no responsive applications will be permitted. *See* 49 CFR 1180.4(d)(1).

Protesting parties are advised that, if they seek either the denial of the BBRR/CSXT application or the imposition of conditions upon any approval, on the theory that approval (or approval without conditions) would harm competition and/or their ability to provide essential services, they must present substantial evidence in support of their positions. *See Lamoille Valley R.R. Co.* v. *ICC*, 711 F.2d 295 (D.C. Cir. 1983).

Responses to Comments, Protests, Requests for Conditions, and Other Opposition; Rebuttal in Support of the Application. Responses to comments, protests, requests for conditions, and other opposition submissions, and rebuttal in support of the BBRR/CSXT application must be filed by September 23, 2004.

Public Hearing/Oral Argument. The Board may hold a public hearing or an oral argument in this proceeding the week of October 4, 2004.

Discovery. Discovery may begin immediately. The parties are encouraged to resolve all discovery matters expeditiously and amicably.

Environmental Matters. Under the Council on Environmental Quality (CEQ) and Board regulations, actions whose environmental effects are ordinarily insignificant may be excluded from review under the National Environmental Policy Act of 1969 (NEPA).[5] In its environmental rules, the Board has promulgated various categorical exclusions. As pertinent here, where the eastern portion of the 199.7-mile rail line proposed to be leased is located in an air quality "nonattainment" area, a rail line lease proposal that would not result in operational changes that exceed certain thresholds—generally an increase in rail traffic of at least three trains a day or 50 percent in traffic (measured in gross ton miles annually)—normally requires no environmental review, 49 CFR 1105.6(c)(2)(i).

Applicants state in their application that the traffic increases they project to occur, should this proposal be approved, consist of four round-trip trains per day, 5 days per week. Applicants explain that BBRR would operate morning and evening round-trip trains between various origins and destinations over four distinct line segments. Specifically, over the easternmost segments, a morning train would operate between Doswell and Ruffin (near Richmond), and an evening train would operate between Doswell and Gordonsville. On the westernmost segments, a morning train would operate between Staunton and Clifton Forge, and an evening train would operate between Staunton and Orange (including Gordonsville). Applicants maintain that operating one round-trip train 5 days per week over four distinct rail line segments would allow BBRR to provide efficient service tailored to the needs of its customers.

Because the four round-trip trains would operate over four different line segments and applicants contemplate no increase on any individual line segment beyond one round-trip train per day, the proposed lease does not meet or exceed the Board's thresholds for environmental documentation established in the Board's environmental rules at 49 CFR 1105.7(e)(4) or (5), and there is nothing in the application to indicate that the transaction has any potential for significant environmental impacts. The Board's Section of Environmental Analysis (SEA) therefore has concluded that formal environmental review is not warranted in this case, and that this

[5] 40 CFR 1500.4(p), 1501.4(a)(2), 1508.4; 49 CFR 1105.6(c). Such activities are said to be covered by a "categorical exclusion," which CEQ defines at 40 CFR 1508.4.

proceeding is "categorically excluded" from environmental review required by NEPA.

Finally, SEA agrees with applicants that the proposed action does not require historic review under the National Historic Preservation Act of 1966 (NHPA) because further approval would be required to abandon any service, and there are no plans to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older. 49 CFR 1105.8(b)(1).

Filing/Service Requirements: Format. Persons participating in this proceeding may "file" with the Board and "serve" on other parties a number of documents, particularly: a notice of intent to participate (due by July 9th); a certificate of service indicating service of prior pleadings on persons designated as PORs on the service list notice (due by the 10th day after the service date of the service list notice); comments, protests, requests for conditions, and any other evidence and argument in opposition to the BBRR/CSXT application (due by August 24th); and responses to comments, etc., and rebuttal in support of the BBRR/CSXT application (due by September 23rd).

Filing Requirements. Any document filed in this proceeding must be filed either via the Board's e-filing format or in the traditional paper format. Any person e-filing a document should comply with the instructions found on the Board's *http://www.stb.dot.gov* Web site, at the "E-FILING" link. Any person filing a document in the traditional paper format should send an original and 10 paper copies of the document (and also an IBM-compatible floppy disk with any textual submission in any version of either Microsoft Word or WordPerfect) to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

Service Requirements. One copy of each document filed in this proceeding must be sent to each of the following (any such copy may be sent by e-mail, but only if service by e-mail is acceptable to the recipient): (1) Secretary of the United States Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590; (2) Attorney General of the United States, c/o Assistant Attorney General, Antitrust Division, Room 3645, Department of Justice, Washington, DC 20530; (3) Keith G. O'Brien (BBRR's representative), Rea, Cross & Auchincloss, 1707 L Street, NW., Suite 570, Washington, DC 20036; (4) Louis E. Gitomer (CSXT's representative), Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005; and (5) any other person designated as a POR on the service list notice.

Service of Decisions, Orders, and Notices. The Board will serve copies of its decisions, orders, and notices only on those persons who are designated on the official service list as either POR, MOC, or GOV. All other interested persons are encouraged either to secure copies of such decisions, orders, and notices via the Board's *http://www.stb.dot.gov* Web site under "E-LIBRARY/Decisions & Notices" or to make advance arrangements with the Board's copy contractor, ASAP Document Solutions (mailing address: ASAP Document Solutions, Suite 103, 9332 Annapolis Rd., Lanham, MD 20706; e-mail address: *asapmd@verizon.net;* telephone number: 301–577–2600), to receive copies of decisions, orders, and notices served in this proceeding. ASAP Document Solutions will handle the collection of charges and the mailing and/or faxing of decisions, orders, and notices to persons who request this service.

Access to Filings. An interested person does not need to be on the service list to obtain a copy of the BBRR/CSXT application or any other filing made in this proceeding. The Board's Railroad Consolidation Procedures provide: "Any document filed with the Board (including applications, pleadings, etc.) shall be promptly furnished to interested persons on request, unless subject to a protective order." 49 CFR 1180.4(a)(3). And the BBRR/CSXT application and other filings in this proceeding will also be available on the Board's *http://www.stb.dot.gov* Web site under "E-LIBRARY/Filings."

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The BBRR/CSXT application in STB Finance Docket No. 34495 is accepted for consideration.

2. The parties to this proceeding must comply with the Procedural Schedule adopted by the Board in this proceeding as shown in Appendix A.

3. The parties to this proceeding must comply with the procedural requirements described in this decision.

4. This decision is effective on June 25, 2004.

Decided: June 22, 2004.

By the Board, Chairman Nober, Vice Chairman Mulvey, and Commissioner Buttrey.

Vernon A. Williams,

Secretary.

Appendix A: Procedural Schedule

May 26, 2004
BBRR/CSXT application, petition for protective order, and petition to establish procedural schedule filed.
June 25, 2004
Board notice of acceptance of BBRR/CSXT application published in the **Federal Register**.
July 9, 2004
Notices of intent to participate due.
August 24, 2004
All comments, protests, requests for conditions, and any other evidence and argument in opposition to the BBRR/CSXT application, including filings of DOJ and DOT, due.
September 23, 2004
Responses to comments, protests, requests for conditions, and other opposition due. Rebuttal in support of the BBRR/CSXT application due.
Week of October 4, 2004
A public hearing or oral argument may be held the week of October 4, 2004.
November 5, 2004
Date of service of final decision.

[FR Doc. 04–14474 Filed 6–24–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 16, 2004.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 26, 2004 to be assured of consideration.

Department of the Treasury and Department of Homeland Security

OMB Number: 1515–0145.
Form Number: None.
Type of Review: Reinstatement.
Title: Regulations Relating to Copyrights and Trademarks.

Description: The collection of information is required in order for

Customs Border Protection (CBP) to provide protection to trademark owners and those requesting copyright protection. In order for CPB to protect against copyright and trademark infringement, respondents must provide information sufficient to enable CBP officers to identify imported articles that violate copyrights and trademarks.

Respondents: Business or other for-profit, Individual or households.

Estimated Number of Respondents: 2,000.

Estimated Burden Hours Per Respondent: 2 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 4,000 hours.

Clearance Officer: Tracey Denning, (202) 927–1429, Department of Homeland Security, Bureau of Customs and Border Protection, Information Services Branch, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 04–14497 Filed 6–24–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 18, 2004.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 26, 2004 to be assured of consideration.

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513–0007.

Form Number: TTB F 5130.9 and TTB F 5130.26.

Type of Review: Extension.

Title: Brewer's Report of Operations and Brewpub Report of Operations.

Description: Brewers periodically file these reports of their operations to account for activity relating to account for activity relating to taxable commodities. TTB uses this information primarily for revenue protection, for audit purposes, and to determine whether activity is in compliance with the requirements of law. We also use this information to publish periodical statistical releases of use and interest to the industry.

Respondents: Business of other for-profit.

Estimated Number of Respondents: 1,750.

Estimated Burden Hours per Respondent:

TTB F 5130.9	1 hour.
TTB F 5130.26	1 hour

Frequency of Response: Monthly, Quarterly.

Estimated Total Reporting Burden: 7,800 hours.

OMB Number: 1513–0015.

Form Number: TTB Fs 5130.22, 5130.23, 5130.25 and 5130.27.

Type of Review: Extension.

Title: Brewer's Bonds and Continuation Certificates.

Description: The Internal Revenue Code requires brewers to give a bond to protect the revenue and to ensure compliance with the requirements of law and regulations. Bonds and continuation certificate are required by law and are necessary to protect government interests in the excise tax revenues that brewers pay.

Respondents: Business of other for-profit.

Estimated Number of Respondents: 1,750.

Estimated Burden Hours per Respondent:

TTB F 5130.22	1 hour.
TTB F 5130.23	45 minutes.

TTD F 5130.25	45 minutes.
TTB F 5130.27	45 minutes

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 600 hours.

OMB Number: 1513–0095.

Form Number: TTB F 5300.28.

Recordkeeping Requirement ID Number: TTB REC 5300/28.

Type of Review: Extension.

Title: Application for Registration for Tax-Free Transactions under 26 U.S.C. 4221.

Description: Businesses, State and local governments, and small businesses apply for registration to sell or purchase firearms or ammunition tax-free on this form. TTB uses the form to determine an applicant's qualification.

Respondents: Business of other for-profit.

Estimated Number of Respondents/Recordkeepers: 125.

Estimated Burden Hours per Respondent/Recordkeeper: 3 hours.

Frequency of Response: Other (one-time).

Estimated Total Reporting/Recordkeeping Burden: 375 hours.

Clearance Officer: William H. Foster, (202) 927–8210, Alcohol and Tobacco Tax and Trade Bureau, Room 200 East, 1310 G. Street, NW., Washington, DC 20005.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 04–14498 Filed 6–24–04; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 14, 2004.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 26, 2004 to be assured of consideration.

Bureau of the Public Debt (PD)

OMB Number: 1535–0122.

Form Numbers: None.

Type of Review: Extension.

Title: Voluntary Customer Satisfaction Survey to Implement Executive Order 12862.

Description: Voluntary survey to determine customer satisfaction.

Respondents: Individuals or households.

Estimated Number of Respondents: 7,000.

Estimated Burden Hours per Respondent: Various.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 876 hours.

Clearance Officer: Vicki S. Thorpe, (304) 480–6553.

Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 04–14499 Filed 6–24–04; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 16, 2004.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 26, 2004 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0575.

Form Number: IRS Form 5330.

Type of Review: Revision.

Title: Return of Excise Taxes Related to Employee Benefit Plans.

Description: Code sections 4971, 4972, 4973(a)(3), 4975, 4976, 4977, 4978, 4978A, 4978B, 4979, 4979A and 4980 impose various excise taxes in connection with employee benefit plans. Form 5330 is used to compute and collect these taxes.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 8,403.

Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping	25 hr., 27 min.
Learning about the law or the form.	11 hr., 59 min.
Preparing and sending the form to the IRS.	14 hr., 11 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 430,464 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 04–14500 Filed 6–24–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 706–NA

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 706–NA, United States Estate (and Generation-Skipping Transfer) Tax Return, Estate of nonresident not a citizen of the United States.

DATES: Written comments should be received on or before August 24, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: United States Estate (and Generation-Skipping Transfer) Tax Return, Estate of nonresident not a citizen of the United States.

OMB Number: 1545–0531.

Form Number: 706–NA.

Abstract: Form 706–NA is used to compute estate and generation-skipping transfer tax liability for nonresident alien decedents in accordance with section 6018 of the Internal Revenue Code. IRS uses the information on the form to determine the correct amount of tax and credits.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 4 hours, 36 minutes.

Estimated Total Annual Burden Hours: 4,600.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including

through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 21, 2004.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–14524 Filed 6–24–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8817

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8817, Allocation of Patronage and Nonpatronage Income and Deductions.

DATES: Written comments should be received on or before August 24, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Allocation of Patronage and Nonpatronage Income and Deductions.

OMB Number: 1545–1135.

Form Number: 8817.

Abstract: Form 8817 is filed by taxable farmers cooperatives to report their income and deductions by patronage and nonpatronage sources. The IRS uses the information on the form to ascertain whether the amounts of patronage and nonpatronage income or loss were properly computed.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and farms.

Estimated Number of Respondents: 1,650.

Estimated Time Per Respondent: 13 hours, 20 minutes.

Estimated Total Annual Burden Hours: 22,006.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 21, 2004.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–14525 Filed 6–24–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120–L

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120–L, U.S. Life Insurance Company Income Tax Return.

DATES: Written comments should be received on or before August 24, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: U.S. Life Insurance Company Income Tax Return.

OMB Number: 1545–0128.

Form Number: 1120–L.

Abstract: Life insurance companies are required to file an annual return of income and compute and pay the tax due. The data is used to insure that the companies have correctly reported taxable income and paid the correct tax.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,440.

Estimated Time Per Respondent: 184 hours, 5 minutes.

Estimated Total Annual Burden Hours: 449,180.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal

revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 18, 2004.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–14526 Filed 6–24–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1040–C

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1040–C, U.S. Departing Alien Income Tax Return.

DATES: Written comments should be received on or before August 24, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: U.S. Departing Alien Income Tax Return.

OMB Number: 1545–0086.

Form Number: 1040–C.

Abstract: Form 1040–C reflects Internal Revenue Code section 6851 and regulation sections 1.6851–1 and 1.6851–2. The form is used by aliens departing the U.S. to report income received or expected to be received for the entire year. The information collected is used to insure that the departing alien has no outstanding U.S. tax liability.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 2,000.

Estimated Time Per Respondent: 5 hours, 49 minutes.

Estimated Total Annual Burden Hours: 11,632.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 18, 2004.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–14527 Filed 6–24–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0521]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to underwrite VA-guaranteed loans.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 24, 2004.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0521" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or fax (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501—3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is

being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Credit Underwriting Standards and Procedures for Processing VA Guaranteed Loans.

b. Report and Certification of Loan Disbursement, VA Form 26–1820.

c. Request for Verification of Employment, VA Form 26–8497.

d. Request for Verification of Deposit, VA Form 26–8497a.

OMB Control Number: 2900–0521.

Type of Review: Extension of a currently approved collection.

Abstract:

a. Credit Underwriting Standards and Procedures for Processing VA Guaranteed Loans—VA set forth, in regulatory form, standards to be used by lenders in underwriting VA-guaranteed loans and to obtain credit information. Lenders must collect certain specific information concerning the veteran and the veteran's credit history (and spouse or other co-borrower, as applicable), in order to properly underwrite the veteran's loan. A loan may not be guaranteed unless the veteran is a satisfactory credit risk. VA requires the lender to provide the Department with the credit information to assure itself that applications for VA-guaranteed loans are underwritten in a reasonable and prudent manner.

b. VA Form 26–1820 is completed by lenders closing VA guaranteed and insured loans under the automatic or prior approval procedures. Lenders are required to submit with the form, a copy of the loan application (showing income, assets, and obligations) which the lender requires the borrower to execute when applying for the loan; original employment and income verifications obtained from the borrower's place of employment; original verification of assets; and original credit report.

c. VA Form 26–8497 is used by lenders to verify a loan applicant's income and employment information when making guaranteed and insured loans. VA, however, does not require the exclusive use of this form for verification purposes; any comprehensible form or independent verification would be acceptable, provided all information presently shown on VA Form 26–8497 is provided.

d. VA Form 26–8497a is primarily used by lenders making guaranteed and insured loans to verify the applicant's deposits in banks and other savings institutions.

Affected Public: Business or other for profit and Individuals or households.

Estimated Annual Burden: 162,500 hour.

Frequency of Response: On occasion.

Estimated Number of Respondents: 650,000.

Dated: June 21, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–14440 Filed 6–24–04; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Friday,
June 25, 2004

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 405, 413, and 417
Medicare Program; Provider Reimbursement Determinations and Appeals; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 405, 413, and 417

[CMS–1727–P]

RIN 0938–AL54

Medicare Program; Provider Reimbursement Determinations and Appeals

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: Subpart R of 42 CFR part 405 consists of regulations governing Medicare reimbursement determinations, and appeals of those determinations by health care providers. (For sake of simplicity, through this proposed rule we use "reimbursement" to refer to Medicare payment under both the reasonable cost and prospective payment systems.) Under section 1878 of the Social Security Act (the Act) and the regulations, the Provider Reimbursement Review Board (Board) has the authority to adjudicate certain substantial reimbursement disputes between providers and fiscal intermediaries. Board decisions are subject to review by the CMS Administrator, and the final agency decision of the Board or the Administrator, as applicable, is reviewable in Federal district court. In addition, under the regulations, fiscal intermediaries have the authority to hold hearings and adjudicate certain other payment and reimbursement disputes with providers. This proposed rule would update, clarify, and revise various provisions of the regulations governing provider reimbursement determinations, appeals before the Board, appeals before the intermediaries (for lesser disputes), and Administrator review of decisions made by the Board.

DATES: To be assured consideration, comments must be received at the appropriate address, as provided below, no later than 5 p.m. on August 24, 2004.

ADDRESSES: In commenting, please refer to file code CMS–1727–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of three ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments to *http://www.cms.hhs.gov/regulations/ecomments* or to *http://www.regulations.gov* (attachments must be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word).

2. *By mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1727–P, P.O. Box 8017, Baltimore, MD 21244–8017.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–7197 in advance to schedule your arrival with one of our staff members.

Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244–1850. (Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period. For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Morton Marcus, (410) 786–4477.

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on all issues set forth in this rule to assist us in fully considering issues and developing policies. You can assist us by referencing the file code CMS–1727–P and the specific "issue identifier" that precedes the section on which you choose to comment.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. After the close of the comment period, CMS posts all electronic comments received before the close of the comment period on its public website. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (410) 786–7197.

This **Federal Register** document is also available from the **Federal Register** online database through GPO Access, a service of the U.S. Government Printing Office. The Web site address is: *http://www.gpoaccess.gov.*

I. Background

[If you choose to comment on issues in this section, please include the caption "Background" at the beginning of your comments.]

Section 1878(a) of the Social Security Act (the Act) allows providers to appeal to the Board final determinations made by the intermediary under section 1861(v)(1)(A) of the Act (reasonable cost reimbursement), as well as certain determinations by the Secretary involving payment under section 1886(d) (inpatient hospital prospective payment) and section 1886(b) (commonly known as the TEFRA payment system). (See section II.c.1., of this preamble, concerning how we propose to define "provider.") In addition, by regulation, providers are given the right to appeal to the Board or intermediary certain other determinations. A brief discussion of the original cost reimbursement, TEFRA, and prospective payment systems (PPS), and some of the types of determinations that are appealable, follows.

For cost reporting years beginning before October 1, 1983, all providers were reimbursed for Part A (hospital insurance) covered items and services they furnished to Medicare beneficiaries on the basis of reasonable cost. Reasonable cost is defined at section 1861(v)(1)(A) of the Act and implementing regulations at 42 CFR, Part 413. In 1982, the Congress determined that the reasonable cost reimbursement system should be modified to provide hospitals with better incentives to render services more efficiently. Accordingly, in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. 97–248, the Congress amended the Act by imposing a ceiling on the rate of increase of inpatient operating costs recoverable by a hospital under Medicare.

The Social Security Amendments of 1983 (Pub. L. No. 98–21) added section 1886(d) to the Act, which effective with cost reporting periods beginning on or after October 1, 1983, changed the method of payment for inpatient hospital services under Medicare Part A for short-term acute care hospitals. The method of payment for these hospitals was changed from a cost-based retrospective reimbursement system to a system based on prospectively set rates. Under Medicare's inpatient hospital PPS, payment is made at a predetermined specific rate for each hospital discharge (classified according to a list of diagnosis-related groups (DRGs)), excluding certain costs that continue to be reimbursed under the reasonable cost-based system.

Other statutory changes expanded the types of providers that are subject to a PPS. The Balanced Budget Act of 1997 (BBA), Pub. L. 105–33, established a prospective payment system for home health agencies (HHAs), for rehabilitation hospitals, and for all skilled nursing facilities (SNFs). The Balanced Budget Refinement Act of 1999, Pub. L. 106–113, provided for the establishment of a PPS for long term care hospitals (LTCHs). Although many types of providers are now paid on a prospectively-determined basis, some types of providers, such as hospices, psychiatric hospitals, and children's hospitals continue to be paid on a reasonable cost basis.

Payments to providers are ordinarily made through private organizations known as fiscal intermediaries, under contracts with the Secretary. For covered items and services reimbursed on a reasonable cost basis, the intermediary pays a provider during a cost reporting year interim payments that approximate the provider's actual costs. Under a PPS, providers are generally paid for each discharge after each bill is submitted.

Regardless of whether the provider is paid under reasonable cost or under a PPS, the provider files an annual cost report after the cost year is completed. The intermediary then reviews or audits the cost report, determines the aggregate amount of payment due the provider, and makes any necessary adjustments to the provider's total Medicare reimbursement for the cost year. This year-end reconciliation of Medicare payment for the provider's cost reporting period constitutes an intermediary determination, as defined in § 405.1801(a). Under §§ 405.1801(a)(1) and (2) and 405.1803, the intermediary must render the provider with written notice of the intermediary determination for the cost period in a notice of amount of program reimbursement (NPR). The NPR is an appealable determination.

In addition to the NPR, other determinations made by the intermediary or CMS for hospitals and other providers are appealable to the intermediary or Board (depending on the amount in controversy), such as: a denial of a hospital's request for an adjustment to, or an exemption from, the TEFRA rate of increase ceiling (see § 413.40); a denial of a HHA's or SNF's request for an adjustment to, or an exemption from, the routine cost limits that were in effect prior to a PPS for such providers (see § 413.30); a denial of a PPS hospital's request to be classified as a sole community hospital (see § 412.92) or rural referral center. Also, some health care entities such as renal dialysis facilities, rural health clinics (RHCs) and Federally qualified health centers (FQHCs) are treated as "providers" for purposes of subpart R and have appeal rights before the intermediaries and the Board. Thus, for example, a renal dialysis facility may appeal to the intermediary or the Board a CMS denial of its request for an exception to its composite payment rate (see § 413.194(b)).

If a provider is dissatisfied with some aspect of an appealable intermediary or CMS determination, it may request a hearing before the intermediary or the Board, depending on the amount in controversy. For an amount in controversy that is at least $1,000 but less than $10,000, the provider may request an intermediary hearing before the intermediary hearing officer(s) under § 405.1811. If the amount in controversy is at least $10,000, the provider may request a hearing before the Board under section 1878(a) of the Act and § 405.1835 and § 405.1841. Alternatively, the provider may request a Board hearing with one or more additional providers under section 1878(b) of the Act and § 405.1837, if the amount in controversy is, in the aggregate, at least $50,000 (such an appeal is known as a group appeal).

Decisions by the intermediary hearing officer(s) or the Board are subject to further review. Intermediary hearing officers' decisions are subject to review by a CMS reviewing official under section 2917 of the Provider Reimbursement Manual, Part 1, but there is no provision for judicial review of a final decision of the intermediary hearing officer(s) or CMS reviewing official, as applicable. Board decisions are subject to review by the Administrator or the Deputy Administrator of CMS, under section 1878(f)(1) of the Act and § 405.1875. (The Secretary's review authority under section 1878(f)(1) of the Act has been delegated to the Administrator, and redelegated to the Deputy Administrator, of CMS. (For ease of use, throughout this proposed rule we use the term "Administrator" to refer to either the Administrator or Deputy Administrator, and the term "Administrator review" to review by either official.) A final decision of the Board, or any reversal, affirmance, or modification of a final Board decision by the Administrator, is subject to review by a United States District Court with venue under section 1878(f)(1) of the Act and § 405.1877 of the regulations.

Most of the central provisions of the regulations governing provider reimbursement determinations and appeals are approximately 25 years old. On May 27, 1972 we published a final rule (37 FR 10722), which provided for the intermediary determination, NPR, intermediary hearing, and reopening of both intermediary determinations and intermediary hearing decisions. Five months later, the Congress added section 1878 to the Act, which established the Board and provided for review of Board decisions by the Secretary and for judicial review. (See Social Security Amendments of 1972, Pub. L. 92–603, section 243(a), 86 Stat. 1420 (October 30, 1972). We then, on September 26, 1974 published a final rule (39 FR 34514), that implemented the 1972 amendments to the Act, and revised and redesignated the preexistent rules governing the intermediary determination, NPR, intermediary hearing, and reopening. These regulations were redesignated as subpart R of part 405 of title 42 of the CFR (subpart R) on September 30, 1977 (42 FR 52826). We have revised these regulations on several occasions, largely in response to various amendments to section 1878 of the Act.

For several reasons, we believe it is necessary and appropriate to reexamine many of the subpart R regulations governing provider reimbursement determinations and appeals. As described previously, the principal provisions of the regulations are about 25 years old. In the intervening period, various issues have arisen regarding provider reimbursement determinations and appeals. Important parts of the regulations have been the subject of extensive litigation, the results of which indicate a need for reexamination of the rules. Also important is the development of a backlog of approximately 10,000 cases before the Board. Experience gained through long use of the regulations indicates that

revisions to the regulations would lead to a more effective and efficient appeal process. We believe that the revisions proposed would help the Board reduce the case backlog (or at least forestall substantial additions to it), and would also reflect changes in the statute, clarify our policy on various issues, and eliminate outdated material. Please note that the Provider Reimbursement Review Board's instructions for providers and intermediaries, as well as the Board's decisions on specific cases brought before it, are available on the web at *http://www.hcfa.gov/regs/prrb.htm.*

II. Provisions of the Proposed Rule

[If you choose to comment on issues in this section, please include the caption "Definitions of or Decisions by Entities" at the beginning of your comments.]

A. Definitions of Entities That Review Intermediary Determinations or Decisions by Such Entities; Definition of Reimbursement (§ 405.1801(a))

1. Intermediary Hearing Officer, CMS Reviewing Official, and CMS Reviewing Official Procedure

As explained above, a provider may appeal the intermediary determination included in the NPR for a cost reporting period to either the intermediary hearing officer(s) or the Board, depending on the amount in controversy. A decision by the intermediary hearing officer(s) may be reviewed by a CMS reviewing official, whereas a Board decision may be reviewed by the CMS Administrator.

Although the term "intermediary hearing" is defined in § 405.1801(a) by reference to § 405.1809, the terms "intermediary hearing officer(s)," "CMS reviewing official," and "CMS reviewing official procedure" are not defined in the regulations. We propose to add to § 405.1801(a) definitions for each of these three terms. The proposed definition of "intermediary hearing officer(s)" is "the hearing officer or panel of hearing officers provided for in § 405.1817." The other two terms would be defined by reference to proposed § 405.1834, which is a new section that would add a CMS reviewing official procedure to subpart R. The proposed definition of "CMS reviewing official" is "the reviewing official provided for in § 405.1834." In turn, "CMS reviewing official procedure" would mean "the review provided for in § 405.1834."

2. Administrator Review

We propose to revise the term "Administrator's review" in § 405.1801(a) to read "Administrator review," although the current definition of the former phrase would still apply to the new phrase. The current use of the possessive term "Administrator's" is unnecessary, and the proposed replacement with the phrase "Administrator review" would be consistent with current use of the non-possessive terms "Board hearing," "intermediary hearing," and "CMS reviewing official procedure."

3. Reviewing Entity

We propose to add the term "reviewing entity" to § 405.1801(a), which would be defined as "the intermediary hearing officer(s), a CMS reviewing official, the Board, or the Administrator, as applicable." We believe that "reviewing entity" is an appropriate term for the various entities that can review intermediary determinations (that is, the intermediary hearing officer(s) and the Board) or the entities that can review intermediary hearing officer and Board decisions (that is, a CMS reviewing official and the Administrator, respectively). For example, current §§ 405.1885(a) and (c) provide for reopening of an intermediary determination by the intermediary that made the determination, and reopening of a decision by the administrative body that issued the decision. Current § 405.1885(a) specifies three different decisionmaking bodies as having reopening authority over one of their respective decisions: the intermediary hearing officer(s), the Board, and the Administrator. As a conforming amendment to proposed § 405.1834 (see section II.G. below), we propose to amend § 405.1885(a) to recognize the CMS reviewing official's authority to reopen a prior decision (see section II.V.1. of this preamble). Instead of adding the phrase "CMS reviewing official" to the list of decisionmakers with reopening authority under § 405.1885(a), we believe it facilitates ease of reference to use the phrase "reviewing entity" in lieu of enumerating all four decisionmakers.

4. Reimbursement

The term "reimbursement," as referring to compensation for providers, appeared in our regulations, and in industry parlance, at a time in which all providers were paid on the basis of their reasonable costs. Upon the development of the inpatient hospital PPS, it became customary for some to use "payment" when speaking of remuneration to a hospital covered under the inpatient hospital PPS and "reimbursement" when referring to a hospital or other provider covered under the reasonable cost system, whereas others continue to use "reimbursement" to refer to compensation under either reasonable cost or a PPS, and still others use the terms interchangeably. We believe it would be verbose, in places where both reasonable cost and a PPS are implicated, to use "reimbursement or payment." Therefore, we propose to define "reimbursement" as encompassing compensation under either the reasonable cost or a PPS, so as to make clear that by using "reimbursment" we do not mean to exclude providers paid under a PPS or some other payment system.

B. Calculating Time Periods and Deadlines (§§ 405.1801(a) and (d)

[If you choose to comment on issues in this section, please include the caption "Calculating Time Periods" at the beginning of your comments.]

1. Basic Proposals

Under section 1878 of the Act and our regulations at 42 CFR, part 405, subpart R, various time periods and deadlines are prescribed for taking specific actions. In addition, the reviewing entities routinely require completion of specific actions within certain time periods or by a specific deadline. We have identified several situations that the present regulations do not specifically address. For example, section 1878(f)(1) of the Act and current § 405.1875(g)(2) authorize the Administrator to review a Board decision within 60 days of when the provider received notification of the Board's decision. Under current § 405.1801(a), the phrase "date of receipt" means "the date on the return receipt of 'return receipt requested' mail, unless otherwise defined." The regulations do not address, however, how to determine the date of provider receipt under § 405.1875(g)(2) if a Board decision is not sent by return receipt requested mail, the provider does not return or date any receipt, or the return receipt certificate is destroyed or obscured. The potential for uncertainty seems greater for material exchanged between providers and intermediaries because experience indicates they do not use return receipt mail regularly.

Similarly, the various reviewing entities routinely issue orders requiring that certain actions be taken within a prescribed time period. (For example, the Board may require submission of position papers within 90 days of an order.) Section 405.1801(a) defines "date of filing" and "date of submission of materials" to mean "the day of the mailing (as evidenced by the postmark) or hand-delivery of materials, unless

otherwise defined in this subpart." However, the regulations do not address how to determine the date of submission (or filing) of materials where, for example, the envelope containing a Board order is destroyed or lost, has no postmark, or has an obscured postmark.

The current regulations also do not address how to determine the first, subsequent, and last days of a prescribed time period. For example, no provision in subpart R addresses how to determine the end of a designated time period when the last day of the period is a Saturday, Sunday, Federal legal holiday, or other nonwork day for Federal employees.

Accordingly, we believe it is necessary and appropriate to revise our regulations at subpart R to ensure that providers, reviewing entities and others may determine precisely the various time periods and deadlines imposed by section 1878 of the Act, the regulations, and particular orders of a reviewing entity. In order to meet this objective, we propose to remove the current definitions in § 405.1801(a) of "date of filing" and "date of submission of materials" and instead provide specific provisions that address the time to appeal a determination or decision of an intermediary, the Board or the Administrator. Thus, proposed § 405.1811(a)(3) would specify the time to request an intermediary hearing; proposed § 405.1834(c) would explain the time to request review by a CMS reviewing official of an intermediary hearing officer decision; proposed § 405.1835(a)(3) would state the time to request a Board hearing; and proposed section 1875(c)(1) would specify the time to seek Administrator review. Likewise, proposed § 405.1875(e)(2) would specify the time the Administrator must render a decision (where the Administrator has taken review of a Board decision or other reviewable Board action), and proposed section 405.1877(b) would state the time a provider may request judicial review of a final Board or Administrator decision. As a general matter, we propose to calculate the beginning period that a party has to take action with reference to the date the party received the triggering notice, and we propose to calculate the end of the period that the action must be taken with reference to the date the reviewing entity must receive the party's submission. (We are using "party" in the previous sentence in a non-technical sense.) Also, generally throughout the preamble and the text of this proposed rule we avoid using the phrase "within x days" and instead use "no later than x days after" in order to make clear that the party or reviewing entity has the benefit of the last day of the period specified. Where the language "within" is used (because it would be cumbersome to say "no later than") it should be understood that the party or reviewing entity has the benefit of the last day of the period specified.)

Accordingly, we propose to revise the current definition of "date of receipt" in § 405.1801, and we propose to add a new paragraph (d) to § 405.1801, which would prescribe rules for determining the first, subsequent, and last days of a designated time period.

2. Definition of "Date of Receipt"

We propose to revise the definition for "date of receipt" as the date a document or other material is received. As part of the proposed definition, we would specify how we determine when a document or other material is received by: (1) a party or non-party involved in proceedings before a reviewing entity; and (2) a reviewing entity.

a. Determining Date of Receipt by Parties and Non-Parties Involved in Proceedings Before a Reviewing Entity—Use of 5-Day Presumption

Under our proposal, we would establish the presumption that the receipt date of documents or other materials sent to providers, intermediaries, and other entities involved in proceedings is 5 days after the postmark date. The presumption would apply to documents and other materials sent by the reviewing entity to parties and non-parties as well as to those sent from one party or non-party to another party or non-party. However, this presumption would be rebutted if a preponderance of the relevant evidence established that the intermediary notice, reviewing entity document, or submitted material, as applicable, was actually received on a later date. The proposed definition further states that the phrase "date of receipt" in the definition is, as applied to a provider, synonymous with the term "notice" in section 1878 of the Act and in subpart R.

We believe this definition is necessary and appropriate in order to facilitate accurate determinations of the date of receipt by parties and affected nonparties of documents and materials pertaining to reviewing entity proceedings. Furthermore, as discussed below with respect to § 405.1835(a)(3) (see section II.D.3. of this preamble), we believe the proposed definition is appropriate given the apparent need to dispel potential confusion about when the 180-day period for submitting a Board appeal begins to run. Under proposed § 405.1835(a)(3), we would interpret the references to notice in section 1878(a)(3) of the Act and in subpart R to mean that the 180-day appeal period commences on the date of receipt by the provider of the NPR for the intermediary determination or, where applicable, upon the expiration of the 12-month period for issuance of the NPR. Our proposal that the phrase "date of receipt" in this definition is, as applied to a provider, synonymous with the word "notice" in section 1878 of the Act, facilitates our new interpretation of the 180-day appeal period prescribed in section 1878(a)(3) of the Act and in the regulations.

Our proposal to determine the presumed receipt date of a document or other material through a "5-day convention" is premised on several factors. Use of a time period convention would avoid any problem of verifying when a document or other material is actually received, except where evidence is presented to rebut the presumed 5-day period. Also, use of a 5-day period as the presumed receipt date would be similar to our policies for reconsideration and appeal for an individual under Medicare Part A (see § 405.722), and for reconsideration and appeal of determinations affecting participation in the Medicare program (see § 498.22(b)(3) and § 498.40(a)(2)), and it would ensure enough time for the period typically necessary for receipt of first class, United States mail.

Also, we believe our proposal to allow for rebuttal of the 5-day convention for determining the receipt date provides an adequate means for a provider, or any entity involved in reviewing entity proceedings to establish that it actually received a document or other material on a later date. We propose to limit the rebuttal opportunity to a satisfactory showing of actual receipt on a date *later* than the presumed date, due to the need for the intermediary (in the case of intermediary notices) or a reviewing entity to know in advance that the prescribed period for taking a given action commences no earlier than a date certain. For example, in order to ensure compliance with the 60-day period for Administrator review of a Board decision under section 1878(f)(1) of the Act and § 405.1875, the Administrator must know in advance that the review period commences no earlier than a date certain. We believe it is reasonable to permit a provider to establish actual receipt of a Board decision after the presumed 5-day period ends, because the Administrator would still be able to render a timely decision. But if we permit the provider to establish actual

receipt before the presumed 5-day period ends, the Administrator might not have enough remaining time to meet the 60-day deadline.

b. Determining Date of Receipt by Reviewing Entity—Presumption of Date Stamp

For materials submitted to a reviewing entity, we would establish the presumption that the receipt date is the date the reviewing entity (or its substitute, see following paragraph) stamped "Received" on the document or other submitted material. The presumption would be rebutted if a preponderance of the relevant evidence established that the document or other submitted material was actually received on a different date by the reviewing entity.

For intermediary hearings where the intermediary hearing officer has not yet been appointed or is not presiding currently, the date of receipt by the intermediary hearing officer would be determined by the date stamped "Received" by the intermediary. In other words, the intermediary would act as a substitute for the intermediary hearing officer for this purpose. Similarly, we propose to determine receipt date by a CMS reviewing official or the CMS Administrator by reference to the date stamped "Received" by CMS's Office of the Attorney Advisor because that Office would seem to be the appropriate recipient in light of the Administrator's many other duties, and because the proposal is consistent with our longstanding practice (see 59 FR 14628, 14645 (March 29, 1994) for a description of the Office of the Attorney Advisor).

Our proposal to use the date a document or other material is received by the reviewing entity is based on the presumption of administrative regularity in agency action. In view of that presumption, it seems reasonable to have our proposed definition presume that the receipt date is the date the reviewing entity or its substitute stamped "Received" on the document or other submitted material. We also believe reasonable our proposal that the presumed receipt date may be rebutted if a different date of receipt is established by a preponderance of the relevant evidence. Given the presumption of administrative regularity, we considered proposing use of the stricter standard of clear and convincing evidence, but rejected this alternative for the sake of consistency and ease of application. That is, as discussed above, the preponderance of the relevant evidence standard would apply for purposes of establishing that a provider or entity received a document on a date other than the presumed receipt date, and the preponderance of the evidence standard seems easier to apply than the clear and convincing evidence standard.

3. Determining Specific Days in Calculating Time Periods and Deadlines

We propose to add a new paragraph (d) to § 405.1801 in order to facilitate the determination of the first, subsequent, and last days included in a time period prescribed or allowed under section 1878 of the Act or subpart R or authorized by a reviewing entity. As to the first day of such a period, the day of the act, event, or default from which the designated time period begins to run would be excluded from the period under proposed paragraph (d)(1).

Proposed paragraph (d)(2) provides that, with two exceptions, each succeeding calendar day, including the last day, would be included in the time period. The first exception is that, for an act to be performed by a reviewing entity, a calendar day would be excluded if the intermediary (for purposes of an intermediary notice) or the reviewing entity is unable to conduct business in the usual manner due to extraordinary circumstances beyond its control (for example, natural or other catastrophe, weather conditions, fire, or furlough). In such cases, the designated time period would resume on the next work day the intermediary or reviewing entity is again able to conduct business in the usual manner.

The second exception proposed under paragraph (d)(2) is that the last day of the designated time period would be excluded if it is a Saturday, Sunday, Federal legal holiday, other nonwork day for Federal employees, or, in the case of a deadline for submission of material to the intermediary (for purposes of an intermediary notice) or a reviewing entity, a day when the intermediary or reviewing entity is not conducting business. In the case of any such excluded day, the designated time period would continue to run until the end of the next day that is not one of the above-described days. Furthermore, paragraph (d)(4) would provide that a reviewing entity is, for purposes of paragraph (d), deemed to be the intermediary in the absence of duly appointed and presiding intermediary hearing officer(s), and to include, in the context of review by a CMS reviewing official or the Administrator, the Office of the Attorney Advisor.

We believe the proposed addition of paragraph (d) to § 405.1801 is necessary and appropriate to ensure the accurate determination of the specific days to be included in the calculation of a time period or deadline prescribed under section 1878 of the Act, subpart R, or by a reviewing entity. Also, we believe that proposed paragraph (d) will accomplish these objectives because much of that paragraph seems reasonably based on and adapted from other authorities. Specifically, proposed paragraphs (d)(1) and (d)(3) are adapted from the first and second sentences of Rule 6(a) of the Federal Rules of Civil Procedure, which address the same kinds of problems for civil actions. Also, proposed paragraph (d)(3) is authorized by sections 216(j) and 1872 of the Act.

Proposed paragraph (d)(2) reflects our concern that a prolonged period in which an intermediary (as to intermediary notices) or a reviewing entity is unable to conduct business in the usual manner due to extraordinary circumstances beyond its control could result in the intermediary or reviewing entity being required to take action on numerous matters immediately after the prolonged period of inactivity. For example, the intermediary could be required to issue numerous NPRs, and/or a reviewing entity might have to render multiple decisions on the first business day after the work interruption. In fact, the Board and the Administrator were confronted with similar problems at the end of a prolonged furlough of Federal employees in late 1995 and early 1996. We believe proposed paragraph (d)(2) would eliminate this problem by requiring that a designated time period would be suspended for as long as the intermediary or reviewing entity is unable to conduct business in the usual manner due to extraordinary circumstances beyond its control. Extraordinary circumstances would be defined as circumstances such as natural or other catastrophe, weather conditions, fire, or furlough.

Finally, in proposed paragraph (d)(4) we would provide that, for purposes of paragraph (d), a reviewing entity would include an intermediary in the situation where an intermediary officer has not yet been appointed (or if appointed, is not yet presiding), and would also include the Office of the Attorney Advisor.

C. Providers Under Subpart R; Limited Applicability to Non-Provider Entities (§ 405.1801(b))

1. Providers

Current § 405.1801(b)(1) states that the term "provider" includes, for purposes of subpart R, hospitals paid under the PPS. However, neither

§ 405.1801(b)(1) nor any other regulation identifies all of the entities that constitute providers under subpart R.

We believe it is necessary and appropriate to identify all of the entities that qualify as a provider for purposes of subpart R. Sections 1861(u), 1878(j), and 1881(b)(2)(D) of the Act recognize various types of entities as providers for purposes of provider reimbursement determinations and appeals. By collecting and enumerating the various types of providers in one regulation, we believe the potential for confusion about this matter can be forestalled. Thus, we propose to amend § 405.1801(b)(1) to recognize as a provider under subpart R each entity recognized under the Act for purposes of provider reimbursement determinations and appeals.

In accordance with the definition of "provider of services" in section 1861(u) of the Act, we propose to recognize specifically a hospital, critical access hospital (CAH), SNF, comprehensive outpatient rehabilitation facility (CORF), HHA, and hospice program. Also, a RHC and a FQHC would be included in accordance with section 1878(j) of the Act, and an end stage renal disease (ESRD) facility would be recognized under section 1881(b)(2)(D) of the Act. Our proposed revision to § 405.1801(b)(1) would also recognize as a provider any other entity treated as a provider under the Act, in order to ensure recognition in subpart R of any other entity that may qualify as a provider under the Act for purposes of provider reimbursement determinations and appeals.

2. Non-Provider Entities

Current § 405.1801(b)(2) addresses entities that do not qualify as providers under the Act, but which are reimbursed on the basis of information included in required cost reports. Such non-provider entities include health maintenance organizations (HMOs) and competitive medical plans (CMPs). Section 405.1801(b)(2) states that such non-provider entities do not qualify for Board review, but that the rules in subpart R regarding intermediary hearings "are applicable to the [non-provider] entities to the maximum extent possible" where the amount of program reimbursement in controversy is at least $1,000.

We believe § 405.1801(b)(2) needs clarification and revision as to the specific applicability of subpart R to non-provider entities. We believe the regulation is incomplete in stating that non-provider entities do not qualify for a Board hearing. Under our longstanding policy, these entities cannot qualify for a Board hearing or an intermediary hearing because both types of hearings are available only to providers. (We note that non-provider entities such as HMOs and CMPs may instead have a right to a hearing before a CMS reviewing official if the amount in controversy is at least $1,000.) Thus, we propose to revise § 405.1801(b)(2) to state that non-provider entities may not obtain an intermediary hearing or a Board hearing.

We believe § 405.1801(b)(2) further states that rules for intermediary hearings are applicable to non-provider hearings "to the maximum extent possible" also needs clarification. It is our longstanding policy that only the procedural rules in subpart R apply to non-provider hearings before a CMS reviewing official. In addition, we believe that non-provider hearings before a CMS reviewing official are more analogous to a Board hearing than an intermediary hearing. For example, non-provider hearings before a CMS reviewing official are adversarial, which is also true of Board hearings (see § 405.1843) but not intermediary hearings (see § 405.1815). Accordingly, we propose to revise § 405.1801(b)(2) to state that if a hearing is available to a non-provider entity on an amount in controversy of at least $1,000, the procedural rules for a Board hearing under this subpart are applicable to the maximum extent possible. The phrase "procedural rules" in proposed § 405.1801(b)(2) would have the same meaning as the phrase "rules of agency organization, procedure, or practice" in the Administrative Procedure Act, 5 U.S.C. § 553(b)(3)(A).

D. Provider Hearing Rights (§ 405.1803(d), § 405.1811, and § 405.1835)

[If you choose to comment on issues in this section, please include the caption "Provider Hearing Rights" at the beginning of your comments.]

Under section 1878(a) of the Act and §§ 405.1835 and 405.1841 of the regulations, a provider may obtain a Board hearing if it meets three jurisdictional requirements: (1) The provider is dissatisfied with its Medicare reimbursement for a cost reporting period; (2) the amount in controversy is at least $10,000 (at least $50,000 for a group appeal); and (3) the provider files a timely request for a hearing to the Board. The same jurisdictional requirements govern provider requests for an intermediary hearing under § 405.1811, except the amount in controversy requirement is $1,000 or more but less than $10,000.

For the reasons set forth in this section, we believe it is necessary and appropriate to revise the regulations in subpart R governing provider hearing requests. We discuss the first and third jurisdictional requirements below, and address the amount in controversy requirement separately for § 405.1839 in section II. I. of this preamble.

1. Provider Dissatisfaction With Medicare Reimbursement; Revised Self-Disallowance Policy

Section 1878(a)(1)(A) of the Act authorizes a provider to obtain a Board hearing if the provider is dissatisfied with a final determination by: (i) the intermediary, of the total amount of program reimbursement for a cost reporting period, or (ii) the Secretary, as to the amount of payment under sections 1886(b) or (d) of the Act. (We note that the references to "final determination" in section 1878(a)(1)(A) of the Act are reflected in § 405.1801(a)(1) through (a)(3) and § 405.1803 of the regulations, which require the intermediary to issue to the provider a written NPR reflecting the intermediary determination for the cost reporting period.) Provider dissatisfaction with Medicare reimbursement is also a requirement for a hearing before the intermediary and the Board under §§ 405.1811(b) and § 405.1841(a)(1), respectively. Under our original policy, we required a provider to make a specific claim for an item on its cost report as a prerequisite to appeal. That is, under that policy, a provider that did not claim an item on its cost report did not meet the dissatisfaction requirement for purposes of obtaining an intermediary or Board hearing. We did not permit a provider to "self-disallow" an item (even if the intermediary had no discretion to award payment for the item) and then seek an appeal before the Board.

Several court decisions addressed our original self-disallowance policy, culminating in the Supreme Court's decision in *Bethesda Hospital Association* v. *Bowen*, 485 U.S. 399 (1988). The providers in the *Bethesda* case self-disallowed their malpractice insurance costs by submitting cost report claims that complied with a regulation, and seeking additional reimbursement before the Board. The Board dismissed the providers' appeal for lack of jurisdiction based on the self-disallowance policy. The Supreme Court held that the plain language of the dissatisfaction requirement in section 1878(a)(1)(A) of the Act supported Board jurisdiction under the facts of the case. The Court reasoned that the intermediary had no authority to award

reimbursement in excess of the regulation by which it was bound, and that it would be futile for a provider to try to persuade the intermediary otherwise.

Following the *Bethesda* decision, we no longer required providers to claim items for which the intermediary did not have the discretion to award payment due to a regulation or manual provision. (See former Appendix A, § B.1. of the Provider Reimbursement Manual (PRM)). We believe it is appropriate to codify our policy in regulations and we are taking this opportunity to make the following proposals. We propose to include, as an interpretation of the dissatisfaction jurisdictional requirement, our self-disallowance policy in a revised § 405.1811(a)(1) and § 405.1835(a)(1) for intermediary and Board hearings, respectively.

Under our proposal, in order to preserve its appeal rights, a provider must either claim an item on its cost report where it is seeking reimbursement that it believes to be in accordance with Medicare policy, or self-disallow the item where it is seeking reimbursement that it believes may not be in accordance with Medicare policy (for example, where the intermediary does not have the discretion to award the reimbursement sought by the provider). In order to self-disallow an item, the provider would be required to follow the applicable procedures for filing a cost report under protest, which are contained currently in § 115 of the PRM, Part 2 (CMS Pub. 15–2). Note that we are using the term "item" instead of "cost" to emphasize that our proposed policy would refer to determinations of amounts due to providers subject to a prospective system as well as determinations of reimbursement due to providers that are paid under cost reimbursement principles.

We believe the self-disallowance rule proposed in § 405.1811(a)(1)(i) and § 405.1835(a)(1)(i) is appropriate under the *Bethesda* decision. We further believe that our proposed policy is a reasonable response to statements by the *Bethesda* providers and others that it is necessary, for any reimbursement request in excess of the amount allowed under program policy, to raise the entire payment request before the Board, because it would be improper to include a cost report claim for more payment than is permitted by Medicare policy. It has been our longstanding policy that a cost report claim at variance with Medicare policy is not improper, provided that such a claim is not intended to procure an intermediary determination (or reviewing entity decision) by fraud or similar fault. For example, given that the *Bethesda* providers' request for additional reimbursement before the Board was premised on their disagreement with and challenge to a reimbursement regulation, it would not have been improper for them to include cost report claims in conformity with their good-faith view as to the proper amount of reimbursement.

2. Audits of Self-Disallowed Items

Under our proposed policy regarding self-disallowed costs, the amount of any cost report claim or intermediary disallowance may differ from the amount of reimbursement requested through a Board or intermediary hearing. Intermediary audits of provider items are usually limited to items included in a cost report, which presumably would often exclude self-disallowed items. Thus, in cases where a provider self-disallows an item by foregoing any cost report claim (or including less than a full claim) and appealing to the Board or intermediary, we would expect such self-disallowed items to be unaudited.

We believe the likelihood that self-disallowed items are unaudited is reason for concern in the event of reviewing entity decisions, court judgments, and settlement agreements that require payment of self-disallowed items. Specifically, in cases where a self-disallowed item is held reimbursable in a final decision by a reviewing entity or a final, non-appealable court judgment, the intermediary might pay the provider for unaudited self-disallowed items. The same problem could develop where an administrative or judicial settlement agreement requires payment of a self-disallowed item. We believe that these results may prove inappropriate in specific cases.

We believe that, given the potential for inappropriate payment of unaudited self-disallowed items, it is necessary and appropriate to provide for intermediary audits of these items. Thus, we propose to add a new paragraph (d) to § 405.1803, which would authorize CMS to require intermediary audits of self-disallowed items before these items may be paid according to a final agency decision, a final, non-appealable court judgment, or an administrative or judicial settlement agreement. Proposed § 405.1803(d) would further provide that CMS's authority to require audits of self-disallowed items is inapplicable to the extent such audits would be inconsistent with a governing court order or settlement agreement.

3. Determining Timeliness of Hearing Requests (§§ 405.1811 and 1835)

Section 1878(a)(3) of the Act requires a provider to file any request for a Board hearing within 180 days "after notice" of a final determination by an intermediary or the Secretary. Moreover, section 1878(a)(1)(B), (C), and (a)(3) of the Act require that, in the absence of a timely final determination, a Board hearing request must be filed within 180 days "after notice" of such determination "would have been received" if the determination had been made on a timely basis. Under current § 405.1835(a)(2) and § 405.1841(a)(1) of the regulations, any request for a Board hearing must be filed with the Board within 180 days of the date the NPR was mailed to the provider. Also, current § 405.1835(c) and § 405.1841(a)(1) provide that if an NPR is not issued within 12 months of the intermediary's receipt of an appropriate cost report, then any hearing request must be filed with the Board within 180 days after the expiration of the 12 month period for a timely NPR. Comparable requirements apply under § 405.1811(a) for purposes of determining the timeliness of a provider request for an intermediary hearing.

We believe it is necessary to revise the regulations governing the timeliness of hearing requests before the Board and intermediary. There is some potential for confusion in determining the 180-day appeal period, especially as to the beginning date of the period. For example, for Board appeals from a timely NPR, section 1878(a)(3) of the Act states that the period commences "after notice" of the final determination, but does not specify how to determine the date of such notice. For Board hearings, the beginning date under § 405.1841(a)(1) is the date the NPR is mailed to the provider. But under § 405.1811(a), the date of the NPR starts the period for intermediary hearing requests.

In our opinion, the references in section 1878(a)(3) of the Act to "after notice" are ambiguous as to the beginning date for the 180-day period for Board hearing requests. We believe the statute can be interpreted reasonably to permit use of any of the following events as the beginning date: the date the provider receives the final determination; the mailing date of the determination; and, the date of the determination.

We propose to revise the regulations to provide that the 180-day period for requesting a Board or intermediary

hearing begins on the date of receipt by the provider of the intermediary determination or, where applicable, the expiration date of the 12-month period for issuance of a timely NPR by the intermediary. These proposed revisions are premised in part on our belief that it is unnecessary for the beginning date of the 180-day period to be determined differently for hearing requests to the intermediary (that is, the NPR date) and the Board (that is, the NPR mailing date). Although we considered the three alternatives of receipt date, NPR date, and NPR mailing date, our proposed use of receipt date is based on several factors.

We believe the proposed use of receipt date is consistent with the reference in section 1878(a)(3) of the Act to when an untimely final determination "would have been received," and to the various references to receipt date in section 1878(f)(1) of the Act and current § 405.1875 and § 405.1877 pertaining to the beginning date of the 60-day period for Administrator and judicial review. Also, determining the beginning date of the 180-day appeal period by reference to receipt date is consistent with our more general proposal in § 405.1801(a) to redefine the phrase "date of receipt" as applied to a provider, as discussed in section II.B.2.a. of this preamble. Moreover, under the 5-day convention for determining date of receipt under our proposed definition, the provider likely would have the NPR in hand by the proposed beginning date of the 180-day appeal period. Thus, the beginning date of the 180-day appeal period would probably be a day on which the provider could actually start to determine whether to request a hearing.

Our proposal also includes a different means of determining the ending date of the 180-day appeal period. Under current § 405.1811(a)(1) and § 405.1841(a)(1), the ending date is the date of filing with the intermediary or Board, respectively, which is determined under § 405.1801 by reference to the date of mailing or hand delivery of the hearing request. We propose to determine the ending date of the appeal period by the date the intermediary or Board received the hearing request. As discussed in II.B.2.b. of this preamble, the date a reviewing entity receives a hearing request or other document is presumed to be the date stamped "Received."

We believe that the proposed use of receipt date by the Board or intermediary is consistent with the reference in section 1878(a)(3) of the Act to "provider files a request for a hearing." The word "file" is defined in *Black's Law Dictionary* in terms of depositing material in the custody or among the records of a court, and delivering material to the proper official for filing as a matter of record. Determining the ending date of the 180-day appeal by reference to when the Board or intermediary receives the hearing request comports with this definition and the usual practice of the courts. Also, given our proposal to determine the beginning date by reference to provider receipt date, we believe the proposed use of Board or intermediary receipt date to determine the ending date is an appropriate corresponding change.

4. Contents of Hearing Request

Under § 405.1811(a) and (b) (for an intermediary hearing) and § 405.1835(a)(2) and § 405.1841(a)(1) (for a Board hearing), a hearing request must be in writing and must identify the specific aspects of the intermediary determination with which the provider is dissatisfied, explain its dissatisfaction with each matter at issue, and submit supporting documentation for its position on each matter at issue. We believe it is necessary and appropriate to revise the regulations governing the content of provider hearing requests for three reasons.

First, we believe the extensive litigation of various issues of Board jurisdiction is attributable in part to the absence of regulations requiring an early and continuing focus on whether the Board has jurisdiction over each matter at issue. Although we address this problem in detail with respect to our proposed addition of new § 405.1814 ("Intermediary hearing officer jurisdiction") and § 405.1840 ("Board jurisdiction"), as discussed in sections II.F. and II.J. of this preamble, we believe it is necessary to propose corresponding changes to other regulations. In order to facilitate an early focus by the parties and the reviewing entity on the jurisdictional requirements for a hearing before the Board or intermediary, we believe it is reasonable to require the original hearing request to include a demonstration (through argument and supporting documentation) that the provider satisfies the jurisdictional requirements for the hearing request. Accordingly, we propose in § 405.1811(b)(1) and § 405.1835(b)(1) to require the provider to demonstrate in its hearing request (through argument and supporting documentation) that it meets the requirements for a hearing before the intermediary or the Board, respectively. We believe this proposal will facilitate the reviewing entity's capacity to meet its continuing responsibility to ensure its own jurisdiction throughout each stage of the proceedings (see § 405.1814 and § 405.1840).

Second, we also believe it is necessary to revise the current requirement that a provider identify, explain, and document its dissatisfaction with particular aspects of the intermediary determination. In order to facilitate the reviewing entity's capacity to determine compliance with our proposed self-disallowance rules, we believe it is reasonable to require the hearing request to include a description of the nature and amount of each self-disallowed item and the reimbursement sought for each cost. In proposed § 405.1811(b)(2) and § 405.1835(b)(2), we would include this requirement in addition to the current requirement that the provider identify and explain its dissatisfaction with each matter at issue in the hearing request. We also note that the proposed requirement of detailed information about each specific self-disallowed item should help the intermediary conduct any audits of self-disallowed items that may be required under proposed § 405.1803(d), as discussed in section II.D.2. of this preamble.

Third, we further believe it is necessary to clarify the current requirement that a hearing request include supporting documentary evidence. We are aware of various cases in which the need to determine Board jurisdiction over a specific matter at issue has been hampered by the absence of the NPR(s) relevant to the appeal or by confusion about whether the NPR at issue was the initial NPR or a revised NPR issued after reopening (see § 405.1885 and § 405.1889). Because appropriate findings of fact and conclusions of law about Board jurisdiction (see proposed § 405.1840) cannot be reached without this information, proposed § 405.1811(b)(3) and § 405.1835(b)(3) would require the hearing request to include each intermediary determination at issue in the appeal. (We note that if the intermediary determination under appeal is a revised NPR, the provider would be required to include the pertinent reopening notice and the initial NPR so that an appropriate determination can be made as to whether a specific matter at issue is within the scope of the revised NPR.) For similar reasons, the hearing request would have to include all documents necessary to determine compliance with the self-disallowance rules proposed in § 405.1811 and § 405.1835. However, the hearing request would no longer need to include documents necessary to

support the merits of the provider's position on a specific reimbursement matter because the reviewing entity must make a preliminary finding of its jurisdiction over each matter at issue before it considers the merits of a particular issue (see proposed § 405.1814 and proposed § 405.1840).

5. Adding Issues to Original Hearing Request (§ 405.1811(c) and § 405.1835(c))

Under current § 405.1811(c) and § 405.1841(a)(1), a provider may add a specific matter at issue to the original request for a hearing before the intermediary or the Board, respectively, anytime before the commencement of a hearing. Under our longstanding interpretation of these provisions, a provider's right to add issues is limited to a single provider appeal before the Board or the intermediary, and does not apply to a group appeal to the Board under section 1878(b) of the Act and § 405.1837. Also, a provider's right to add issues is contingent on an original hearing request that meets all jurisdictional requirements for a Board or intermediary hearing, along with satisfaction of applicable jurisdictional requirements after any issues are added to the original request. Moreover, if a provider's original hearing request is an appeal from a revised NPR issued after a reopening (see § 405.1885 and § 405.1889), the provider's right to add issues is limited to those specific matters that are within the scope of the reopening and revised NPR.

We believe it is necessary to revise the regulations governing the addition of issues to an original hearing request. At the time the current provisions were adopted in September, 1974, there was no case backlog at the Board; thus, it was reasonable to expect that hearings would be conducted expeditiously, thereby leaving a relatively short period for the addition of new issues. As the case backlog and the period before the hearing have increased, however, it has become apparent that permitting the addition of issues at any time before the hearing is untenable. Because Board hearings often are not conducted until several years after the original hearing request, the period for adding issues far exceeds our original expectations. Moreover, we believe the availability of such a long period for adding issues has become a major obstacle to the Board's efforts to reduce (or at least minimize additions to) its case backlog.

In order to resolve (or at least mitigate) the problems posed by a virtually open-ended period for adding issues, we believe it is appropriate to propose a period that reconciles a provider's potential need to supplement its original hearing request with the imperative of enhancing the Board's capacity to reduce the case backlog. We believe a 60-day period, commencing with the expiration of the applicable 180-day period for submitting the original hearing request under proposed § 405.1811(a)(3) and § 405.1835(a)(3), would strike an appropriate balance between these two concerns. On the one hand, a 60-day period should foreclose additions to the case backlog that are attributable to the addition of new issues to appeals that may remain pending before the Board for several years.

However, a 60-day period would afford providers an adequate opportunity to appeal specific issues that were overlooked in the original hearing request. A provider has at least 5 months after the end of a fiscal period to file a cost report (see § 413.24(f)(2)), after which the intermediary has 12 months to issue a timely NPR (see § 405.1835(c)). Of course, the provider then has 180 days in which to analyze the NPR and prepare and submit any hearing request. Our proposal to allow 60 more days for the addition of new issues to the original hearing request gives the provider ample time to appeal any matter overlooked in the original hearing request.

We believe a proposed 60-day limitation on the period for adding issues to an original hearing request is consistent with section 1878 of the Act. This provision does not address whether or how long a provider may add issues to a pending request for a Board hearing. Nonetheless, we considered whether our proposal is consistent with section 1878(d) of the Act, which gives the Board the power to affirm, modify, or reverse the intermediary determination under appeal, and to make any other revisions on matters covered by the cost report regardless of whether such matters were considered by the intermediary in making the final determination of Medicare reimbursement.

We believe that, in cases where the Board has jurisdiction under section 1878(a) of the Act, section 1878(d) does not foreclose our proposed 60-day period for adding issues. We recognize that, to the extent the Board has jurisdiction under section 1878(a) over a single provider appeal from an initial NPR, the third sentence of section 1878(d) confers on the Board the power to affirm, modify, or reverse the intermediary determination, and to make any other revisions on matters covered by the cost report regardless of whether such matters were considered by the intermediary in making the final determination. However, we interpret this provision to address only the Board's powers over a jurisdictionally proper appeal under section 1878(a)—not whether or how long after filing the appeal a provider may add issues to such an appeal. Indeed, the third sentence of section 1878(d) of the Act is reflected in § 405.1869 ("Scope of Board's decisionmaking authority"), instead of § 405.1841(a)(1) ("Time, place, form, and content or request for Board hearing"), since the original Board regulations.

Given our interpretation that section 1878 of the Act does not address whether or how long after filing an appeal a provider may add issues to the appeal, we believe our proposal to allow a 60-day period to add issues to such an appeal is an appropriate exercise of the Secretary's general rulemaking authority under sections 1102 and 1871 of the Act. As discussed previously, we believe this proposal strikes a reasonable accommodation between a provider's potential need to ensure the completeness of its original hearing request and the necessity of improving the Board's ability to reduce the case backlog.

Moreover, we believe the Board's powers under section 1878(d) of the Act do not apply to appeals from a revised NPR after a reopening. Instead, the Board's powers under section 1878(d) apply, for purposes of a single provider appeal, only to an appeal from an initial NPR that satisfies the jurisdictional requirements of section 1878(a) of the Act. We believe the Board's jurisdiction over post-reopening appeals is based on § 405.1889 of the reopening regulations, and not on section 1878(a) of the Act. See *French Hosp. Med. Ctr.* v. *Shalala*, 89 F.3d 1411, 1416–20 (9th Cir. 1996); *HCA Health Servs. of Oklahoma, Inc.* v. *Shalala*, 27 F.3d 614, 617–19 (D.C. Cir. 1994). Because section 1878(d) of the Act does not pertain to post-reopening appeals premised on § 405.1889 of the reopening regulations, our proposal to limit the period for adding issues to a post-reopening appeal does not seem inconsistent with the statute.

For the foregoing reasons, we propose to revise § 405.1811(c) and § 405.1835(c) to authorize a provider to add issues to an original request for an intermediary or Board hearing within 60 days after the expiration of the applicable 180-day period for making the original request. (See section II.V. of this preamble for a discussion of our proposal for the time in which to add issues following a reopening by an intermediary of a determination currently on appeal to the Board (proposed § 405.1885(c)(1)). Any

request to add issues would have to be in writing, satisfy the jurisdictional dissatisfaction requirements under proposed § 405.1811 (a)(1) or § 405.1835(a)(1), and meet the requirements governing the contents of a hearing request under proposed of § 405.1811(b) or § 405.1835(b), as applicable. Also, the provider would have to establish both that the original hearing request meets all applicable jurisdictional requirements, and that the original request combined with the matters identified for addition to that request satisfy the applicable amount in controversy requirement under proposed of § 405.1811(a)(2) or § 405.1835(a)(2). Moreover, we would continue our longstanding policies of prohibiting the addition of issues to a group appeal before the Board, as discussed in section II.H. of this preamble), and limiting the addition of issues in a single provider appeal from a revised NPR to those specific issues that are within the scope of the reopening and revised NPR.

We considered the alternative of eliminating altogether the opportunity to add issues to a single provider appeal. This alternative would be likely to enhance further the Board's capacity to reduce the case backlog. We believe, however, that a provider may reasonably need additional time to ensure its original hearing request is complete, and, if necessary, request addition of issues to the original request.

E. Provider Requests for Good Cause Extension of Time Period for Requesting Hearing (§ 405.1813 and § 405.1836)

[If you choose to comment on issues in this section, please include the caption "Provider Request for Extension" at the beginning of your comments.]

Current § 405.1813 and § 405.1841(b) authorize the intermediary hearing officer(s) and the Board, respectively, to extend "for good cause shown" the 180-day period for requesting a hearing. Under these regulations, a provider must file any request for a good cause extension within 3 years after the date of the original notice of intermediary determination.

We believe it is necessary to revise the regulations governing good cause extension requests for two reasons. First, there is a split among the Federal circuit courts of appeals on the threshold question of our authority to authorize the Board to extend the 180-day period for hearing requests under section 1878(a)(3) of the Act. The courts of appeals for the Eighth and Eleventh Circuits have held that the good cause extension request provisions in § 405.1841(b) are invalid because they are inconsistent with section 1878(a)(3) of the Act. (*St. Joseph's Hosp. of Kansas City* v. *Heckler*, 786 F.2d 848 (8th Cir. 1986); *Alacare Home Health Services, Inc.* v. *Sullivan*, 891 F.2d 850 (11th Cir. 1990).) By contrast, the Ninth Circuit has upheld our authority to authorize good cause extension requests before the Board, and concluded that a final agency decision on such a request is subject to judicial review under the Administrative Procedure Act, 5 U.S.C. 706(2)(A). *Western Med. Enters., Inc.* v. *Heckler*, 783 F.2d 1376 (9th Cir. 1986). Other courts, without addressing the issue of whether there is authority to allow an extension for good cause, have found that the courts do not have jurisdiction to review a finding by the Board or the Administrator that good cause did not exist in a particular case. See *Lenox Hill Hosp.* v. *Shalala*, 131 F. Supp. 2d 136 (D.D.C. 2000) and cases cited therein.

Second, we believe the case backlog at the Board also necessitates revision of the good cause extension request regulations. When the Board finds good cause to extend the 180-day period for requesting a hearing, another case is added to the backlog. Also, the lengthy 3-year period for requesting a good cause extension makes increases in the backlog more likely.

We propose to continue to authorize good cause extensions of the 180-day period for requesting a hearing. However, we also are proposing revisions to these regulations in response to the case law and the case backlog before the Board.

The split of authority among the Federal circuit courts of appeals regarding our authority to provide for good cause extensions led us to consider the alternative of eliminating these regulations altogether. Our proposal, to retain and revise the regulations instead, is based on several considerations. As discussed previously in the context of the regulations for adding issues to an original hearing request in section II.D.5. of this preamble, we believe the Board's jurisdiction over post-reopening appeals is based on § 405.1889 of the reopening regulations, and not on section 1878(a) of the Act. See *HCA Health Servs. of Oklahoma, Inc.* v. *Shalala*, 27 F.3d 614, 617–19 (D.C. Cir. 1994); *French Hosp. Med. Ctr.* v. *Shalala*, 89 F.3d 1411, 1416–20 (9th Cir. 1996). Thus, we see no statutory impediment to retaining good cause extension regulations for requests for a Board hearing based on a reopening and revised NPR.

As for a Board hearing request based on an initial NPR and section 1878(a) of the Act, we see some merit to both sides of the split of judicial authority as to our authority to provide for good cause extensions in such cases. Although our proposal to retain and revise these regulations is based primarily on policy considerations, we note that adoption of this proposal may result in additional court decisions and lead to a definitive resolution of whether the regulations are consistent with section 1878(a)(3) of the Act.

We believe it is appropriate to afford providers an additional period to submit hearing requests in limited circumstances. Specifically, in cases where a provider establishes it could not reasonably have been expected to submit a hearing request within the 180-day period due to extraordinary circumstances beyond its control (for example, natural or other catastrophe, fire, or strike), we believe it appropriate to authorize the Board and the intermediary hearing officer(s), as applicable, to extend the appeals period provided that the provider's good cause extension request is received by the Board within a reasonable time after the expiration of the 180-day period (but in no circumstances more than three years after the date of the intermediary determination). We emphasize that the circumstances justifying additional time to submit a hearing request truly would have to be extraordinary. Where such extraordinary circumstances would exist, what would be considered a "reasonable" additional period would depend on the particular situation and would be set according to the discretion of the Board or the intermediary hearing officer(s). The outer limit of three years after the date of the intermediary determination would be consistent with the time for seeking a reopening under proposed § 405.1885(b).

For the foregoing reasons, we propose to revise § 405.1813 and add a new § 405.1836 to authorize the intermediary hearing officer(s) and the Board, respectively, to extend the 180-day period for requesting an intermediary or Board hearing, as applicable. Proposed § 405.1813 and § 405.1836 include three principal revisions to the current regulations. First, our proposal to continue to authorize good cause extensions is limited under paragraph(a) of § 405.1813 and § 405.1836 to provider extension requests received by the Board or the intermediary hearing officer(s), as applicable, within a reasonable time after the expiration of the applicable 180-day period prescribed in proposed § 405.1811(a)(3) or § 405.1835(a)(3), as applicable.

Second, while the current regulations do not include specific guidance for

determining whether there is good cause for granting an extension request, we propose to add criteria for this purpose. Proposed § 405.1813(b) and § 405.1836(b) would provide that the intermediary hearing officer(s) and the Board, respectively, may find good cause to extend the time limit only if the provider demonstrates it could not reasonably have been expected to submit a hearing request within the 180-day period due to extraordinary circumstances beyond its control such as natural or other catastrophe, fire, or strike. Furthermore, § 405.1813(c)(1) and § 405.1836(c)(1) would prohibit the pertinent reviewing entity from granting a good cause extension request if the provider relies on a change (whether based on a court decision or otherwise) in the law, regulations, CMS Rulings, general CMS instructions, or CMS administrative ruling or policy as the basis for the extension request. We believe these proposals are a necessary and appropriate means to ensure that an additional period for submission of a hearing request is available only if the provider was prevented from submitting an appeal due to extraordinary circumstances beyond its control. We also believe the proposed prohibition of good cause extensions based on a change in the law will prevent the provider from appealing improperly a new issue—one it had not intended previously to appeal—after expiration of the 180-day period.

Third, we also are proposing revisions to delineate the consequences of a reviewing entity's decision on a provider's good cause extension request. A decision by an intermediary hearing officer(s) or the Board, to grant or deny a request for an extension for good cause, would be subject to review by a CMS reviewing official or the Administrator, as applicable. Because we view decisions on whether to grant an extension for good cause to be analogous to decisions on whether to reopen a previous determination or decision, we would state that a decision by the Board or the Administrator to not grant an extension for good cause would not be subject to judicial review under proposed § 405.1877(a)(3) or (a)(4).

In order to facilitate any further administrative review of such a decision, proposed § 405.1813(d) and § 405.1836(d) requires the pertinent reviewing entity to provide written notice of its decision to grant or deny a good cause extension request. Such notice must include an explanation of the reasons for the decision by the Board or the intermediary hearing officer(s), as applicable, and the facts underlying the decision.

Also, § 405.1813(e) and § 405.1836(e) includes proposals about the availability and timing of any review of such decisions. Specifically, § 405.1813(e) and § 405.1836(e) would provide that a decision by the Board or the intermediary hearing officer(s), as applicable, denying good cause and dismissing the appeal, is final and binding on the parties unless the decision is reviewed by the Administrator or a CMS hearing officer, respectively. Such a dismissal decision would be immediately reviewable. Proposed §§ 405.1813 and 405.1836(e) would further provide that if the Board or intermediary hearing officer(s) grants a good cause extension request, the decision would be non-final and not subject to immediate administrative or judicial review. Any non-final decision on an extension request would be reviewable solely during the course of review by the Administrator or a CMS hearing official, as applicable, of one of the decisions enumerated in § 405.1875(a)(2) or § 405.1834, respectively. We believe these proposals are an appropriate way to avoid piecemeal litigation, and are consistent with settled principles regarding the timing of administrative review.

Finally, proposed § 405.1836(e) would state that a determination by the Board or the Administrator that the provider did or did not demonstrate good cause for extending the time to request a hearing, is not subject to judicial review. We do not believe that it is necessary to propose a provision for § 405.1814 as that section would not provide for any judicial review of any decision by an intermediary hearing officer(s) or a CMS reviewing official.

F. Intermediary Hearing Officer Jurisdiction (§ 405.1814)

We propose to add a new § 405.1814 to impose certain requirements on intermediary hearing officers regarding making jurisdictional findings and to provide certain information on matters that are excluded from an intermediary hearing officer's jurisdiction. Proposed § 405.1814 would be similar to proposed § 405.1840, pertaining to Board jurisdiction, discussed below.

In proposed § 405.1814, we would require the intermediary hearing officer to make a preliminary determination of the scope of his or her jurisdiction, if any, over the matters at issue in the appeal, and notify the parties of his or her specific jurisdictional findings, before conducting any of the following proceedings: determining his or her authority to decide a legal question relevant to a matter at issue (see § 405.1829; permitting discovery (see § 405.1821); and conducting a hearing (see § 405.1819). Our proposal is designed to ensure the hearing officer's and the parties' focus on jurisdictional issues, for the purposes of making accurate decisions and to avoid committing needless time and resources in cases where jurisdiction is not present.

In issuing his or her decision, the intermediary hearing officer would be required to include a final jurisdictional finding for each specific matter at issue in the appeal. If the hearing officer determines that he or she lacks jurisdiction over every specific matter at issue in the appeal, he or she would issue a jurisdictional dismissal decision under § 405.1814(c)(2). Final jurisdictional findings and jurisdictional dismissal decisions by the hearing officer(s) would be subject to the CMS reviewing official procedure. Where a hearing officer does not dismiss an entire appeal, but instead finds that he or she lacks jurisdiction over a particular issue or issues, (or, conversely, finds that he or she has jurisdiction over a particular issue or issues) the hearing officer's jurisdictional ruling on such issue or issues would not be immediately reviewable, but rather would be reviewable upon the hearing officer's issuance of a hearing decision. Our proposal is intended to promote an efficient hearing and appeals process by not allowing for bifurcated appeals.

Finally, proposed § 405.1814 would specify that certain matters at issue are removed from the jurisdiction of the intermediary hearing officer, such as a finding in an intermediary determination that no payment be made by Medicare for costs incurred for items and services furnished to an individual because those items and services are excluded from coverage under section 1862 of the Act and our regulations. (Such a finding may be reviewed only in accordance with the applicable provisions of section 1869 of the Act, and of subpart G or H of part 405 of our regulations, pertaining to coverage appeals.) Another example of matters removed from the intermediary hearing officer's jurisdiction includes certain matters affecting payments to hospitals under the prospective payment system, as provided in § 405.1804.

G. CMS Reviewing Official Procedure (§ 405.1834)

Currently, our procedures for CMS review of intermediary hearings appear at § 2917 of the PRM. The procedures at § 2917 of the PRM were issued in response to the court's decision in *St. Louis University* v. *Blue Cross Hospital*

Service, 537 F.2d 283 (8th Cir. 1976). Because we believe that these procedures are of sufficient importance to warrant inclusion in the regulations, we propose to add a new § 405.1834 for that purpose.

In § 405.1834(a), we would specify the current rule that a provider, and only a provider, has the right to a review by the Administrator (acting by delegation to a CMS reviewing official) of an intermediary hearing officer decision. Unlike CMS Administrator review of a Board decision conducted in accordance with § 405.1875, if a provider requests review of an intermediary hearing officer decision and otherwise meets the requirements for review, the request must be granted. We also propose that the Administrator, through the CMS reviewing official, may take own motion review of an intermediary hearing officer decision, regardless of whether the decision is favorable to the provider. (Own motion review, as used here for review of intermediary hearing officer decisions and other reviewable actions, and also for Administrator review of Board decisions and other reviewable actions, is any review undertaken by the Administrator on his or her own initiative, including the situation where the Administrator takes review following a suggestion by a CMS component or other entity that review is appropriate.) We believe the rationale of *St. Louis University* is applicable to the situation where the intermediary hearing officer's decision is unfavorable to the provider as well as to the situation where the decision is favorable to the provider.

In proposed § 405.1834(b) we would specify the types of decisions that are and are not immediately reviewable. A final decision by the intermediary hearing officer denying a provider's good cause extension request; a final jurisdictional dismissal decision by the intermediary hearing officer (including any determination denying a provider's good cause extension request), and a final intermediary hearing decision would be immediately reviewable. Non-final actions taken by the intermediary hearing officer generally would not be immediately reviewable. For example, and in accordance with proposed § 405.1814(d), if an intermediary hearing officer finds that he or she has jurisdiction over one or more issues but not over another issue(s), the provider may seek review by a CMS reviewing official of the issue(s) for which the intermediary hearing officer found no jurisdiction, but may not seek such review until the intermediary hearing officer has issued an intermediary hearing decision. We would provide an exception, in the case of certain discovery or disclosure rulings, to the proposed provision that non-final actions may not be immediately appealed. We would *allow* immediate review, upon request of the provider or upon own motion of the Administrator, of any discovery or disclosure order (including an order made at the hearing) for which an objection based on privilege or other protection from disclosure was made. We would do so because any harm that may be caused by a discovery or disclosure order might not be rectified by a reversal of the order by the CMS reviewing official in the context of review of the intermediary hearing officer's final decision. An immediate review would be at the discretion of the CMS reviewing official. That is, although, a provider has the right to CMS reviewing official review (as discussed previously), whether the CMS reviewing official takes immediate review, where an objection based on privilege or other protection from disclosure was made, is discretionary. We discuss our proposal for immediate review of certain discovery and disclosure rulings further in section II.N., of this preamble.

In proposed § 405.1834(c) and (d), we would specify the time for a provider to request review, or for the CMS Administrator (through a CMS reviewing official) to take own motion review, of an intermediary hearing officer decision. In order for a provider request for review to be timely, the request must be received by CMS's Office of Hearings no later than 60 days after the date on which the provider received the intermediary hearing officer decision. The address of the Office of Hearings is: Suite CMS L, 2520 Lord Baltimore Drive, Baltimore, MD 21244–2670.

For provider requests for CMS reviewing official review of a discovery or disclosure order for which an objection based on privilege or other protection from disclosure was made, we would require the request to be made within 5 business days after the day the objection was made so as not to unduly disrupt the hearing process.

If the CMS Administrator wishes to take own motion review, through a CMS reviewing official, of an intermediary hearing officer decision, the CMS reviewing official must notify the parties and the intermediary of his or her intention to take own motion review no later than 60 days after the date the Office of the Hearings received the intermediary hearing officer decision. It is not necessary for the CMS reviewing official to issue his or her decision within such 60-day period.

In proposed § 405.1834(e), we would specify the procedures to be followed by a CMS reviewing official in reviewing an intermediary hearing officer's decision. A CMS reviewing official would be required to follow all applicable statutes, regulations and CMS Rulings, and would be required to afford great weight to other interpretive and procedural rules (such as those contained in the Provider Reimbursement Manual) and general statements of policy. The review by a CMS reviewing official ordinarily would be limited to the record of the proceedings before the intermediary hearing officer, but the CMS reviewing official could consider extra-record evidence if he or she determined under § 405.1823 that the evidence was improperly excluded from the record. The CMS reviewing official ordinarily would issue a decision based on the written record, but could decide to hold an oral hearing if he or she determines that an oral hearing is necessary. Upon completion of his or her review, the CMS reviewing official would issue a decision that affirms, reverses, modifies, or remands the intermediary hearing officer decision and would mail a copy of such decision to each party, to the intermediary and to CMS's Office of Hearings.

Proposed § 405.1834(f) would state the effect of a decision or a remand. Consistent with current procedures in section 2917 of the PRM, § 405.1834(f) would state that a CMS reviewing official decision that affirms, modifies or reverses the intermediary hearing officer's decision is final and binding on each party and on the intermediary, unless reopened, and is not subject to further appeal. A CMS reviewing official remand decision would not be a final decision and would have the effect of vacating the intermediary hearing officer's decision. A CMS reviewing official remand would require the intermediary hearing officer to take the actions specified in the remand order and to issue a new intermediary hearing officer decision.

H. Group Appeals (§ 405.1837)

[If you choose to comment on issues in this section, please include the caption "Group Appeals" at the beginning of your comments.]

Section 1878(b) of the Act and § 405.1837(a) of the regulations authorize a group of providers to appeal to the Board. (We note that group appeals are available for Board hearings, but not for intermediary hearings.) Each provider in a group appeal must satisfy individually the requirements for a single provider appeal under section

1878(a) of the Act and § 405.1835, except for the $10,000 amount in controversy requirement. Also, a group appeal is limited to those cases that involve a single common question of fact or interpretation of law, regulations, or CMS Rulings, in which the amount in controversy is, in the aggregate, $50,000 or more. Furthermore, the last sentence of section 1878(f)(1) of the Act, and § 405.1837(b), require providers under common ownership or control to bring any appeal, involving a legal or factual issue common to such providers and involving $50,000 or more in controversy in the aggregate, as a group appeal rather than allowing them to bring separate, single provider appeals.

We believe it is necessary to revise the group appeal provisions of § 405.1837 and propose appropriate revisions in order to ensure conformity with other proposed changes to the regulations. For example, we believe it is appropriate to propose revisions to § 405.1837 to conform the group appeal regulations to our proposed changes to the single provider appeal provisions of § 405.1835.

Another reason to propose revisions to § 405.1837 is that it is appropriate to clarify and update that regulation to reflect longstanding group appeal procedures. For example, our longstanding policy is that a group appeal may start as a Board hearing request for a group of providers or as a single provider appeal that later becomes a group appeal. Other longstanding policies limit each group appeal to only one common legal or factual issue, and prohibit the addition of new issues to a group appeal. We believe it is necessary and appropriate to propose revisions to § 405.1837 to reflect and update such longstanding policies for group appeals.

Under our proposal, § 405.1837(a) would be revised to clarify that each provider in a group appeal must satisfy individually the requirements for a single provider appeal (except for the $10,000 amount in controversy requirement). (We address the $50,000 amount in controversy requirement for group appeals separately for § 405.1839 in section II. I., for this preamble.)

Proposed § 405.1837(a)(1) would clarify that each provider must establish its dissatisfaction with Medicare payment for a specific item in accordance with our proposed revisions to § 405.1835(a)(1). This proposal would further clarify that each provider must demonstrate, for each disputed matter at issue, that it satisfied the 180-day deadline for appeal under our proposed revisions to § 405.1835(a)(3).

In proposed § 405.1837(a)(2), we would clarify our longstanding interpretation that a group appeal must be limited to one legal or factual issue that is common to each provider in the group. Section 1878(b) of the Act authorizes a group appeal if "the matters in controversy involve a common question of fact or interpretation of law or regulation." We interpret the foregoing reference to "a" common legal or factual issue to mean that "the matters in controversy" (that is, the separate matters appealed by the different providers in the group) in one group appeal may involve only one common question of law or fact. Similarly, we construe the reference in the last sentence of section 1878(f)(1) of the Act to "an issue common to such providers" to mean that commonly owned or operated providers must file a separate group appeal for each common legal or factual question. Besides comporting with the statutory language, our interpretation has always been reflected in § 405.1837 and in our general policies and procedures for group appeals. (See, for example, Board's "Group Appeal Instructions" (July 1997)), reprinted in [CCH] Medicare and Medicaid Guide 7700.30 (each group appeal must "contain one issue"; providers "may not combine different issues"). See also PRRB Instructions, Part 1, Section B.I.d (March 2002).

We also propose to revise § 405.1837(b) to clarify the distinction between mandatory and optional uses of group appeal procedures, and to specify the different ways these two types of group appeals may be initiated. Proposed § 405.1837(b)(1) would require, consistent with section 1878(f)(1) of the Act and current § 405.1837(b), that any appeal brought by two or more commonly owned or controlled providers, involving a legal or factual question that is common to these providers, and involving $50,000 or more in controversy in the aggregate, be brought as a group appeal. Proposed § 405.1837(b)(2) would provide, consistent with section 1878(b) of the Act and current § 405.1837(a), that two or more providers not under common ownership or control may (but are not required to) bring a group appeal of a specific matter at issue that involves a common legal or factual question.

In proposed § 405.1837(b)(3), we would specify the different ways mandatory and optional group appeals may be initiated. We would require a provider subject to the mandatory group appeal requirements of section 1878(f)(1) of the Act and proposed § 405.1837(b)(1) to request, either alone or with other commonly owned or operated providers, a group appeal. We believe it is reasonable to require commonly owned or operated providers to initiate an appeal with a request for a hearing as a group because their common ownership or control should enable these providers to identify issues raising a common legal or factual question. By contrast, providers not under common ownership or control do not have a ready means to identify common issues with other providers. Thus, proposed § 405.1837(b)(3) would give providers not under common ownership or control an election between submitting at the outset a group hearing request, or starting with a single provider appeal and transferring common issues to a group appeal at a later time.

Also, we propose to add a new § 405.1837(c), which would specify the requirements for the contents of a request for a group appeal. Under proposed § 405.1837(c)(1), a group appeal request would have to be submitted in writing to the Board and include a demonstration that the request satisfies all requirements for a group appeal under proposed § 405.1837(a). Proposed § 405.1837(c)(2) would require each provider in the group appeal to demonstrate in its initial request its dissatisfaction with Medicare payment for each disputed item and compliance with the applicable 180-day appeal deadline, and to include a copy of each intermediary or Secretary determination under appeal and any other documentary evidence the provider believes necessary to demonstrate the dissatisfaction and timely filing requirements.

Under proposed § 405.1837(c)(3), the initial request for a group appeal must include a precise description of the one question of fact or interpretation of law, regulations, or CMS Rulings that is common to the particular matters at issue in the group appeal.

In proposed § 405.1837(c)(4), we would authorize an election as to when the group may demonstrate compliance with the $50,000 amount in controversy requirement. Our longstanding policy is to permit providers to submit a group appeal request before the group is fully formed. This policy reflects our recognition that it may not be possible for the group to satisfy the $50,000 amount in controversy requirement until other providers receive their respective NPRs and request a hearing as part of the same group appeal. Accordingly, proposed § 405.1837(c)(4) would give the group an election between establishing at the outset that all hearing requirements (for each

provider and for the whole group) are met, or showing initially that all requirements are satisfied except for the $50,000 amount in controversy requirement. Proposed paragraph (c)(4) would further require that the group appeal request include a statement representing that the providers believe the hearing request is jurisdictionally complete (and hence the Board can proceed to make jurisdictional findings) or the request is incomplete (and thus the Board should defer making jurisdictional findings).

We advance corresponding provisions in proposed new § 405.1837(d) regarding the Board's preliminary response to group appeal hearing requests. Apart from taking any ministerial steps deemed necessary upon receipt of such a request, the Board's principal response would be determined by the providers' representation under proposed § 405.1837(c)(4) as to whether the hearing request satisfies all requirements for a group appeal. For hearing requests described as jurisdictionally complete by the group, the Board would be required under § 405.1837(d) to make jurisdictional findings in accordance with new proposed § 405.1840 (see section II.J. of this preamble) before conducting any further proceedings. If the hearing request is described as jurisdictionally incomplete by the group, the Board would defer the requisite jurisdictional findings (and hence any further proceedings in the appeal) until the group represents that the hearing request is complete.

Proposed § 405.1837(e) clarifies the regulations to reflect and update our longstanding policies regarding the processing of group appeals pending full formation of the group and issuance of a Board decision. Proposed § 405.1837(e)(1) would authorize the filing of a group appeal hearing request before each member of the group has been identified or complied with the dissatisfaction and timely filing requirements, or before the group has satisfied the $50,000 amount in controversy requirement. Proceedings before the Board in any such partially formed group appeal would be determined by the remainder of proposed § 405.1837(e).

Under proposed § 405.1837(e)(2), the Board would not make the jurisdictional findings required under new proposed § 405.1840 until the group notifies the Board in writing that the group appeal is jurisdictionally complete. Proposed § 405.1837 (e)(3) authorizes the Board to take further steps necessary for consideration of the appeal only to the extent it finds jurisdiction over the specific matters at issue. In the event the Board finds jurisdiction before the group is fully formed, however, § 405.1837 (e)(3) would require the Board to make additional and updated jurisdictional findings after any ensuing changes in the composition of the group.

Proposed § 405.1837(e)(4) would authorize a provider to request from the Board permission to join a group appeal anytime before the Board issues one of the final decisions enumerated in proposed § 405.1875(a)(2). The Board would be required to grant any such request that is unopposed by any group member and received timely by the Board, and otherwise complies with § 405.1837. If the Board grants a request, the newly added provider would be bound by the Board's actions and decision in the appeal. If the Board denies the request, the provider could still submit a separate appeal on the same issue. The applicable 180-day period for filing a separate appeal (and the 60-day period for adding issues to any separate single provider appeal) would be suspended during the period from submission of the original hearing request through the Board's denial of the provider's request to join the group appeal. That is, following the Board's denial, the provider would have the same number of days to file an appeal or add issues that it had at the time it submitted the request to join the group appeal. We believe proposed of § 405.1837(e) reasonably reflects and updates our longstanding policies regarding group appeal processing pending full formation of the group and issuance of a Board decision.

In proposed § 405.1837(f), we would clarify that the specific matters at issue in a group appeal must be limited to one legal or factual question common to each provider in the group.

I. Amount in Controversy (§ 405.1839)

Section 405.1839 sets forth the requirements for determining the minimum amounts in controversy for intermediary and Board hearings ($1,000 for an intermediary hearing and $10,000 for a Board hearing.) We believe that certain aspects of the regulations need clarification to ensure the proper interpretation of the requirements by providers.

To clarify the method for determining the amount in controversy, we propose a series of minor revisions to § 405.1839. For both individual and group appeals, we would specify in proposed § 405.1839(a) and (b), respectively, that the amount in controversy is determined based only on those particular adjustments that the provider has challenged before the Board or the intermediary and includes the combined total of all issues raised by the provider that arise within the same cost year. Thus, a provider may aggregate issues within a cost year to meet the threshold amount. However, we would specify in proposed § 405.1839(a)(1) that a single provider may not aggregate issues across more than one cost year even if the issues involve the same payment adjustments being appealed in other cost years. We believe this proposed provision reflects the intent of section 1878(a)(1)(A)(i) of the Act, which specifies that a provider may obtain a Board hearing if it is dissatisfied with the intermediary's determination of the amount due the provider for the period covered by the provider's cost report. Therefore, a provider would have to meet the amount in controversy requirement for each cost year being appealed. In contrast, in proposed § 405.1839(b)(1) we would allow providers to aggregate issues across more than one cost year for purposes of meeting the amount in controversy requirement for group appeals. In *Cleveland Memorial Hospital, Inc.* v. *Califano*, 594 F.2d 993 (4th Cir. 1979), and *White Memorial Medical Center* v. *Schweiker*, 640 F.2d 1126 (9th Cir. 1981), the courts held that Congress's intent in enacting section 1878 of the Act was to permit providers in a group appeal to aggregate issues over more than one cost year, if necessary, to meet the amount in controversy requirement. We do not necessarily agree with the courts' view of Congressional intent and we note that the cases were decided prior to the Supreme Court's decision in *Chevron U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), which held that courts must defer to an agency's interpretation of a statute that the agency is charged with administering, if the agency's interpretation is a permissible one. However, because we have conformed our policy to the courts' decisions since their issuance, and because no significant problems have been encountered with that policy, we see no reason to propose departing from it at the present time.

J. Board Jurisdiction (§ 405.1840)

We propose to add a new § 405.1840, which would be similar to proposed new § 405.1814, pertaining to intermediary hearing officer jurisdiction, as discussed at section II.F. of this preamble. In addition, we note that current § 405.1873 provides that the Board decides questions relating to its

jurisdiction and that the Board may not review intermediary determinations denying payment because the item or service is excluded from coverage under section 1862 of the Act. Because we believe it appropriate to state within § 405.1840 that the Board does not have jurisdiction to review an intermediary determination that an item or service is excluded under section 1862 of the Act, we propose to delete § 405.1873 and consolidate its provisions into new § 405.1840.

K. Expediting Judicial Review (§ 405.1842)

[If you choose to comment on issues in this section, please include the caption "Expediting Judicial Review" at the beginning of your comments.]

After the Board began conducting hearings under section 1878 of the Act, it became evident that in cases where providers challenged an intermediary's determination based on objections to the validity of the law, regulations or CMS rulings, a hearing before the Board would not resolve the dispute. Because these cases did not raise factual issues and because, under section 1878(e) of the Act, the Board is bound by the law and regulations, the Board was obliged to decide these cases against the provider. Although the provider could then seek judicial review in these cases (that is, file a complaint in a Federal district court), the provider effectively was required to participate in a futile hearing before the Board as a prerequisite to obtaining Federal court jurisdiction.

To remedy this situation, we published a proposed rule on February 14, 1980 (45 FR 9953) that sought to provide the Board with the authority to permit a provider to avoid the delay of a futile Board hearing and immediately seek to challenge the CMS policy in court. Before a final rule was published, section 1878(f)(1) of the Act was amended by section 955 of the Omnibus Reconciliation Act of 1980 (Pub. L. 96–499) to allow providers to seek immediately judicial review of any action of the fiscal intermediary involving a question of the statute or regulations whenever the Board determined that it was without authority to decide the issue. Under the revised provisions of section 1878(f)(1), a provider can request that the Board make a determination of its authority to decide the issue before it. If the Board determines that it has jurisdiction over the issue but does not have the authority to decide the issue, the provider may obtain expedited judicial review. The legislative history indicates that the intent of revising section 1878(f)(1) was to eliminate undue delays resulting from the requirement that providers pursue time-consuming and unproductive administrative reviews before they could obtain judicial review of a Board determination. (H.R. Rep. No. 96–1167, at 394 (1980)).

Over the years, there has been some confusion about the types of cases to which expedited judicial review applies. For example, in appeals before the Board, providers have contended not only that intermediary audit adjustments are improper, but that the statute or regulation under which the intermediaries' review was conducted is invalid. The providers have argued that, because an aspect of the appeal concerns a challenge to a statute or regulation, expedited judicial review should be granted so that the legal matter can be contested in court while the audit adjustments are simultaneously being contested before the Board. The Board has denied these requests for expedited judicial review because it found that the issues before it involved the accuracy of the cost adjustments. In the Board's view, a provider's assertion that the audit procedure was in violation of a statute or regulation was not an issue for purposes of the judicial review provision but constituted a legal argument in support of the provider's position that the adjustments had to be reversed. The Board found that in the types of cases mentioned above, a hearing before it would not necessarily be futile because it often could decide the case and grant the relief sought by the provider based on other arguments presented.

We agree with the Board's position that, in situations in which a provider asserts that audit adjustments are improper and also argues that a statute, regulation, or CMS Ruling bearing on those adjustments is invalid, a Board hearing should be held before the matter proceeds to court. We believe that although an assertion that a statute, regulation, or Ruling is invalid is a matter that the Board cannot decide, the Board should accept the case and rule on those other issues relating to the same adjustments over which it has jurisdiction and does have authority to decide. Only in those cases in which the Board determines it has jurisdiction but does not have the authority to decide any of the issues raised with respect to a particular item by the provider, should it grant expedited judicial review as to those issues.

Accordingly, we propose the following revisions to § 405.1842.

To reflect more accurately the subject matter of this section, we would change the title from "Expediting Board Proceedings" to "Expedited Judicial Review". We would change all references in this section to reflect the revised title, including using the acronym "EJR." We recognize that to say that the Board grants or does not grant expedited judicial review is not strictly accurate. The Board actually grants or denies the opportunity to seek expedited judicial review, because only the court can grant review by taking jurisdiction over the case. However, we believe "expedited judicial review" and "EJR" are suitable and commonly used terms to refer to proceedings at the administrative level.

In § 405.1842(a), we would clarify that providers may seek expedited judicial review when the Board decides, because it is bound by a relevant statute, regulation, or CMS Ruling, that, although it has jurisdiction, it does not have the authority to decide the issue. We consider jurisdiction to be a necessary prerequisite of the Board's ability to issue an EJR Decision. We would also clarify that the Administrator may review the Board's determination of whether it has jurisdiction over the matter(s) at issue, but may not review the Board's determination of whether it has the authority to decide such matter(s).

In proposed § 405.1842(b), we would set forth an overview of the EJR process. We believe that an overview would be helpful given the complexity of the process. In § 405.1842(b)(1), we would emphasize that a Board finding that it has jurisdiction over the specific matter at issue is a prerequisite for its determination of its authority to decide the legal question, and for the ensuing stages of the EJR process. Section 1878(f)(1) of the Act states that a provider may file a request for EJR "[i]f [such] provider of services may obtain a hearing under subsection (a) [which sets forth the jurisdictional requirements for obtaining a Board hearing]." In § 405.1842(b)(2) we would state that the EJR procedures may be initiated in two ways. First, a provider or group of providers may request the Board to grant EJR, or, second, the Board may consider on its own motion whether to grant EJR. We would also state in paragraph (b)(2), consistent with the requirement that a Board finding of jurisdiction is a prerequisite of both the provider's ability to obtain EJR and the Board's authority to issue an EJR Decision, that the 30-day time limit specified in section 1878(f)(1) of the Act for the Board to act on a provider's complete request does not begin to run until the Board has found jurisdiction on the specific matter at issue.

In § 405.1842(c), we would clarify the procedures for own motion consideration by the Board of whether to grant EJR. Upon finding that it has jurisdiction on a specific matter at issue, the Board would be authorized to consider, on its own motion, whether it lacks the authority to decide a legal question relevant to the matter at issue. The Board would be required to send written notice to each of the parties to the appeal so that they may respond with evidence or argument in favor of or against granting EJR.

In proposed § 405.1842(d) we would specify the procedures for provider requests for EJR, including the required contents of such requests.

In proposed § 405.1842(e), we specify the procedures for the Board to reply to provider requests for EJR and how we calculate the 30-day timeframe for issuing an EJR Decision following a provider request. In paragraph (e)(1) we would state that if the Board finds that it has jurisdiction over a matter for which the provider has requested EJR, the Board is then required to consider whether it lacks the authority to decide the legal question that is relevant to a matter. The Board would be required to issue an EJR decision for a matter no later than 30 days after the date of the Board's notice to the provider that the provider's request is complete. The condition that the 30-day timeframe does not begin to run until the Board has received a "complete" request from the provider is found in section 1878(f)(1) of the Act (a provider request for EJR shall be "accompanied by such documents and materials as the Board shall require" and "the Board shall render [an EJR Decision] within thirty days after the Board receives the request and such accompanying documents and materials.")

In proposed § 405.1842(e)(2) we would define a "complete provider request" as one that includes all of the information and documents found necessary for the Board to issue an EJR decision. In proposed § 405.1842(e)(3), we would specify what the Board must do when it has received a complete provider request or an incomplete provider request. Where the Board has received a complete provider request, it would be required to issue an EJR decision within 30 days of its receipt of the complete provider request. We would also specify that if the Board does not issue a timely EJR Decision (that is, no later than 30 days after the date of the notice issued under § 405.1842(e)(3)(i)), the provider has a right to file a complaint in Federal district court in order to obtain judicial review over the matter(s) at issue (see also proposed (§ 405.1842(g)(4)). Where the Board has received an incomplete provider request the Board would be required to issue a written notice to the provider describing the further information the Board requires.

In proposed § 405.1842(f), we would specify the criteria for the Board to apply for purposes of granting or denying EJR. If the Board has taken own motion consideration of whether to grant EJR, or if the provider has requested EJR, the Board would be required to grant EJR if it determines that it has jurisdiction over the specific matter at issue, and lacks the authority to decide the matter. The Board would be required to deny EJR if it determined it lacked jurisdiction over the specific matter at issue, or if it determined that it had the authority to decide the specific matter at issue, or if it did not have sufficient information to determine whether it had jurisdiction over, or had the authority to decide, the specific matter at issue. Subject to § 405.1842(h), the Board would be required to issue an EJR Decision (either granting or denying EJR) in any case in which it notified the provider that it was taking own motion consideration of whether to grant EJR under § 405.1842(c), or in which it notified the provider that its request for EJR was complete under § 405.1842(e). Under proposed § 405.1842(h) (discussed below), the Board would not be required or permitted to render an EJR Decision if the provider filed a lawsuit on the specific matter at issue for the same cost year at issue. The Board would also not be required or permitted to issue an EJR Decision following a provider request for EJR if the provider did not submit a complete request and did not perfect the request after being given the opportunity to do so under § 405.1842(e).

In proposed § 405.1842(g)(1), we would provide that, in accordance with proposed § 405.1875(a)(2)(iii), the Administrator may review, on his or her own motion, or at the request of a party, the Board's EJR Decision. The Administrator's review would be limited to the question of whether there is Board jurisdiction over the specific matter at issue. The Administrator would not be permitted to review the Board's determination of its authority to decide the legal question. To account for the possibility that a Board decision may grant EJR and the Administrator may find that the Board did not have jurisdiction over one or more of the specific matters at issue, the proposed rule would state that a Board decision granting or denying EJR is inoperative during the 60-day period for review by the Administrator. Proposed paragraph (g)(1) also would specify that a final Board EJR Decision under paragraph (f) of this section, and a final Administrator decision affirming, modifying, reversing or remanding a Board EJR Decision under § 405.1875(a)(2) and (e), may be reopened in accordance with §§ 405.1885 through 405.1889. Under proposed § 405.1842(g)(3), where a Board decision denies EJR for a specific matter at issue solely because it determines that it did not have jurisdiction over the matter, and the Administrator reverses the Board on the jurisdictional finding, and the Board determines on remand that it lacks the legal authority to decide the question, the provider would be able to file a complaint seeking EJR.

Proposed § 405.1842(h) would set forth the effect of final EJR Decisions by the Board and the Administrator, and the effect of lawsuits, on the Board's ability to conduct further proceedings on the appeal. Paragraph (h)(1) would provide that if the final decision of the Board grants EJR, the Board would be precluded from conducting any further proceedings on the legal question. The Board would be required to dismiss the specific matter at issue from the appeal unless the Board could fully decide the matter without a final resolution of the legal question for which EJR was granted. The Board would be required also to dismiss the entire appeal if there were no other matters at issue that were within the Board's jurisdiction and could be fully decided by the Board.

Proposed § 405.1842(h)(2) would specify the effect that a Board or Administrator decision denying EJR would have on the Board's ability to conduct further proceedings on the appeal. First, if the final decision of the Board were to deny EJR solely on the basis that the Board determines that it has the authority to decide the legal question relevant to the specific matter at issue, the Board would be required to conduct further proceedings on the specific legal question and issue a decision on the matter at issue in accordance with this subpart. (An exception to this rule would exist where the provider(s) files a lawsuit pertaining to the legal question; in that situation, the Board would be precluded from conducting any further proceedings on the legal question or the matter at issue before the lawsuit is finally resolved.) Second, if the Board or the Administrator were to deny EJR on the sole, or additional, basis that the Board lacks jurisdiction over the specific matter at issue, the Board would be required, as applicable, to dismiss the specific matter at issue from the appeal, or to dismiss the appeal entirely if there

were no other matters at issue that were within the Board's jurisdiction and could be fully decided by the Board. *Example 1:* Suppose a provider, after it received a revised NPR, filed an appeal and raised three issues, and sought EJR on the first issue. If the Board decided that the issue for which the provider sought EJR was not within the scope of the revised NPR, it would be required to dismiss that issue. If the Board found that the second and third issues were within the scope of the revised NPR, the appeal would continue (assuming there were no other jurisdictional problems with those issues), and the provider would not be able to seek Administrator (or judicial) review of the first issue until the Board issued a final decision on all the issues. (See proposed § 405.1840(d).) If, following a final decision by the Board on all the issues, the Administrator were to take review of the first issue and find that the Board did have jurisdiction, the Administrator would remand for the Board to determine whether it had the authority to decide the issue. If the Board were to decide on remand that it did not have the authority to decide the issue, then the Board would grant EJR on the issue. *Example 2:* Same as above except that the Administrator declines review or issues a timely decision affirming the Board's decision that it did not have jurisdiction on the first issue. In this case, the provider could appeal the Board's decision (if the Administrator declined review) or the Administrator's decision to court, and if the court were to reverse the Board's or Administrator's decision, the Administrator would remand the matter to the Board for a finding of whether the Board had the authority to decide the legal issue.

Proposed § 405.1842(h)(3) would specify the effect that a provider lawsuit would have on the Board's ability to conduct further proceeding on the legal matter at issue. In general, if a provider files a lawsuit on the same legal issue for the same cost year that is currently pending before the Board—that is, the provider goes into court without waiting for a final administrative decision on EJR, we would seek to have the lawsuit dismissed, and we would prohibit the Board from conducting further proceedings on that issue until the lawsuit is resolved.

L. Parties to a Board Hearing (§ 405.1843)

Section 405.1843(a) of the regulations states that the parties to a Board hearing include the intermediary, the provider, and any related organization of the provider. This section also provides that CMS may be a party to the hearing only when it acts directly as an intermediary. Section 405.1843(b) provides that neither the Secretary nor CMS may be made a party to the hearing (except when CMS acts as an intermediary). With the disbandment of CMS's Office of Direct Reimbursement (formerly known as the Division of Direct Reimbursement), CMS no longer acts directly as an intermediary. Therefore, we propose to delete the obsolete references in § 405.1843(a) and (b) that provide that CMS may be a party to a hearing when it serves as an intermediary.

Although we are not a party to a Board hearing, our policies, actions and decisions are frequently central to a provider's reimbursement dispute before the Board. Moreover, in certain types of appeals, it is CMS, rather than the fiscal intermediary, that has made the determination being appealed by the provider.

Because our policies, actions and decisions may be at the center of many Board disputes, we believe the regulations should provide a mechanism by which CMS may be included in the hearings process, without having formal party status. Accordingly, we propose to add a new § 405.1843(c) to authorize intermediaries to designate a representative from CMS, who may be an attorney, to defend the intermediary's position in proceedings before the Board. We are modeling this portion of the regulations on the provisions authorizing the U.S. Department of Justice to allow an attorney (outside of the Department of Justice) to appear on its behalf in certain situations (see 28 U.S.C. 515). There may also be cases before the Board that have major policy implications that CMS would like to address without being designated as the representative of the intermediary. In these cases, proposed new § 405.1843(d)) would permit CMS to make written and timely filed *amicus curiae* submissions for the Board's consideration.

M. Quorum Requirements (§ 405.1845)

Section 405.1845(d) provides that a quorum is required for the rendering of Board decisions. Three Board members, at least one of whom is representative of providers of services, constitute a quorum. With the provider's approval, the Board Chairman may designate one or more Board members to conduct a hearing and prepare a recommended decision for adjudication by a quorum when a sufficient number of Board members are available.

As mentioned previously, the Board has an enormous case backlog. Approximately 10,000 hearing requests currently are awaiting disposition by the Board. In order to expedite the resolution of these cases and reduce this backlog, we propose several revisions to the quorum requirements under § 405.1845(d). First, because the presence of a quorum of Board members is not required at a hearing, we propose to clarify that more than one hearing may be held simultaneously. Under this proposed revision, the Board Chairman could designate one Board member to conduct a hearing. Under our proposal, it would not be necessary for the Board Chairman to obtain the approval of the provider or the intermediary before he or she could assign less than a quorum to conduct a hearing. We believe that the rights of the parties are not prejudiced by not requiring the Board to obtain the permission of the parties to have less than a quorum present at the hearing because no hearing decision would be rendered without the participation of a quorum of the Board members.

Second, we propose to eliminate the requirement that a recommended decision be prepared when less than a quorum has conducted the hearing. We believe that the preparation of a recommended decision is a time-consuming process that may be eliminated without affecting the fairness of the proceeding. A Board member who was not present at a hearing thus would be able to review the written record of the hearing and make a decision based upon that review. This proposed change is consistent with the Administrative Procedure Act, which provides at 5 U.S.C. 557(b) that an administrative officer charged with the decision making need not personally hear the testimony, but may rely instead on the written record.

We also propose that the Board may offer the parties the option to have the Board decide the case based on all the written evidence submitted by the parties. The parties would have to agree to waive their rights to an oral hearing as a condition for holding a "hearing on the written record."

N. Board Proceedings Prior to Hearing; Discovery in Board and Intermediary Hearing Officer Proceedings (§ 405.1853 and § 405.1821)

[If you choose to comment on issues in this section, please include the caption "Board Proceedings Prior To Hearing" at the beginning of your comments.]

We propose to make several revisions to § 405.1853. Proposed § 405.1853(a) would specify the present requirement that, prior to any Board hearing, the intermediary and provider must attempt

to resolve legal and factual issues, and following such attempt must send to the Board joint or separate written stipulations setting forth the specific issues that remain for Board resolution. We would remove the requirement that the intermediary ensure that all documentary evidence in support of each party's position is in the record. The intermediary does not have the capability or the responsibility for ensuring that all documentary evidence in support of the provider's position is made part of the record. We would continue the present requirement that the intermediary be required to place in the record a copy of all evidence that it considered in making its determination, and would add, that where the determination under appeal is a Secretary determination, the intermediary would be responsible for placing in the record all evidence considered by CMS in making the Secretary determination.

In proposed § 405.1853(b), we would address the timeframes for submitting position papers. Currently, § 405.1853(a) requires the provider and the intermediary to submit position papers, identifying issues that have been resolved between the intermediary and the provider and those that remain for Board resolution, to the Board no later than 60 days after the provider's hearing request. In many instances, the 60-day timeframe for submitting position papers has proved to be not a realistic or workable timeframe. We would remove the reference to the 60-day timeframe and instead provide in proposed § 405.1853(b) that the Board will set the deadlines for submitting position papers in each case as appropriate, and that the Board would have the authority to extend the deadline for good cause shown.

Additionally, we propose requiring that each position paper set forth the relevant facts and arguments concerning the Board's jurisdiction over each remaining matter at issue in the appeal, and that any supporting exhibits must accompany the position paper. These proposed requirements are intended to facilitate the Board's ability to make preliminary findings as to whether it has jurisdiction with respect to each specific matter at issue (see proposed § 405.1840(a)). All accompanying exhibits must be submitted in a form to be decided by the Board. Finally, proposed § 405.1840(b) would require that exhibits regarding the merits of the provider's appeal are to be submitted pursuant to the schedule set by the Board.

Proposed § 405.1853(c) and (d), would set forth requirements relating to "initial" and "further" status conferences. We would clarify that the Board may conduct status conferences for a wide variety of purposes, borrowing the criteria set forth in 42 CFR § 1005.6(b). Proposed § 405.1853(e) would make changes in discovery procedures for Board proceedings, and we would propose similar changes to § 405.1821 for proceedings before an intermediary hearing officer(s). In developing our proposals, we have attempted to balance competing considerations. On the one hand, and in accordance with the view that discovery generally is not available in record review cases before the courts, we believe that discovery should be limited, especially for non-parties. In this regard, we note that under our proposed revisions to § 405.1853(a) we would require that the intermediary, or CMS, as applicable, place in the record a copy of all evidence that the intermediary or CMS considered in making its determination, thus lessening any need for extra-record discovery. We are also concerned with the effect that broad discovery procedures may have on the Board's ability to schedule and hold hearings in an efficient manner. On the other hand, we recognize that reasonable discovery procedures can enhance the fairness of proceedings and the accuracy of decisions. Additionally, there may be circumstances where an entity that is not a party to a Board hearing, for example, CMS, is the only entity able to respond to provider discovery requests. A provider that seeks to obtain discovery materials from its servicing intermediary before a Board hearing is sometimes unable to do so because only a non-party has the requested information. We do not believe that it is fair to providers to deny them access to discovery material in these types of situations, and would therefore include non-parties within the scope of our proposed procedures.

Proposed § 405.1853(e)(1), and proposed § 405.1821(b)(1) would specify the basic requirements for discovery, including the requirement that the matter sought to be discovered must be relevant to the specific subject matter of the Board or intermediary hearing.

Proposed § 405.1853(e)(2) would specify that the method of discovery permitted would generally be limited to reasonable requests for the production of documents for inspection and copying, and a reasonable number of interrogatories, with depositions permitted in limited circumstances. A party would not be permitted to take an oral or written deposition of another party or a non-party, unless the proposed deponent agrees to the deposition, or the Board finds that the proposed deposition is necessary and appropriate under Federal Rules of Civil Procedure 26 and 32. (Under proposed paragraph (e)(1), the applicable provisions of the Federal Rules of Civil Procedure and Rules 401 (relevant evidence) and 501 (privileges) of the Federal Rules of Evidence would be used as guidance for all discovery permitted under this section or by Board order.) We would specifically state in paragraph (e)(2) that requests for admission, or any other form of discovery (other than requests for production of documents, interrogatories and depositions) are not permitted. Proposed § 405.1821(b)(2) would be similar, except that we would not permit depositions in proceedings before an intermediary hearing officer(s), as we do not believe the potential expense and inconvenience of a deposition is warranted given the limited amount in controversy in intermediary hearing officer hearings.

In § 405.1853(e)(3), we would revise the time limits for requesting discovery. Section 405.1853(b) provides that the Board must allow all timely requests for prehearing discovery, that is, requests made before the beginning of a hearing. Under this rule, a party is within its rights to file a discovery request as late as 1 day before a scheduled hearing, and the Board is bound to honor the request. We do not believe this is a reasonable requirement, especially in light of the current backlog of cases at the Board, and the substantial length of time between filing an appeal and the Board determination. We propose that a party's discovery request would be timely if the date of receipt of such a request by another party or non-party, as applicable, is no later than 90 days before the scheduled starting date of the Board hearing. A party would not be permitted to conduct discovery any later than 45 days before the scheduled starting date of the Board hearing. We would further provide that, upon request and upon a showing of good cause, the Board may extend the time for making a discovery request or may extend the time for performing discovery. Before ruling on an extension request, the Board would be required to give the other parties to the appeal (and any non-party subject to a discovery request) a reasonable period to respond to the extension request. The Board would be permitted to extend the time for requesting discovery or for conducting discovery only if the requesting party establishes that it was not dilatory or otherwise at fault in not meeting the original discovery deadline.

If the Board grants the extension request, it would be required to impose a new deadline and, if necessary, reschedule the hearing date so that all discovery ends no later than 45 days before the hearing. Proposed § 405.1821(a) would be similar for proceedings before an intermediary hearing officer(s).

In § 405.1853(e)(4) and § 405.1821(c), we propose to specify the rights of non-parties with respect to discovery requests. A non-party would have the same rights as a party in responding to a discovery request. These rights would include, but would not be limited to, the right to select and use any attorney or other representative, and to submit discovery responses, objections, motions, or other pertinent materials to the Board.

In § 405.1853(e)(5) and § 405.1821(c)(3), we propose a specific procedure for motions to compel and for protective orders. In order to conserve Board resources and promote an efficient hearing process, each party would be required to make a good faith effort to resolve or narrow any discovery dispute, including a dispute with a non-party. Any motion to compel discovery and any motion for a protective order, and any response thereto, would have to include a self-sworn declaration describing the movant's or respondent's efforts to resolve or narrow the discovery dispute.

In § 405.1853(e)(6), and in § 405.1821(d)(2), we would include a general rule, and an exception thereto, for the reviewability of Board or intermediary hearing officer(s) orders on discovery. Our general rule would be that any discovery or disclosure ruling issued by the hearing officer(s) or the Board is non-final and not subject to immediate review by the Administrator. Rather, such a ruling could be reviewed solely during the course of Administrator review of one of the Board decisions specified as final, or deemed to be final by the Administrator, under § 405.1875(a)(2), or of judicial review of a final agency decision as described in § 405.1877(a) and (c)(3), as applicable. However, we also propose that where the Board or hearing officer(s) authorize discovery, or compel disclosure, of a matter for which a party or non-party made an objection based on privilege, or some other protection from disclosure, that portion of the discovery ruling would be reviewable immediately by the Administrator. If a party or non-party were required, over its objection, to disclose privileged materials or comply with an unduly burdensome request, the damage could not be undone by a reversal of the order by the Administrator in the context of review of the Board's or hearing officer(s)' final decision. For Administrator review of an order to be meaningful, it has to be available immediately to the party or non-party. We would provide for an automatic stay where the party or non-party, as applicable notifies the Board or intermediary hearing officer(s) of its intention to seek immediate review. The duration of the stay would be limited to no more than 15 days in the case of Board proceedings and to no more than 10 days in the case of intermediary hearing officer(s) proceedings. Under proposed §§ 405.1875(c)(1) and 405.1834(c)(3), a request for a review would have to be made within 5 business days after the party or non-party received notice of the Board's or intermediary hearing officer's ruling. If the Administrator grants a request for review or takes own motion review before the expiration of the stay, the stay would continue until the Administrator or CMS reviewing official renders a written decision, but if the Administrator does not grant or take review within the time allotted for the stay, the stay is lifted and the Board's or hearing officer(s)' ruling stands. We believe our proposal strikes an appropriate balance between the need to maintain the orderly flow of cases before the Board or the hearing officers, and a party's right to assert privilege or to be free from unduly burdensome requests.

O. Subpoenas (§ 405.1857)

We propose to revise and clarify our procedures for the Board issuance of subpoenas. In addition to specifying in some detail the procedures for requesting subpoenas and the required contents for subpoenas, we would make the subpoena process similar to the discovery process under § 405.1853 in several respects.

In proposed § 405.1857(a), we would impose time limits for requesting subpoenas that are similar to those we propose for discovery requests and orders. For subpoenas requested for purposes of discovery, a party would be allowed to request a subpoena no later than 90 days before the scheduled starting date of the Board hearing, and for subpoenas requested for purposes of an oral hearing, a request would have to be made at least 45 days before the scheduled starting date of the Board hearing. In addition, for purposes of a discovery subpoena or a hearing subpoena, the Board would not be allowed to issue a subpoena any later than 75 days, or 30 days, respectively, before the scheduled starting date of the Board hearing. For good cause, the Board would be allowed to extend the time for requesting a subpoena or for issuing a subpoena, provided that it gave certain procedural protections (including allowing any party, and CMS or any other non-party affected by the subpoena, the opportunity to comment on the proposed extension).

Consistent with our view that discovery should be available in appropriate circumstances from non-parties, we propose to specifically state in § 405.1857(a) that a subpoena may be issued to a non-party. Section 205(d) of the Act authorizes the Secretary to issue subpoenas requiring attendance, testimony, and production of evidence relevant to the matter under investigation. Section 1878(e) of the Act provides that the provisions of section 205(d) apply to the Board to the same extent that they apply to the Secretary. Section 405.1857 currently provides that the Board, either upon its own motion or upon the request of a party, may issue subpoenas "when reasonably necessary for the full presentation of a case." There may be instances when the Board or a requesting party believes that a non-party should be subpoenaed to produce documents or testify. This section does not specify whether the Board's subpoena authority extends to non-parties. Therefore, we propose to revise § 405.1857 to clarify that a non-party may be subpoenaed by the Board. We believe this proposed revision is justifiable in view of the authority to issue subpoenas granted to the Board under section 1878(e) of the Act. We believe a non-party's rights would be adequately protected by extending to it the same rights a party would have in responding to a subpoena or subpoena request, see proposed § 405.1857(c)(3), and by allowing it to seek immediate Administrator review of a Board subpoena in some circumstances, (see proposed § 405.1857(d)(2)).

In proposed § 405.1857(d), we would propose the same general rule and exception for Administrator review of Board subpoenas that we propose for Administrator review of Board discovery rulings. That is, the rule would be that any subpoena issued by the Board would be non-final and not subject to immediate review, with the exception that immediate Administrator review could be had where the Board issued a subpoena for a matter for which a party or non-party made an objection based on privilege, or some other protection from disclosure. Our general rule and exception for Administrator review of Board subpoenas are based on the same considerations that led us to propose our general rule and exception

for Administrator review of Board discovery rulings.

In proposed § 405.1857(e), we would specify that only the Administrator has the authority to seek enforcement of a Board subpoena. We believe that because the Administrator is the Secretary's designee as the final administrative authority for appeals under section 1878 of the Act and has the authority to review Board issuances of subpoenas, it is appropriate that the Administrator have sole authority to seek enforcement of a subpoena. For example, it would make little sense to have the Board seek enforcement of a subpoena that the Administrator in the course of its review authority later determines to have been issued erroneously. Our proposal would also avoid any potential conflict whereby the Board would attempt to enforce a subpoena directed at CMS or the Secretary that the Administrator believes should not be enforced.

P. Record of Administrative Proceedings (§ 405.1865)

Section 405.1865, entitled "Record of Board Hearing," requires that a "complete" record be made of the proceedings at the hearing before the Board, but does not specify what materials are to be made part of the record. It also does not explain how evidence or other material that is excluded by the Board or the Administrator is to be segregated in order to ensure that such excluded material is not inadvertently considered by the Administrator or by a court. We propose to amend § 405.1865 to address with specificity the required contents of the record on appeal and to explain how excluded material is to be treated. We would change the title from "Record of Board Hearing" to "Record of administrative proceedings," to reflect that the recordkeeping requirements apply not only to Board review but to Administrator review as well. New paragraph (a) would specify that all evidence, argument and any other tangible material (admissible or inadmissible) received by the Board, as well as a transcript of the proceedings of any oral hearing before the Board, be made part of the record of the appeal. Paragraph (a) would also provide that a copy of such transcript must be made available to any party upon request. Proposed new § 405.1865(b) and (c) would make a distinction between the unappended record and an appendix to the record (although, as indicated above in the discussion of proposed paragraph (a), the term "record" is intended to encompass both the unappended and any appendix to the record). For purposes of the Board's decision, paragraph (b) would provide that the record would consist of such evidence and other materials accepted by the Board, as well as the transcript(s) of any oral hearing(s) before the Board. Any evidence ruled inadmissible by the Board, and any other material not considered by the Board in making its decision, must be, to the extent practicable, clearly identified and segregated in an appendix to the record for the purpose of any review by the Administrator and/or the judiciary.

For purposes of Administrator review, § 405.1865(c) would provide that the administrative record also includes all documents and any other tangible matter submitted to the Administrator by the parties to the appeal or by any non-party, in addition to all correspondence from the Administrator or the Office of the Attorney Advisor and all rulings, orders, and decisions by the Administrator. It would also specify that the provision in proposed § 405.1865(b), that excluded evidence and other non-considered matter should be segregated and placed in an appendix, also pertains to evidence or other matter submitted to the Administrator and found inadmissible or not considered by the Administrator. Finally, paragraph (c) would also provide that the Administrator has the authority to reverse the Board's determination regarding the admissibility of evidence or other matter. That is, the Administrator may exclude evidence or other matter that was admitted and considered by the Board if the Administrator determines that such evidence or other matter should not have been admitted and considered, and the Administrator may admit and consider evidence or other matter that was excluded and not considered by the Board if the Administrator determines that such evidence or other matter should have been admitted and considered by the Board.

Q. Board Actions in Response to Failure To Follow Board Rules (§ 405.1868)

Section 1878(e) of the Act provides the Board with "full power and authority to make rules and establish procedures, not inconsistent with the provisions of this title or regulations of the Secretary, which are necessary or appropriate to carry out the provisions of this section." In accordance with the broad latitude granted the Board under this provision, we propose to add a new § 405.1868 to specify that the Board has authority to take appropriate actions for failure to follow its established procedural requirements or for inappropriate conduct during hearings. In proposed § 405.1868(a), we would set forth this statutory language in the regulations to clarify the basis and breadth of the Board's authority for conducting hearings under section 1878 of the Act.

As discussed previously, the Board has an unusually large backlog of cases that results in substantial delays in hearings. The Board is not able to dispose of cases expeditiously, in part, because of deliberate tactics by the parties to the hearing to delay the proceedings. One of the major objectives of administrative dispute resolution is to provide a decision as quickly as possible, while still allowing each party a fair opportunity to present its case. Therefore, we are proposing to specify in the regulations how the Board would exercise its authority to take appropriate action in response to undue delay and/or a violation of its orders or rules. We propose to add a new § 405.1868(b) to provide that if the provider fails to meet any filing or procedural deadlines or other requirements established by the Board, the Board may dismiss the appeal, issue an order requiring the provider to show cause why the Board should not dismiss the appeal, or take other appropriate action. Also, proposed § 405.1868(c) would specify that if the intermediary fails to meet any filing or procedural deadlines or other requirements set by the Board, the Board may issue a decision based on the written record submitted to that point or take other appropriate action. We note that, as discussed above, the Board would also have discretion to grant an extension of time to a party that has failed to meet a filing or procedural deadline, but only if the party shows good cause for the delay in accordance with proposed § 405.1835(e).

R. Scope of Board's Authority in a Hearing Decision § 405.1869)

Section 1878(d) of the Act and § 405.1869 give the Board the power to affirm, modify, or reverse the intermediary's findings on each specific matter at issue in the intermediary determination for the cost reporting period under appeal, and to make additional revisions on specific matters regardless of whether the intermediary considered these matters in issuing the intermediary determination. We would clarify in § 405.1869(a) and (b) that the Board's power to make additional revisions in a hearing decision does not authorize the Board to consider or decide a specific matter at issue for which it lacks jurisdiction (see § 405.1840(b)) or which was not timely raised in the provider's hearing request.

We would also revise the title of § 405.1869 slightly.

S. Board Hearing Decision (§ 405.1871)

We propose to revise current § 405.1871 to provide more specificity as to the types of findings of fact and conclusions of law each Board decision must contain. We believe these revisions are appropriate as they will help ensure that the parties are fully informed as to the basis and reasoning of the Board's decision, and will also assist the Administrator or a court in determining whether or to what extent a Board decision should be upheld. Section 405.1871(a) states that the Board's decision must be based on evidence "as may be obtained or received by the Board." We would revise this statement by clarifying that the Board's decision must be based on the admissible evidence from the Board hearing and such other admissible evidence and written argument or comments as may be received by the Board and included in the record. Consistent with our proposed revisions to § 405.1840 (Board jurisdiction) and § 405.1842 (expedited judicial review), we would require that the Board's decision contain findings of fact and conclusions of law regarding the Board's jurisdiction over each specific matter at issue. (We propose to delete current § 405.1873, Board's jurisdiction, as no longer necessary.) We would also require the Board's decision to state whether the provider carried its burden of production of evidence and burden of persuasion, by establishing by a preponderance of the evidence that the provider is entitled to relief on the merits of the matter at issue. This requirement would ensure that the Board correctly allocated the burden of production and burden and proof on the provider, in accordance with our regulations at 42 CFR, part 413, CMS Ruling 79–60C, caselaw (see, *for example, Butler County Mem'l. Hosp.* v. *Heckler*, 780 F.2d 352 (3d Cir. 1985); *Fairfax Hosp. Ass'n* v. *Califano*, 585 F.2d 602 (4th Cir. 1978)), and general principles of administrative law. We would also require the Board's decision, with respect to any issue for which the policy expressed in a CMS instruction (other than a regulation or ruling) is dispositive but for which the Board would not affirm the intermediary's adjustment, to explain how it gave great weight to such instruction (as required by § 405.1867) but did not affirm the intermediary's adjustment. This requirement would ensure that the Board is giving proper weight to CMS instructions (other than regulations and Rulings, which are binding on the Board) and would allow a reviewing entity to discern the Board's specific disagreement with the policy expressed in the instruction.

In proposed § 405.1871(b), we would revise the statement in current paragraph (b), that the Board's decision is final and binding unless reviewed by the Administrator (or reopened and revised), to say that the Board's decision is final and binding unless the Administrator renders a decision reversing, modifying, affirming, or remanding the Board's decision (or unless the Board's decision is reopened and revised). The purpose of the proposed revision is to clarify that the act of taking review, by itself, that is, without a subsequent timely decision by the Administrator, will not provide a Board decision non-final and non-binding. However, consistent with proposed changes to §§ 405.1836(e)(2), 405.1842(g)(1), 405.1853(e)(6)(ii), 405.1857(d)(2), and 405.1868(f)(2), we also propose to clarify in paragraph (b) that the Board's decision is inoperative during the 60-day period of review by the Administrator.

T. Administrator Review (§ 405.1875)

[If you choose to comment on issues in this section, please include the caption "Administrator Review" at the beginning of your comments.]

We propose to clarify the existing procedures for obtaining Administrator review of a Board hearing decision, and to address what other types of Board decisions are subject to Administrator review, the timing of such review, and the procedures for obtaining such review.

We would revise § 405.1875(a) in several ways. We would revise the material in current paragraph (a)(2) relating to the role of the Office of the Attorney Advisor, and place it in the introductory language of paragraph (a). We would require all requests for Administrator review, as well as all written submissions to the Administrator specified in § 405.1875(c), whether they be from a party, or from an affected non-party such as CMS, to be sent to the Office of Attorney Advisor. We would also specify that the Office of Attorney Advisor must examine each Board decision and each review request and written submission, of which it becomes aware, in order to assist the Administrator in the exercise of his or her discretionary review authority. We say "of which it becomes aware" because we do not propose that the Board would be required to send all jurisdictional decisions and interlocutory orders and rulings to the Office of Attorney Advisor, as we do not believe it would be practicable to require the Board to do so, given the large number of such decisions and rulings. The Board does send a copy of all its decisions on the merits, including EJR decisions, to the Office of Attorney Advisor, and we would codify this practice in paragraph (a).

We would specify in proposed § 405.1875(a)(1) that the date of rendering of any Administrator decision must be no later than 60 days after the date of receipt by the provider of a reviewable Board decision or action. The date of rendering is the date the Administrator signs the decision, and not the date the decision is mailed or otherwise transmitted to the parties.

In proposed § 405.1875(a)(2), we would specify the types of final Board decisions that are subject to immediate review by the Administrator. The types of final decisions that the Board may issue, and which are subject to immediate review by the Administrator, would be specified in paragraph (a)(2) as: Board Hearing Decision (see § 405.1871); Board Dismissal Decision (see §§ 405.1836(e)(1) and (e)(2), § 405.1840(c)(2), §§ 405.1868(d)(1) and (2)); and Board Expedited Judicial Review Decision (see §§ 405.1842(h)). In addition to those decisions that would be specified as final in paragraph (a)(2), the Board may issue a decision or take some type of action from time to time that may have the characteristics of a final decision. Therefore, so as not to make the list of Board decisions specified in paragraph (a)(2) exhaustive, we propose that the Administrator would have the authority, in a given case, to deem a Board decision or action to be final and thus subject to immediate review. (For example, the Administrator might deem a Board remand order to be final if it ordered the intermediary or CMS to take certain action, which, if resulting in the reimbursement of costs or the granting of other relief, the Secretary would be unable to appeal. (see *Colon* v. *Sec'y of HHS*, 877 F.2d 148 (1st Cir. 1989); *Stone* v. *Heckler*, 722 F.2d 464 (9th Cir. 1983), and cases cited therein.)) We say "in a given case" because the fact that the Administrator would deem a particular action to be final in one case would not entitle a party to seek immediate review in another case, based on the party's belief that the action in the second case is similar to the action in the first case. Rather, upon request or on his or her own motion, the Administrator would have to specifically deem the Board's action in the second case to be final for purposes of immediate review.

Proposed § 405.1875(a)(3) would then specify that any Board decision or action not specified as final, or deemed to be final by the Administrator in a given case under paragraph (a)(2), would be non-final and not subject to immediate review, except for the following: a Board ruling authorizing discovery or disclosure of a matter for which an objection was made based on privilege or other protection from disclosure as case preparation or confidential material; and, a Board subpoena compelling disclosure of a matter for which an objection was made based on privilege or other protection from disclosure as case preparation or confidential material.

We believe the foregoing revisions would provide greater clarity as to what types of Board decisions may be immediately reviewable by the Administrator. In particular, we note that because the current regulations do not specify that the Board's assumption of jurisdiction in a case is a non-final action and not subject to immediate review by the Administrator, requests have been made by intermediary counsel to have the Administrator immediately rule that the Board incorrectly assumed jurisdiction. (By "immediately," we mean prior to the issuance of a decision by the Board on the merits of the case.) Such requests have consumed time and resources of the Administrator despite the fact that it has been the Administrator's well-established practice to not immediately review the Board's taking of jurisdiction. By proposing that the Board's finding or assumption of jurisdiction is a non-final action and not subject to immediate review by the Administrator, we hope to avoid any confusion on this matter and to conserve needed resources. Conforming changes on this point would also be made to § 405.1840(d).

We also believe that the two proposed exceptions to the proposed policy that non-final orders would not be immediately reviewable are necessary and appropriate. Our reasons for the exceptions are also grounded in the recognition that certain non-final orders have a practical finality to them. That is, a Board order authorizing discovery or disclosure of, or a Board subpoena compelling disclosure of, a matter for which an objection was made based on privilege or other protection from disclosure as case preparation or confidential material, is for all intents and purposes final unless it is immediately reviewable, for once the disclosure is made the effects of the disclosures cannot be reversed.

In proposed § 405.1875(b), we would specify an illustrative list of criteria the Administrator will use to determine whether he or she will review a reviewable Board decision or reviewable Board non-final order. (We would revise the material in current paragraph (b), relating to the time in which to seek review of a Board decision, and place it in paragraph (c), as discussed below.) The criteria we would specify include, with slight expansion, the criteria that appears in current paragraph (c). We would specify that the Administrator will consider criteria "such as" the criteria listed, in order to emphasize that the list is not exclusive, and thus is not a limit on the Administrator's discretionary review authority. (The current language "the Administrator will normally consider" is also intended to convey that the list is not exclusive.) We would reserve the right for the Administrator to exercise discretionary review authority for reasons other than those listed, although we have attempted to anticipate all the reasons for which the Administrator would take review and include those reasons in the proposed list. We wish to point out three proposed changes. First, we would delete the current criterion of whether the Board's decision is supported by substantial evidence. Substantial evidence is less than a preponderance, and we believe it is appropriate for the Administrator to exercise discretionary review authority where the Administrator concludes that the Board's decision is incorrect, even if the Board's decision is supported by substantial evidence. Second, we would include as a criterion whether the Board's hearing decision met the requirements of section 405.1871(a). The proposed change would reflect that under proposed § 405.1871(a), the Board's decision must include findings of fact and conclusions of law regarding the Board's jurisdiction over each specific matter at issue, and whether the provider carried its burden of production of evidence and burden of persuasion, and must include appropriate citations to authority. We believe it is appropriate for the Administrator to review any Board hearing decision that does not meet these requirements. Third, we would include as a criterion whether the Board erred in refusing to admit certain evidence or in not considering other submitted matter, or erred in admitting certain evidence or considering other submitted matter (see § 405.1855 and proposed § 405.1865(b)).

We would revise the procedures for Administrator review in current § 405.1875(c) and (d), and set them forth in proposed paragraph (c). In proposed paragraph (c)(1), we would specify that a party or CMS may request review of any reviewable decision or reviewable non-final order (as specified in (a)(2) and (a)(3), respectively), but a non-party other than CMS may request review only of a Board discovery order or subpoena to which an objection was made based on privilege or other protection from disclosure as case preparation or confidential material. We would also allow a party or CMS to respond to any request for review. A request for review, or a response to a request, would have to be in writing, identify the specific issues for which review is requested, and explain why review is or is not appropriate, under the criteria set forth in paragraph (b) or for some other reason. In order to be timely, any review request would have to be received by the Office of the Attorney Advisor no later than 15 days after the date the party or non-party making the request received the Board's decision or other reviewable action. We would require a copy of any review request (or response to the request) to be mailed promptly to the Office of the Attorney Advisor, to each party to the appeal, to CMS, and to any non-party other than CMS that is affected.

In proposed § 405.1875(c)(2), we would provide that, whenever the Administrator decides to review a Board decision or other matter, the Administrator issue a written notice to the parties, to CMS, and to any other affected non-party that a Board's decision or other matter will be reviewed, and indicate in the notice the specific issues that will be considered. We would also restate in proposed paragraph (c)(2) that which appears in current paragraph (d)(2), namely, that the Administrator may decline to review a Board decision or other matter, or any issue in a decision or matter, even if a proper request for review was submitted. We would specify that where the Administrator declines to review a Board decision, the Administrator will notify the parties, CMS, and any other affected non-party.

In proposed § 405.1875(c)(3), we would propose minor changes to the process (which currently appears at paragraph (e)) for making written comments to the Administrator following notice that the Administrator has decided to take review. Consistent with other changes and clarifications to § 405.1875 discussed above, we would specify that: (1) CMS or any other affected non-party that has properly requested review may submit comments; (2) comments may be

submitted in response to any Administrator notice of intention to review a Board decision or other reviewable action; (3) all comments must be filed with the Office of the Attorney Advisor. We would also specify that the date of receipt by the Office of the Attorney Advisor of any comments must be no later than 15 days after the date the party, CMS or other affected non-party submitting comments received notice of the Administrator's intention to take review.

Proposed § 405.1875(d) would contain what currently appears in paragraph (f) for the prohibition on *ex parte* communications, with one minor change. Because CMS or another affected non-party would have the right to seek Administrator review of certain matters under proposed paragraph (c)(1), and would have the right to make written submissions to the Administrator under proposed paragraph (c)(3), it is necessary to specify that the rules on *ex parte* communications would apply to affected non-parties.

In proposed § 405.1875(e), we would update and revise the procedures for issuing an Administrator decision that currently appear in paragraph (g). In proposed paragraph (e)(1)(i), we would specify that, for review of a Board decision described in section 1875(a)(2), an Administrator decision will affirm, reverse, modify, or vacate and remand the Board's decision. In proposed paragraph (e)(1)(ii), we would state that with respect to review of one of the reviewable non-final orders listed in section 1875(a)(3), an Administrator decision will affirm, reverse, modify or remand the Board's order, and will remand the case to the Board for further proceedings. Thus, the distinction between an Administrator decision that follows review of a Board decision, and an Administrator decision that follows review of a reviewable Board non-final order, is that in the latter situation the Administrator decision will always return the case to the Board for further proceedings.

In proposed paragraph (e)(2) we would specify that the date of rendering of any decision of the Administrator under (e)(1)(i) or (e)(l)(ii) must be no later than 60 days after the date of the provider's receipt of the Board's decision or reviewable non-final order. We would also require that a copy of the Administrator's decision be sent to any affected non-party.

In proposed paragraph (e)(3) we would specify the exclusive list of factual and legal materials on which the Administrator may base his or her decision. The list of materials is similar to that specified in current paragraph (g)(3), except that, by stating that the Administrator may base his or her decision on "[t]he administrative record for the case (see § 405.1865)," we mean to include materials that the Board excluded but which the Administrator determines should have been admitted, and we mean to exclude materials that the Board admitted but which the Administrator determines should have been excluded. The language in current § 405.1875 (g)(3)(ii), relating to comments submitted to the Administrator, has been deleted, because comments are contained within the proposed administrative record category, as the administrative record would be defined in § 405.1865 to include all written materials submitted to, and accepted by, the Administrator. For the sake of consistency, we would also make the exclusive list of factual and legal materials on which the Administrator may base his or her decision applicable to decisions by the Administrator to remand. This would be a change from current paragraph (g)(3), which specifies "[a]ny decision other than to remand."

In proposed paragraph (e)(4), we would specify the effect of a timely decision by the Administrator. We believe it is appropriate to do so in order to notify the parties of their rights and responsibilities. We would specify that a timely Administrator decision that affirms, reverses, or modifies a final Board decision (that is, a Board decision specified in § 405.1875(a)(2)) is final and binding on each party to the appeal, and we would cross-reference § 405.1877(a)(4). Section 405.1877(a)(4) would specify that where the Administrator affirms, modifies or reverses a Board decision, the Administrator's decision—and only the Administrator's decision—is subject to judicial review. In addition, we would specify in proposed paragraph (e)(4) that if such an Administrator decision is not appealed to a court, the intermediary has the responsibility of implementing the decision in accordance with proposed § 405.1803(d). We would also specify that an Administrator decision may be reopened by the Administrator in accordance with our regulations on reopening (§ 405.1885 through 405.1889). In addition to stating the above effects of a final Administrator decision, we would specify in paragraph (e)(4) that a decision by the Administrator to remand a matter to the Board for further proceedings is not a final decision for purposes of judicial review, and does not invoke the effectuation responsibilities of § 405.1803(d).

Finally, in proposed § 405.1875(f), we would revise the rules and procedures that currently appear in paragraph (h) on Administrator remand orders. In proposed paragraph (f)(1)(i) we would specify that an Administrator remand order of a Board final decision (see section 1875(a)(2)) has the effect of vacating that decision and requiring further proceedings in accordance with the Administrator remand order, and in proposed paragraph (f)(1)(ii) we would specify that an Administrator affirmance, reversal, modification, or remand of a reviewable Board non-final order (see § 405.1875(a)(3)) has the effect of requiring further proceedings in accordance with the Administrator order. These statements in paragraphs (f)(1)(i) and (f)(1)(i) would also appear in paragraphs (e)(1)(i) and (e)(1)(ii).

Proposed paragraph (f)(2) would contain the text that currently appears in § 405.1875(h)(2), with some clarifying changes. In proposed paragraphs (f)(3)(and (f)(4), we would make minor revisions to the text that currently appears at (h)(3) and (h)(4). Current paragraph (h)(3) specify that the Board will take the action "requested" in the Administrator's remand order, and we would clarify this language to state that the Board is required to take the actions required in the Administrator remand order. Also, where current paragraph (h)(3) specifies that the Board will issue a new "decision" in response to the Administrator remand order, we would specify that the Board is required to "issue a new decision pursuant to paragraph (f)(1)(i) of this section, or an initial decision or a further remand order, discovery ruling, or subpoena, as applicable, under paragraph (f)(1)(ii)." The purpose of the proposed language is to recognize that the subject of the Administrator's review and ensuing remand order may have been a final Board decision as described in proposed paragraph (a)(2) of § 405.1875 (in which case a "new" decision would be required from the Board), or it may have been a reviewable non-final order as described in proposed § 405.1875(a)(3) (in which case the Board would be required to issue an "initial" decision, or no decision at all, but rather a further remand order, discovery ruling, or subpoena ruling). Similarly, current paragraph (h)(4) specifies that the "new decision" issued by the Board in response to the Administrator remand will become final unless affirmed, reversed, modified, or remanded again by the Administrator. Proposed paragraph (f)(4) would take into account that, in response to the Administrator

remand order, the Board may be required to issue a new final decision or an initial decision (which would be the final decision of the Secretary unless affirmed, reversed, modified, or remanded by the Administrator), or the Board may be required to issue a further remand order, discovery ruling, or subpoena ruling (which would not be the final decision of the Secretary regardless of whether the Administrator took review of the further remand order, discovery ruling, or subpoena ruling).

In proposed paragraph (f)(5), we would specify that the Administrator has the authority to remand a matter not only to the Board, but also to any component of HHS or CMS, or to an intermediary, under appropriate circumstances (including, but not limited to the purpose of implementing a court's order). We recognize there is a split of authority on the issue of whether the Administrator has remand authority, but we believe the better view is espoused in *Gulf Coast Home Health Services, Inc.* v. *Califano,* 1978 U.S. Dist. LEXIS 15069 (D.D.C. 1978).

U. Judicial Review (§ 405.1877)

[If you choose to comment on issues in this section, please include the caption "Judicial Review" at the beginning of your comments.]

We propose to clarify the existing procedures for obtaining judicial review of a Board or Administrator decision, and to specify how court remand orders will be processed and implemented. Current § 405.1877(a) specifies that a "final decision of the Board" is subject to judicial review (and that a Board's decision is not final if the Administrator timely affirms, modifies or reverses it), but does not otherwise define "final decision of the Board." We would revise paragraph (a), consistent with our proposed revisions to § 405.1875, to specify that a Board decision is final if it is one of the decisions specified in proposed § 405.1875(a)(2)(i) through (iv), and has not been timely reversed, affirmed, modified, or remanded by the Administrator. The types of decisions specified in proposed § 405.1875(a)(2)(i) through (iv) are: Board Hearing Decision (see § 405.1871); Board Dismissal Decision (see § 405.1836(e)(1) and (2), § 405.1840(c)(2) and (3), § 405.1868(d)(1) and (2)); Board Expedited Judicial Review Decision (see § 405.1842(h)); and any other decision deemed final by the Administrator in a particular case. Also, because we occasionally receive civil complaints filed against the Administrator of CMS or CMS itself, or an intermediary, we would inform that the only proper defendant in an action brought under section 1878(f)(1) of the Act is the Secretary. Finally, in response to a question we received, we would clarify that where a provider is dissatisfied with a final and otherwise judicially reviewable decision of the Board, it is not necessary that the provider ask the Administrator to review the decision under § 405.1875. If the provider does not ask the Administrator to review a final Board decision, and the Administrator does not review it, the provider may nonetheless seek judicial review of the Board decision. (Of course, if the Administrator were to review the Board decision and issue an Administrator decision, the Administrator decision would be the only decision subject to review.) Although we believe this principle can be gleaned from the absence of any requirement in our current regulations to seek Administrator review before seeking judicial review of a final Board decision that has not been affirmed, modified, reversed or remanded by the Administrator, we believe it is worthwhile to add specific language to proposed paragraph (a)(3) on this point.

In proposed § 405.1877(b) we would clarify the language in existing paragraphs (b) and (c) as to the time for seeking judicial review in the following three situations: (1) The Administrator declines review; (2) the Administrator accepts review and timely reverses, affirms, or modifies the Board decision; and (3) the Administrator accepts review but does not timely render a decision. Although it has always been our policy that Administrator remand orders are non-final and not subject to judicial review, and although current paragraph (a) implies as much by stating that a decision by the Administrator reversing, affirming, or modifying a Board decision is subject to judicial review, we would specify explicitly in proposed paragraph (b)(3) that an Administrator remand of a Board decision is not subject to judicial review. We would also clarify existing policy in proposed paragraph (b)(3) by stating that an Administrator remand of a Board decision vacates that Board decision and that the vacated Board decision is not subject to judicial review.

In proposed paragraph (c)(1), we would specify the limitation expressed in section 1878(g)(1) of the Act, that an intermediary's finding that expenses incurred for items and services by a provider to an individual are not payable because those items or services are excluded from coverage under section 1862 of the Act, is not reviewable by the Board and is not subject to judicial review under section 1878(f)(1) of the Act. We would specify that the finding is subject to administrative review under our regulations at 42 CFR, subparts G and H, of Part 405, and subpart A of Part 478, as applicable, and is subject to judicial review in accordance with the applicable provisions of sections 1155, 1869 and 1879(d) of the Act. In proposed paragraph (c)(2), we would restate, with minor modification, the language in current paragraph (d), that certain matters affecting payment to hospitals under the prospective payment system are not subject to administrative or judicial review, as provided in section 1886(d)(7) of the Act, and § 405.1804 and proposed § 405.1840(b)(2) of our regulations.

In proposed paragraph (d), we would clarify language in current paragraph (e), relating to group appeals. Specifically, we would specify that any providers that wish to seek judicial review of a final Board or Administrator decision on a group appeal brought under § 405.1837, must do so as a group for the specific matter at issue and common factual or legal issue that was addressed in the final Board or Administrator decision.

In proposed § 405.1877(e)(1) and (e)(2), we would restate, with minor language changes, the provisions of current paragraph (f) for the venue requirements for single and group court appeals, respectively. A civil action seeking judicial review of a single provider appeal must be brought in the District Court of the United States in which the provider is located, or in the United States District Court for the District of Columbia. A civil action seeking judicial review of a group appeal must be brought in the District Court of the United States in which the greatest number of providers participating in both the group appeal and the civil action are located, or in the United States District Court for the District of Columbia.

Current § 405.1877(g), pertaining to service of process, would be redesignated as paragraph (f).

In proposed paragraph (g)(1), we would provide that, subject to proposed paragraph (g)(3), a court's remand order will be deemed to be directed to the Administrator for processing, regardless of whether the order refers to the Administrator, the Secretary or some component of the Department of HHS, the Board or the intermediary. We believe that such a rule is appropriate because the Secretary is the real party in interest in any civil action seeking judicial review of a final decision by the Administrator or the Board, and the Secretary has delegated responsibility to

the Administrator to review decisions of the Board and to issue final decisions on behalf of the Secretary. In proposed paragraph (g)(2), we would specify the procedures for the Administrator to follow in processing a court remand order. Upon receipt of a court remand order, the Administrator would prepare an appropriate remand order and, where applicable, file the order in any Board appeal at issue in the civil action. However, we would also provide, in paragraph (g)(3), that the above rule does not apply if its application would be inconsistent with the court's remand order or any other order of a court regarding the civil action.

V. Reopening Procedures (§§ 405.1885 Through 405.1889)

[If you choose to comment on issues in this section, please include the caption "Reopening Procedures" at the beginning of your comments.]

Regulations in Subpart R of Part 405 provide for a reopening and revision procedure. A reopening and revision renders non-final and non-binding a determination, that, left undisturbed, would otherwise have been final and binding. A reopening procedure is neither specifically authorized, nor required, by statute. Rather, reopening is authorized only by our regulations, based on the Secretary's general rulemaking authority in sections 1102(a) and 1871(a) of the Act. (See *HCA Health Servs. of Oklahoma, Inc.* v. *Shalala*, 27 F.3d 614, 618 (D.C. Cir. 1994). See also *Your Home Visiting Nurse Servs., Inc.* v. *Shalala*, 525 U.S. 449, 454 (1999)).

We propose to clarify our procedures on reopening and revising final determinations. Previously, not all of our policies were set forth explicitly in regulations, and there was litigation on specific issues. Our proposals are an attempt to provide as clear a statement of our policies as possible. We also note that a few clarifications to the reopening rules were recently made, in the final rule published at 67 FR 49982 (August 1, 2002). That rule first clarified that an intermediary's discretion under section 405.1885(a) to reopen or not reopen a particular matter is limited by an explicit directive from CMS pertaining to that matter. That is, CMS retains the ultimate authority as to whether an intermediary may or may not reopen a matter, and one should not infer that CMS has directed an intermediary to reopen a matter, in the absence of a explicit direction from CMS to the intermediary. The August 1, 2002 rule also clarified that a change in legal interpretation or policy by CMS in a regulation, CMS ruling, or CMS general instruction, whether made in response to judicial precedent or otherwise, is not a basis for reopening an intermediary determination or intermediary hearing officer decision. Finally, in response to a comment on the proposed rule, the August 1, 2002 final rule clarified that CMS may direct an intermediary to reopen a particular intermediary determination or decision in order to implement a final agency decision, a final and non-appealable court judgment, or an agreement to settle an administrative appeal or a lawsuit, regarding the same determination or decision.

Our proposed changes to the reopening rules, set forth below, would incorporate the clarifications made by the August 1, 2002 final rule.

1. Reopening an Intermediary or Secretary Determination or Reviewing Entity Decision (§ 405.1885)

We propose to revise and make several changes to § 405.1885. In proposed § 405.1885(a), we would set forth an overview of the reopening process. We would specify that a Secretary or intermediary determination or a decision by a reviewing entity (that is, an intermediary hearing officer(s), a CMS reviewing official, the Board or the Administrator, see § 405.1801(a)) may be reopened either through own motion by the intermediary or the applicable reviewing entity, or by granting a provider's request to reopen. (Our current regulations do not address reopening of Secretary determinations (which are rendered by CMS), such as a determination to grant or deny a provider's request for an adjustment to its rate-of-increase ceiling under § 413.40(e). Nor do they address reopening of decisions by CMS reviewing officials.) We would also reiterate in paragraph(a) one of the points made in the August 1, 2002 final rule, namely, that CMS has the final say as to whether an intermediary or intermediary hearing officer(s) may or may not reopen an intermediary determination or intermediary hearing decision. We would provide that where CMS directs an intermediary or intermediary hearing officer(s) to reopen an intermediary determination or decision, the resulting reopening is considered an own motion reopening. (Proposed § 405.1885(b) would set forth specific time limits for reopenings by request and for own motion reopenings.) Finally, we would provide that a decision whether or not to reopen a determination or decision is not subject to further administrative review and inform that it is not subject to judicial review. We have always regarded determinations to reopen or not to reopen to be within the sole discretion of the intermediary or the reviewing entity, as applicable. In *Your Home Visiting Nurse Services, Inc.* v. *Shalala*, 525 U.S. 449, 454 (1999), the Supreme Court affirmed our policy that a determination by the intermediary not to reopen was not subject to administrative or judicial review.

In proposed § 405.1885(b), we would revise and clarify the time limits for reopening. In proposed paragraph (b)(1), we would clarify that in order for CMS, the intermediary, or a reviewing entity to reopen timely on its own motion, the notice of reopening must be mailed no later than 3 years after the date of the original determination or decision that is the subject of the reopening. In proposed paragraph (b)(2), we would specify the time in which a request to reopen must be made. Current § 405.1885(a) specifies that a request to reopen "must be made within 3 years of the date of the notice" of the determination or decision. We propose to clarify this language by stating that a provider request to reopen must be *received* by the intermediary or reviewing entity, as applicable, no later than 3 years after the date of the rendering of the original determination or decision by the intermediary or reviewing entity. The 3-year standard applies to receipt of the request for reopening, not to the issuance of a reopening notice. When the request for reopening is received late in the 3-year period, the issuance of a reopening notice does not have to occur before the expiration of 3 years. The intermediary may take a reasonable amount of time to consider the request and seek additional information, and may then issue the notice of reopening. We believe this proposed change will avoid any question as to whether a request for reopening was timely. We would also clarify in paragraph (b)(2) that a request for reopening, does not, by itself, alter the time for seeking administrative or judicial review of a determination or decision. Example: A provider receives a notice of amount of program reimbursement on January 2. Under our regulations the provider has 180 days from January 2 to seek a Board hearing (unless the time is extended for good cause). Under our proposal, if the provider requested a reopening on March 2, the request, by itself, would not extend the time for seeking a Board hearing, and the time to request a Board hearing would continue to be 180 days after January 2. (We discuss below our proposed clarifications to § 405.1887 concerning the effects a notice of reopening and a notice after reopening

have on the time to appeal a determination or decision.)

Proposed paragraph (b)(3) would combine the substance of language that currently appears in § 405.1885(a) and (d), namely that an intermediary determination or a decision by the reviewing entity may not be reopened after the 3-year period specified in proposed (b)(1) and (b)(2), except where the determination or decision was procured by fraud or similar fault, in which case reopening may be made at any time.

In proposed § 405.1885(c) we would restate our current rules on which component or entity has the authority to reopen a prior determination or decision. With one exception, authority or "jurisdiction" to reopen would be the exclusive province of the component or entity that rendered the determination or decision that is the subject of the reopening. Thus, jurisdiction for reopening a Secretary determination, CMS reviewing official decision, Board decision, and Administrator decision would lie exclusively with CMS, the CMS reviewing official, the Board, and the Administrator, respectively. The current exception to this general rule of exclusive authority, which we propose to continue, is that the discretion of an intermediary or intermediary hearing officer(s) to reopen or not reopen an intermediary determination or intermediary hearing decision is subject to a directive from CMS to reopen or not reopen.

In paragraph (c)(1) we would specify that CMS may direct an intermediary or intermediary hearing officer(s) to reopen and revise an intermediary determination or intermediary hearing officer(s) decision by providing explicit direction to the intermediary or hearing officer(s) to reopen and revise, and that CMS's authority is constrained only by the time limits set forth in proposed paragraph (b) and the limitation in proposed paragraph (c)(1)(ii) (discussed below). As we stated in the August 1, 2002 final rule (67 FR 50096–97), the purpose of requiring an explicit direction to reopen and revise is to prevent any misunderstanding as to whether CMS has directed a reopening, including a claim that CMS has impliedly directed a reopening through publication or issuance of a change in policy.

In proposed paragraph (c)(1)(i), we would give two examples of CMS-directed reopenings. The first example is where CMS provides explicit notice to the intermediary that the intermediary determination or the intermediary hearing decision is inconsistent with the applicable law, regulations, CMS ruling, or CMS general instructions in effect, and as CMS understood those legal provisions, at the time the determination or decision was rendered by the intermediary. This example, as recently clarified by the August 1, 2002 final rule, has been in § 405.1885(b) of our regulations since its inception. We propose to place it under the heading of "Example" to further reinforce the discretionary nature of reopenings, including CMS-directed reopenings, and to avoid implying that CMS must direct an intermediary or intermediary hearing officer(s) to reopen in such a situation. Our proposed second example of a CMS-directed reopening currently appears (with slight, non-substantive wording differences) at § 405.1885(b)(3). It was added by the August 1, 2002 final rule in response to our concern that the clarifications proposed for that rule might be misinterpreted as meaning that CMS would be precluded from requiring the reopening of a particular intermediary determination or decision in order to implement a specific final agency decision, final and non-appealable court judgment or a specific agreement to settle an administrative appeal or a lawsuit. See 67 FR 50099.

In paragraph (c)(1)(ii) we would provide that a change of legal interpretation or policy by CMS in a regulation, CMS ruling, or CMS general instruction, whether made in response to judicial precedent or otherwise, is not a basis for reopening a CMS or intermediary determination, an intermediary hearing decision, a CMS reviewing official decision, a Board decision, or an Administrator decision, under this section. We explained in the August 1, 2002 final rule that it was never our policy to require intermediaries to reopen based on a change in legal interpretation or policy, regardless of the impetus of such change, and that intermediary reopenings based on a change in legal interpretation or policy would raise questions of impermissible retroactive rulemaking. See 67 FR 50096. The August 1, 2002 final rule made clear that intermediary and intermediary hearing officer(s) reopenings based on a change in legal interpretation or policy are not permitted, and we believe that fairness and concerns of possible impermissible retroactive rulemaking dictate that we should extend such a prohibition on such reopenings to CMS (with respect to Secretary determinations), CMS reviewing officials, the Board, and the Administrator.

In proposed paragraphs (c)(3) and (c)(4), we would clarify the authority, and specify the procedures, for intermediary reopenings in two specific situations. In proposed paragraph (c)(3), we would state that the intermediary may reopen, on its own motion or on request, a determination that is currently pending on appeal before the Board or the Administrator. The scope of the reopening could include any matter covered by the determination, including those specific matters that have been appealed to the Board or the Administrator. The intermediary would be required to notify the Board of the reopening. In proposed paragraph (c)(4) we would provide that an intermediary may reopen, on its own motion or on request of the provider(s), a determination for which no appeal has been taken, but for which the time to appeal to the Board has not yet expired.

Finally, we would delete as unnecessary current § 405.1885(f) which relates to cost reporting periods ending prior to December 31, 1971.

2. Required Notices Under Reopening Procedures; Effect of a Reopening (§ 405.1887)

In proposed § 405.1887 we would specify the obligations of the intermediary or reviewing entity, as applicable, to: (1) Provide written notice to all parties of its intention to reopen; (2) to allow the parties a reasonable period of time in which to present any additional evidence or argument in support of their positions; and (3) to notify all parties, at the conclusion of the reopening, of the results of the reopening, including any revisions that have been made.

Our proposed language for § 405.1887(d) is meant to state our longstanding policy that a reopening of a determination by itself does not extend appeal rights, and that any matter that is considered during the course of a reopening (including a matter specifically identified in a notice of reopening) but is not revised is not within the proper scope of an appeal of a revised determination or decision (see § 405.1889). In *Edgewater Hospital* v. *Bowen*, 857 F.2d 1123 (7th Cir. 1989), the intermediary issued an NPR and, following a reopening, a revised NPR. The provider appealed the disallowance of two items that were addressed in the original NPR and which were identified in the notice of reopening, but were not revised in the revised NPR. The appeal was within 180 days after the revised NPR, but more than 180 days after the original NPR. Based on the "clear language of the Regulations," the court of appeals found that the provider's appeal was timely. The court held that the intermediary's decision to review

the two disputed cost items during the course of its reopening was a revision within the meaning of the regulations, despite the fact that the intermediary did not revise the disallowances with respect to those items. The proposed language in paragraph (d) is intended to make clear that items that are within the scope of a reopening but are not revised, are not appealable through any revised determination issued after the reopening. See also proposed § 405.1889. For example: An intermediary issues an NPR on March 1, 2001. No timely appeal of the NPR is taken. On December 1, 2001 the intermediary notifies the provider that it intends to reopen the March 1, 2001 NPR to examine cost issues A, B, and C. On June 1, 2001 the intermediary issues a revised NPR which addresses only cost issue C. The provider has 180 days from its receipt of the June 1, 2001 revised NPR to appeal cost issue C (assuming the amount in controversy and dissatisfaction requirements are met); any appeal of cost issues A and/or B would be untimely and would be disallowed, because issues A and B were not revised.

We note that in *Edgewater*, the provider still had time to appeal the first NPR at the time that the intermediary issued its notice of reopening. The district court stated that the provider was unaware that the two cost items that it appealed (from the revised NPR) were not going to be revised until it received the revised NPR (at which time it was too late to appeal them from the original NPR). The court of appeals indicated that its decision may have in part been based on fairness concerns. We do not believe, however, that a provider should assume that cost items that have been reopened will necessarily be revised at all, or revised in a fully favorable way to the provider.

3. Effect of a Revision; Issue-Specific Nature of Appeals of Revised Determinations and Decisions (§ 405.1889)

We propose to change the title of § 405.1889 and to make minor revisions to the language. Our proposed changes are intended to clarify our longstanding policy, which is expressed in current § 405.1889 and which has been upheld by several courts, that the scope of appeal of a revised notice of amount of program reimbursement (NPR) or other revised determination or revised decision is limited to the specific revisions that were made in the revised determination or decision. That is, if the time to raise a matter through an appeal of the original determination or decision has expired, the matter may not be appealed through an appeal of a revised determination or decision if the matter has not been specifically revised in the revised determination or decision. (See, for example, *Foothill Presbyterian Hosp.* v. *Shalala*, 152 F.3d 1132 (9th Cir. 1998); *HCA Health Servs. of Oklahoma, Inc.* v. *Shalala*, 27 F.3d 614, 618 (D.C. Cir. 1994)). For example: After the time to appeal an NPR has expired, an intermediary reopens the NPR and issues a revised NPR, which reclassifies the provider's malpractice insurance costs as administrative and general expenses not subject to the routine cost limits (RCL). The provider appeals the revised NPR to the Board, and challenges the methodology by which the RCL were calculated. Although the RCL were necessarily affected by the revised NPR, the revised NPR made no revision to the methodology for calculating the RCL; therefore the provider's appeal is not within the scope of the revised NPR and the Board is without jurisdiction to hear the appeal.

W. Three Additional Proposals Under Consideration

We are considering whether to amend our regulations to state the following. First, an ex parte contact with a Board staff member concerning a procedural matter in a case is not a prohibited ex parte communication. We believe this proposed position is consistent with how courts operate with respect to communications between one party's attorney and the judge's clerk or the court's docket staff. We would also encourage counsel to keep such communications to a minimum and to notify promptly opposing counsel whenever such communications take place.

Second, upon receipt of a credible allegation that a party's counsel has a conflict of interest in his or her representation of the party, the Board has the responsibility to order such party to show cause why a case should not be dismissed or why other appropriate action should not be taken. We believe that in order to maintain the integrity of the appeal process, a representative that has, or may have, obtained confidential information from one party while in that party's employ should not represent another party whose interest is inimical to that of the first party. An allegation that a conflict of interest has occurred should not be made nor taken lightly.

Third, where an intermediary denies reimbursement for a claimed item without auditing the reimbursement effect of such claim, and the intermediary's denial is reversed by a decision of the Board, the Administrator or a court, which has become final and non-appealable, CMS may require the intermediary to determine the reimbursement effect of the claim prior to payment. (This position is similar to our proposal for § 405.1803(d), as previously stated, for the auditing of self-disallowed costs.) Similarly, where CMS or the intermediary denies reimbursement for an item on one basis and that determination is reversed, CMS or the intermediary should then have the opportunity to determine whether reimbursement should be allowed or whether reimbursement should be denied for any other reason. For example, if CMS were to deny a provider's request for an exception to its ESRD payment rate on the basis that the request was not submitted timely, and if this determination were reversed by a court order that has become final and non-appealable, CMS would then determine whether the provider's exception request is allowable — the exception request would not be granted simply because the court found that it was timely submitted. This latter proposal is consistent with our longstanding view and we believe it is appropriate in light of the need to conserve administrative resources. That is, we believe that it is potentially a waste of resources for a decision maker to consider all possible reasons why an item or request should not be allowed where the decision maker has a good faith belief that its determination is correct and that determination may never be challenged or, if it is challenged, may never be reversed.

Issues relating to these proposals did not surface until very late in the development of this proposed rule. We did not wish to delay publication of the proposed rule, so we have not set forth specific regulatory text language for these proposals. Rather, we are providing the public with notice of the proposals and we invite comments on them.

X. Technical Revisions

1. Sections 413.30(c)(1), 413.30(c)(2), 413.40(e)(5)

These sections provide that the time required by CMS or the intermediary to review a request for an exception or exemption to the routine cost limits or a request for an adjustment to the rate-of-increase ceiling for a hospital excluded from PPS is good cause for the granting of an extension of time in which to seek a Board hearing on an appeal of the intermediary's NPR. We propose to revise the language to provide that the time in which to seek

an intermediary hearing under the above circumstances is also extended for good cause. We also propose to delete the references to § 405.1841 (which we propose to delete) in these sections and replace them with references to proposed new § 405.1836.

2. Section 413.64(j)(1)

We propose to make minor, non-substantive wording changes and to replace the reference to § 405.1841 with a reference to § 405.1835.

3. Sections 417.576, 417.810

As we explain above, we propose to revise § 405.1801(b)(2) to clarify the specific applicability of subpart R to non-provider entities. We believe the regulation is incomplete in stating that non-provider entities do not qualify for a Board hearing, because, under our longstanding policy, such entities cannot qualify for a Board hearing or an intermediary hearing because both types of hearings are available only to providers. Also as stated above, we believe that non-provider hearings before a CMS reviewing official are more analogous to a Board hearing than an intermediary hearing, and we propose to revise § 405.1801(b)(2) to state that if a hearing is available to a non-provider entity on an amount in controversy of at least $1,000, the procedural rules for a Board hearing under this subpart are applicable to the maximum extent possible. Accordingly, we also propose to revise §§ 417.576(d)(4), 417.810(c)(2) and 417.810(d)(3) to substitute "a hearing in accordance with the procedural rules described in § 405.1801(b)(2)" in place of language that states or implies that a health maintenance organization (HMO) or competitive medical plan (CMP) has a right to a hearing in accordance with, or under, Subpart R.

III. Collection of Information Requirements

[If you choose to comment on issues in this section, please include the caption "Collection of Information Requirements" at the beginning of your comments.]

Under the Paperwork Reduction Act (PRA) of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

For the purpose of discussion, below is a summary of the information collection requirements associated with the hearing process. Because these collection requirements are collected pursuant to an administration action and/or audit they are not subject to the PRA, as stipulated under 5 CFR 1320.4.

Section 405.1811 Right to Intermediary Hearing; Contents of, and Adding Issues to, Hearing Request

The provider's request for an intermediary hearing must be submitted in writing to the intermediary, and the request must include specified information.

After filing a hearing request in accordance with paragraphs (a) and (b) of this section, a provider may add specific Medicare payment issues to the original hearing request by submitting a written request to the intermediary hearing officer, only if certain conditions are met.

The exempt burden associated with these requirements is the time it will take a provider to gather all the necessary information and to write the request for an intermediary hearing. The proposed regulation would not impose any new paperwork burdens on providers. It would merely require providers to prepare their requests in a more expedited fashion. Because most cost report disputes involve at least $10,000 and are therefore heard by the Board, only a handful of intermediary hearing requests are submitted annually by providers.

Section 405.1835 Right to Board Hearing; Contents of, and Adding Issues to, Hearing Request

The provider's request for a Board hearing must be submitted in writing to the intermediary, and the request must include specified information.

After filing a hearing request in accordance with paragraphs (a) and (b) of this section, a provider may add specific Medicare payment issues to the original hearing request by submitting a written request to the intermediary hearing officer, only if certain conditions are met.

The exempt burden associated with these requirements is the time it will take a provider to gather all the necessary information and to write the request for a Board hearing. The proposed regulation would not impose any new paperwork burdens on providers. It would merely require providers to prepare their requests in a more expedited fashion. Generally speaking, appeal letters are two to five pages long and the time required to put together and mail the appeal letter is minimal. The number of requests for appeal received by the Board varies from year to year. For FY 2000, the Board received 4053 new appeals and in 2003, the Board received 1675 new appeals. We welcome comments on this burden.

Section 405.1837 Group Appeals

The providers' request for a group appeal must be submitted in writing to the Board, and the request must include specified information. A provider may be added to the group after requesting to do so in writing.

The exempt burden associated with these requirements is the time it will take a group to gather all the necessary information and to write the request. In the last two years, an average of 325 groups filed requests for Board hearings and each had to submit additional information.

IV. Response To Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Regulatory Impact Statement

[If you choose to comment on issues in this section, please include the caption "Regulatory Impact Statement" at the beginning of your comments.]

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA), September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995, Pub. L. No. 104–4, and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential

economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year). This rule does not reach the economic threshold and thus is not considered a major rule.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any one year. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities. The only burden attached to this proposed rule is the information collection burden associated with filing a request for an intermediary or PRRB hearing. As we have described in section III of this preamble, the proposed rule does not impose any new paperwork burdens on providers. It merely proposes requiring providers to prepare their hearing requests in a more expedited fashion. Moreover, the proposed rule would lessen the time it takes small entities to pursue appeals and receive decisions.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We are not preparing analyses for section 1102(b) of the Act because we have determined, and we certify, that this rule would not have a significant impact on the operations of a substantial number of small rural hospitals. Again, the only impact on small rural hospitals would be the potential increase in the amount of time a provider would need to file a request for an intermediary or PRRB hearing. However, as we described in section III of this preamble, the proposed rule does not impose any new paperwork burdens on providers. It merely proposes requiring providers to prepare their hearing requests in a more expedited fashion. Moreover, the proposed rule would lessen the time it takes rural hospitals to pursue appeals and receive decisions.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This rule will have no consequential effect on the governments mentioned or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Because this regulation does not impose any costs on State or local governments, the requirements of E.O. 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 417

Administrative practice and procedure, Grant programs—health, Health care, Health insurance, Health maintenance organizations (HMO), Loan programs—health, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 42 CFR chapter IV would be amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart R—Provider Reimbursement Determinations and Appeals

1. The authority citation for part 405, subpart R continues to read as follows:

Authority: Secs. 205, 1102, 1814(b), 1815(a), 1833, 1861(v), 1871, 1872, 1878, and 1886 of the Social Security Act (42 U.S.C. 405, 1302, 1395f(b), 1395g(a), 1395l, 1395x(v), 1395hh, 1395ii, 1395oo, and 1395ww).

2. Section 405.1801 is amended to read as follows:

A. In paragraph (a), remove the words "Administrator's review" and add in their place, the words "Administrator review"; the terms "date of filing" and "date of submission of materials" are removed; and the definition for the term "date of receipt" is revised; definitions for "CMS reviewing official", "CMS reviewing official procedure", "intermediary hearing officer(s)", and "reviewing entity" are added in alphabetical order.

B. Paragraph (b) is revised.

C. A new paragraph (d) is added.

The revisions and additions read as follows:

§ 405.1801 Introduction.

(a) Definitions. * * *

* * * * *

CMS reviewing official means the reviewing official provided for in § 405.1834.

CMS reviewing official procedure means the review provided for in § 405.1834.

* * * * *

Date of receipt means the date a document or other material is received by: (1) A party or an affected non-party, such as CMS, involved in proceedings before a reviewing entity; or (2) a reviewing entity. The date of receipt by a party or affected nonparty involved in proceedings before a reviewing entity is presumed to be 5 days after the date of issuance of an intermediary notice or a reviewing entity document, or 5 days after the date of submission of material to a reviewing entity, as applicable, unless it is established by a preponderance of the evidence that the intermediary notice, reviewing entity document, or submitted material was actually received on a later date. As applied to a provider, the phrase "date of receipt" in this definition is synonymous with the term "notice," as that term is used in section 1878 of the Act and in this subpart.

The date of receipt by a reviewing entity is presumed as the date stamped by the reviewing entity "Received" on the document or other submitted material, unless it is established by a preponderance of the evidence that the document or other material was actually received on a different date. For purposes of an intermediary hearing, if no intermediary hearing officer is appointed (or none is currently presiding), the date of receipt of an intermediary hearing request (or other material pertaining to the request) is presumed to be the date stamped "Received" on the material by the

intermediary, unless it is established by a preponderance of the evidence that the document or other material was actually received on a different date. The date of receipt of a document or other material by a CMS reviewing official or the CMS Administrator is presumed to be the date stamped "Received" on the material by the Office of the Attorney Advisor, unless it is established by a preponderance of the evidence that the document or other material was actually received on a different date.

Intermediary hearing officer(s) means the hearing officer or panel of hearing officers provided for in § 405.1817.

* * * * *

Reviewing entity means the intermediary hearing officer(s), a CMS reviewing official, the Board, or the Administrator.

(b) *General rules*—(1) *Providers.* In order to be paid for covered services furnished to Medicare beneficiaries, a provider must file a cost report with its intermediary as specified in § 413.24(f) of this chapter. For purposes of this subpart, the term "provider" includes a hospital (see part 482 of this chapter), hospice program (see § 418.3 of this chapter), critical access hospital (CAH), comprehensive outpatient rehabilitation facility (CORF), renal dialysis facility, Federally qualified health center (FQHC), home health agency (HHA), rural health clinic (RHC), skilled nursing facility (SNF), and any other entity included under the Act. (FQHCs and RHCs are providers, for purposes of this subpart, effective with cost reporting periods beginning on or after October 1, 1991).

(2) *Other non-provider entities participating in Medicare Part A.*

(i) In addition to providers of services, there are other entities such as health maintenance organizations (HMOs) and competitive medical plans (CMPs) (see § 400.200 of this chapter) that may participate in the Medicare program but do not qualify as providers under the Act or this subpart.

(ii) Some of these non-provider entities are required to file periodic cost reports and are paid on the basis of information furnished in these reports. These non-provider entities may not obtain an intermediary hearing or a Board hearing under the Act or this subpart.

(iii) Some other hearing may be available to these non-provider entities, if the amount in controversy is at least $1,000.

(iv) For any non-provider hearing, the procedural rules for a Board hearing set forth in this subpart are applicable to the maximum extent possible.

* * * * *

(d) *Calculating time periods and deadlines.* In computing any period of time or deadline prescribed or allowed under this subpart or authorized by a reviewing entity:

(1) The day of the act, event, or default from which the designated time period begins to run is not included.

(2) Each succeeding calendar day is included in the designated time period, except that, in calculating a designated period of time for an act by a reviewing entity, a day is not included where the reviewing entity is unable to conduct business in the usual manner due to extraordinary circumstances beyond its control such as natural or other catastrophe, weather conditions, fire, or furlough. In that case, the designated time period resumes when the reviewing entity is again able to conduct business in the usual manner.

(3) The last day of the designated time period is included unless it is a Saturday, a Sunday, a Federal legal holiday (as enumerated in Rule 6(a) of the Federal Rules of Civil Procedure), or, in the case of a deadline for receipt by a reviewing entity (see § 405.1801(a)), a day when the reviewing entity is unable to conduct business in the usual manner due to extraordinary circumstances beyond its control such as natural or other catastrophe, weather conditions, fire, or furlough. In that case, the designated time period continues to run until the end of the next day which is not one of the aforementioned days.

(4) For purposes of paragraph (d) of this section, the reviewing entity is deemed to—

(i) Be the intermediary, if the intermediary hearing officer(s) is not yet appointed (or none is currently presiding); and

(ii) Include the Office of the Attorney Advisor.

3. Section 405.1803 is amended to read as follows:

A. In the first sentence of paragraph (a) introductory text, remove the citation "(see § 405.1835(b))" and add in its place "(see § 405.1835(a)(3)(ii))";

B. In the second sentence of paragraph (b), remove the phrase "after the date of the notice." and add in its place "after the date of receipt of the notice.";

C. A new paragraph (d) is added to read as follows:

§ 405.1803 Intermediary determination and notice of amount of program reimbursement.

* * * * *

(d) *Effect of certain final agency decisions and final court judgments; audits of self-disallowed items.*

(1) This paragraph applies to the following administrative decisions and court judgments:

(i) A final hearing decision by the intermediary (see § 405.1833) or the Board (see § 405.1871(b)).

(ii) A final decision by a CMS reviewing official (see § 405.1834(f)(1)) or the Administrator (see § 405.1875(e)(4)) following review of a hearing decision by the intermediary or the Board, respectively.

(iii) A final, non-appealable judgment by a court on a Medicare reimbursement issue that the court rendered in accordance to jurisdiction under section 1878 of the Act (see § 405.1842 and § 405.1877).

(2) For any final agency decision or final court judgment specified in paragraph (d)(1) of this section, the intermediary must promptly, upon notification from CMS:

(i) Determine the effect of the final decision or judgment on the intermediary determination for the cost reporting period at issue in the decision or judgment.

(ii) Issue any revised intermediary determination, and make any additional program payment, or recoup or offset any program payment (see § 405.371), for the period that may be necessary to implement the final decision or judgment on the specific matters at issue in the decision or judgment.

(3) CMS may require the intermediary to audit any self-disallowed item at issue in an appeal or a civil action before any revised intermediary determination or additional Medicare payment, recoupment, or offset may be determined for an item under paragraph (d)(2) of this section.

(4) For any final settlement agreement, whether for an appeal to the intermediary hearing officer(s) or the Board or for a civil action before a court, the intermediary must implement the settlement agreement in accordance with paragraphs (d)(2) and (d)(3) of this section, unless a particular administrative or judicial settlement agreement provides otherwise.

4. Section 405.1811 is revised to read as follows:

§ 405.1811 Right to intermediary hearing; contents of, and adding issues to, hearing request.

(a) *Criteria.* A provider (but no other individual, entity, or party) has a right to an intermediary hearing, as a single provider appeal, for specific items claimed for a cost reporting period covered by an intermediary or Secretary

determination for the period, but only if—

(1) The provider has preserved its right to claim dissatisfaction with the amount of Medicare payment for the specific item(s) at issue, by either:

(i) Including a claim for a specific item(s) on its cost report for a period if the provider seeks payment that it believes to be in accordance with Medicare policy; or

(ii) Self-disallowing a specific item(s) by following the applicable procedures for filing a cost report under protest, if the provider seeks payment that it believes may not be allowable or may not be in accordance with Medicare policy (for example, if the intermediary lacks discretion to award the reimbursement the provider seeks for the item(s)).

(2) The amount in controversy (as determined in accordance with § 405.1839) is at least $1,000 but less than $10,000; and

(3) Unless the provider qualifies for a good cause extension under § 405.1813, the date of receipt by the intermediary of the provider's hearing request must be—

(i) No later than 180 days after the date of receipt by the provider of the intermediary or Secretary determination; or

(ii) Where the intermediary determination is not issued (through no fault of the provider) within 12 months of the date of receipt by the intermediary of the provider's perfected cost report or amended cost report (as specified in § 413.24(f) of this chapter), no later than 180 days after the expiration of the 12-month period for issuance of the intermediary determination. The date of receipt by the intermediary of the provider's perfected cost report or amended cost report is presumed to be the date the intermediary stamped "Received" unless it is shown by a preponderance of the evidence that the intermediary received the cost report on an earlier date.

(b) *Contents of request for an intermediary hearing.* The provider's request for an intermediary hearing must be submitted in writing to the intermediary, and the request must include:

(1) A demonstration that the provider satisfies the requirements for an intermediary hearing as specified in paragraph (a) of this section, including a specific identification of the intermediary or Secretary determination under appeal.

(2) An explanation, for each specific item at issue (see § 405.1811(a)(1)), of the provider's dissatisfaction with the intermediary or Secretary determination under appeal, including an account of:

(i) Why the provider believes Medicare payment is incorrect for each disputed item.

(ii) How and why the provider believes Medicare payment should be determined differently for each disputed item.

(iii) Where the provider self-disallows a specific item, a description of the nature and amount of each self-disallowed item and the reimbursement sought for any item.

(3) A copy of the intermediary or Secretary determination under appeal, and any other documentary evidence the provider considers necessary to satisfy the hearing request requirements of paragraphs (b)(1) and (b)(2) of this section.

(c) *Adding issues to the hearing request.* After filing a hearing request in accordance with paragraphs (a) and (b) of this section, a provider may add specific Medicare payment issues to the original hearing request by submitting a written request to the intermediary hearing officer, only if:

(1) A hearing request to add issues complies with the requirements of paragraphs (a)(1) and (b) of this section as to each new issue.

(2) The specific matters at issue raised in the initial hearing request and the matters identified in subsequent requests to add issues, when combined, satisfy the requirements of paragraph (a)(2) of this section.

(3) The intermediary hearing officer receives the request to add issues no later than 60 days after the expiration of the applicable 180-day period prescribed in paragraph (a)(3) of this section.

5. Section 405.1813 is revised to read as follows:

§ 405.1813 Good cause extension of time limit for requesting an intermediary hearing.

(a) A request for an intermediary hearing that is received by the intermediary after the applicable 180-day time limit prescribed in § 405.1811(a)(3) must be dismissed by the intermediary hearing officer(s), except the hearing officer(s) may extend the time limit upon a good cause showing by the provider.

(b) The intermediary hearing officer(s) may find good cause to extend the time limit only if the provider demonstrates in writing it could not reasonably have been expected to file timely due to extraordinary circumstances beyond its control such as a natural or other catastrophe, fire, or strike, and the provider's written request for an extension is received by the intermediary hearing officer(s) within a reasonable time (as determined by the intermediary hearing officer(s) under the circumstances) after the expiration of the applicable 180-day limit prescribed in § 405.1811(a)(3).

(c) The intermediary hearing officer(s) may not grant a request for an extension under this section if—

(1) The provider relies on a change in the law, regulations, CMS Rulings, or general CMS instructions (whether based on a court decision or otherwise) or a CMS administrative ruling or policy as the basis for the extension request; or

(2) The date of receipt by the intermediary of the provider's extension request is later than 3 years after the date of the intermediary or other determination that the provider seeks to appeal.

(d) If an extension request is granted or denied under this section, the intermediary hearing officer(s) must give prompt written notice to the provider, and mail a copy to each party to the appeal. The notice must include an explanation of the reasons for the decision by the hearing officer(s) and the facts underlying the decision.

(e)(1) A decision denying an extension request under this section and dismissing the appeal is final and binding on the provider unless the dismissal decision is reviewed by a CMS reviewing official in accordance with § 405.1834(b)(2)(i) or reopened by the intermediary hearing officer(s) in accordance with § 405.1885 through § 405.1889. The intermediary hearing officer(s) will promptly mail the decision to CMS' Office Hearings (see § 405.1834(b)(4)).

(2) A decision granting an extension request under this section is not subject to immediate review by a CMS reviewing official (see § 405.1834(b)(3)). Any decision may be examined during the course of CMS review of a final jurisdictional dismissal decision or a final hearing decision by the intermediary hearing officer(s) (see § 405.1834(b)(2)(i) and (ii)).

6. A new section 405.1814 is added to read as follows:

§ 405.1814 Intermediary hearing officer jurisdiction.

(a) *General rules.* (1) After a request for an intermediary hearing is filed under § 405.1811, the intermediary hearing officer(s) must:

(i) Determine in accordance with paragraph (b) of this section, whether it has jurisdiction to grant a hearing on each of the specific matters at issue in the hearing request.

(ii) Make a preliminary determination of the scope of its jurisdiction, if any,

over the matters at issue in the appeal, and notify the parties of its specific jurisdictional findings, before conducting any of the following proceedings:

(A) Determining its authority to decide a legal question relevant to a matter at issue (see § 405.1829);

(B) Permitting discovery (see § 405.1821); or conducting a hearing (see § 405.1819);

(C) May revise a preliminary jurisdictional finding at any subsequent stage of the proceedings in an appeal, and it must promptly notify the parties of the revised findings.

(2) Under paragraph (c)(1) of this section, each intermediary hearing decision (see § 405.1831) must include a final jurisdictional finding for each specific matter at issue in the appeal.

(3) If the hearing officer(s) finally determines it lacks jurisdiction over every specific matter at issue in the appeal, it issues a jurisdictional dismissal decision under paragraph (c)(2) of this section.

(4) Final jurisdictional findings and jurisdictional dismissal decisions by the hearing officer(s) are subject to the CMS reviewing official procedure in accordance with paragraph (d) of this section and § 405.1834(b)(2)(i) and (b)(2)(ii).

(b) *Criteria.* Except for the amount in controversy requirement, the jurisdiction of the intermediary hearing officer(s) to grant a hearing is determined separately for each specific matter at issue in the intermediary or Secretary determination for the cost reporting period under appeal. The hearing officer(s) has jurisdiction to grant a hearing over a specific matter at issue in an appeal only if the provider has a right to an intermediary hearing under § 405.1811. Certain matters at issue are removed from the jurisdiction of the intermediary hearing officer(s); these matters include, but are not limited to, the following:

(1) A finding in an intermediary determination that no payment be made under title XVIII of the Act for expenses incurred for items and services furnished to an individual because those items and services are excluded from coverage under section 1862 of the Act, 42 U.S.C. 1395y, and the regulations at 42 CFR, Part 411 (the finding may be reviewed only in accordance with the applicable provisions of section 1869 of the Act, and of subpart G or H of part 405).

(2) Certain matters affecting payments to hospitals under the prospective payment system, as provided in § 405.1804.

(3) Any self-disallowed item except as permitted in § 405.1811(a)(1)(ii).

(c) *Final jurisdictional findings and jurisdictional dismissal decisions by intermediary hearing officer(s).*

(1) In issuing a hearing decision under § 405.1831, the intermediary hearing officer(s) must make a final determination of its jurisdiction, or lack thereof, for each specific matter at issue in the hearing decision. Each intermediary hearing decision must include specific findings of fact and conclusions of law as to the jurisdiction of the hearing officer(s), or lack thereof, to grant a hearing on each matter at issue in the appeal.

(2) If the hearing officer(s) finally determines it lacks jurisdiction to grant a hearing for every specific matter at issue in an appeal, it must issue a jurisdictional dismissal decision dismissing the appeal for lack of jurisdiction. Each jurisdictional dismissal decision by the hearing officer(s) must include specific findings of fact and conclusions of law explaining the determination that there is no jurisdiction to grant a hearing on each matter at issue in the appeal. A copy of the jurisdictional dismissal decision must be mailed promptly to each party to the appeal (see § 405.1815) and to CMS' Office of Hearings (see § 405.1834(b)(4)).

(3) A jurisdictional dismissal decision by the intermediary hearing officer(s) under paragraph (c)(2) of this section is final and binding on the parties unless the decision is reviewed by a CMS reviewing official in accordance with § 405.1834 or reopened by the intermediary hearing officer(s) in accordance with §§ 405.1885 through 405.1889.

(d) *CMS reviewing official procedure.* Any finding by the intermediary hearing officer(s) as to whether it has jurisdiction to grant a hearing on a specific matter at issue in an appeal is not subject to immediate review by a CMS reviewing official, except as provided in this paragraph (see § 405.1834(b)(3)). A CMS reviewing official may review under § 405.1834(b)(2)(ii) or (b)(2)(iii) the final jurisdictional findings of the intermediary hearing officer(s) as to specific matters at issue in an appeal, provided these findings are included in a jurisdictional dismissal decision under paragraph (c)(2) of this section or a hearing decision (see § 405.1831) by the intermediary hearing officer(s).

7. Section 405.1815 is revised to read as follows:

§ 405.1815 Parties to proceedings before the intermediary hearing officer(s).

When a provider files a request for an intermediary hearing in accordance with § 405.1811, the parties to all proceedings before the intermediary hearing officer(s) are the provider and, if applicable, any other entity found by the intermediary to be a related organization of the provider under § 413.17 of this chapter. The parties must be given reasonable notice of the time, date, and place of any intermediary hearing. Neither the intermediary nor CMS may be made a party to proceedings before the intermediary hearing officer(s).

8. Section 405.1821 is revised to read as follows:

§ 405.1821 Prehearing discovery and other proceedings prior to the intermediary hearing.

(a) *Discovery rule; time limits.* (1) Limited prehearing discovery may be permitted by the intermediary hearing officer(s) upon request of a party, provided the request is timely and the hearing officer(s) makes a preliminary finding of its jurisdiction over the matters at issue in accordance with § 405.1814(a).

(2) A prehearing discovery request is timely if the date of receipt of the request by another party, or non-party, as applicable, is no later than 90 days before the scheduled starting date of the intermediary hearing, unless the intermediary hearing officer(s) extend the time upon request of the party and upon a showing of good cause.

(3) Discovery may not be authorized by the hearing officer(s) or conducted by a party any later than 45 days before the scheduled starting date of the intermediary hearing unless the hearing officer(s) find, at the request of the party, good cause to extend the period for discovery.

(4) Before ruling on a request to extend the time for requesting discovery or for conducting discovery, the hearing officer(s) must give the other parties to the appeal and any non-party subject to a discovery request a reasonable period to respond to the extension request.

(5) The hearing officer(s) may extend the time in which to request discovery or conduct discovery only if the requesting party establishes that it was not dilatory or otherwise at fault in not meeting the original discovery deadline.

(6) If the extension request is granted, the hearing officer(s) must impose a new deadline and, if necessary, reschedule the hearing date so that all discovery ends no later than 45 days before the hearing.

(b) *Discovery criteria*—(1) *General rule.* The intermediary hearing officer(s) may permit discovery of a matter that is relevant to the specific subject matter of the intermediary hearing, provided the matter is not privileged or otherwise protected from disclosure and the discovery request is not unreasonable, unduly burdensome or expensive, or otherwise inappropriate. In determining whether to permit discovery and in fixing the scope and limits of any discovery, the hearing officer(s) uses the Federal Rules of Civil Procedure and Rules 401 and 501 of the Federal Rules of Evidence for guidance.

(2) *Limitations on discovery.* Any discovery before the intermediary hearing officer(s) is limited as follows:

(i) A party may request of another party or a non-party the reasonable production of documents for inspection and copying, and may propound a reasonable number of written interrogatories.

(ii) A party may not request admissions, take oral or written depositions, or take any other form of discovery not permitted under this section.

(c) *Discovery procedures; rights of non-parties; motions to compel or for protective order.* (1) A party may request discovery of another party to the proceedings before the intermediary hearing officer(s) or of a non-party to the proceedings. Any discovery request filed with the intermediary hearing officer(s) must be mailed promptly to the party or non-party from which the discovery is requested, and to any other party to the intermediary hearing (see § 405.1815).

(2) If a discovery request is made of a non-party to the intermediary hearing, the non-party (including HHS and CMS) has the same rights as any party has in responding to a discovery request. These rights include, but are not limited to, the right to select and use any attorney or other representative, and to submit discovery responses, objections, or motions to the hearing officer(s).

(3) Each party is required to make a good faith effort to resolve or narrow any discovery dispute, regardless of whether the dispute is with another party or a non-party.

(i) A party may submit to the intermediary hearing officer(s) a motion to compel discovery that is permitted under this section, and a motion for a protective order regarding any discovery request may be submitted to the hearing officer(s) by a party or non-party.

(ii) Any motion to compel or for protective order must include a self-sworn declaration describing the movant's efforts to resolve or narrow the discovery dispute. The declaration also must be included with any response to a motion to compel or for a protective order.

(iii) The hearing officer(s) must—

(A) Decide the motion in accordance with this section and any prior discovery ruling; and

(B) Issue and mail to each party and any affected non-party a discovery ruling that grants or denies the motion to compel or for protective order in whole or in part; if applicable, the discovery ruling must specifically identify any part of the disputed discovery request upheld and any part rejected, and impose any limits on discovery the hearing officer(s) find necessary and appropriate.

(d) *Reviewability of discovery or disclosure rulings*—

(1) *General rule.* A discovery ruling issued in accordance with paragraph (c)(3) of this section, or a disclosure ruling (such as one issued at a hearing), is not subject to immediate review by a CMS official (see § 405.1834(b)(3)). A discovery ruling may be examined solely during the course of CMS review under § 405.1834 of a jurisdictional dismissal decision (see § 405.1814(c)(2)) or a hearing decision (see § 405.1831) by the intermediary hearing officer(s).

(2) *Exception.* To the extent a ruling authorizes discovery or disclosure of a matter for which an objection based on privilege or other protection from disclosure was made before the intermediary hearing officer(s), that portion of the discovery or disclosure ruling may immediately be reviewed by a CMS reviewing official in accordance with § 405.1834(b)(3). Upon notice to the intermediary hearing officer that the provider intends to seek immediate review of a ruling, or that the intermediary intends to suggest that the Administrator take own motion review of the ruling, the intermediary hearing officer stays all proceedings affected by the ruling. The intermediary hearing officer under the circumstances of a given case must determine the length of any stay, but in no event must be less than 10 days. If the Administrator grants a request for review, or takes own motion review, of a ruling, the ruling is stayed until the time as the CMS reviewing official issues a written decision that affirms, reverses, modifies, or remands the intermediary hearing officer's ruling. If the Administrator does not grant review or take own motion review within the time allotted for the stay, the stay is lifted and the ruling stands.

(e) *Prehearing conference.* The intermediary hearing officer(s) has discretion to schedule a prehearing conference. A prehearing conference may be conducted in person or telephonically, at the discretion of the intermediary hearing officer(s). When a panel of intermediary hearing officers is designated, the panel may appoint one or more hearing officers to act for the panel for any prehearing conference or any matter addressed at the conference.

9. Section 405.1827 is revised to read as follows:

§ 405.1827 Record of proceedings before the intermediary hearing officer(s).

(a) The intermediary hearing officer(s) must maintain a complete record of all proceedings in an appeal.

(b) The record consists of all documents and any other tangible materials timely submitted to the hearing officer(s) by the parties to the appeal and by any non-party (see § 405.1821(c)), along with all correspondence, rulings, orders, and decisions (including the final decision) issued by the hearing officer(s).

(c) The record must include a complete transcription of the proceedings at any intermediary hearing.

(b) A copy of the transcription must be made available to any party upon request.

10. Section 405.1829 is amended to read as follows:

A. In paragraph (a), remove the parenthetical phrase "(see 42 CFR 401.108)," and add, in its place, "(see 401.108 of this chapter for a description of CMS Rulings),";

B. The section heading and paragraph (b) are revised to read as follows:

§ 405.1829 Scope of authority of intermediary hearing officer(s).

* * * * *

(b)(1) If the intermediary hearing officer(s) has jurisdiction to conduct a hearing on the specific matters at issue under § 405.1811, and the legal authority to fully resolve the matters in a hearing decision (see § 405.1831), the hearing officer(s) must affirm, modify, or reverse the intermediary's findings on each specific matter at issue in the intermediary or Secretary determination for the cost year under appeal.

(2) The intermediary hearing officer(s) also may make additional revisions on specific matters regardless of whether the intermediary considered the matters in issuing the intermediary determination for the cost year, provided the hearing officer(s) does not consider or decide any specific matter for which it lacks jurisdiction (see § 405.1814(b)) or which was not timely raised in the provider's hearing request.

(3) The authority of the intermediary hearing officer(s) under this paragraph

to make the additional revisions is limited to those revisions necessary to fully resolve a specific matter at issue if—

(i) The hearing officer(s) has jurisdiction to grant a hearing on the specific matter under § 405.1811 and § 405.1814; and

(ii) The specific matter was timely raised in an initial request for an intermediary hearing filed in accordance with § 405.1811(b) or in a timely request to add issues to an appeal submitted in accordance with § 405.1811(c).

11. Section 405.1831 is revised to read as follows:

§ 405.1831 Intermediary hearing decision.

(a) If the intermediary hearing officer(s) finds jurisdiction and conducts a hearing (see § 405.1814(a)) the hearing officer(s) must promptly issue a written hearing decision.

(b) The intermediary hearing decision must be based on the evidence from the intermediary hearing (see § 405.1823) and other evidence as may be included in the record (see § 405.1827).

(c) The decision must include findings of fact and conclusions of law on jurisdictional issues (see § 405.1814(c)(1)) and on the merits of the provider's reimbursement claims, and include appropriate citations to the record evidence and to the applicable law, regulations, CMS Rulings, and general CMS instructions.

(d) A copy of the decision must be mailed promptly to each party and to CMS's Office of Hearings (see § 405.1834(b)(4)).

12. Section 405.1833 is revised to read as follows:

§ 405.1833 Effect of intermediary hearing decision.

An intermediary hearing decision issued in accordance with § 405.1831 is final and binding on all parties to the intermediary hearing and the intermediary unless the hearing decision is reviewed by a CMS reviewing official in accordance with § 405.1834 or reopened by the intermediary hearing officer(s) in accordance with § 405.1885 through § 405.1889. Final intermediary hearing decisions are subject to the provisions of § 405.1803(d).

13. A new section 405.1834 is added to read as follows:

§ 405.1834 CMS reviewing official procedure.

(a) *Scope.* A provider that is a party to, and dissatisfied with, a final decision by the intermediary hearing officer(s) may request further administrative review of a decision, or the decision may be reviewed at the discretion of the Administrator. No other individual, entity, or party has the right to the review. The review is conducted on behalf of the Administrator by a designated CMS reviewing official who considers whether the decision of the intermediary hearing officer(s) is consistent with the law and the evidence in the record. Based on the review, the CMS reviewing official issues a decision on behalf of the Administrator.

(b) *General rules.* (1) A CMS reviewing official may immediately review any final decision of the intermediary hearing officer(s) as specified in paragraph (b)(2) of this section; and non-final decisions and other non-final actions by the intermediary hearing officer(s) are not immediately reviewable, except as provided in paragraph (b)(3) of this section. The Administrator may exercise this review authority in response to a request from a provider party to the appeal or at his or her discretion.

(2) A CMS reviewing official may immediately review:

(i) Any final jurisdictional dismissal decision by the intermediary hearing officer(s), including any finding that the provider failed to demonstrate good cause for extending the time in which to request a hearing (see § 405.1813(e)(1) and § 405.1814(c)(3)); and

(ii) Any final intermediary hearing decision (see § 405.1831).

(3) Non-final decisions and other non-final actions by the intermediary hearing officer(s) are not subject to the CMS reviewing official procedure until the intermediary hearing officer(s) issues a final decision as specified in paragraph (b)(2) of this section (see § 405.1813(e)(2), § 405.1814(d), and § 405.1821(d)(1)), except a CMS reviewing official may, but is not required to, immediately review any intermediary hearing officer ruling (including a ruling made during the course of the hearing) authorizing discovery or disclosure of a matter for which an objection was made based on privilege or other protection from disclosure such as case preparation, confidentiality, or undue burden (see § 405.1821(d)(2)).

(4) In order to facilitate the Administrator's exercise of this review authority, the intermediary hearing officer(s) must promptly send copies of any decision specified in paragraph (a)(2) of this section or § 405.1821(d)(2) to CMS's Office of Hearings.

(i) All requests for review by a CMS reviewing official and all written submissions to a CMS reviewing official under paragraphs (c) and (d) of this section also must be sent to CMS'' Office of Hearings.

(ii) The Office of Hearings examines each intermediary hearing officer decision that is reviewable under paragraph (b)(2) of this section or § 405.1821(d)(2), along with any review requests and any other submissions made by a party in accordance with the provisions of this section, in order to assist the Administrator's exercise of this review authority.

(c) *Request for review.* (1) A provider's request for review by a CMS reviewing official is granted if:

(i) The date of receipt by the Office of Hearings of the review request is no later than 60 days after the date of receipt by the provider of the intermediary hearing officer decision.

(ii) The request seeks review of a decision listed in paragraph (b)(2) of this section, and the provider complies with the requirements of paragraph (c)(2) of this section.

(2) The provider must submit its request for review in writing, attach a copy of the intermediary decision for which it seeks review and include a brief description of:

(i) Those aspects of the intermediary hearing officer decision with which the provider is dissatisfied.

(ii) The reasons for the provider's dissatisfaction.

(iii) Any argument or record evidence the provider believes supports its position.

(iv) Any additional, extra-record evidence relied on by the provider, along with a demonstration that the evidence was improperly excluded from the intermediary hearing (see § 405.1823).

(3) A provider request for immediate review of an intermediary hearing officer ruling authorizing discovery or disclosure in accordance with paragraph (b)(3) of this section must:

(i) Be made as soon as practicable after the ruling is made, but in no event later than 5 business days after the date it received notice of the ruling.

(ii) State the reason(s) why the ruling is in error and the potential harm that may be caused if immediate review is not granted.

(d) *Own motion review.* (1) The Administrator has discretion to initiate the CMS reviewing official procedure, on his or her own motion, of an intermediary hearing officer decision (regardless of whether the decision was favorable or unfavorable to the provider) or other reviewable action.

(2) In order to execise this authority, the designated CMS reviewing official must, no later than 60 days after the

date the Office of Hearings received the intermediary hearing officer decision, notify the parties and the intermediary that he or she reviews the intermediary hearing officer decision or other reviewable action.

(3) In the notice, the designated CMS reviewing officer identifies with particularity the issues that are to be reviewed, and gives the parties (see § 405.1815) a reasonable period to comment on the issues through a written submission complying with paragraph (c)(2) of this section.

(e) *Review procedure.* (1) In reviewing an intermediary hearing officer decision specified in paragraph (b)(2) of this section, the CMS reviewing official must:

(i) Comply with all applicable law, regulations, and CMS Rulings (see § 401.108 of this chapter), and afford great weight to other interpretive and procedural rules and general statements of policy;

(ii) Subject to paragraph (e)(1)(iii) of this section, limit the review to the record of the proceedings before the intermediary hearing officer(s) (see § 405.1827) and any written submissions by the parties under paragraphs (c)(2) or (d) of this section; and

(iii) Consider additional, extra-record evidence only if he or she determines that the evidence was improperly excluded from the intermediary hearing (see § 405.1823).

(2) Review of an intermediary decision specified in paragraph (b)(2) of this section is limited to a hearing on the written record in accordance with paragraph (e)(1)(ii) of this section unless the CMS reviewing official determines that:

(i) Additional, extra-record evidence may be considered in accordance with paragraph (e)(1)(iii) of this section;

(ii) An oral hearing is necessary for consideration of the extra-record evidence; and

(iii) The matter must not be remanded to the intermediary hearing officer(s) in accordance with paragraph (f)(2) of this section.

(3) Upon completion of the review of an intermediary decision specified in paragraph (b)(2) of this section, the CMS reviewing official issues a written decision that affirms, reverses, modifies, or remands the intermediary hearing officer decision. A copy of the decision must be mailed promptly to each party, to the intermediary, and to CMS's Office of Hearings.

(f) *Effect of a decision; remand.* (1) A decision of affirmation, reversal, or modification by the CMS reviewing official is final and binding on each party and the intermediary. No further review or appeal of a decision is available, but the decision may be reopened by a CMS reviewing official in accordance with §§ 405.1885 through 405.1889. Decisions of a CMS reviewing official are subject to the provisions of § 405.1803(d). A decision by a CMS reviewing official remanding an appeal to the intermediary hearing officer(s) for further proceedings under paragraph (f)(2) of this section is not a final decision.

(2) A remand to the intermediary hearing officer(s) by the CMS reviewing official must—

(i) Vacate the intermediary hearing officer decision;

(ii) Be governed by the same criteria that apply to remands by the Administrator to the Board under § 405.1875(f)(2), and require the intermediary hearing officer(s) to take specific actions on remand; and

(iii) Result in the intermediary hearing officer(s) taking the actions required on remand and issuing a new intermediary hearing decision in accordance with § 405.1831 and § 405.1833.

14. Section 405.1835 is revised to read as follows:

§ 405.1835 Right to Board hearing; contents of, and adding issues to, hearing request.

(a) *Criteria.* A provider (but no other individual, entity, or party) has a right to a Board hearing, as a single provider appeal, for specific items claimed for a cost reporting period covered by an intermediary or Secretary determination for the period, only if—

(1) The provider has preserved its right to claim dissatisfaction with the amount of Medicare payment for the specific item(s) at issue, by either:

(i) Including a claim for specific item(s) on its cost report for the period where the provider seeks payment that it believes to be in accordance with Medicare policy; or

(ii) Self-disallowing the item(s) by following the applicable procedures for filing a cost report under protest, where the provider seeks payment that it believes may not be allowable or may not be in accordance with Medicare policy (for example, if the intermediary lacks discretion to award the reimbursement the provider seeks for the item(s)).

(2) The amount in controversy (as determined in accordance with § 405.1839) is $10,000 or more; and

(3) Unless the provider qualifies for a good cause extension under § 405.1836, the date of receipt by the Board of the provider's hearing request is—

(i) No later than 180 days after the date of receipt by the provider of the intermediary or Secretary determination; or

(ii) If the intermediary determination is not issued (through no fault of the provider) within 12 months of the date of receipt by the intermediary of the provider's perfected cost report or amended cost report (as specified in § 413.24(f) of this chapter), no later than 180 days after the expiration of the 12 month period for issuance of the intermediary determination. The date of receipt by the intermediary of the provider's perfected cost report or amended cost report is presumed to be the date the intermediary stamped "Received" unless it is shown by a preponderance of the evidence that the intermediary received the cost report on an earlier date.

(b) *Contents of request for a Board hearing.* The provider's request for a Board hearing must be submitted in writing to the Board, and the request must include:

(1) A demonstration that the provider satisfies the requirements for a Board hearing as specified in paragraph (a) of this section, including a specific identification of the intermediary or Secretary determination under appeal.

(2) An explanation (for each specific item at issue, see § 405.1835(a)(1)) of the provider's dissatisfaction with the intermediary or Secretary determination under appeal, including an account of:

(i) Why the provider believes Medicare payment is incorrect for each disputed item.

(ii) How and why the provider believes Medicare payment must be determined differently for each disputed item.

(iii) If the provider self-disallows a specific item, a description of the nature and amount of each self-disallowed item and the reimbursement or payment sought for the item.

(3) A copy of the intermediary or Secretary determination under appeal, and any other documentary evidence the provider considers necessary to satisfy the hearing request requirements of paragraphs (b)(1) and (2) of this section.

(c) *Adding issues to the hearing request.* After filing a hearing request in accordance with paragraphs (a) and (b) of this section, a provider may add specific Medicare payment issues to the original hearing request by submitting a written request to the Board, only if:

(1) A request to add issues complies with the requirements of paragraphs (a)(1) and (b) of this section as to each new issue.

(2) The specific matters at issue raised in the initial hearing request and the matters identified in subsequent requests to add issues, when combined, satisfy the requirements of paragraph (a)(2) of this section.

(3) The Board receives the request to add issues no later than 60 days after the expiration of the applicable 180–day period prescribed in paragraph (a)(3) of this section or, for a request to add issue(s) following a reopening conducted in accordance with and within the period specified in § 405.1885(c)(1).

15. Section 405.1836 is added to read as follows:

§ 405.1836 Good cause extension of time limit for requesting a Board hearing.

(a) A request for a Board hearing that the Board receives after the applicable 180-day time limit prescribed in § 405.1835(a)(3) must be dismissed by the Board, except the Board may extend the time limit upon a good cause showing by the provider.

(b) The Board may find good cause to extend the time limit only if the provider demonstrates in writing it can not reasonably be expected to file timely due to extraordinary circumstances beyond its control such as natural or other catastrophe, fire, or strike, and the provider's written request for an extension is received by the Board within a reasonable time (as determined by the Board under the circumstances) after the expiration of the applicable 180-day limit specified in § 405.1835(a)(3).

(c) The Board may not grant a request for an extension under this section if—

(1) The provider relies on a change in the law, regulations, CMS Rulings, or general CMS instructions (whether based on a court decision or otherwise) or a CMS administrative ruling or policy as the basis for the extension request; or

(2) The date of receipt by the Board of the provider's extension request is later than 3 years after the date of the intermediary or other determination that the provider seeks to appeal.

(d) If an extension request is granted or denied under this section, the Board must give prompt written notice to the provider, and mail a copy of the notice to each party to the appeal. The notice must include a detailed explanation of the reasons for the decision by the Board and the facts underlying the decision.

(e)(1) If the Board denies an extension request and determines it lacks jurisdiction to grant a hearing for every specific matter at issue in an appeal, it must issue a Board Dismissal Decision dismissing the appeal for lack of Board jurisdiction. This decision by the Board must be in writing and include the explanation of the extension request denial required under paragraph (d) of this section, in addition to specific findings of fact and conclusions of law explaining the Board's determination that it lacks jurisdiction to grant a hearing on each matter at issue in the appeal (see § 405.1840(c)). A copy of the Board's Dismissal Decision must be mailed promptly to each party to the appeal (see § 405.1843).

(2) A Board Dismissal Decision under paragraph (e)(1) of this section is final and binding on the parties unless the decision is reversed, affirmed, modified, or remanded by the Administrator under § 405.1875(a)(2)(ii), paragraph (e), and paragraph (f) no later than 60 days after the date of receipt by the provider of the Board's decision. This Board decision is inoperative during the 60-day period for review of the decision by the Administrator, or in the event the Administrator reverses, affirms, modifies, or remands that decision, within the period. A Board decision under paragraph (e)(1) of this section that is otherwise final and binding may be reopened by the Board in accordance with § 405.1885 through § 405.1889.

(3) The Administrator may review a Board decision granting an extension request solely during the course of an Administrator review of one of the Board decisions specified as final, or deemed final by the Administrator, under § 405.1875(a)(2).

(4) A finding by the Board or the Administrator that the provider did or did not demonstrate good cause for extending the time for requesting a Board hearing is not subject to judicial review.

16. Section 405.1837 is revised to read as follows:

§ 405.1837 Group appeals.

(a) *Right to Board hearing as part of a group appeal; criteria.* A provider (but no other individual, entity, or party) has a right to a Board hearing, as part of a group appeal with other providers, for specific items claimed for a cost reporting period covered by an intermediary or Secretary determination for the period, only if—

(1) The provider satisfies individually the requirements for a Board hearing under § 405.1835(a), except for the $10,000 amount in controversy requirement under § 405.1835(a)(2);

(2) The matter at issue in the group appeal involves a single question of fact or interpretation of law, regulations, or CMS Rulings that is common to each provider in the group; and

(3) The amount in controversy is, in the aggregate, $50,000 or more, as determined in accordance with § 405.1839.

(b) *Usage and filing of group appeals.* (1) *Mandatory use of group appeals.* Two or more providers under common ownership or control must bring a group appeal before the Board in accordance with this section, if the providers wish to appeal to the Board a specific matter at issue that involves a question of fact or interpretation of law, regulations, or CMS Rulings that is common to the providers, and for which the amount in controversy is $50,000 or more in the aggregate. Any commonly owned or controlled provider may not appeal to the Board any common issue in a single provider appeal brought under § 405.1835.

(2) *Optional use of group appeals.* Two or more providers not under common ownership or control may bring a group appeal before the Board under this section, if the providers wish to appeal to the Board a specific matter at issue that involves a question of fact or interpretation of law, regulations, or CMS Rulings that is common to the providers. Alternatively, any provider may appeal to the Board any issues in a single provider appeal brought under § 405.1835.

(3) *Initiating a group appeal.* A provider that is required to bring a group appeal under paragraph (b)(1) of this section must submit, either alone or with other commonly owned or operated providers, a written request for a Board hearing as a group appeal in accordance with paragraph (c) of this section. Any group appeal filed by a single provider must be joined by related providers on common issues in accordance with paragraphs (b)(1) and (e) of this section. Providers that have the option of bringing a group appeal under paragraph (b)(2) of this section may submit—

(i) Initially a written request for a Board hearing as a group appeal in accordance with paragraph (c) of this section; or

(ii) A request to the Board in accordance with paragraph (e)(4) of this section that a specific matter at issue in a single provider appeal, filed previously under § 405.1835, be transferred from the single appeal to a group appeal.

(c) *Contents of request for a group appeal.* The request by a provider (or providers) for a Board hearing as a group appeal must be submitted in writing to the Board, and the request must include—

(1) A demonstration that the request satisfies—

(i) All of the requirements for a Board hearing as a group appeal, as specified in paragraph (a) of this section; or

(ii) At least the requirements for a Board hearing as a group appeal under paragraph (a)(1) of this section, if the request is submitted in accordance with paragraph (c)(4)(ii) of this section;

(2) An explanation (for each specific cost at issue, see § 405.1835(a)(1)) of each provider's dissatisfaction with its intermediary or Secretary determination under appeal, including an account of—

(i) Why the provider believes Medicare payment is incorrect for each disputed cost;

(ii) How and why the provider believes Medicare payment must be determined differently for each disputed cost; and

(iii) If the provider self-disallows a specific cost, a description of the nature and amount of each self-disallowed cost and the reimbursement sought for each cost.

(3) A copy of each intermediary or Secretary determination under appeal, and any other documentary evidence the providers consider necessary to satisfy the hearing request requirements of paragraphs (c)(1) and (c)(2) of this section, and a precise description of the one question of fact or interpretation of law, regulations, or CMS Rulings that is common to the particular matters at issue in the group appeal; and

(4) A statement representing that either—

(i) The providers believe they have satisfied all of the requirements for a group appeal hearing request under paragraph (a) of this section and the Board can proceed to make jurisdictional findings in accordance with § 405.1840; or

(ii) The Board must defer making jurisdictional findings until the providers request the findings in accordance with paragraph (e)(2) of this section.

(d) *Board's preliminary response to group appeal hearing requests.* (1) Upon receipt of a group appeal hearing request, the Board must take any necessary ministerial steps.

(2) The steps, include, for example—

(i) Acknowledging the request;

(ii) Assigning a case number to the appeal; or

(iii) If applicable, transferring a specific matter at issue from a single provider appeal filed under § 405.1835 to a group appeal filed under this section.

(3) For group appeal hearing requests submitted in accordance with paragraph (c)(4)(i) of this section, the Board must make jurisdictional findings in accordance with § 405.1840 before conducting any further proceedings in the appeal under paragraph (e)(3) of this section.

(4) For hearing requests submitted in accordance with paragraph (c)(4)(ii) of this section, the Board may not make jurisdictional findings under § 405.1840 until the providers request the findings under paragraph (e)(2) of this section.

(e) *Group appeal procedures pending full formation of the group and issuance of a Board decision.* (1) A provider (or providers) may file a group appeal hearing request with the Board under this section before each provider member of the group identifies or complies with paragraphs (a)(1) and (a)(2) of this section, or before the group satisfies the $50,000 amount in controversy requirement under paragraph (a)(3) of this section. Proceedings before the Board in any partially formed group appeal are subject to the provisions of paragraphs (e)(2), (e)(3), and (e)(4) of this section.

(2) For group appeal hearing requests submitted in accordance with paragraph (c)(4)(ii) of this section, the Board may not make jurisdictional findings under § 405.1840 until the providers request the findings by notifying the Board in writing that the group appeal is fully formed, or that the providers believe they have satisfied all of the requirements for a group appeal hearing request and the Board can proceed to make jurisdictional findings. The providers must include with the notice any additional information or documentary evidence that is required for group appeal hearing requests under paragraph (c) of this section, but was not previously submitted by the group members (see § 405.1837(c)(1)(ii)). After receiving the notice from the providers, the Board must make jurisdictional findings in accordance with § 405.1840.

(3) If the Board finds jurisdiction to conduct a hearing as a group appeal under this section, the Board then takes any further actions in the appeal it finds to be appropriate under this subpart (see § 405.1840(a)). The Board may take further actions even though the providers in the appeal may wish to add other providers to the group in accordance with paragraph (e)(4) of this section, but the Board must make separate jurisdictional findings for each cost reporting period added subsequently to the group appeal (see § 405.1837(a) and § 405.1839(b)).

(4) A provider may submit a request to the Board to join a group appeal anytime before the Board issues one of the decisions specified in § 405.1875(a)(2). By submitting a request, the provider agrees that, if the request is granted, the provider is bound by the Board's actions and decision in the appeal.

(5) The Board must grant any request that is unopposed by the group members, received by the Board before the date of issuance of one of the decisions specified in § 405.1875(a)(2), and otherwise complies with this section.

(6) If the Board denies a request, the Board's action is without prejudice to any separate appeal the provider may bring in accordance with § 405.1811, § 405.1835, or this section.

(7) For purposes of determining timeliness for any separate appeal, the period from the date of receipt of the provider's original hearing request through the date of receipt by the provider of the Board's denial of the provider's request to join the group appeal must be excluded from the applicable 180-day period for filing a separate appeal (see § 405.1835(a)(3)) and from the 60-day period for adding issues to any single provider appeal (see § 405.1835(c)(3)).

(f) *Limitations on group appeals.* (1) After the date of receipt by the Board of a group appeal hearing request under paragraph (c) of this section, a provider may not add other questions of fact or law to the appeal, regardless of whether the question is common to other members of the appeal (see § 405.1837(a)(2) and § 405.1837(g)).

(2) The Board may not consider, in one group appeal, more than one question of fact or of interpretation of law, regulations, or CMS Rulings that is common to each provider in the appeal. If the Board finds jurisdiction over a group appeal hearing request under § 405.1840:

(i) The Board must determine whether the appeal involves specific matters at issue that raise more than one factual or legal question common to each provider.

(ii) Where the appeal is found to involve more than one factual or legal question common to each provider, assign a separate case number to the appeal of each common factual or legal question and conduct further proceedings in the various appeals separately for each case.

(g) *Issues not common to the group appeal.* A provider involved in a group appeal that also wishes to appeal a specific matter that does not raise a factual or legal question common to each of the other providers in the group must file a separate request for a single provider hearing in accordance with § 405.1811 or § 405.1835 or file a separate request for a hearing as part of a different group appeal under this section, as applicable.

17. Section 405.1839 is revised to read as follows:

§ 405.1839 Amount in controversy.

(a) *Single provider appeals.* (1) In order to satisfy the amount in controversy requirement under § 405.1811(a)(2) for an intermediary hearing or the amount in controversy requirement under § 405.1835(a)(2) for a Board hearing for a single provider, the provider must demonstrate that if its appeal were successful, the provider's total program reimbursement for each cost reporting period under appeal increases by at least $1,000 but by less than $10,000 for an intermediary hearing, or by at least $10,000 for a Board hearing, as applicable.

(2) *Aggregation of claims.* For purposes of satisfying the applicable amount in controversy requirement for a single provider appeal to the intermediary or the Board, the provider may aggregate claims for additional program payment for more than one specific matter at issue, provided each specific claim and issue is for the same cost reporting period. Aggregation of claims from more than one cost reporting period to meet the applicable amount in controversy requirement is prohibited, even if a specific claim or issue recurs in the appeal for multiple cost years.

(b) *Group appeals.* (1) In order to satisfy the amount in controversy requirement under § 405.1837(a)(3) for a Board hearing as a group appeal, the group must demonstrate that if its appeal were successful, the total program reimbursement for the cost reporting periods under appeal increases, in the aggregate, by at least $50,000.

(2) *Aggregation of claims.* For purposes of satisfying the amount in controversy requirement, group members are not allowed to aggregate claims involving different issues. A group appeal must involve a single question of fact or interpretation of law, regulations, or CMS Ruling that is common to each provider (see § 405.1837(a)(2)). However, the single issue that is common to each provider may exist over different cost reporting periods. For purposes of satisfying the amount in controversy requirement, a provider may appeal multiple cost reporting periods and different providers in the group may appeal different cost reporting periods.

(c) *Limitations on change in Medicare reimbursement.*

(1) In order to satisfy the applicable amount in controversy requirement for a single provider appeal or a group appeal, an appeal favorable to the provider(s) on all specific matters at issue in the appeal increases program reimbursement for the provider(s) in the cost reporting period(s) at issue by an amount that equals or exceeds the applicable amount in controversy threshold.

(2) The applicable amount in controversy requirement is not satisfied if the result of a favorable appeal decreases program reimbursement for the provider(s) in the cost reporting year(s) at issue in the appeal.

(3) Any effects that a favorable appeal might have on program reimbursement for the provider(s) in cost reporting period(s) not at issue in the appeal have no bearing on whether the amount in controversy requirement is satisfied for the cost year(s) at issue in the appeal.

18. A new § 405.1840 is added to read as follows:

§ 405.1840 Board jurisdiction.

(a) *General rules.* (1) After a request for a Board hearing is filed under § 405.1835 or § 405.1837 of this part, the Board must determine in accordance with paragraph (b) of this section, whether or not it has jurisdiction to grant a hearing on each of the specific matters at issue in the hearing request.

(2) The Board must make a preliminary determination of the scope of its jurisdiction, if any, over the matters at issue in the appeal, and notify the parties of its specific jurisdictional findings, before conducting any of the following proceedings:

(i) Determining its authority to decide a legal question relevant to a matter at issue (see § 405.1842 of this part); permitting discovery (see § 405.1853).

(ii) Issuing a subpoena (see § 405.1857).

(iii) Conducting a hearing (see § 405.1845 of this part).

(3) The Board may revise a preliminary jurisdictional finding at any subsequent stage of the proceedings in a Board appeal, and must promptly notify the parties of any revised findings. Under paragraph (c)(1) of this section, each expedited judicial review decision (see § 405.1842 of this part) and hearing decision (see § 405.1871 of this part) by the Board must include a jurisdictional finding for each specific matter at issue in the appeal.

(4) If the Board determines it lacks jurisdiction over every specific matter at issue in the appeal, the Board must issue a Dismissal Decision under paragraph (c)(2) of this section.

(5) Jurisdictional findings and Dismissal Decisions by the Board under paragraphs (c)(1) and (c)(2) of this section are subject to Administrator and judicial review in accordance with paragraph (d) of this section.

(b) *Criteria.* The Board's jurisdiction to grant a hearing must be determined separately for each specific matter at issue in each intermediary or Secretary determination for each cost reporting period under appeal. The Board has jurisdiction to grant a hearing over a specific matter at issue in an appeal only if the provider has a right to a Board hearing as a single provider appeal under § 405.1835 of this part or as part of a group appeal under § 405.1837 of this part, as applicable. Certain matters at issue are removed from the Board's jurisdiction; these matters include, but are not necessarily limited to, the following:

(1) A finding in an intermediary determination that expenses incurred for certain items or services furnished by a provider to an individual are not payable under title XVIII of the Act because those items or services are excluded from coverage under section 1862 of the Act, and § 411.15 of this chapter; review of these findings is limited to the applicable provisions of sections 1155, 1869, and 1879(d) of the Act, and of subparts G and H of part 405 and subpart B of part 473, as applicable.

(2) Certain matters affecting payments to hospitals under the prospective payment system, as provided in § 405.1804 of this part.

(3) Any self-disallowed cost, except as permitted in § 405.1835(a)(1)(ii) and § 405.1837(a)(1) of this part.

(c) *Board's Jurisdictional Findings and Jurisdictional Dismissal Decisions.* (1) In issuing an Expedited Judicial Review Decision under § 405.1842 of this part or a Hearing Decision under § 405.1871 of this part, as applicable, the Board must make a separate determination of whether it has jurisdiction for each specific matter at issue in each intermediary or Secretary determination under appeal. A decision by the Board must include specific findings of fact and conclusions of law as to whether the Board has jurisdiction to grant a hearing on each matter at issue in the appeal.

(2) Except as provided in § 405.1836(e)(1) and § 405.1842(g)(2)(i) of this part, where the Board determines it lacks jurisdiction to grant a hearing for every specific matter at issue in an appeal, it must issue a Dismissal Decision dismissing the appeal for lack of Board jurisdiction. The decision by the Board must include specific findings of fact and conclusions of law explaining the Board's determination that it lacks jurisdiction to grant a hearing on each matter at issue in the appeal. A copy of the Board's decision

must be mailed promptly to each party to the appeal (see § 405.1843 of this part).

(3) A Dismissal Decision by the Board under paragraph (c)(2) of this section is final and binding on the parties unless the decision is reversed, affirmed, modified, or remanded by the Administrator under § 405.1875(a)(2)(ii), (e), and (f) no later than 60 days after the date of receipt by the provider of the Board's decision. The Board decision is inoperative during the 60-day period for review of the decision by the Administrator, or in the event the Administrator reverses, affirms, modifies, or remands that decision within that period. A final Board decision under paragraphs (c)(2) and (c)(3) of this section, may be reopened by the Board in accordance with §§ 405.1885 through 405.1889 of this part.

(d) *Administrator and judicial review.* Any finding by the Board as to whether it has jurisdiction to grant a hearing on a specific matter at issue in an appeal is not subject to further administrative and judicial review, except as provided in this paragraph. The Board's jurisdictional findings as to specific matters at issue in an appeal may be reviewed solely during the course of Administrator review of one of the Board decisions specified as final, or deemed to be final by the Administrator, under § 405.1875(a)(2) of this part, or during the course of judicial review of a final agency decision as described in § 405.1877(a) of this part, as applicable.

§ 405.1841 [Removed]

19. Section 405.1841 is removed.

20. Section 405.1842 is revised to read as follows:

§ 405.1842 Expedited judicial review.

(a) *Basis and scope.* (1) This section implements provisions in section 1878(f)(1) of the Act that give a provider the right to seek expedited judicial review (EJR) of a legal question relevant to a specific matter at issue in a Board appeal if there is Board jurisdiction to conduct a hearing on the matter (see § 405.1840 of this part), and the Board determines it lacks the authority to decide the legal question (see § 405.1867 of this part, which describes the scope of Board's legal authority).

(2) A provider may request a Board decision that the provider is entitled to seek EJR or the Board may consider issuing a decision on its own motion. Each EJR Decision by the Board must include a specific jurisdictional finding on the matter(s) at issue, and, where the Board determines that it does have jurisdiction on the matter(s) at issue, a separate determination of the Board's authority to decide the legal question(s).

(3) The Administrator may review the Board's jurisdictional finding, but not the Board's authority determination.

(4) The provider has a right to seek EJR of the legal question under section 1878(f)(1) of the Act only:

(i) If the final EJR Decision of the Board or the Administrator, as applicable, includes a finding of Board jurisdiction over the specific matter at issue and a determination by the Board that it has no authority to decide the relevant legal question; or

(ii) If the Board fails to make a determination of its authority to decide the legal question no later than 30 days after finding jurisdiction over the matter at issue and notifying the provider that the provider's EJR request is complete.

(b) *Overview*—(1) *Prerequisite of Board jurisdiction.* The Board or the Administrator must find that the Board has jurisdiction over the specific matter at issue before the Board may determine its authority to decide the legal question.

(2) *Initiating EJR procedures.* A provider or group of providers may request the Board to grant EJR of a specific matter or matters under appeal, or the Board on its own motion may consider whether to grant EJR of a specific matter or matters under appeal. Under paragraph (c) of this section, the Board may initiate own motion consideration of its authority to decide a legal question only if the Board makes a preliminary finding that it has jurisdiction over the specific matter at issue to which the legal question is relevant. Under paragraphs (d) and (e) of this section, a provider may request a determination of the Board's authority to decide a legal question, but the 30-day period for the Board to make a determination under section 1878(f)(1) of the Act does not begin to run until the Board finds jurisdiction to conduct a hearing on the specific matter at issue in the EJR request and notifies the provider that the provider's request is complete.

(c) *Board's own motion consideration.* (1) If the Board makes a finding that it has jurisdiction to conduct a hearing on a specific matter at issue in accordance with § 405.1840(a) of this part, it may then consider on its own motion, whether it lacks the authority to decide a legal question relevant to the matter at issue.

(2) The Board must initiate its own motion consideration by issuing a written notice to each of the parties to the appeal (see § 405.1843 of this part). The notice must:

(i) Identify each specific matter at issue for which the Board has made a finding that it has jurisdiction under § 405.1840(a) of this part, and for each specific matter, identify each relevant statutory provision, regulation, or CMS Ruling.

(ii) Specify a reasonable period of time for the parties to respond in writing.

(3) After considering any written responses made by the parties to its notice of own motion consideration, the Board must determine whether it has sufficient information to issue an EJR Decision for each specific matter and legal question included in the notice. If necessary, the Board may request additional information regarding its jurisdiction or authority from a party (or parties), and the Board must give any other party a reasonable opportunity to comment on any additional submission. Once the Board determines it needs no further information from the parties (or that any information has not been rendered timely), it must issue an EJR Decision in accordance with paragraph (f) of this section.

(d) *Provider requests.* A provider (or, in the case of a group appeal, the group of providers) may request a determination by the Board that it lacks the authority to decide a legal question relevant to a specific matter at issue in an appeal. A provider must submit a request in writing to the Board and to each party to the appeal (see § 405.1843 of this part), and the request must include—

(1) For each specific matter and question included in the request, an explanation of why the provider believes the Board has jurisdiction under § 405.1840 of this part over each matter at issue and no authority to decide each relevant legal question; and

(2) Any documentary evidence the provider believes supports the request.

(e) *Board action on provider requests.* (1) If the Board makes a finding that it has jurisdiction to conduct a hearing on a specific matter at issue in accordance with § 405.1840(a) of this part, then (and only then) it must consider whether it lacks the authority to decide a legal question relevant to the matter at issue. The Board is required to make a determination of its authority to decide the legal question raised in a review request under paragraph (d)(1) of this section, by issuing an EJR Decision no later than 30 days after receiving a complete provider request as defined in paragraph (e)(2) of this section.

(2) *Requirements of a complete provider request.* A complete provider request for EJR consists of:

(i) A request for an EJR Decision by the provider(s).

(ii) All of the information and documents found necessary by the Board for issuing a decision in accordance with paragraph (f) of this section.

(3) *Board's response to provider requests.* After receiving a provider request for an EJR Decision, the Board must review the request, along with any responses to the request submitted by other parties to the appeal (see § 405.1843 of this part). The Board must respond to the provider(s) as follows:

(i) Upon receiving a complete provider request, issue an EJR Decision in accordance with paragraph (f) of this section no later than 30 days after receipt of the complete provider request. If the Board does not issue a decision within that 30-day period, the provider has a right to file a complaint in Federal district court in order to obtain EJR over the specific matter(s) at issue.

(ii) If the provider has not submitted a complete request, issue a written notice to the provider describing in detail the further information that the provider must submit in order to complete the request.

(f) *Board's decision on EJR: criteria for granting EJR.* Subject to paragraph (h)(3) of this section, the Board is required to issue an EJR decision following either the completion of the Board's own motion consideration under paragraph (c) or a notice issued by the Board in accordance with paragraph (e)(3)(i) of this section.

(1) The Board's decision must grant EJR for a legal question relevant to a specific matter at issue in a Board appeal if the Board determines the following conditions are satisfied:

(i) The Board determines that it has jurisdiction to conduct a hearing on the specific matter at issue in accordance with § 405.1840 of this part.

(ii) The Board determines it lacks the authority to decide a specific legal question relevant to the specific matter at issue because the legal question is a challenge to the constitutionality of a provision of a statute, or the substantive and procedural validity of a regulation or CMS Ruling.

(2) Must deny EJR for a legal question relevant to a specific matter at issue in a Board appeal if any of the following conditions are satisfied:

(i) The Board determines that it does not have jurisdiction to conduct a hearing on the specific matter at issue in accordance with § 405.1840; or

(ii) The Board determines it has the authority to decide a specific legal question relevant to the specific matter at issue because the legal question is not a challenge to the constitutionality of a provision of a statute, and is not a challenge to the substantive and/or procedural validity of a regulation or CMS Ruling.

(iii) The Board does not have sufficient information to determine whether the criteria specified in paragraph (f)(i) or (f)(ii) of this section are met.

(3) A copy of the Board's decision must be sent promptly to each party to the Board appeal (see § 405.1843 of this part) and to the Office of the Attorney Advisor.

(g) *Further review after the Board issues an EJR Decision*— (1) *General rules.* (i) Under § 405.1875(a)(2)(iii) of this part, the Administrator may review, on his or her own motion, or at the request of a party, the jurisdictional component only of the Board's EJR Decision.

(ii) Any review by the Administrator is limited to the question of whether there is Board jurisdiction over the specific matter at issue; the Administrator may not review the Board's determination of its authority to decide the legal question.

(iii) An EJR Decision by the Board becomes final and binding on the parties unless the decision is reversed, affirmed, modified, or remanded by the Administrator under § 405.1875(a)(2)(iii) of this part, (e), and (f) of this section no later than 60 days after the date of receipt by the provider of the Board's decision.

(iv) A Board decision is inoperative during the 60-day period for review by the Administrator, or in the event the Administrator reverses, affirms, modifies, or remands that decision within that period.

(v) Any right of the provider to obtain EJR from a Federal district court is specified at paragraphs (g)(2) and (g)(3) of this section (where the Board issues a timely EJR Decision) and paragraph (g)(4) of this section (in the absence of a timely Board decision).

(vi) A final Board decision under paragraph (f) of this section, and a final Administrator decision made upon review of final Board decision (see § 405.1875(a)(2) and (e) of this part) may be reopened in accordance with §§ 405.1885 through 405.1889 of this part.

(2) *Board grants EJR.* If the Board grants EJR, the provider may file a complaint in a Federal district court in order to obtain expedited judicial review of the legal question unless the Administrator issues, no later than 60 days after the date of receipt by the provider of the Board's decision granting EJR, a decision finding that the Board has no jurisdiction over the matter at issue, thereby reversing the Board's decision (see § 405.1877(a)(3) and (b)(3) of this part).

(3) *Board denies EJR.* If the Board's decision denies EJR because the Board finds that it has the authority to decide the legal question relevant to the matter at issue, the Administrator may not review the Board's authority determination and the provider has no right to obtain expedited judicial review. If the Board denies EJR based on a finding that it lacks jurisdiction over the specific matter, the provider has no right to obtain EJR unless the Administrator issues timely a final decision reversing the Board and finding the Board has jurisdiction over the matter at issue and the Board subsequently issues on remand from the Administrator an EJR decision granting EJR on the basis that it lacks the authority to decide the legal question.

(4) *No timely EJR Decision.* The Board must issue an EJR Decision no later than 30 days after the date of a written notice under paragraph (e)(3)(i) of this section, when the provider submits a complete request for EJR. If the Board does not issue an EJR Decision within a 30-day period, the provider(s) has a right to seek expedited judicial review under section 1878(f)(1) of the Act.

(h) *Effect of final EJR Decisions and lawsuits on further Board proceedings— (1) Final decisions granting EJR.* If the final decision of the Board or the Administrator, as applicable (see § 405.1842(g)(1) and § 405.1875(e)(4) of this part), grants EJR, the Board may not conduct any further proceedings on the legal question. The Board must dismiss:

(i) The specific matter at issue from the appeal.

(ii) The entire appeal if there are no other matters at issue that are within the Board's jurisdiction and can be fully decided by the Board.

(2) *Final decisions denying EJR.* If the final decision:

(i) Of the Board denies EJR solely on the basis that the Board determines it has the authority to decide the legal question relevant to the specific matter at issue, the Board must conduct further proceedings on the legal question and issue a decision on the matter at issue in accordance with this subpart. *Exception*: If the provider(s) files a lawsuit pertaining to the legal question, and for a period that is covered by the Board's decision denying EJR, the Board may not conduct any further proceedings under this subpart on the legal question or the matter at issue before the lawsuit is finally resolved.

(ii) Of the Board or the Administrator denies EJR on the basis that the Board

lacks jurisdiction over the specific matter at issue, the Board or the Administrator, must, as applicable, dismiss the specific matter at issue from the appeal, or dismiss the appeal entirely if there are no other matters at issue that are within the Board's jurisdiction and can be fully decided by the Board. If only the specific matter(s) is dismissed from the appeal, judicial review may be had only after a final decision on the appeal is made by the Board or Administrator, as applicable (see § 405.1840(d), § 405.1877(a) of this part). If the Board or the Administrator, as applicable, dismisses the appeal entirely, the decision is subject to judicial review under § 405.1877(a) of this part.

(3) *Provider lawsuits.* (i) If the provider files a lawsuit seeking judicial review (whether on the basis of the EJR provisions of section 1878(f)(1) of the Act or otherwise) pertaining to a legal question that is allegedly relevant to a specific matter at issue for a cost year in a Board appeal and not within the Board's authority to decide, the Office of the Attorney Advisor must promptly provide the Board with written notice of the lawsuit and a copy of the complaint.

(ii) If the lawsuit is filed after a final EJR Decision by the Board or the Administrator, as applicable (see § 405.1842(g)(1) and § 405.1875(e)(4)), on the legal question, the Board must carry out the applicable provisions of paragraphs (h)(1) and (h)(2) of this section in any pending Board appeal on the specific matter at issue.

(iii) If the lawsuit is filed before a final EJR Decision is issued on the legal question, the Board may not conduct any further proceedings on the legal question or the matter at issue until the lawsuit is resolved.

21. Section § 405.1843 is revised to read as follows:

§ 405.1843 Parties to proceedings in a Board appeal.

(a) When a provider files a request for a hearing before the Board in accordance with § 405.1835 or § 405.1837, the parties to all proceedings in the Board appeal include the provider, an intermediary, and, where applicable, any other entity found by the intermediary to be a related organization of the provider under § 413.17 of this chapter.

(b) Neither the Secretary nor CMS may be made a party to proceedings in a Board appeal. The Board may call as a witness any employee or officer of Heath and Human Services or CMS having personal knowledge of the facts and the issues in controversy in an appeal.

(c) An intermediary may designate a representative from the Secretary or CMS, who may be an attorney, to represent the intermediary in proceedings before the Board.

(d) Although CMS is not a party to proceedings in a Board appeal, there may be instances where CMS determines that the administrative policy implications of a case are substantial enough to warrant comment from CMS (see § 405.1863). In these cases, CMS may file *amicus curiae* (friend of the court) briefing papers with the Board in accordance with a schedule to be determined by the Board. CMS must promptly mail copies of any documents filed with the Board to each party to the appeal.

22. Section 405.1845 is amended by—

A. Revising the section heading.

B. Revising paragraph (c).

C. Revising paragraph (d).

D. Revising paragraph (e).

E. Adding paragraph (f).

F. Adding Paragraph (g).

The revisions and additions read as follows:

§ 405.1845 Composition of Board; hearings, decisions, and remands.

* * * * *

(c) *Composition of Board.* The Secretary designates one member of the Board as Chairperson. The Chairperson coordinates and directs the administrative activities of the Board and the conduct of proceedings before the Board. CMS provides administrative support for the Board. Under the direction of the Chairperson, the Board is solely responsible for the content of its decisions.

(d) *Quorum.* (1) The Board must have a quorum in order to issue one of the decisions specified as final, or deemed final by the Administrator, under § 405.1875(a)(2), but a quorum is not required for other Board actions.

(2) Three Board members, at least one of who is representative of providers, are required in order to constitute a quorum.

(3) The opinion of the majority of those Board members issuing a decision specified as final, or deemed as final by the Administrator, under § 405.1875(a)(2) constitutes the Board's decision.

(e) *Hearings.* The Board may conduct a hearing and issue a Hearing Decision (see § 405.1871) on a specific matter at issue in an appeal, provided it finds jurisdiction over the matter at issue in accordance with § 405.1840 of this part and determines it has the legal authority to fully resolve the issue (see § 405.1867 of this part).

(f) *Oral Hearings.* (1) In accordance with paragraph (d) of this section, the Board does not need a quorum in order to hold an oral hearing (see § 405.1851 of this part). The Chairperson of the Board may designate one or more Board members to conduct an oral hearing (where less than a quorum conducts the hearing). Because the presence of all Board members is not required at an oral hearing, the Board, at its discretion, may hold more than one oral hearing at a time.

(2) *Waiver of oral hearings.* With the intermediary's agreement and the Board's approval, the provider (or, in the case of group appeals, the group of providers) and any related organizations (see § 405.1836 of this part) may waive any right to an oral hearing and stipulate that the Board may issue a Hearing Decision on the written record. An on-the-written-record hearing consists of all the evidence and written argument or comments must be submitted to the Board and included in the record (see § 405.1865 of this part).

(3) *Hearing decisions.* The Board's Hearing Decision must be based on the transcript of any oral hearing before the Board, any matter admitted into evidence at a hearing or deemed admissible evidence for the record (see § 405.1855 of this part), and any written argument or comments timely submitted to the Board (see § 405.1865 of this part).

(g) *Remands.* (1) Except as provided in paragraph (g)(3) of this section, a Board remand order may be reviewed solely during the course of Administrator review of one of the Board decisions specified in § 405.1875(a)(2) of this part), or of judicial review of a final agency decision as described in § 405.1877(a) and (c)(3) of this part, as applicable.

(2) The Board may order a remand requiring specific actions of a party to the appeal. In ordering a remand, the Board must—

(i) Specify any actions required of the party and explain the factual and legal basis for ordering a remand;

(ii) Be in writing;

(iii) Be mailed promptly to the parties and any affected non-party, such as CMS, to the appeal.

(3) A Board remand order is not subject to immediate Administrator review unless the Administrator determines that the remand order might otherwise evade his or her review. (see § 405.1875(a)(2)(iv)).

23. Section 405.1853 is revised to read as follows:

§ 405.1853 Board proceedings prior to any hearing; discovery.

(a) *Preliminary narrowing of the issues.* Upon receiving notification that

a request for a Board hearing is submitted, the intermediary must:

(1) Promptly review both the materials submitted with the provider hearing request, and the information underlying each intermediary or Secretary determination for each cost reporting period under appeal.

(2) Expeditiously attempt to join with the provider in resolving specific factual or legal issues and submitting to the Board written stipulations setting forth the specific issues that remain for Board resolution based on the review.

(3) Ensure that the evidence it considered in making its determination, or, where applicable, the evidence the Secretary considered in making his or her determination, is included in the record.

(b) *Position papers.* (1) After any preliminary narrowing of the issues, the parties must file position papers in order to narrow the issues further. In each case, and as appropriate, the Board establishes the deadlines when the provider(s) and the intermediary must submit position papers to the Board.

(2) The Board may extend the deadline for submitting a position paper for good cause shown. Each position paper must set forth the relevant facts and arguments regarding the Board's jurisdiction over each remaining matter at issue in the appeal (see § 405.1840 of this part), and the merits of the provider's Medicare payment claims for each remaining issue.

(3) Any supporting exhibits regarding Board jurisdiction must accompany the position paper; exhibits regarding the merits of the provider's Medicare payment claims may be submitted later in a time frame to be decided by the Board.

(c) *Initial status conference.* (1) Upon review of the parties' position papers, one or more members of the Board may conduct an initial status conference. An initial status conference may be conducted in person or telephonically, at the discretion of the Board.

(2) The Board may use the status conference to discuss any of the following:

(i) Simplification of the issues.

(ii) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement.

(iii) Stipulations and admissions of fact or as to the content and authenticity of documents.

(iv) If the parties can agree to submission of the case on a stipulated record.

(v) If a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (the admissibility of which is subject to objection from other parties) and written argument.

(vi) Limitation of the number of witnesses.

(vii) Scheduling dates for the exchange of witness lists and of proposed exhibits.

(viii) Discovery as permitted under this section.

(ix) The time and place for the hearing.

(x) Potential settlement of some or all of the issues.

(xi) Other matters that the Board deems necessary and appropriate. The Board may issue any orders at the conference found necessary and appropriate to narrow the issues further and expedite further proceedings in the appeal.

(3) After the status conference, the Board may:

(i) Issue in writing a report and order specifying what transpired and formalizing any orders issued at the conference.

(ii) Require the parties to submit (jointly or otherwise) a proposed report and order, in order to facilitate issuance of a final report and order.

(d) *Further status conferences.* Upon a party's request, or on its own motion, the Board may conduct further status conferences where it finds the proceedings necessary and appropriate.

(e) *Discovery*—(1) *General rules.* (i) Discovery is limited in Board proceedings.

(ii) The Board may permit discovery of a matter that is relevant to the specific subject matter of the Board hearing, provided the matter is not privileged or otherwise protected from disclosure and the discovery request is not unreasonable, unduly burdensome or expensive, or otherwise inappropriate.

(iii) Any discovery initiated by a party must comply with all requirements and limitations of this section, along with any further requirements or limitations ordered by the Board.

(iv) The applicable provisions of the Federal Rules of Civil Procedure and Rules 401 and 501 of the Federal Rules of Evidence serve as guidance for any discovery that is permitted under this section or by Board order.

(2) *Limitations on discovery.* Any discovery before the Board is limited as follows:

(i) A party may request of another party or a non-party the reasonable production of documents for inspection and copying, or may propound a reasonable number of interrogatories.

(ii) A party may not take the deposition, upon oral or written examination, of another party or a non-party, unless the proposed deponent agrees to the deposition or the Board finds that the proposed deposition is necessary and appropriate under the criteria set forth in Fed. R. Civ. P. 26 and 32 in order to secure the deponent's testimony for a Board hearing.

(iii) A party may not request admissions or take any other form of discovery not permitted under this section.

(3) *Time limits.* (i) A party's discovery request is timely if the date of receipt of a request by another party or non-party, as applicable, is no later than 90 days before the scheduled starting date of the Board hearing, unless the Board extends the time upon request of the party and upon a showing of good cause.

(ii) Discovery may not be conducted by a party any later than 45 days before the scheduled starting date of the Board hearing unless the Board finds, at the request of the party, good cause to extend the period for discovery.

(iii) Before ruling on a request to extend the time for requesting discovery or for conducting discovery, the Board must give the other parties to the appeal and any non-party subject to a discovery request a reasonable period to respond to the extension request.

(iv) The Board may extend the time in which to request discovery or conduct discovery only if the requesting party establishes that it was not dilatory or otherwise at fault in not meeting the original discovery deadline.

(v) If the Board grants the extension request, it must impose a new discovery deadline and, if necessary, reschedule the hearing date so that all discovery ends no later than 45 days before the hearing.

(4) *Rights of non-parties.* If a discovery request is made of a non-party to the Board appeal, the non-party (including HHS and CMS) has the same rights as any party has in responding to a discovery request.

(5) *Motions to compel or for protective order.*

(i) Each party is required to make a good faith effort to resolve or narrow any discovery dispute, regardless of whether the dispute is with another party or a non-party.

(ii) A party may submit to the Board a motion to compel discovery that is permitted under this section or any Board order, and a party or non-party may submit a motion for a protective order regarding any discovery request to the Board.

(iii) Any motion to compel or for protective order must include a self-sworn declaration describing the movant's efforts to resolve or narrow the discovery dispute.

(iv) The declaration must be included with any response to a motion to compel or for protective order.

(v) The Board must decide any motion in accordance with this section and any prior discovery ruling.

(vi) The Board must issue and mail to each party and any affected non-party a discovery ruling that grants or denies the motion to compel or for protective order in whole or in part; if applicable, the discovery ruling must specifically identify any part of the disputed discovery request upheld and any part rejected, and impose any limits on discovery the Board finds necessary and appropriate.

(6) *Reviewability of discovery and disclosure rulings—*

(i) *General rule.* A Board discovery ruling, or a Board disclosure ruling such as one issued at a hearing is not subject to immediate review by the Administrator (see § 405.1875(a)(3)). The ruling may be reviewed solely during the course of Administrator review of one of the Board decisions specified as final, or deemed to be final by the Administrator, under § 405.1875(a)(2), or of judicial review of a final agency decision as described in § 405.1877(a) and (c)(3), as applicable.

(ii) *Exception.* To the extent a ruling authorizes discovery or disclosure of a matter for which an objection based on privilege, or other protection from disclosure such as case preparation, confidentiality, or undue burden, was made before the Board, that portion of the discovery or disclosure ruling may be reviewed immediately by the Administrator in accordance with § 405.1875(a)(3)(i). Upon notice to the Board that a party or non-party, as applicable, intends to seek Administrator review of the ruling, the Board must stay all proceedings affected by the ruling. The Board determines the length of the stay under the circumstances of a given case, but in no event must the length of the stay be less than 15 days after the day on which the Board received notice of the party or non-party's intent to seek Administrator review. If the Administrator grants a request for review, or takes own motion review, of the a ruling, the ruling is stayed until the time the Administrator issues a written decision that affirms, reverses, modifies, or remands the Board's ruling. If the Administrator does not grant review or take own motion review within the time allotted for the stay, the stay is lifted and the ruling stands.

24. Section 405.1857 is revised to read as follows:

§ 405.1857 Subpoenas.

(a) *Time limits.* (1) The Board may issue a subpoena:

(i) To a party to a Board appeal or to a non-party requiring the attendance and testimony of witnesses or the production of documents for inspection and copying, provided the Board makes a preliminary finding of its jurisdiction over the matters at issue in accordance with § 405.1840(a) of this part.

(ii) At the request of a party for purposes of discovery (see § 405.1853 of this part) or an oral hearing (see § 405.1845 of this part).

(iii) On its own motion solely for purposes of a hearing.

(2) The date of receipt by the Board of a party's subpoena request may not be any later than:

(i) For subpoenas requested for purposes of discovery, 90 days before the scheduled starting date of the Board hearing; and

(ii) For subpoenas requested for purposes of an oral hearing, 45 days before the scheduled starting date of the Board hearing.

(3) The Board may not issue a subpoena any later than:

(i) For purposes of a discovery subpoena, 75 days before the scheduled starting date of the Board hearing; and

(ii) For purposes of a hearing subpoena, whether issued at a party's request or on the Board's own motion, 30 days before the scheduled starting date of the Board hearing.

(4) The Board may extend for good cause the deadlines specified in paragraphs (a)(2) and (a)(3) of this section provided the Board:

(i) Gives each party to the appeal and any non-party subject to a subpoena request or subpoena a reasonable period of time to comment on any proposed extension.

(ii) Finds that the party requesting the extension, where applicable, was not dilatory or otherwise at fault in not meeting the original subpoena deadlines.

(iii) Imposes new deadlines and, if necessary, reschedules the hearing date so that all subpoena requests are submitted and all subpoenas issued within the time periods specified in paragraphs (a)(2) and (a)(3) of this section.

(b) *Criteria*—(1) *Discovery subpoenas.* The Board may issue a subpoena for purposes of discovery if:

(i) The subpoena was requested in accordance with the requirements of paragraph (c)(1) of this section.

(ii) The party's discovery request complies with the applicable provisions of § 405.1853(e) of this part.

(iii) A subpoena is necessary and appropriate to compel a response to the discovery request.

(2) *Hearing subpoenas.* The Board may issue a subpoena for purposes of an oral hearing if:

(i) If applicable, the party's subpoena request meets the requirements of paragraph (c)(1) of this section.

(ii) A subpoena is necessary and appropriate to compel the attendance and testimony of witnesses or the production of documents for inspection or copying, provided the testimony or documents are relevant and material to a matter at issue in the appeal but not unduly repetitious (see § 405.1855 of this part).

(iii) The subpoena does not compel the disclosure of matter that is privileged or otherwise protected from disclosure for reasons such as case preparation, confidentiality, or undue burden.

(iv) The subpoena does not impose undue burden or expense on the party or non-party subject to the subpoena, and is not otherwise unreasonable or inappropriate.

(3) *Guiding principles.* In determining whether to issue, quash, or modify a subpoena under this section, the Board must comply with the applicable provisions of the Federal Rules of Civil Procedure and Rules 401 and 501 of the Federal Rules of Evidence for guidance.

(c) *Procedures*—(1) *Subpoena requests.* The requesting party must mail any subpoena request submitted to the Board promptly to the party or non-party subject to the subpoena, and to any other party to the Board appeal. The request must:

(i) Identify with particularity any witnesses (and their addresses, if known) or any documents (and their location, if known) sought by the subpoena, and the means, time, or location for securing any witness testimony or documents.

(ii) Describe specifically, in the case of a hearing subpoena, the facts any witnesses, documents, or tangible materials are expected to establish, and why those facts cannot be established without a subpoena.

(iii) Explain why a subpoena is appropriate under the criteria prescribed in paragraph (b) of this section.

(2) *Contents of subpoenas.* A subpoena issued by the Board, whether on its own motion or at the request of a party, must be in writing and either sent promptly by the Board to the party or non-party subject to the subpoena by certified mail or overnight delivery (and to any other party and affected non-

party to the appeal by regular mail), or hand-delivered. Each subpoena must:

(i) Be issued in the name of the Board, and include the case number and name of the appeal.

(ii) Provide notice that the subpoena is issued in accordance with section 1878(e) of the Act, and § 405.1857 of this part, and that CMS must pay the fees and the mileage of any witnesses, as provided in section 205(d) of the Act.

(iii) If applicable, require named witnesses to attend a particular proceeding at a certain time and location, and to testify on specific subjects.

(iv) If applicable, require the production of specific documents for inspection or copying at a certain time and location.

(3) *Rights of non-parties.* If a non-party to the Board appeal is subject to the subpoena or subpoena request, the non-party (including HHS and CMS) has the same rights as any party has in responding to a subpoena or subpoena request. These rights include, but are not limited to, the right to select and use any attorney or other representative, and to submit responses, objections, motions, or any other pertinent materials to the Board regarding the subpoena or subpoena request.

(4) *Board action on subpoena requests and motions.* After issuing a subpoena or receiving a subpoena request, the Board must:

(i) Give the party or non-party subject to the subpoena or subpoena request a reasonable period of time for the submission of any responses, objections, or motions.

(ii) Consider the subpoena or subpoena request, and any responses, objections, or motions related thereto, under the criteria specified in paragraph (b) of this section.

(iii) Issue in writing and mail promptly to each party and any affected non-party an order granting or denying any motion to quash or modify a subpoena, or granting or denying any subpoena request in whole or in part; and issue, if applicable, an original or modified subpoena in accordance with paragraph (c)(2) of this section.

(d) *Reviewability*—(1) *General rules.* (i) If the Board issues, quashes, or modifies, or refuses to issue, quash, or modify, a subpoena under paragraphs (c)(2) or (c)(4) of this section, the Board's action is not subject to immediate review by the Administrator (see § 405.1875(a)(3) of this part).

(ii) Any Board action may be reviewed solely during the course of Administrator review of one of the Board decisions specified in § 405.1875(a)(2) of this part, or of judicial review of a final agency decision as described in § 405.1877(a) and (c)(3) of this part, as applicable.

(2) *Exception.* (i) To the extent a subpoena compels disclosure of a matter for which an objection based on privilege, or other protection from disclosure such as case preparation, confidentiality, or undue burden, was made before the Board, the Administrator may review immediately that portion of the subpoena in accordance with § 405.1875(a)(3)(ii).

(ii) Upon notice to the Board that a party or non-party, as applicable, intends to seek Administrator review of the subpoena, the Board must stay all proceedings affected by the subpoena.

(iii) The Board determines the length of the stay under the circumstances of a given case, but in no event is less than 15 days after the day on which the Board received notice of the party or non-party's intent to seek Administrator review.

(iv) If the Administrator grants a request for review, or takes own motion review, of the subpoena, the subpoena or portion of the subpoena, as applicable, is stayed until the time as the Administrator issues a written decision that affirms, reverses, modifies, or remands the Board's action for the subpoena.

(v) If the Administrator does not grant review or take own motion review within the time allotted for the stay, the stay is lifted and the Board's action stands.

(e) *Enforcement.* (i) If the Board determines, whether on its own motion or at the request of a party, that a party or non-party subject to a subpoena issued under this section has refused to comply with the subpoena, the Board may request the Administrator to seek enforcement of the subpoena in accordance with section 205(e) of the Act, 42 U.S.C. 405(e).

(ii) Any enforcement request by the Board must consist of a written notice to the Administrator describing in detail the Board's findings of noncompliance and its specific request for enforcement, and providing a copy of the subpoena and evidence of its receipt by certified mail by the party or nonparty subject to the subpoena.

(iii) The Board must promptly mail a copy of the notice and related documents to the party or non-party subject to the subpoena, and to any other party and affected non-party to the appeal.

25. Section 405.1865 is revised to read as follows:

§ 405.1865 Record of administrative proceedings.

(a)(1) The Board and, if applicable, the Administrator must maintain a complete record of all proceedings in each appeal.

(2) For proceedings before the Board, the administrative record consists of all evidence, documents and any other tangible materials submitted by the parties to the appeal and by any non-party (see § 405.1853(d) and § 405.1857(c)(3) of this part), along with all Board correspondence, rulings, subpoenas, orders, and decisions.

(3) The term record is intended to encompass both the unappended record and any appendix to the record (see § 405.1865(b) of this part).

(4) The record also includes a complete transcription of the proceedings at any oral hearing before the Board.

(5) A copy of any transcription must be made available to any party upon written request.

(b) Any evidence ruled inadmissible by the Board (see § 405.1855 of this part) and any other submitted matter that the Board declines to consider (whether as untimely or otherwise) must be, to the extent practicable, clearly identified and segregated in an appendix to the record for purposes of any further review (see §§ 405.1875 and 405.1877 of this part).

(c) To the extent applicable, the administrative record also includes all documents (including written submissions) and any other tangible materials to the Administrator by the parties to the appeal or by any non-party (see § 405.1853(d) and § 405.1857(c)(3) of this part), in addition to all correspondence from the Administrator or the Office of the Attorney Advisor and all rulings, orders, and decisions by the Administrator. The provisions of paragraph (b) of this section also pertain to any proceedings before the Administrator, to the extent the Administrator finds evidence inadmissible or declines to consider specific matter (whether as untimely or otherwise).

§ 405.1867 [Amended]

26. Section 405.1867 is amended by:

A. Revising the section heading to read as follows: "Scope of Board's legal authority."

B. Revising the introductory clause, in the first sentence to read as follows: "In exercising its authority to conduct proceedings under this subpart,".

27. A new § 405.1868 is added to read as follows:

§ 405.1868 Board actions in response to failure to follow Board rules.

(a) The Board has full power and authority to make rules and establish procedures, not inconsistent with the law, regulations, and CMS Rulings, that are necessary or appropriate to carry out the provisions of section 1878 of the Act and of the regulations in this subpart. The Board's powers include the authority to take appropriate actions in response to the failure of a party to a Board appeal to comply with Board rules and orders or for inappropriate conduct during proceedings in the appeal.

(b) If a provider fails to meet a filing deadline or other requirement established by the Board in a rule or order, the Board may—

(1) Dismiss the appeal with prejudice;

(2) Issue an order requiring the provider to show cause why the Board does not dismiss the appeal; or

(3) Take any other remedial action it considers appropriate.

(c) If an intermediary fails to meet a filing deadline or other requirement established by the Board in a rule or order, the Board may take action it considers appropriate, such as issuing a written notice to the Administrator describing the intermediary's actions and requesting that the notice be considered in CMS' review of the intermediary's compliance with the contractual requirements of § 421.120, § 421.122, and § 421.124 of this chapter. The Board's authority for the intermediary does not include reversing or modifying the intermediary or Secretary determination for the cost reporting period under appeal, or ruling against the intermediary on a disputed issue of law or fact in the appeal.

(d)(1) If the Board dismisses the appeal with prejudice under this section, it must issue a Dismissal Decision dismissing the appeal. The decision by the Board must be in writing and include an explanation of the reason for the dismissal. A copy of the Board's Dismissal Decision must be mailed promptly to each party to the appeal (see § 405.1843).

(2) A Dismissal Decision by the Board under paragraph (f)(1) of this section is final and binding on the parties unless the decision is reversed, affirmed, modified, or remanded by the Administrator under § 405.1875(a)(2)(ii), paragraphs (e), and (f) of this section no later than 60 days after the date of receipt by the provider of the Board's decision. The Board decision is inoperative during the 60-day period for review by the Administrator, or in the event the Administrator reverses, affirms, modifies, or remands the decision within the period. The Board may reopen final Board decision under paragraphs (f)(1) and (f)(2) of this section, in accordance with §§ 405.1885 through 405.1889.

(3) Any action taken by the Board under this section other than dismissal of the appeal is not subject to immediate Administrator review (see § 405.1875(a)(3)) or judicial review (see § 405.1877(a)(3)). A Board action other than dismissal of the appeal may be reviewed solely during the course of Administrator review of one of the Board decisions specified as final, or deemed to be final by the Administrator, under § 405.1875(a)(2) or of judicial review of a final agency decision as described in § 405.1877(a), as applicable.

28. Section 405.1869 is revised as follows:

§ 405.1869 Scope of Board's authority in a hearing decision.

(a) If the Board has jurisdiction to conduct a hearing on a specific matter at issue under section 1878(a) or (b) of the Act and § 405.1840, and the legal authority to fully resolve the matter in a hearing decision (see § 405.1842(f)(3), § 405.1867, and § 405.1871), section 1878(d) of the Act, and paragraph (a) of this section, give the Board the power to affirm, modify, or reverse the intermediary's findings on each specific matter at issue in the intermediary determination for the cost reporting period under appeal, and to make additional revisions on specific matters regardless of whether the intermediary considered the matters in issuing the intermediary determination. The Board's power to make additional revisions in a hearing decision does not authorize the Board to consider or decide a specific matter at issue for which it lacks jurisdiction (see § 405.1840(b)) or which was not timely raised in the provider's hearing request. The Board's power under section 1878(d) of the Act and paragraph (a) of this section to make additional revisions is limited to those revisions necessary to resolve fully a specific matter at issue if—

(1) The Board has jurisdiction to grant a hearing on the specific matter at issue under section 1878(a) or (b) of the Act and § 405.1840; and

(2) The specific matter at issue was timely raised in an initial request for a Board hearing filed in accordance with § 405.1835 or § 405.1837, as applicable, or in a timely request to add issues to a single provider appeal submitted in accordance with § 405.1835(c).

(b)(1) If the Board has jurisdiction to conduct a hearing on a specific matter at issue solely under § 405.1840 and § 405.1835 or § 405.1837, as applicable, and the legal authority to fully resolve the matter in a hearing decision (see §§ 405.1842(f)(3), 405.1867, and 405.1871), the Board is authorized to:

(i) Affirm, modify, or reverse the intermediary's or Secretary's findings on each specific matter at issue in the intermediary or Secretary determination under appeal.

(ii) Make additional revisions on each specific matter at issue regardless of whether the intermediary considered these revisions in issuing the intermediary determination under appeal, provided the Board does not consider or decide a specific matter for which it lacks jurisdiction (see § 405.1840(b)) or that was not timely raised in the provider's hearing request.

(2) The Board's authority under this section to make the additional revisions is limited to those revisions necessary to fully resolve a specific matter at issue if:

(i) The Board has jurisdiction to grant a hearing on the specific matter solely under § 405.1840 and § 405.1835 or § 405.1837, as applicable.

(ii) The specific matter at issue was timely raised in the request for a Board hearing filed in accordance with § 405.1835 or § 405.1837, as applicable.

29. Section 405.1871 is revised to read as follows:

§ 405.1871 Board Hearing Decision.

(a)(1) If the Board finds jurisdiction over a specific matter at issue and conducts a hearing on the matter (see § 405.1840(a) and § 405.1845(e)), the Board must issue a Hearing Decision deciding the merits of the specific matter at issue.

(2) A Board Hearing Decision must be in writing and based on the admissible evidence from the Board hearing and other admissible evidence and written argument or comments as may be included in the record and accepted by the Board (see § 405.1845(f)(3) and § 405.1865).

(3) The decision must include findings of fact and conclusions of law regarding the Board's jurisdiction over each specific matter at issue (see § 405.1840(c)(1)), and whether the provider carried its burden of production of evidence and burden of proof by establishing, by a preponderance of the evidence, that the provider is entitled to relief on the merits of the matter at issue.

(4) The decision must include appropriate citations to the record evidence and to the applicable law, regulations, CMS Rulings, and general CMS instructions.

(5) A copy of the decision must be mailed promptly to each party to the appeal.

(b)(1) A Board Hearing Decision issued in accordance with paragraph (a) of this section is final and binding on the parties to the Board appeal unless the Hearing Decision is reversed, affirmed, modified, or remanded by the Administrator under § 405.1875(a)(2)(i), (e), and (f), no later than 60 days after the date of receipt by the provider of the Board's decision. A Board Hearing Decision is inoperative during the 60-day period for review of the decision by the Administrator, or in the event the Administrator reverses, affirms, modifies, or remands that decision within the period.

(2) A Board Hearing Decision that is final under paragraph (b)(1) of this section is subject to the provisions of § 405.1803(d), unless a decision is the subject of judicial review (see § 405.1877).

(3) A final Board decision under paragraph (a) and (b)(1) of this section may be reopened by the Board in accordance with §§ 405.1885 through 405.1889.

§ 405.1873 [Removed].

30. Section 405.1873 is removed.

31. Section 405.1875 is revised to read as follows:

§ 405.1875 Administrator review.

(a) *Basic rule; time limit for rendering Administrator decisions; Board decisions and action subject to immediate review.* The Administrator, at his or her discretion, may immediately review any decision of the Board specified in paragraph (a)(2) of this section. Non-final decisions or actions by the Board are not immediately reviewable, except as provided in paragraph (a)(3) of this section. The Administrator may exercise this discretionary review authority on his or her own motion, or in response to a request from: A party to the Board appeal; CMS; or, in the case of a matter specified in paragraph (a)(3)(i) or (a)(3)(ii) of this section, another affected non-party to a Board appeal. All requests for Administrator review and any other submissions to the Administrator under paragraph (c) of this section must be sent to the Office of the Attorney Advisor. The Office of the Attorney Advisor must examine each Board decision specified in paragraph (a)(2) of this section, and each matter described in §§ 405.1845(g)(3), 405.1853(e)(2), or 405.1857(d)(2), of which it becomes aware, together with any review requests or any other submission made in accordance with the provisions of this section, in order to assist the Administrator's exercise of this discretionary review authority. The Board is required to send to the Office of the Attorney Advisor a copy of each decision specified in paragraphs (a)(2)(i) and (a)(2)(iii) of this section upon issuance of the decision.

(1) The date of rendering any decision after the review by the Administrator must be no later than 60 days after the date of receipt by the provider of a reviewable Board decision or action. For purposes of this section, the date of rendering is the date the Administrator signs the decision, and not the date the decision is mailed or otherwise transmitted to the parties.

(2) The Administrator may immediately review:

(i) A Board Hearing Decision (see § 405.1871).

(ii) A Board Dismissal Decision (see § 405.1836(e)(1) and (e)(2), § 405.1840(c)(2) and (c)(3), § 405.1868(d)(1) and (d)(2)).

(iii) A Board Expedited Judicial Review Decision, but only the question of whether there is Board jurisdiction over a specific matter at issue in the decision; the Administrator may not review the Board's determination in a decision of its authority to decide a legal question relevant to the matter at issue (*see* § 405.1842(h)).

(iv) Any other Board decision or action deemed to be final by the Administrator.

(3) Any decision or action by the Board not specified in paragraph (a)(2)(i) through (a)(2)(iii) of this section, or not deemed to be final by the Administrator under paragraph (a)(2)(iv) of this section, is non-final and not subject to Administrator review until the Board issues one of the decisions specified in paragraph (a)(2) of this section, except the Administrator may review immediately the following matters:

(i) A Board ruling authorizing discovery or disclosure of a matter for which an objection was made based on privilege or other protection from disclosure such as case preparation, confidentiality, or undue burden (*see* § 405.1853(e)(2)).

(ii) A Board subpoena compelling disclosure of a matter for which an objection was made based on privilege or other protection from disclosure such as case preparation, confidentiality, or undue burden (*see* § 405.1857(d)(2)).

(b) *Illustrative list of criteria for deciding whether to review.* In deciding whether to review a Board decision or other matter specified in paragraphs (a)(2) and (a)(3) of this section, either on his or her own motion or in response to a request for review, the Administrator considers criteria such as whether it appears that:

(1) The Board made an erroneous interpretation of law, regulation, CMS Ruling, or general CMS instructions.

(2) Any Board hearing decision meets the requirements of § 405.1871(a).

(3) The Board erred in refusing to admit certain evidence or in not considering other submitted matter (*see* § 405.1855 and § 405.1865(b)), or in admitting certain evidence or considering other submitted matter.

(4) The case presents a significant policy issue having a basis in law and regulations, and review is likely to lead to the issuance of a CMS Ruling or other directive needed to clarify a statutory or regulatory provision.

(5) The Board has incorrectly found, assumed, or denied jurisdiction over a specific matter at issue or extended its authority in a manner not provided for by statute, regulation, CMS Ruling, or general CMS instructions.

(6) The decision or other action of the Board requires clarification, amplification, or an alternative legal basis.

(7) A remand to the Board may be necessary or appropriate under the criteria prescribed in paragraph (f) of this section.

(c) *Procedures*—(1) *Review requests.* A party to the Board appeal or CMS may request Administrator review of a Board decision specified in paragraph (a)(2) of this section or a matter described in paragraph (a)(3) of this section. A non-party other than CMS may request Administrator review solely of a matter described in paragraph (a)(3)(i) or (a)(3)(ii) of this section. The date of receipt by the Office of Attorney Advisor of any review request must be no later than 15 days after the date the party or non-party making the request received the Board's decision or other reviewable action.

(2) *Exception.* If a party, or nonparty, as applicable, seeks immediate review of a matter described in § 405.1875(a)(3)(i) or (a)(3)(ii), the request for review must be made as soon as practicable, but in no event later than 5 business days after the day the party or non-party seeking review received notice of the ruling or subpoena.

(i) The request must state the reason(s) why the ruling was in error and the potential harm that may be caused if immediate review is not granted.

(ii) A party or CMS may respond to a request for Administrator review.

(iii) A request for review (or a response to a request) must be submitted in writing, identify the

specific issues for which review is requested, and explain why review is or is not appropriate, under the criteria specified in paragraph (b) of this section or for some other reason.

(iv) A copy of any review request (or response to a request) must be mailed promptly to each party to the appeal, the Office of the Attorney Advisor, and, as applicable, CMS, and any other affected non-party.

(3) *Notice of review.* When the Administrator decides to review a Board decision or other matter specified in paragraphs (a)(2) or (a)(3) of this section, respectively, whether on his or her own motion or upon request, the Administrator must send a written notice to the parties, CMS, and any other affected non-party stating that the Board's decision is reviewed, and indicating the specific issues that is considered. The Administrator may decline to review a Board decision or other matter, or any issue in a decision or matter, even if a request for review is submitted in accordance with paragraph (c)(1) of this section.

(4) *Written submissions on review.* If the Administrator accepts review of the Board's decision or other reviewable action, a party, CMS, or, another affected non-party that properly requested review, may render written submissions regarding the review. The date of receipt by the Office of the Attorney Advisor of any material must be no later than 15 days after the date the party, CMS or other affected non-party submitting comments received the Administrator's notice under paragraph (c)(3) of this section, taking review of the Board decision or other reviewable matter. Any submission must be limited to the issues accepted for Administrator review (as identified in the notice) and be confined to the record of Board proceedings (*see* § 405.1865). The submission may include:

(i) Argument and analysis supporting or taking exception to the Board's decision or other reviewable action;

(ii) Supporting reasons, including legal citations and excerpts of record evidence, for any argument and analysis submitted under paragraph (c)(3)(i) of this section;

(iii) Proposed findings of fact and conclusions of law;

(iv) Rebuttal to any written submission filed previously with the Administrator in accordance with paragraph (c)(3) of this section; or

(v) A request, with supporting reasons, that the decision of other reviewable action be remanded to the Board.

(d) *Ex parte communications prohibited.* All communications from any party, CMS, or other affected non-party, concerning a Board decision (or other reviewable action) that is being reviewed or may be reviewed by the Administrator, must be in writing and must contain a certification that copies were served on all other parties, CMS, and any other affected non-party, as applicable. The communications include, but are not limited to, requests for review and responses to requests for review submitted under paragraph (c)(1) of this section, and written submissions regarding review submitted under paragraph (c)(3) of this section. The Administrator does not consider any communication that does not meet these requirements or is not submitted within the required time limits.

(e) *Administrator's decision.* (1) Upon completion of any review, the Administrator provides a written decision that:

(i) For purposes of review of a Board decision specified in paragraph (a)(2) of this section, affirms, reverses, or modifies the Board's decision, or vacates that decision and remands the case to the Board for further proceedings in accordance with paragraph (f)(1)(i) of this section; or

(ii) For purposes of review of a matter described in paragraph (a)(3) of this section, affirms, reverses, modifies, or remands the Board's remand order, discovery ruling, or subpoena, as applicable, and remands the case to the Board for further proceedings in accordance with paragraph (f)(1)(ii) of this section.

(2) The date of rendering any decision by the Administrator must be no later than 60 days after the date of receipt by the provider of the Board's decision or other reviewable action. The Administrator must promptly mail a copy of his or her decision to the Board, to each party to the appeal, to CMS, and, if applicable, to any other affected non-party.

(3) Any decision by the Administrator must be based on:

(i) Applicable provisions of the law, regulations, CMS Rulings, and general CMS instructions.

(ii) Prior decisions of the Board, the Administrator, and the courts, and any other law that the Administrator finds applicable, whether or not cited in materials submitted to the Administrator.

(iii) The administrative record for the case (see § 405.1865).

(iv) Generally known facts that are not subject to reasonable dispute.

(4) A timely decision by the Administrator that affirms, reverses, or modifies one of the Board decisions specified in paragraph (a)(2) of this section is final and binding on each party to the Board appeal (see § 405.1877(a)(4)). If the final Administrator decision follows review of a Board Hearing Decision, the Administrator's decision is subject to the provisions of § 405.1803(d) unless that final decision is the subject of judicial review (see § 405.1877). The Administrator in accordance with § 405.1885 through § 405.1889 may reopen a final Administrator decision. A decision by the Administrator remanding a matter to the Board for further proceedings in accordance with paragraph (f) of this section is not a final decision for purposes of judicial review (see § 405.1877(a)(4)) or the provisions of § 405.1803(d).

(f) *Remand.* (1) A remand to the Board by the Administrator has the effect for purposes of review:

(i) A Board decision specified in paragraph (a)(2) of this section, vacating the Board's decision and requiring further proceedings in accordance with the Administrator's decision and this subpart; or

(ii) A matter described in paragraph (a)(3) of this section, affirming, reversing, modifying, or remanding the Board's remand order, discovery ruling, or subpoena, as applicable, and returning the case to the Board for further proceedings in accordance with the Administrator's decision and this subpart.

(2) The Administrator may direct the Board to take further action for the development of additional facts or new issues, or to consider the applicability of laws or regulations other than those considered by the Board. The following are not acceptable bases for remand:

(i) Presentation of evidence existing at the time of the Board hearing that was known or reasonably may be known.

(ii) Introduction of a favorable court ruling, regardless of whether the ruling was made or was available at the time of the Board hearing or at the time the Board issued its decision.

(iii) Change in a party's representation, regardless when made.

(iv) Presentation of an alternative legal basis concerning an issue in dispute.

(v) Attempted retraction of a waiver of a right, regardless when made.

(3) After remand, the Board must take the actions required in the Administrator's remand order and issue a new decision in accordance with paragraph (f)(1)(i) of this section, or issue under paragraph (f)(1)(ii) of this section an initial decision or a further remand order, discovery ruling, or subpoena ruling, as applicable.

(4) Administrator review of any decision or other action by the Board after remand is, to the extent applicable, subject to the provisions of paragraphs (a)(2) or (a)(3) of this section.

(5) Besides ordering a remand to the Board, the Administrator may order a remand to any component of HHS or CMS or to an intermediary under appropriate circumstances, including, but not limited to, for the purpose of effectuating a court order (see § 405.1877(g)(2)).

32. Section 405.1877 is revised to read as follows:

§ 405.1877 Judicial review.

(a) *Basis and scope.* (1) Notwithstanding the provisions of 5 U.S.C. 704 or any other provision of law, sections 205(h) and 1872 of the Act provide that a decision or other action by a reviewing entity is subject to judicial review solely to the extent authorized by section 1878(f)(1) of the Act. This section, along with the expedited judicial review provisions of § 405.1842, implements section 1878(f)(1) of the Act.

(2) Section 1878(f)(1) of the Act provides that a provider has a right to obtain judicial review of a final decision of the Board, or of a timely reversal, affirmation, or modification by the Administrator of a final Board decision, by filing a civil action in accordance with the Federal Rules of Civil Procedure in a Federal district court with venue no later than 60 days after the date of receipt by the provider of a final Board decision or a reversal, affirmation, or modification by the Administrator. The Secretary of Health and Human Services (and not the Administrator or CMS itself, or the intermediary) is the only proper defendant in a civil action brought under section 1878(f)(1).

(3) A Board decision is final and subject to judicial review under section 1878(f)(1) of the Act only if the decision—

(i) Is one of the Board decisions specified in § 405.1875(a)(2)(i) through (a)(2)(iii) or, in a particular case, is deemed to be final by the Administrator under § 405.1875(a)(2)(iv); and

(ii) Is not reversed, affirmed, modified, or remanded by the Administrator under § 405.1875(e) and (f) within 60 days of the date of receipt by the provider of the Board's decision. A provider is not required to seek Administrator review under § 405.1875 first in order to seek judicial review of a Board decision that is final and subject to judicial review under section 1878(f)(1) of the Act.

(4) If the Administrator timely reverses, affirms, or modifies one of the Board decisions specified in § 405.1875(a)(2)(i) through (a)(2)(iii) or deemed to be final by the Administrator in a particular case under § 405.1875(a)(2)(iv), the Administrator's reversal, affirmation, or modification is the only decision subject to judicial review under section 1878(f)(1) of the Act. A remand of a Board decision by the Administrator to the Board vacates the decision; neither the Board's decision nor the Administrator's remand is a final decision subject to judicial review under section 1878(f)(1) of the Act (see § 405.1875(e)(4), (f)(1), and (f)(4)).

(b) *Determining when a civil action may be filed—*

(1) *General rule.* Under section 1878(f)(1) of the Act, the 60-day periods for Administrator review of a decision by the Board, and for judicial review of any final Board decision, respectively, both begin to run on the same day. Paragraphs (b)(2), (b)(3) and (b)(4) of this section identify how various actions or inaction by the Administrator within the 60-day review period determine the scope and timing of any right a provider may have to judicial review under section 1878(f)(1) of the Act.

(2) *Administrator declines review.* If the Administrator declines any review of a Board decision specified in § 405.1875(a)(2), whether through inaction or in a written notice issued under § 405.1875(c)(2), the provider must file any civil action seeking judicial review of the Board's final decision under section 1878(f)(1) of the Act no later than 60 days after the date of receipt by the provider of the Board's decision.

(3) *Administrator accepts review and renders timely decision.* Where the Administrator decides to review, in a notice under § 405.1875(c)(2), any issue in a Board decision specified as final, or deemed as final by the Administrator, under § 405.1875(a)(2) and he or she subsequently makes a decision within the 60-day review period (see § 405.1875(a)(1)), the provider has no right to obtain judicial review under section 1878(f)(1) of the Act of the Board's decision. If the Administrator timely reverses, affirms, or modifies the Board's decision, the provider's only right under section 1878(f)(1) of the Act is to request judicial review of the Administrator's decision by filing a civil action no later than 60 days after the date of receipt by the provider of the Administrator's decision (see § 405.1877(a)(3)). If the Administrator timely vacates the Board's decision and remands for further proceedings (see § 405.1875(f)(1)(i)), a provider has no right to judicial review under section 1878(f)(1) of the Act of the Board's decision or of the Administrator's remand (see § 405.1877(a)(3)).

(4) *Administrator accepts review and timely decision is not rendered.* If the Administrator decides to review, in a notice under § 405.1875(c)(2), any issue in a Board decision specified as final, or deemed to be final by the Administrator, under § 405.1875(a)(2), but he or she does not render a decision within the 60-day review period, this subsequent inaction constitutes an affirmation of the Board's decision by the Administrator. In this case, the provider must file any civil action requesting judicial review of the Administrator's final decision under section 1878(f)(1) of the Act no later than 60 days after the expiration of the 60-day period for a decision by the Administrator under § 405.1875(a)(1) and § 405.1875(e)(2).

(c) *Statutory limitations on and preclusion of judicial review.* The Act limits or precludes judicial review of certain matters at issue. Limitations on and preclusions of judicial review include the following:

(1) A finding in an intermediary determination that expenses incurred for items and services furnished by a provider to an individual are not payable under title XVIII of the Act because those items or services are excluded from coverage under section 1862 of the Act, and § 411.15 of this chapter, is not reviewable by the Board (see § 405.1840(b)(1)) and is not subject to judicial review under section 1878(f)(1) of the Act; the finding is subject to judicial review solely in accordance with the applicable provisions of sections 1155, 1869, and 1879(d) of the Act, and of subparts G and H of part 405 and subpart B of part 473, as applicable.

(2) Certain matters affecting payments to hospitals under the prospective payment system are completely removed from administrative and judicial review, as provided in section 1886(d)(7) of the Act, and § 405.1804 and § 405.1840(b)(2).

(3) Any Board remand order, or discovery ruling or subpoena specified in § 405.1875(a)(3)(i) through (a)(3)(ii), or a decision by the Administrator following immediate review of a Board remand order, discovery ruling, or subpoena, is not subject to immediate judicial review under section 1878(f)(1) of the Act. Judicial review of all non-final Board actions, including any such Board remand order, discovery ruling, and, except as provided in § 405.1857(e), subpoena, is limited to

review of a final agency decision as described in § 405.1877(a).

(d) *Group appeals.* If a final decision is issued by the Board or rendered by the Administrator, as applicable, in any group appeal brought under § 405.1837, those providers in the group appeal that seek judicial review of the final decision under section 1878(f)(1) of the Act must file a civil action as a group (see § 405.1877(e)(2)) for the specific matter at issue and common factual or legal question that was addressed in the final agency decision in the group appeal.

(e) *Venue for civil actions.* (1) *Single provider appeals.* A civil action under section 1878(f)(1) of the Act requesting judicial review of a final decision of the Board or the Administrator, as applicable, in a single provider appeal under § 405.1835 must be brought in the District Court of the United States for the judicial district in which the provider is located or in the United States District Court for the District of Columbia.

(2) *Group appeals.* A civil action under section 1878(f)(1) of the Act seeking judicial review of a final decision of the Board or the Administrator, as applicable, in a group appeal under § 405.1837 must be brought in the District Court of the United States for the judicial district in which the greatest number of providers participating in both the group appeal and the civil action are located or in the United States District Court for the District of Columbia.

(f) *Service of process.* Process must be served as described under 45 CFR part 4.

(g) *Remand by a court*—(1) *General rule.* Under section 1874 of the Act, and § 421.5(b) of this chapter, the Secretary is the real party in interest in a civil action seeking relief under title XVIII of the Act. The Secretary has delegated to the Administrator the authority under section 1878(f)(1) of the Act to review decisions of the Board and, as applicable, render a final agency decision. If a court, in a civil action brought by a provider against the Secretary as the real party in interest regarding a matter pertaining to Medicare payment to the provider, orders a remand for further action by the Secretary, any component of HHS or CMS, or the intermediary, a remand order must be deemed, except as provided in paragraph (g)(3) of this section, to be directed to the Administrator in the first instance, regardless of whether the court's remand order refers to the Secretary, the Administrator, the Board, any other component of HHS or CMS, or the intermediary.

(2) *Exception.* The provisions of paragraphs (g)(2) and (g)(3) of this section do not apply to the extent they may be inconsistent with the court's remand order or any other order of the court regarding the civil action.

(3) *Procedures.* (i) Upon receiving notification of a court remand order, the Administrator must prepare an appropriate remand order and, if applicable, file the order in any Board appeal at issue in the civil action.

(ii) The Administrator's remand order must describe the specific requirements of the court's remand order; require compliance with those requirements by the pertinent component of HHS or CMS or by the intermediary, as applicable; and remand the matter to the appropriate entity for further action.

(iii) After the entity named in the Administrator's remand order completes its response to that order, the entity's response after remand is subject to further proceedings before the Board or the Administrator, as applicable, in accordance with this subpart. For example, if the intermediary issues a revised intermediary determination after remand, the provider may request a Board hearing on the revised determination (see § 405.1803(d) and § 405.1889); or, if the intermediary hearing officer(s) or the Board issues a new decision after remand, a decision may be reviewed by a CMS reviewing official or the Administrator, respectively (see § 405.1834, § 405.1875(f)(4)).

(h) *Implementation of final court judgment.* (1) Where a final, non-appealable court judgment is issued in a civil action brought by a provider against the Secretary as the real party in interest regarding a matter affecting Medicare payment, a court judgment is subject to the provisions of § 405.1803(d).

(2) The provisions of paragraph (h)(1) of this section do not apply to the extent they may be inconsistent with the court's final judgment or any other order of a court regarding the civil action.

33. Section 405.1885 is revised to read as follows:

§ 405.1885 Reopening an intermediary determination or reviewing entity decision.

(a) *Overview.* (1) A Secretary determination, a intermediary determination, or a decision by a reviewing entity (see § 405.1801(a)) may be reopened, for findings on matters at issue in a determination or decision, by the intermediary or by the applicable reviewing entity, respectively.

(2) A determination or decision may be reopened either through own motion of CMS (for Secretary determinations), the intermediary or reviewing entity, by notifying the parties to the determination or decision (as specified in § 405.1887), or by granting the request of the provider affected by the determination or decision.

(3) An intermediary's discretion to reopen or not reopen a matter is subject to a contrary directive from CMS to reopen or not reopen that matter.

(4) If CMS directs an intermediary to reopen a matter, reopening is considered an own motion reopening by the intermediary. A reopening may result in a revision of any matter at issue in the determination or decision.

(5) If a matter is reopened and a revised determination or decision provided, a revised determination or decision is appealable to the extent provided in § 405.1889.

(6) A determination or decision to reopen or not to reopen a determination or decision is not a final determination or decision within the meaning of this subpart and is not subject to further administrative review or judicial review.

(b) *Time limits.* (1) An own motion reopening is timely only if the notice of intent to reopen is mailed no later than 3 years after the date of the determination or decision that is the subject of the reopening. The date the notice is mailed is presumed to be the date indicated on the notice unless it is shown by a preponderance of the evidence that the notice was mailed on a later date.

(2) A reopening made upon request is timely only if the request to reopen is received by CMS, the intermediary, or reviewing entity, as appropriate, no later than 3 years after the date of the determination or decision that is the subject of the requested reopening. The date of receipt by CMS, the intermediary, or the reviewing entity of the request to reopen is presumed to be the date stamped "Received" unless it is shown by a preponderance of the evidence that CMS, the intermediary, or the reviewing entity received the request on an earlier date. A request to reopen does not toll the time in which to appeal an otherwise appealable determination or decision.

(3) No Secretary or intermediary determination, or decision by a reviewing entity, may be reopened after the 3-year period specified in paragraphs (b)(1) and (b)(2) of this section, except as follows: A Secretary or intermediary determination or decision by the reviewing entity may be reopened and revised at any time if it is established that the determination or decision was procured by fraud or

similar fault of any party to the determination or decision.

(c) *Jurisdiction for reopening.* Jurisdiction for reopening an intermediary determination or intermediary hearing decision rests exclusively with the intermediary or intermediary hearing officer(s) that rendered the determination or decision (or, where applicable, with the successor intermediary), subject to a directive from CMS to reopen or not reopen the determination or decision. Jurisdiction for reopening a Secretary determination, CMS reviewing official decision, a Board decision, or an Administrator decision rests exclusively with CMS, the CMS reviewing official, Board or Administrator, respectively.

(1) *CMS-directed reopenings.* CMS may direct an intermediary or intermediary hearing officer(s) to reopen and revise any matter, subject to the time limits specified in paragraph (b) of this section, and subject to the limitation expressed in paragraph (c)(2) of this section, by providing explicit direction to the intermediary or intermediary hearing officer(s) to reopen and revise.

(i) *Examples.* An intermediary determination or intermediary hearing decision must be reopened and revised if CMS provides explicit notice to the intermediary that the intermediary determination or the intermediary hearing decision is inconsistent with the applicable law, regulations, CMS ruling, or CMS general instructions in effect, and as CMS understood those legal provisions, at the time the determination or decision was rendered by the intermediary. CMS may direct the intermediary to reopen a particular intermediary determination or decision in order to implement a final agency decision (see § 405.1833, § 405.1871(b), § 405.1875, § 405.1877(a)), a final, non-appealable court judgment, or an agreement to settle an administrative appeal or a lawsuit, regarding the same determination or decision.

(ii) [Reserved]

(2) *Prohibited reopenings.* A change of legal interpretation or policy by CMS in a regulation, CMS ruling, or CMS general instruction, whether made in response to judicial precedent or otherwise, is not a basis for reopening a CMS or intermediary determination, an intermediary hearing decision, a CMS reviewing official decision, a Board decision, or an Administrator decision, under this section.

(3) *Reopening by CMS or intermediary of determination currently on appeal to the Board.* CMS or an intermediary may reopen, on its own motion or on request of the provider(s), a Secretary or intermediary determination that is currently pending on appeal before the Board. The scope of the reopening may include any matter covered by the determination, including those specific matters that are appealed to the Board or the Administrator. The intermediary must send a copy of the notice required under § 405.1887(a) to the Board specifically informing that matter(s) to be addressed by the reopening are currently under appeal to the Board or are covered by the same determination that is under appeal.

(4) *Reopening by intermediary of determination within the time for appealing that determination to the Board.* CMS or an intermediary may reopen, on its own motion or on request of the provider(s), Secretary or intermediary determination for which no appeal was taken to the Board, but for which the time to appeal to the Board has not yet expired, by sending the notice specified in § 405.1887(a).

34. Section 405.1887 is revised to read as follows:

§ 405.1887 Notice of reopening; effect of reopening.

(a) In exercising its reopening authority under § 405.1885, CMS (for Secretary determinations), the intermediary or the reviewing entity, as applicable, must provide written notice to all parties to the determination or decision that is the subject of the reopening. Notices of reopening by a CMS reviewing official or the Board also must be sent promptly to the Administrator. For additional notice requirements for intermediary reopenings of determinations that are currently pending before the Board or the Administrator see §§ 405.1885(c)(3) and (c)(4).

(b) Upon receipt of the notice required under § 405.1887(a), the parties to the prior Secretary or intermediary determination or decision by a reviewing entity, as applicable, must be allowed a reasonable period of time in which to present any additional evidence or argument in support of their positions.

(c) Upon concluding its reopening, CMS, the intermediary or the reviewing entity, as applicable, must provide written notice promptly to all parties to the determination or decision that is the subject of the reopening, informing the parties as to what matter(s), if any, is revised, with a complete explanation of the basis for any revision.

(d) A reopening by itself does not extend appeal rights. Any matter that is reconsidered during the course of a reopening but is not revised is not within the proper scope of an appeal of a revised determination or decision (see § 405.1889).

35. Section 405.1889 is revised to read as follows:

§ 405.1889 Effect of a revision; issue-specific nature of appeals of revised determinations and decisions.

(a) If a revision is made in a Secretary or intermediary determination or a decision by a reviewing entity after the determination or decision is reopened as provided in § 405.1885, the revision must be considered a separate and distinct determination or decision to which the provisions of § 405.1811, § 405.1834, § 405.1835, § 405.1837, § 405.1875, § 405.1877 and § 405.1885 are applicable.

(b) Only those matters that are specifically revised in a revised determination or decision are within the scope of any appeal of the revised determination or decision; any matter that is not specifically revised (including any matter that was reopened but not revised) may not be considered in any appeal of the revised determination or decision.

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; OPTIONAL PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

36. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1861(v)(1)(A), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x(v)(1)(A), and 1395hh).

36a. The heading for part 413 is revised to read as set forth above.

§ 413.30 [Amended]

37. The last sentence in paragraph (c)(1) of § 413.30 is revised to read as follows:

* * * * *

(c) * * *

(1) * * * The time required for CMS to review the request is considered good cause for the granting of an extension of the time limit for requesting an intermediary hearing or a Provider Reimbursement Review Board (Board) hearing as specified in § 405.1813 and § 405.1836 of this chapter, respectively.

* * * * *

§ 413.40 [Amended]

38. Paragraph (e)(5) of § 413.40 is revised to read as follows:

* * * * *

(e) * * *

(5) *Extending the time limit for review of NPR.* The time required to review the

request is considered good cause for the granting of an extension of the time limit for requesting an intermediary hearing or a Board hearing as specified in § 405.1813 and § 405.1836 of this chapter, respectively.

* * * * *

§ 413.64 [Amended]

39. The last sentence in paragraph (j)(1) of § 413.64 is revised to read as follows:

* * * * *

(j) * * *

(1) * * * The interest begins to accrue on the first day of the first month following the 180-day period described in § 405.1835(a)(3)(i) or (a)(3)(ii) of this chapter, as applicable.

* * * * *

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

40. The authority citation for part 417 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), secs. 1301, 1306, and 1310 of the Public Health Service Act (42 U.S.C. 300e, 300e–5, and 300e–9); and 31 U.S.C. 9701.

§ 417.576 [Amended]

41. Section 417.576 is amended as follows:

a. In paragraph (d)(4), remove the phrase "a hearing in accordance with subpart R of part 405 of this chapter." and add, in its place, "a hearing in accordance with the requirements specified in § 405.1801(b)(2) of this chapter."

b. In paragraph (e)(2), remove the phrase "a hearing under subpart R of part 405 of this chapter." and add, in its place "a hearing in accordance with the requirements specified in § 405.1801(b)(2) of this chapter."

§ 417.810 [Amended]

42. Section 417.810 is amended as follows:

a. In paragraph (c)(2), remove the phrase "a hearing as provided in part 405, subpart R of this chapter." and add, in its place, "a hearing in accordance with the requirements specified in § 405.1801(b)(2) of this chapter."

b. In paragraph (d)(3), remove the phrase "a hearing on the determination under the provisions of part 405, subpart R of this chapter." and add, in its place, "a hearing in accordance with the requirements specified in § 405.1801(b)(2) of this chapter."

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: June 5, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: February 4, 2004.

Tommy G. Thompson,

Secretary.

Editorial Note: This document was received in the Office of the Federal Reister on June 8, 2004.

[FR Doc. 04–13246 Filed 6–24–04; 8:45 am]

BILLING CODE 4120–01–P

Federal Register

Friday,
June 25, 2004

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for Populations of Bull Trout; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AJ12

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Jarbidge River, Coastal-Puget Sound, and Saint Mary-Belly River Populations of Bull Trout

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the Jarbidge River, Coastal-Puget Sound, and Saint Mary-Belly River populations of bull trout (*Salvelinus* confluentus) pursuant to the Endangered Species Act of 1973, as amended (Act). For the Jarbidge River population, the proposed critical habitat designation includes approximately 131 miles (mi) (211 kilometers (km)) of streams in Idaho and Nevada. For the Coastal-Puget Sound population, the proposed critical habitat designation totals approximately 2,290 mi (3,685 km) of streams, 52,540 acres (ac) (21,262 hectares (ha)) of lakes, and 985 mi (1,585 km) of marine shoreline in Washington. For the Saint Mary-Belly River population, the proposed critical habitat designation totals approximately 88 mi (142 km) of streams and 6,295 ac (2,548 ha) of lakes in Montana.

Section 4 of the Act requires us to consider the economic and other relevant impacts of specifying any area as critical habitat. We will conduct an analysis of the economic impacts of designating these areas in a manner that is consistent with the ruling of the 10th Circuit Court of Appeals in *N.M. Cattle Growers Ass'n* v. *USFWS*. We hereby solicit data and comments from the public on all aspects of this proposal, including data on economic and other impacts of the designation. We may revise this proposal prior to final designation to incorporate or address new information received during public comment periods.

DATES: We will accept comments until August 24, 2004.

Public Hearing

The Act provides for a public hearing on this proposal, if requested. Given the high likelihood of requests, we have scheduled a public hearing to be held on Tuesday, August 10, 2004, in Washington State.

Persons needing reasonable accommodations in order to attend and participate in the public hearing should contact Patti Carroll at 503/231–2080 as soon as possible. In order to allow sufficient time to process requests, please call no later than 1 week before the hearing date.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

1. You may submit written comments and information to John Young, Bull Trout Coordinator, U.S. Fish and Wildlife Service, Branch of Endangered Species, 911 N.E. 11th Avenue, Portland, OR 97232 (telephone 503/231–6194; facsimile 503/231–6243).

2. You may hand-deliver written comments to our Regional Office, at the address given above during normal business hours.

3. You may send comments by electronic mail (e-mail) to: *r1bulltroutch@r1.fws.gov*. Please see the Public Comments Solicited section below for file format and other information about electronic filing. In the event that our internet connection is not functional, please submit your comments by the alternate methods mentioned above.

All comments and materials received, as well as supporting documentation used in preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the above address.

Public Hearing: We will hold public hearings at the Comfort Inn and Conference Center, 1620 74th Ave. Southwest, Tumwater, WA. Public hearings will be held from 1 p.m. until 3 p.m. and from 6 p.m. until 8 p.m.

FOR FURTHER INFORMATION CONTACT: John Young, Bull Trout Coordinator, at the above address, (telephone 503/231–6194; facsimile 503/231–6243).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefit of designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of bull trout habitat, and what habitat is essential to the conservation of the species and why;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other potential impacts resulting from the proposed designation, in particular, any impacts on small entities;

(5) Whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments;

(6) We are seeking comment on the use of tidal datum to delineate the area of the photic zone (uppermost layer of water into which daylight penetrates sufficiently to influence living organisms), and we are interested in any proposed alternatives that appropriately identify proposed critical habitat for bull trout in the marine nearshore waters; and

(7) We are specifically seeking public comment on areas of habitat for which we do not have documented evidence of occupancy, but which may be essential to provide additional spawning and rearing areas or foraging, migratory, and overwintering (FMO) habitat for existing bull trout populations. Specific areas include: the headwater tributaries of the Jarbidge River system; the Bruneau River and its tributaries; tributaries of the Skokomish, Dungeness, Hoh, Queets, Quinault, and Chehalis River systems; independent tributaries to Hood Canal, Pacific Coast from Cape Flattery to Willapa Bay, and Grays Harbor; Sumas River and tributaries of the Chilliwack River system; tributaries of the Nooksack River system, especially those to its major forks; tributaries of the Skagit River system; tributaries of Diablo Lake and the Thunder Creek system; tributaries of Ross Lake and the Lightning Creek system; tributaries of the Stillaguamish River system, especially those to its major forks; tributaries of the Skykomish River and its major forks; and tributaries of the Puyallup River system, especially those to the Carbon, West Fork White, upper White, and Greenwater Rivers.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES** section). The proposed rule, maps, fact sheets, photographs, and other materials relating to this proposal, can be found on our Pacific Region bull trout Web site at *http://species.fws.gov/bulltrout*.

Please submit e-mail comments to *r1bulltroutch@r1.fws.gov* in ASCII file format and avoid the use of special characters or any form of encryption. Please also include "Attn: bull trout" in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our Regional Office at phone number 503/872–2766. Please note that the Internet address *r1bulltroutch@r1.fws.gov* will be closed out at the termination of the public comment period. In the event that our Internet connection is not functional, please submit your comments by the alternate methods mentioned above.

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

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made in writing within 45 days of the publication of the proposal. Public hearing requests must be received by August 9, 2004. However, due to the high probability of receiving a request for a public hearing on this proposal, we have scheduled public hearings to be held on Tuesday, August 10, 2004, in Tumwater, WA. If, as the result of public requests, we decide to schedule additional public hearings on this proposal, we will announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing. See **DATES** and **ADDRESSES** for information on the public hearings currently scheduled.

Anyone wishing to make oral comments for the record at the public hearing is encouraged to provide a written copy of their statement and present it to us at the hearing. In the event there is a large attendance, the time allotted for oral statements may be limited. Oral and written statements receive equal consideration.

Designation of Critical Habitat Provides Little Additional Protection to Species

In 30 years of implementing the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), we have found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of available conservation resources. Our present system for designating critical habitat is driven by litigation rather than biology, limits our ability to fully evaluate the science involved, consumes enormous agency resources, and imposes huge social and economic costs. We believe that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

While attention to, and protection of, habitat is paramount to successful conservation actions, we have consistently found that, in most circumstances, the designation of critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. Sidle (1987) stated, "Because the ESA can protect species with and without critical habitat designation, critical habitat designation may be redundant to the other consultation requirements of section 7."

Currently, only 445 species or 36 percent of the 1,244 listed species in the U.S. under our jurisdiction have designated critical habitat. We address the habitat needs of all 1,211 listed species through conservation mechanisms such as listing, section 7 consultations, the section 4 recovery planning process, the section 9 protective prohibitions of unauthorized take, section 6 funding to the States, and the section 10 incidental take permit process. We believe that it is these measures that may make the difference between extinction and survival for many species.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits regarding critical habitat designation, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected us to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves us with little ability to prioritize our activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits and to comply with the growing number of adverse court orders. As a result, our own proposals to undertake conservation actions based on biological priorities are significantly delayed.

The accelerated schedules of court ordered designations have left us with almost no ability to provide for additional public participation beyond those minimally required by the Administrative Procedures Act, the Act, and our implementing regulations, or to take additional time for review of comments and information to ensure the rule has addressed all the pertinent issues before making decisions on listing and critical habitat proposals, due to the risks associated with noncompliance with judicially imposed deadlines. This, in turn, fosters a second round of litigation in which those who will suffer adverse impacts from these decisions challenge them. The cycle of litigation appears endless, is very expensive, and in the final analysis, provides little additional protection to listed species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects, and the cost of requesting and responding to public comment, and in some cases the costs of compliance with the National Environmental Policy Act of 1969, all are part of the cost of critical habitat designation. These costs result in minimal benefits to the species that is not already afforded by the protections of the Act enumerated earlier, and they directly reduce the funds available for direct and tangible conservation actions.

Bull Trout Biology, Life History Strategies, and Distribution

Biology

Bull trout (*Salvelinus confluentus*) are members of the char subgroup of the family Salmonidae and are native to waters of western North America. Bull trout are relatively dispersed in the Columbia River and Snake River basins, extending east to headwater streams in Montana and Idaho, and into Canada. Bull trout also occur in the Klamath River basin of south-central Oregon. For additional information on the biology and habitat requirements of the bull trout, please refer to the proposed critical habitat rule for the Klamath River and Columbia River populations (68 FR 6863, February 11, 2003), and listing rules for the Klamath River and Columbia River population (63 FR 31647, June 10, 1998), Jarbidge River population (64 FR 17110, April 8, 1999), and Coastal-Puget Sound and Saint Mary-Belly River populations (64 FR 58910, November 1, 1999).

Life-History Strategies

Bull trout exhibit a number of life-history strategies: stream-resident, migratory, and amphidromous. Stream-resident bull trout complete their entire life cycle in the tributary streams where they spawn and rear. Some bull trout are migratory, spawning in tributary streams where juvenile fish usually rear from 1 to 4 years before migrating to either a larger river (fluvial) or lake (adfluvial) where they spend their adult life, returning to the tributary stream to spawn (Fraley and Shepard 1989). Resident and migratory forms may be found together, and either form can produce resident or migratory offspring (Rieman and McIntyre 1993).

Some bull trout populations, coastal cutthroat trout populations, and some other species are commonly referred to as anadromous, as are Pacific salmon. Technically, however, unlike Pacific salmon, bull trout, coastal cutthroat trout, and some other species that enter the marine environment are more properly termed amphidromous. Unlike strict anadromy, amphidromus individuals often return seasonally to freshwater as subadults, sometimes for several years, before returning to spawn (Wilson 1997). For bull trout, the "amphidromous" life history form is unique to the Coastal-Puget Sound population.

In the Coastal-Puget Sound population, amphidromous bull trout require access to marine habitat to complete their life history. For amphidromous bull trout populations, estuaries and marine nearshore areas provide an important component of their FMO habitat, and are integral to maintaining the complex amphidromous life-history strategy, which is unique to the Coastal-Puget Sound distinct population segment. When juvenile bull trout emigrate downstream to marine waters, they enter a more productive marine environment that allows them to achieve rapid growth and energy storage (similar to adfluvial forms migrating to lakes and reservoirs) (Washington Department of Fish and Wildlife (WDFW) *et al.* 1997). Bull trout "smolts" typically enter marine water at 2 years of age and around 6 in (150 mm) or longer, although much smaller individuals have been reported (Curtis Kraemer, WDFW, in litt. 2003). While in marine waters, bull trout appear to primarily occupy productive estuarine and nearshore habitat and feed on a variety of prey items, especially small marine fish such as Pacific herring (*Clupea pallasii*), surf smelt (*Hypomesus pretiosus*), and sandlance (*Ammodytes hexapterus*) (WDFW *et al.* 1997; Brenkman and Corbett 2003). Subadult bull trout use marine habitat to forage, generally from late spring to early fall, and as migration corridors to and from essential marine foraging areas.

These marine habitats also serve as migration corridors to and from non-natal watersheds providing other essential freshwater foraging and overwintering habitat outside of their natal watersheds (Brenkman and Corbett 2003). Subadults typically leave marine waters in the fall to overwinter in mainstem rivers for a period of time before returning to marine areas to forage (WDFW 1998). They repeat this cycle until maturing at about age 4.

Bull trout migration and life-history strategies are closely related to their feeding and foraging strategies. Optimal foraging theory can be used to describe how fish choose between alternative sources of food by weighing the benefits and costs of capturing one possible choice over another. For example, food (prey) often occur in concentrated patches of abundance (patch model in Gerking 1994). As the predator feeds, the prey population is reduced sooner or later, and it becomes more profitable to seek a new patch of prey rather than continue feeding on the original one, which is why bull trout appear to wander from one marine site to another.

Bull trout appear to be largely opportunistic feeders, and bull trout habitat use can be variable depending upon foraging opportunities (Montana Bull Trout Scientific Group (MBTSG) 1998). According to optimal foraging theory, as positions of patches and the types of prey change with the seasons, the predator must constantly modify its behavior in order to stay alive and maximize fitness (Hart 1986). In the Puget Sound area, bull trout may seasonally prey upon salmon eggs, smolts, or hatchery salmon. At other times, they may enter marine waters to prey upon surf smelt and Pacific herring where these fish school or spawn (Kraemer 1994). Seasonally, bull trout may also enter marine areas in order to locate abundant freshwater prey species in adjacent rivers not connected to their core area (Sam Brenkman, Olympic National Park, in litt. 2003). In a Montana study in Flathead Lake (Leathe and Graham 1982), kokanee (*Oncorhynchus nerka*) were an important food source for bull trout during spring months. By autumn, the bull trout had moved to near the mouth of the Flathead River, reportedly to exploit a pygmy whitefish (*Prosopium coulteri*) spawning run (Leathe and Graham 1982).

Upon reaching maturity, amphidromous bull trout begin reentering mainstem rivers in late spring and early summer to migrate to their spawning tributaries (WDFW 1998). Similar to the adfluvial life history, after amphidromous forms complete spawning, they usually return downstream to lower mainstem rivers and marine habitats (Kraemer 1994).

Jarbidge River Distinct Population Segment Distribution

Although historical records are lacking, bull trout were likely more abundant and widely distributed in the Bruneau and Jarbidge River Basins than they are today because of barriers to fish passage and past habitat degradation (Gilbert and Evermann 1894; Durrant 1935; McNeill *et al.* 1997). Currently, bull trout occur primarily in the Jarbidge River Basin in both Idaho and Nevada. The Jarbidge River population includes six local populations of resident bull trout: the East Fork Jarbidge River (including the East Fork headwaters, Cougar Creek, and Fall Creek), West Fork Jarbidge River (including Sawmill Creek), Dave Creek, Jack Creek, Pine Creek, and Slide Creek, and some remnant fluvial bull trout. These populations are considered to be quite low in abundance and at risk of extirpation (J. Dunham, University of Nevada-Reno, in litt. 1998).

Among the many factors that contributed to the decline of bull trout in the Jarbidge River Basin, those which appear to have been particularly significant are as follows: (1) Isolation of the population due to dams and water

diversions that impeded migratory bull trout movements (Gilbert and Evermann 1894; Lay 2000); (2) habitat degradation, including alterations in water temperature, water quality, and sedimentation rates, resulting from past forest and rangeland management practices, mining, and roads (McNeill *et al.* 1997); and (3) fisheries management, particularly fishing pressure and potential overharvest, and the introduction of competing nonnative species (Durrant 1935; Nevada Division of Wildlife 1961, 1975; Johnson 1990; Frederick and Klott 1999).

Coastal-Puget Sound Distinct Population Segment Distribution

The Coastal-Puget Sound population includes bull trout residing in the Puget Sound and Olympic Peninsula regions of western Washington. Historical reports for this population demonstrates that bull trout, especially the amphidromous form, were once more abundant and more widely distributed (Suckley and Cooper 1860; Service 1913; Norgore and Anderson 1921; King County Department of Natural Resources (KCDNR) 2000). Bull trout still occur in most major watersheds within the population, but the distribution and abundance within these watersheds often has been reduced by human-caused conditions (Service 2002, 2004). Bull trout are now rarely observed in the Nisqually River and Chehalis River systems, which may have supported spawning populations in the past (Service 2002, 2004). In the Puyallup River system, the amphidromous life history form currently exists in low numbers, as does the migratory form in the South Fork Skokomish River (Service 2002, 2004). In the Elwha River and parts of the Nooksack River, amphidromous bull trout are unable to access historic spawning habitat resulting from manmade barriers (Service 2002, 2004).

The Coastal-Puget Sound region is affected by the same significant factors that contributed to the decline of bull trout in the Columbia River and Klamath River Basins (67 FR 71236). These include the fragmentation and isolation of local populations due to dams and diversions, degradation of spawning and rearing habitat, and introduction of nonnative fish species. In addition to these factors, amphidromous bull trout distribution and abundance in the Coastal-Puget Sound region is threatened by the degradation of mainstem river FMO habitat, and the degradation and loss of marine nearshore foraging and migration habitat.

Saint Mary-Belly River Distinct Population Segment Distribution

The Saint Mary-Belly River population includes headwaters of the Saint Mary and Belly River systems in the U.S. These two streams flow north, from high-elevation slopes along the Rocky Mountain front in north-central Montana. This population is the only portion of the conterminous U.S. range of bull trout that is located east of the Continental Divide. Most of the Saint Mary River and Belly River watersheds are located in Alberta, Canada. The interjurisdictional nature of the Saint Mary River and Belly River watersheds is relatively unique in the bull trout's range and makes international coordination especially critical. Major land ownership includes Glacier National Park and the Blackfeet Nation in the United States, and the Province of Alberta, Waterton Lakes National Park, the Blood Tribe, and various private entities in Canada.

The Saint Mary River watershed occurs in steep, glaciated valleys in Glacier National Park. It flows northward through the glaciated troughs of two large lakes, Saint Mary Lake and Lower Saint Mary Lake, and then across the northwest corner of the Blackfeet Reservation before crossing the international border into Alberta, Canada. In addition to the two major lakes, the watershed contains many smaller high-elevation lakes, three of which have existing bull trout populations. There are at least five tributary drainages in the U.S. with important bull trout spawning and rearing habitat. The Saint Mary River, in Canada, flows northeast through southwest Alberta and enters the Oldman River a few miles upstream from Lethbridge, Alberta.

The Belly River originates on the east slope of the Rocky Mountains, in the northernmost portion of Glacier National Park, between the Saint Mary River drainage to the east and the Waterton River drainage to the west. The Belly River flows north for about 12.0 mi (19.3 km), entirely within glaciated valleys and lakes in Glacier National Park, before crossing the international border into Alberta, Canada. In Canada, the Belly River flows through mostly prairie foothill habitat from the international border to the confluence of the Oldman River, some 112 mi (180 km) downstream. Only a few miles of the headwaters of the Belly River in the United States contain bull trout (Fitch 1997).

Within the Saint Mary-Belly River Recovery Unit in the United States, the historical distribution of bull trout is believed to be relatively intact. However, abundance of bull trout in U.S. portions of these watersheds has been reduced, and portions of the habitat are fragmented from natural condition due to manmade structures such as dams and diversions (Service 1993). It is considered likely that the mountains and transitional zones of the Saint Mary and Belly Rivers (the U.S. headwaters and upper reaches in Canada) were historical strongholds for bull trout in these drainages (Fitch 1997). In the lower reaches of the Saint Mary and Belly Rivers in Alberta, bull trout may have been occasionally present, though they were not commonly distributed in these prairie streams (Clayton 1999). Historical connectivity for bull trout to migrate between the Saint Mary and Belly River systems may not have occurred, at least not for much of the recent post-glaciated period that extends over approximately the past 10,000 years (Costello *et al.* 2003).

Threats to Bull Trout Populations

The range of the bull trout is likely to have contracted and expanded over time in relation to natural climate changes; the distribution of the species probably was likely patchy even in pristine environments. However, regardless of uncertainty about the exact historical range, the number and size of historical populations, and the role of natural factors in the status of the species, there is widespread agreement in scientific literature that many factors related to human activities have impacted bull trout and continue to pose significant risks of further extirpations of local populations (see Fitch 1997; Clayton 1999; Post and Johnson 2002; Costello *et al.* 2003). In the Saint Mary River drainage within the United States, the primary threat to bull trout habitat is water diversions in the U.S. and Canada, which can cause entrainment of fish, disruption of migratory corridors, dewatering of instream habitat, and alteration of stream temperature regimes, and may preclude connectivity with some local headwater populations, such as in Lee Creek.

A second major issue is the lingering effect of a half-century of fish introductions, particularly the widespread stocking and establishment of brook trout (*Salvelinus fontinalis*), which may compete with and hybridize with bull trout. Lake trout (*Salvelinus namaycush*) and northern pike (*Esox lucius*), two species with the potential to compete with bull trout, are native in the Saint Mary River drainage. As a result, bull trout were probably precluded from establishing strong

migratory populations in the most productive lowland lacustrine habitats in the drainage, such as in Saint Mary Lakes (Donald and Alger; Service 2002). In addition, much of the potential habitat for adfluvial populations of bull trout in headwater lakes was historically isolated and fishless, due to barriers formed by natural waterfalls. Hence, bull trout populations in the Saint Mary system seem to have developed a mixture of fluvial and adfluvial migratory life history patterns, spending much of their time in the Saint Mary River and several of its major tributaries. Localized habitat impacts occur in some of the watersheds from forestry, livestock grazing, agriculture, mining, and transportation corridors. These impacts are generally site-specific and less pervasive than the impacts due to the diversions (Fitch 1997; Clayton 1999; Service 2002).

In the Belly River drainage, the reasons for decline were similar, though they occur mostly in downstream reaches in Canada. The headwater lakes in Glacier National Park currently support mostly populations of nonnative rainbow trout (*Oncorhynchus mykiss*), Yellowstone cutthroat trout (*Oncorhynchus clarki bouvieri*), brook trout, and kokanee. The habitat in U.S. portions of the Belly River drainage is mostly intact, as it occurs primarily in backcountry areas of Glacier National Park.

For populations of bull trout throughout their range, the ramifications and effects of isolation and habitat fragmentation on various aspects of the life cycle of bull trout are highlighted in much of the scientific literature on this species. Isolation of populations and habitat fragmentation resulting from barriers to migration has negatively impacted bull trout in several ways that have important implications for the conservation of the species. These include: (1) Reducing geographical distribution (Rieman and McIntyre 1993; MBTSG 1998); (2) increasing the probability of losing individual local populations (Rieman and McIntyre 1993; Rieman *et al.* 1995; MBTSG 1998; Dunham and Rieman 1999; Nelson *et al.* 2002); (3) increasing the probability of hybridization with introduced brook trout (Rieman and McIntyre 1993); (4) reducing the potential for movements that are necessary to meet developmental, foraging, and seasonal habitat requirements (Rieman and McIntyre 1993; MBTSG 1998); and (5) reducing reproductive capability by eliminating the larger, more fecund migratory form of bull trout from many subpopulations (Rieman and McIntyre 1993; MBTSG 1998).

Introduced brook trout threaten bull trout throughout most of their range through competition, hybridization, and possibly predation (Leary *et al.* 1993). Brook trout appear to be better adapted to degraded habitat than bull trout, and brook trout are more tolerant of high water temperatures. Hybridization between brook trout and bull trout has been reported in Montana, Oregon, Washington, and Idaho (Leary *et al.* 1985). In addition, brook trout mature at an earlier age and have a higher reproductive rate than bull trout. This difference appears to favor brook trout over bull trout when they occur together, often leading to the decline or extirpation of bull trout (Leary *et al.* 1993; MBTSG 1998). Nonnative lake trout also negatively affect bull trout. A study of 34 lakes in Montana, Alberta, and British Columbia found that lake trout reduce the distribution and abundance of migratory bull trout in mountain lakes, and concluded that lacustrine populations of bull trout usually cannot be maintained if lake trout are introduced (Donald and Alger 1993).

Previous Federal Action

On November 29, 2002, we published the court-ordered proposed critical habitat designation for the bull trout Klamath River and Columbia River populations (67 FR 71235). In that proposed rule, we included a detailed summary of previous Federal actions completed prior to publication of that proposal as it related to all bull trout populations. We now provide information on actions as they relate just to the Jarbidge River, Coastal-Puget Sound, and Saint Mary-Belly River populations.

On June 10, 1998, we published in the **Federal Register** (63 FR 31693) a proposed rule to list the Jarbidge River, Coastal-Puget Sound, and Saint Mary-Belly River population segments of bull trout as a threatened species. On August 11, 1998, we published an emergency rule in the **Federal Register** (63 FR 42757) listing the Jarbidge River population as endangered. We published the final rule listing the Jarbidge River population as threatened on April 8, 1999 (64 FR 17110), and listed the Coastal-Puget Sound and Saint Mary-Belly River populations as threatened on November 1, 1999 (64 FR 58910). At the time of each listing, we made the finding that critical habitat was not determinable for these populations because their habitat needs were not sufficiently well known (64 FR 58927).

On January 26, 2001, the Alliance for the Wild Rockies, Inc. and Friends of the Wild Swan, Inc. filed a lawsuit in the U.S. District Court of Oregon challenging our failure to designate critical habitat for bull trout. We entered into a settlement agreement on January 14, 2002, in which we agreed to submit for publication in the **Federal Register** a proposed rule for critical habitat designation for the Jarbidge River, Coastal-Puget Sound, and Saint Mary-Belly River populations by October 1, 2003, and a final rule by October 1, 2004. A subsequent agreement resulted in extending the date for finalizing the proposed rule by June 15, 2004, and completing a final rule by June 15, 2005.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 requires consultation on Federal actions that are likely to result in the destruction or adverse modification of critical habitat.

To be included in a critical habitat designation, the habitat must first be "essential to the conservation of the species." Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Occupied habitat may be included in critical habitat only if the essential features thereon may require special management or protection. Thus, we do not include areas where existing management is sufficient to conserve the species. (As discussed below, such areas may also be excluded from critical habitat pursuant to section 4(b)(2).)

Our regulations state that, "The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species" (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species so require, we will not designate critical habitat in areas outside the geographic area occupied by the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271) and our U.S. Fish and Wildlife Service Information Quality Guidelines (2002) provide criteria, establish procedures, and provide guidance to ensure that our decisions represent the best scientific and commercial data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

Critical habitat designations do not signal that habitat outside the designation is unimportant to bull trout. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1), and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by section 4(b)(1)(A) of the Act, we used the best scientific data available to determine areas essential to the conservation of the bull trout, including proposing critical habitat, we review the overall approaches to the conservation of the species undertaken by local, State, and Federal agencies; Tribal governments; and private individuals and organizations since the species was listed in 1998. We relied heavily on information developed by the Bull Trout Recovery Unit Teams, which were comprised of Federal, State, Tribal, and private industry biologists, as well as experts from other scientific disciplines such as hydrology and forestry, resource users, and other stakeholders with an interest in bull trout and the habitats they depend on for survival. We reviewed available information concerning bull trout habitat use and preferences, habitat conditions, threats, limiting factors, population demographics, and the known locations, distribution, and abundances of bull trout.

During our evaluation of information, we took into account the relatively low probability of detection of bull trout in traditional fish sampling and survey efforts, as well as the limited extent of such efforts across the range of bull trout. Because of their varied life-history strategies, nocturnal habits, and low population densities in many areas, the detectability of bull trout in a given area is highly variable (Rieman and McIntyre 1993). Furthermore, much of the current information on bull trout presence is the product of informal surveys or sampling conducted for other species or other purposes. The primary limitations of informal surveys are that they provide no estimate of certainty (*i.e.*, a measure of the probability of detection), and they may be inadequate for determining parameters such as the densities and distribution of the population. The need for a statistically sound bull trout survey protocol has been addressed only recently through the development, by the American Fisheries Society, of a peer-reviewed protocol for determining presence/absence, for juvenile and resident bull trout (Peterson *et al.* 2002).

Areas where presence of the species is undetermined may be essential to the conservation of the species if they provide connectivity between areas of high-quality habitat or access to an abundant food base, served as important migration corridors for fluvial or adfluvial fish, or were identified in the Draft Recovery Plan (Service 2002, 2004) as necessary for local population expansion or reestablishment in order to achieve recovery, so that delisting can occur. Restoration of reproducing bull trout populations to additional portions of their historical range would significantly reduce the likelihood of extinction due to natural or human-caused factors that might otherwise further reduce population size and distribution. Thus, an integral component of the Draft Recovery Plan (Service 2002, 2004) is the selective reestablishment of secure, self-sustaining populations in certain areas where the species has apparently, but not necessarily conclusively, been extirpated.

In some areas (*e.g.*, areas of Montana where bull trout surveys have been consistently conducted for a decade or more), we feel there is a relatively reliable level of information available on bull trout distribution. However, given the limitations of our current knowledge and the specific life history traits of bull trout described above, we feel that in many areas across their range a lack of bull trout detections to date does not provide definitive evidence of their absence in a particular lake, stream, or river. Accordingly, we considered information gathered during the bull trout recovery planning process, as supplemented by even more recent information developed by State agencies, Tribes, the U.S. Forest Service (USFS), and other entities, in the development of our critical habitat proposal. Data concerning accessibility, proximity to known bull trout streams, habitat conditions, and status of primary constituent elements were also considered when available. To address areas where data gaps exist, we also solicited expert opinions from knowledgeable fisheries biologists in the local area.

However, because of our desire to limit any potential regulatory effects of a critical habitat designation to those areas where we believe we have the greatest set of supporting information, we have limited this critical habitat proposal to areas of known occupancy that we consider essential to the conservation of the species. We acknowledge that considerable scientific information exists as to the importance of other areas to the conservation of the species where bull trout-specific surveys have not been conducted. Accordingly, we are specifically seeking public comment on areas of habitat for which we do not have documented evidence of occupancy, but which may be important to provide additional spawning and rearing areas or FMO habitat for existing bull trout populations. These habitat areas may contain the primary constituent elements, in particular an adequate forage base, and are accessible to existing bull trout populations. Additionally, we are seeking information on areas of habitat with evidence of occupancy of which we are unaware.

Specific areas for which we are seeking additional information include: the headwater tributaries of the Jarbidge River system; the Bruneau River and its

tributaries; tributaries of the Skokomish, Dungeness, Hoh, Queets, Quinault, and Chehalis River systems; independent tributaries to Hood Canal, Pacific Coast from Cape Flattery to Willapa Bay, and Grays Harbor; Sumas River and tributaries of the Chilliwack River system; tributaries of the Nooksack River system, especially those to its major forks; tributaries of the Skagit River system; tributaries of Diablo Lake and the Thunder Creek system; tributaries of Ross Lake and the Lightning Creek system; tributaries of the Stillaguamish River system, especially those to its major forks; tributaries of the Skykomish River and its major forks; and tributaries of the Puyallup River system, especially those to the Carbon, West Fork White, upper White, and Greenwater Rivers. If we receive evidence of occupancy of stream segments in any of these areas, we will evaluate the appropriateness of including them in the final critical habitat designation.

Important considerations in selecting areas for critical habitat designation include factors specific to each river system, such as size (*e.g.*, stream order), gradient, channel morphology, connectivity to other aquatic habitats, and habitat complexity and diversity, as well as range-wide recovery considerations. This effort was especially assisted by the recovery strategy described in the Draft Recovery Plan (Service 2002, 2004). We took into account that preferred habitat for bull trout ranges from small headwater streams that are used largely for spawning and rearing, to downstream, mainstem portions of river networks that are used for rearing, foraging, overwintering, and migration.

Our method included consideration of information regarding habitat essential to maintaining the migratory life-history forms of bull trout, in light of the repeated emphasis about the importance of such habitat in the scientific literature (Rieman and McIntyre 1993; Hard 1995; Healey and Prince 1995; Rieman *et al.* 1995; MBTSG 1998; Dunham and Rieman 1999; Nelson *et al.* 2002). As explained previously, habitat for movement upstream and downstream is important for all life-history forms for spawning, foraging, growth, access to rearing and overwintering areas, or thermal refugia (*e.g.*, spring-fed streams in late summer), avoidance of extreme environmental conditions, and other normal behavior. Successful migration requires biologically, physically, and chemically unobstructed routes for movement of individuals. Therefore, our method included considering information regarding habitat that is essential for movement into and out of larger rivers, because of the importance of such areas to the fluvial form of bull trout. We similarly identified habitat that is essential for movement between streams and lakes by adfluvial forms.

Migratory corridors also are important for movement between populations (*e.g.* Fraley and Shepard 1989; Rieman and McIntyre 1993; Rieman *et al.* 1995; Dunham and Rieman 1999). Thus, in addition to considering areas important for migration within populations, our method also included considering information regarding migration corridors necessary to allow for genetic exchange between local populations. Corridors that provide for such movements can support eventual recolonization of unoccupied areas or otherwise play a significant role in maintaining genetic diversity and metapopulation viability. Because these factors are important in identifying areas that are essential to the conservation of bull trout, our method included consideration of the various roles that migratory corridors have for bull trout.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to designate as critical habitat, we consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species, and that may require special management considerations or protection. These features are used for all listed species and include, but are not limited to: space for individual and population growth and for normal behavior; food, water, or other nutritional or physiological requirements; cover or shelter; sites for breeding and reproduction; and habitats that are protected from disturbance or are representative of the historic and geographical and ecological distributions of a species.

The specific biological and physical features, otherwise referred to as the primary constituent elements, which comprise bull trout habitat are based on specific components that provide for the essential biological components of the species as described below.

Bull trout have more specific habitat requirements than most other salmonids (Rieman and McIntyre 1993). Habitat components that particularly influence their distribution and abundance include water temperature and quality; cover; channel form and stability; spawning and rearing substrate conditions; appropriate hydrograph; migratory corridors: food base abundance; and the absence of predatory or interbreeding species or species that compete for resources.

Relatively cold water temperatures, particularly summer water temperatures, are characteristic of bull trout habitat. Water temperatures above 59 °Fahrenheit (F) (15 °Celsius (C)) are believed to limit their distribution (Fraley and Shepard 1989; Rieman and McIntyre 1996). Although adults have been observed in large rivers throughout the Columbia River basin in water temperatures up to 68 °F (20 °C), Gamett (1999) documented steady and substantial declines in abundance in stream reaches where water temperature ranged from 59 to 69 °F (15 to 20 °C). Thus, water temperature may partially explain the generally patchy distribution of bull trout in a watershed. In large rivers, bull trout are often observed "dipping" into the lower reaches of tributary streams, and it is suspected that cooler waters in these tributary mouths may provide important thermal refugia, allowing them to forage, migrate, and overwinter in waters that would otherwise be, at least seasonally, too warm. Spawning areas often are associated with cold-water springs, groundwater infiltration, and the coldest streams in a given watershed (Pratt 1992; Rieman and McIntyre 1993; Rieman *et al.* 1997).

Throughout their lives, bull trout require complex forms of cover, including large woody debris, undercut banks, boulders, and pools (Fraley and Shepard 1989; Watson and Hillman 1997). Juveniles and adults frequently inhabit side channels, stream margins, and pools with suitable cover (Sexauer and James 1997). McPhail and Baxter (1996) reported that newly emerged fry are secretive and hide in gravel along stream edges and in side channels. They also reported that juveniles are found mainly in pools but also in riffles and runs that they maintain focal sites near the bottom, and that they are strongly associated with instream cover, particularly overhead cover. Bull trout have been observed overwintering in deep beaver ponds or pools containing large woody debris (Jakober 1995). Adult bull trout migrating to spawning areas have been recorded as staying 2 to 4 weeks at the mouths of spawning tributaries in deeper holes or near log or cover debris (Fraley and Shepard 1989).

The stability of stream channels and stream flows are important habitat characteristics for bull trout populations (Rieman and McIntyre 1993). The side channels, stream margins, and pools with suitable cover for bull trout are sensitive to activities that directly or

indirectly affect stream channel stability and alter natural flow patterns. For example, altered stream flow in the fall may disrupt bull trout during the spawning period, and channel instability may decrease survival of eggs and young juveniles in the gravel during winter through spring (Fraley and Shepard 1989; Pratt 1992; Pratt and Huston 1993).

Watson and Hillman (1997) concluded that watersheds must have specific physical characteristics to provide the necessary habitat requirements for bull trout spawning and rearing, and that the characteristics are not necessarily ubiquitous throughout the watersheds in which bull trout occur. The preferred spawning habitat of bull trout consists of low-gradient stream reaches with loose, clean gravel (Fraley and Shepard 1989). Bull trout typically spawn from August to November during periods of decreasing water temperatures (Swanberg 1997). However, migratory forms are known to begin spawning migrations as early as April, and to move upstream as much as 155 mi (250 km) to spawning areas (Fraley and Shepard 1989; Swanberg 1997). Fraley and Shepard (1989) reported that initiation of spawning by bull trout in the Flathead River system appeared to be related largely to water temperature, with spawning initiated when water temperatures dropped below 48 to 50 °F (9 to 10 °C). Goetz (1989) reported a temperature range from 39 to 50 °F (4 to 10 °C) (Goetz 1989). Such areas often are associated with cold-water springs or groundwater upwelling (Rieman *et al.* 1997; Baxter *et al.* 1999). Fraley and Shepard (1989) also found that groundwater influence and proximity to cover are important factors influencing spawning site selection. They reported that the combination of relatively specific requirements resulted in a restricted spawning distribution in relation to available stream habitat. Depending on the water temperature, egg incubation is normally 100 to 145 days (Pratt 1992). Water temperatures of 34.2 to 41.7 °F (1.2 to 5.4 °C) have been reported for incubation, with an optimum (best embryo survivorship) temperature reported to be from 36 to 39 °F (2 to 4 °C) (Fraley and Shepard 1989; McPhail and Baxter 1996).

Juveniles remain in the substrate after hatching, such that the time from egg deposition to emergence of fry can exceed 200 days. During the relatively long incubation period in the gravel, bull trout eggs are especially vulnerable to fine sediments and water quality degradation (Fraley and Shepard 1989). Increases in fine sediment appear to reduce egg survival and emergence (Pratt 1992). Weaver and Fraley (1991) reported an 80 percent emergence success rate when no fine material was present and less than a 5 percent emergence success rate when half of the incubation gravel was smaller than 0.25 in (0.635 cm). Juveniles are likely to be negatively affected as well. High juvenile densities have been reported in areas characterized by a diverse cobble substrate and a low percent of fine sediments (Shepard *et al.* 1984).

The stability of stream channels and stream flows are important habitat characteristics for bull trout populations (Rieman and McIntyre 1993). The side channels, stream margins, and pools with suitable cover for bull trout are sensitive to activities that directly or indirectly affect stream channel stability and alter natural flow patterns. For example, altered stream flow in the fall may disrupt bull trout during the spawning period, and channel instability may decrease survival of eggs and young juveniles in the gravel during winter through spring (Fraley and Shepard 1989; Pratt 1992; Pratt and Huston 1993).

The ability to migrate is important to the persistence of local bull trout (Rieman and McIntyre 1993; Gilpin 1997; Rieman and Clayton 1997; Rieman *et al.* 1997). Bull trout rely on migratory corridors to move from spawning and rearing habitats to foraging and overwintering habitats and back. Migratory bull trout become much larger than resident fish in the more productive waters of larger streams and lakes, leading to increased reproductive potential (McPhail and Baxter 1996). The use of migratory corridors by bull trout also results in increased dispersion, facilitating gene flow among local populations when individuals from different local populations interbreed, stray, or return to nonnatal streams. Also, local populations that have been extirpated by catastrophic events may become reestablished as a result of movements by bull trout through migratory corridors (Rieman and McIntyre 1993; Montana Bull Trout Scientific Group (MBTSG) 1998).

While stream habitats have received more attention, lakes and reservoirs also figure prominently in meeting the life cycle requirements of bull trout. For adfluvial bull trout populations, lakes and reservoirs provide an important component of the core foraging, migrating, and overwintering habitat, and are integral to maintaining the adfluvial life history strategy that is commonly exhibited by bull trout. When juvenile bull trout emigrate downstream to a lake or reservoir from the spawning and rearing streams in the headwaters, they enter a more productive lentic environment that allows them to achieve rapid growth and energy storage. Typically, juvenile bull trout are at least 2 years old and 4 in (100 mm) or longer upon entry to the lake environment. For the next 2 to 4 years they grow rapidly. At a typical age of 5 years or older, when total length normally exceeds 16 in (400 mm), they reach sexual maturity. The lake environment provides the necessary attributes of food, space, and shelter for the subadult fish to prepare for the rigors of migratory passage upstream to the natal spawning area, a migration that may last as long as 6 months and cover distances as much as 155 mi (250 km) upriver.

When adfluvial bull trout reach adulthood and complete the spawning migration, mating in the fall in the stream where they originated, they usually return downstream to the lake very rapidly. Adult adfluvial bull trout may live as long as 20 years and can complete multiple migrations between the lake and the spawning stream. In many populations, alternate year spawning is the normal pattern, and adult fish may require as much as 20 months in the lake or reservoir habitat to facilitate adequate energy storage and gamete development before they return to spawn again.

One of the key factors influencing the distribution and abundance of bull trout is the extent to which habitat patches in sufficient number and proximity provide for the natural reestablishment of local subpopulations. Ratliff and Howell (1992) noted that habitat fragmentation and the resulting isolation of populations can exacerbate problems facing declining populations, including reduced genetic variability that can lead to inbreeding depression, further lowering productivity and increasing the risk of extinction. They described the loss of fluvial and adfluvial life histories as a major concern for bull trout conservation, noting that these larger fish have greater reproductive potential because of their increased fecundity and also are less likely to hybridize with the smaller brook trout (*Salvelinus fontinalis*) that often co-occur in spawning areas.

Although the loss of a few populations may have little effect on overall genetic diversity, without conserving suites of populations and their habitats (*i.e.*, core areas and, on a larger scale, recovery units), the loss of phenotypic diversity may be substantial, with negative consequences to the viability of the species (Rieman and McIntyre 1993; Hard 1995; Healey and

Prince 1995; MBTSG 1998; Taylor *et al.* 1999; Nelson *et al.* 2002). Therefore, the maintenance of phenotypic variability and plasticity for adaptive traits (*e.g.*, variability in body size and form, foraging efficiency, and timing of migrations, spawning, and maturation) is achieved by conserving populations, their habitats, and opportunities for the species to take advantage of habitat diversity (Hard 1995; Healey and Prince 1995).

The ramifications and effects of isolation and habitat fragmentation on various aspects of the life cycle bull trout are highlighted in much of the scientific literature on this species. Isolation of populations and habitat fragmentation resulting from barriers to migration have negatively impacted affected bull trout in several ways that have important implications for the conservation of the species. These include: (1) Reducing geographical distribution (Rieman and McIntyre 1993; MBTSG 1998); (2) increasing the probability of losing individual local populations (Rieman and McIntyre 1993; Rieman *et al.* 1995; MBTSG 1998; Dunham and Rieman 1999; Nelson *et al.* 2002); (3) increasing the probability of hybridization with introduced brook trout (Rieman and McIntyre 1993); (4) reducing the potential for movements that are necessary to meet developmental, foraging, and seasonal habitat requirements (Rieman and McIntyre 1993; MBTSG 1998); and (5) reducing reproductive capability by eliminating the larger, more fecund migratory form of bull trout from many subpopulations (Rieman and McIntyre 1993; MBTSG 1998).

Introduced brook trout threaten bull trout through competition, hybridization, and possibly predation (Leary *et al.* 1993). Brook trout appear to be better adapted to degraded habitat than bull trout, and brook trout are more tolerant of high water temperatures. Hybridization between brook trout and bull trout has been reported in Montana, Oregon, Washington, and Idaho. In addition, brook trout mature at an earlier age and have a higher reproductive rate than bull trout. This difference appears to favor brook trout over bull trout when they occur together, often leading to the decline or extirpation of bull trout (Leary *et al.* 1993; MBTSG 1998). Nonnative lake trout also negatively affect bull trout. A study of 34 lakes in Montana, Alberta, and British Columbia found that lake trout reduce the distribution and abundance of migratory bull trout in mountain lakes and concluded that lacustrine populations of bull trout usually cannot be maintained if lake trout are introduced (Donald and Alger 1993).

The effects of pollutant discharges on water quality and bull trout range from benign to extreme, depending upon the type and concentration of material delivered (MBTSG 1998). NMFS has studied the effects of contaminated sediments on salmon populations and noted reduced growth and disease resistance of juvenile chinook salmon when exposed to environmentally relevant levels of compounds like PCBs and PAHs (Varanasi *et al.* 1993a, Arkoosh *et al.* 1991, 1998). Similar effects are likely to occur in bull trout.

Pursuant to our regulations, we are required to identify the known physical and biological features, *i.e.*, primary constituent elements, essential to the conservation of bull trout, together with a description of any critical habitat that is proposed. In identifying the primary constituent elements, we used the best available scientific and commercial data available. The primary constituent elements determined essential to the conservation of bull trout are:

(1) Water temperatures ranging from 36 to 59 °F (2 to 15 °C), with adequate thermal refugia available for temperatures at the upper end of this range. Specific temperatures within this range will vary depending on bull trout life history stage and form, geography, elevation, diurnal and seasonal variation, shade, such as that provided by riparian habitat, and local groundwater influence;

(2) Complex stream channels with features such as woody debris, side channels, pools, and undercut banks to provide a variety of depths, velocities, and instream structures;

(3) Substrates of sufficient amount, size, and composition to ensure success of egg and embryo overwinter survival, fry emergence, and young-of-the-year and juvenile survival. A minimal amount of fine substrate less than 0.25 in (0.63 cm) in diameter and minimal substrate embeddedness are characteristic of these conditions;

(4) A natural hydrograph, including peak, high, low, and base flows within historic ranges or, if regulated, a hydrograph that demonstrates the ability to support bull trout populations by minimizing daily and day-to-day fluctuations and minimizing departures from the natural cycle of flow levels corresponding with seasonal variation;

(5) Springs, seeps, groundwater sources, and subsurface water connectivity to contribute to water quality and quantity;

(6) Migratory corridors with minimal physical, biological, or water quality impediments between spawning, rearing, overwintering, and foraging habitats, including intermittent or seasonal barriers induced by high water temperatures or low flows;

(7) An abundant food base including terrestrial organisms of riparian origin, aquatic macroinvertebrates, and forage fish;

(8) Few or no nonnative predatory, interbreeding, or competitive species present; and

(9) Permanent water of sufficient quantity and quality such that normal reproduction, growth and survival are not inhibited.

The bull trout critical habitat for the Jarbidge River, Coastal-Puget Sound, and Saint Mary-Belly River populations are designed to incorporate what is essential for their conservation. All lands identified as essential and proposed as critical habitat contain one or more of the primary constituent elements for bull trout.

Special Management Considerations or Protection

As we undertake the process of designating critical habitat for a species, we first evaluate lands defined by those physical and biological features essential to the conservation of the species for inclusion in the designation pursuant to section 3(5)(A) of the Act. Secondly, we then evaluate lands defined by those features to assess whether they may require special management considerations or protection. As discussed throughout this proposed rule, in the previous proposal of critical habitat for the Klamath and Columbia River segments of bull trout (67 FR 71236, November 29, 2002), in the draft Recovery Plan for the Klamath, Columbia, and St. Mary-Belly River segments of bull trout, and in the various proposed and final listing rules for bull trout (62 FR 32268, June 13, 1997; 64 FR 17110, April 8, 1999; 63 FR 31647, June 10, 1998; 63 FR 31693, June 10, 1998; and 64 FR 58910, November 1, 1999), bull trout and its habitat are threatened by a multitude of factors. Threats to those features that define essential habitat (primary constituent elements) are caused by negative changes in water quality, stream complexity, quality and quantity of stream substrate, stream hydrology, migratory corridors, food sources, and non-native competitors and predators. It is essential for the survival of this species to protect those features that define the remaining essential habitat, through purchase or special management plans, from irreversible threats and habitat conversion. These impacts can be ameliorated by educating landowners and managers

about the location and value of these resources and requesting that they protect these resources.

Threats to the features that define habitat essential to the conservation of the bull trout should be assessed for each site. Sites should be protected from activities that negatively alter or destroy bull trout aquatic habitat. An appropriate management and monitoring plan should address these threats. As such, we believe that within each area proposed for designation as critical habitat the physical and biological features essential for the conservation of the bull trout may require some level of management and/or protection to address the current and future threats to the bull trout and habitat essential to its conservation to ensure the overall recovery of the species.

Relatively cold water temperatures are characteristic of bull trout habitat. Water temperatures above 15 °Celsius (C) (59 °Fahrenheit (F)) are believed to limit their distribution (Fraley and Shepard 1989; Rieman and McIntyre 1996). Although adults have been observed in large rivers throughout the Columbia River basin in water temperatures up to 20 °C (68 EF), Gamett (1999) documented steady and substantial declines in abundance in stream reaches where water temperature ranged from 15 to 20 °C (59 to 68 °F). Thus, water temperature may partially explain the generally patchy distribution of bull trout in a watershed. In large rivers, bull trout are often observed "dipping" into the lower reaches of tributary streams, and it is suspected that cooler waters in these tributary mouths may provide important thermal refugia, allowing them to forage, migrate, and overwinter in waters that would otherwise be, at least seasonally, too warm. Spawning areas often are associated with cold-water springs, groundwater infiltration, and the coldest streams in a given watershed (Pratt 1992; Rieman and McIntyre 1993; Rieman *et al.* 1997). Activities that reduce stream flows or alter the natural hydrograph may affect stream temperatures (*e.g.*, stream diversions).

The stability of stream channels and stream flows are important habitat characteristics for bull trout populations (Rieman and McIntyre 1993). The side channels, stream margins, and pools with suitable cover for bull trout are sensitive to activities that directly or indirectly affect stream channel stability and alter natural flow patterns. For example, altered stream flow in the fall may disrupt bull trout during the spawning period, and channel instability may decrease survival of eggs and young juveniles in the gravel during winter through spring (Fraley and Shepard 1989; Pratt 1992; Pratt and Huston 1993).

Throughout their lives, bull trout require complex forms of cover, including large woody debris, undercut banks, boulders, and pools (Fraley and Shepard 1989; Watson and Hillman 1997). Juveniles and adults frequently inhabit side channels, stream margins, and pools with suitable cover (Sexauer and James 1997). McPhail and Baxter (1996) reported that newly emerged fry are secretive and hide in gravel along stream edges, and in side channels. They also reported that juveniles are found mainly in pools, but also in riffles and runs, that they maintain focal sites near the bottom, and that they are strongly associated with instream cover, particularly overhead cover. Bull trout have been observed overwintering in deep beaver ponds or pools containing large woody debris (Jakober 1995). Activities that disrupt or reduce stream complexity such as channelizing, reducing the input of woody debris, or removing riparian cover may negatively affect bull trout.

The ability to migrate is important to the persistence of local bull trout subpopulations (Rieman and McIntyre 1993; Gilpin 1997; Rieman and Clayton 1997; Rieman *et al.* 1997). Bull trout rely on migratory corridors to move from spawning and rearing habitats to foraging and overwintering habitats and back. Migratory bull trout become much larger than resident fish in the more productive waters of larger streams and lakes, leading to increased reproductive potential (McPhail and Baxter 1996). The use of migratory corridors by bull trout also results in increased dispersion, facilitating gene flow among local populations when individuals from different local populations interbreed, stray, or return to non-natal streams. Also, local populations that have been extirpated by catastrophic events may become reestablished as a result of movements by bull trout through migratory corridors (Rieman and McIntyre 1993, Montana Bull Trout Scientific Group (MBTSG) 1998). Activities that preclude the function of migratory corridors may affect bull trout (*e.g.*, stream blockages).

The introduction and spread of nonnative species, particularly brook trout (*Salvelinus fontinalis*) and lake trout (*Salvelinus namaycush*), which compete with bull trout for limited resources and, in the case of brook trout, hybridize with bull trout (Ratliff and Howell 1992; Leary *et al.* 1993) is another ongoing threat to bull trout. Both species have been introduced in historical bull trout habitat, and both legal and illegal introductions of these and other competing species have continued to the present.

Criteria Used To Identify Critical Habitat

The Draft Recovery Plan (Service 2002, 2004) identifies the specific recovery needs of the bull trout and provides guidance for identifying areas that warrant critical habitat designation. As described below, the information contained in the Draft Recovery Plan was used as the principal basis for identifying this proposed critical habitat designation. Critical habitat for bull trout was also delineated using multiple sources including State databases of bull trout distribution.

The draft recovery strategy focuses primarily on the maintenance and, where needed, expansion of existing local populations by: (1) Protecting sufficient amounts of spawning and rearing habitat in upper watershed areas; (2) providing suitable habitat conditions in downstream rivers and lakes to provide foraging and overwintering habitat for fluvial and adfluvial fish; and (3) sustaining (and in some cases reestablishing) migratory corridors by maintaining or restoring habitat conditions that retain migration routes. Migratory corridors allow for the potential of gene flow between local populations, as well as provide opportunities for the full expression of migratory life-history forms to ensure adaptive resilience (Rieman and McIntyre 1993; MBTSG 1998; Morita and Yamamoto 2002; Colden Baxter, Colorado State University and Christian Torgerson, U.S. Geological Survey, in litt. 2003; Philip Howell, USFS, in litt. 2003).

Critical habitat units are patterned after recovery units identified in the Draft Recovery Plan (Service 2002, 2004) for the Jarbidge River, Coastal-Puget Sound, and Saint Mary-Belly River population segments. Using the guidance from those plans, we identified habitat areas needed for the survival and recovery of bull trout. To be included as critical habitat, an area had to provide one or more of the following three functions: (1) Spawning, rearing, foraging, or overwintering habitat to support existing bull trout local populations; (2) movement corridors necessary for maintaining migratory life-history forms; and/or (3) suitable and historically occupied habitat that is essential for recovering existing local populations that have declined, or that is needed to reestablish local populations required for recovery.

We also note that some habitat areas that would not be considered essential if they were geographically isolated are, in fact, essential to the conservation of the species when situated in locations where they facilitate movement between local populations or otherwise play a significant role in maintaining metapopulation viability (*e.g.*, by providing sources of immigrants to recolonize adjacent habitat patches following periodic extirpation events) (Dunham and Rieman 1999). In addition, populations on the periphery of the species' range, or in atypical environments, are important for maintaining the genetic diversity of the species and could prove essential to the ability of the species to adapt to rapidly changing climatic and environmental conditions (Leary *et al.* 1993; Hard 1995).

Relationship to Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete, by November 17, 2001, an Integrated Natural Resource Management Plan (INRMP). An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found there. Each INRMP includes an assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species; a statement of goals and priorities; a detailed description of management actions to be implemented to provide for these ecological needs; and a monitoring and adaptive management plan. We consult with the military on the development and implementation of INRMPs for installations with listed species.

Section 318 of fiscal year 2004 the National Defense Authorization Act (Pub. L. 108–136) amended section 3 of the Endangered Species Act. This provision prohibits us from designating as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an INRMP prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if we determine in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.

We identified habitat essential for the conservation of the bull trout within the Jim Creek drainage, which is partially encompassed within the Naval Reservation for the Naval Radio Station Jim Creek. We have examined the INRMP for the Naval Radio Station Jim Creek to determine coverage for the bull trout. The INRMP includes measures that attempt to minimize impacts to riparian areas and strive to prevent entry of herbicides into waterbodies in the Jim Creek basin during antenna field vegetation management. Additionally, the riparian areas that border the reach of Jim Creek within the Naval Reservation and identified as essential habitat are managed primarily for riparian protection and wildlife. Based on the beneficial measures for the bull trout contained in the INRMP for Naval Radio Station Jim Creek, we have not included this area in the proposed designation of critical habitat for bull trout pursuant section 4(a)(3) of the Act. We will continue to work cooperatively with the Department of the Navy to assist the Naval Radio Station Jim Creek in implementing and refining the programmatic recommendations contained in this plan that provide benefits to the bull trout. The non-inclusion of Naval Radio Station Jim Creek demonstrates the important contributions approved INRMPs have to conservation of the species. As with HCP exclusions, a related benefit of excluding Department of Defense lands with approved INRMPs is that it would encourage continued development of partnerships with other stakeholders, including States, local governments, conservation organizations, and private landowners to develop adequate management plans that conserve and protect bull trout habitat.

Relationship to Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, on the basis of the best available scientific data after taking into consideration the economic impact, the impact to national security, and any other relevant impact, of specifying any particular area as critical habitat. An area may be excluded from critical habitat if it is determined, following an analysis, that the benefits of such exclusion outweigh the benefits of specifying a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species. Consequently, we may exclude an area from designated critical habitat based on economic impacts, national security, or other relevant impacts such as preservation of conservation partnerships, if we determine the benefits of excluding an area from critical habitat outweigh the benefits of including the area in critical habitat, provided the action of excluding the area will not result in the extinction of the species. In our critical habitat designations we have used the provisions outlined in sections 4(b)(2) of the Act to evaluate those specific areas that are proposed for designation as critical habitat and those areas which are subsequently finalized (*i.e.*, designated).

Relationship to Habitat Conservation Plans

As described above, section 4(b)(2) of the Act requires us to consider other relevant impacts, in addition to economic and national security impacts, when designating critical habitat. Section 10(a)(1)(B) of the Act authorizes us to issue to non-Federal entities a permit for the incidental take of endangered and threatened species. This permit allows a non-Federal landowner to proceed with an activity that is legal in all other respects, but that results in the incidental taking of a listed species (*i.e.*, take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity). The Act specifies that an application for an incidental take permit must be accompanied by a conservation plan, and specifies the content of such a plan. The purpose of such a habitat conservation plan, or HCP, is to describe and ensure that the effects of the permitted action on covered species are adequately minimized and mitigated and that the action does not appreciably reduce the survival and recovery of the species.

The vast majority of land within the Saint Mary-Belly River population of bull trout is either managed by the National Park Service in Glacier National Park or is tribal land managed by the Blackfeet Nation. The majority of land within the Jarbidge River population of bull trout is Federal. There are no existing or proposed HCPs that cover the Saint Mary-Belly River or Jarbidge River populations of bull trout.

Within the range of the Coastal-Puget Sound population of bull trout, there are six HCPs that include bull trout as a covered species. Four of these encompass stream segments and lakes identified as proposed critical habitat; these HCPs are from the Washington Department of Natural Resources (WDNR), City of Seattle, Tacoma Water, and Simpson Timber Company. The WDNR and Simpson Timber HCPs have been developed, in part, to provide for the conservation needs of bull trout while also allowing for otherwise lawful timber management activities. The Tacoma Water and City of Seattle Cedar

River Watershed HCPs have been developed, in part, to provide for the conservation needs of bull trout while also allowing for water management and watershed restoration and protection activities. The duration of the permits associated with these HCPs ranges from 50 to 100 years. The permittees have the option, however, of terminating at any time if they so choose, with a 60-day notice to the Service. Moreover, some permittees may retain their permits but sell some of their lands covered by an HCP. All of these HCPs contain a provision that allow buyers of lands covered by the HCP to assume the permit if they so desire.

The WDNR lands are maintained primarily for the purpose of growing and selling timber to finance State government, and the management of these lands also can include purchases, sales, and land exchanges. The WDNR HCP does not include incentives for placing conservation easements on some of the land that WDNR sells. The HCP allows WDNR to dispose of permit lands at its sole discretion. However, if the cumulative impact of disposed lands would have a significant adverse effect on the covered species, the parties to the HCP are required to mutually amend the HCP to provide replacement mitigation.

The City of Seattle Cedar River Watershed HCP includes provisions that: (1) Allow for the sale or exchange of parcels not in excess of 640 ac (259 ha) to any party as long as the cumulative total of all such transactions does not exceed 1,920 ac (777 ha) per township, or a total of 6,338 ac (2,565 ha); and (2) allow lands in all other circumstances to be sold or exchanged if parties negotiate conditions on the property transferred, or alternative mitigation which will not compromise the effectiveness of the HCP. However, to maintain protection of the public water supply, the City of Seattle is unlikely to sell or exchange lands.

The Tacoma Water HCP addresses reservoir operations and forest management activities associated with the management of the upper Green River watershed and associated water supply. Although the operational effects to bull trout in the downstream reaches of the Green River are covered under this HCP, Tacoma Water does not possess management authority over other habitat-altering activities that may occur along these lower reaches.

The Tacoma Water HCP includes provisions that: (1) Generally allow for the sale or exchange of lands to an agency of the Federal Government; (2) allow for the sale or exchange of any lands to a non-Federal entity that has entered into an agreement acceptable to the Services to ensure that the lands will be managed consistent with the goals and objectives of the HCP; and (3) allow for the sale of parcels not in excess of 160 ac (65 ha). However, Tacoma Water is more likely to acquire land for the purpose of protecting the public water supply, rather than sell lands.

The Simpson Timber Company HCP covers approximately 287,000 ac (116,145 ha), all within the range of the Coastal-Puget Sound population. Provisions in the HCP allow for sale or exchange of lands with the following provisions: (1) Sale or exchange does not involve a Core Area (as defined in the HCP) and the total acreage of all lands sold or exchanged will not exceed 39,200 ac (15,864 ha); or (2) the lands are transferred to a Comparable Transferee, such as an agency of the Federal Government; or (3) the HCP and Incidental Take Permit are modified to delete such land in accordance with the modification procedures as described in the Incidental Take Permit.

We evaluated lands covered by these existing HCPs to determine whether they are: (1) Occupied by bull trout and essential to the conservation of the species; (2) in need of special management considerations or protection; and (3) currently not known to be occupied but essential to the conservation of the species. We evaluated each HCP to determine whether it: (1) Provides a conservation benefit to the species; (2) provides assurances that the management plan will be implemented; and (3) provides assurances the plan will be effective. Approved and permitted HCPs are designed to ensure the long-term survival of covered species within the plan area. Where we have an approved HCP, the areas we ordinarily would designate as critical habitat for the covered species will normally be protected through the terms of the HCPs and their implementation agreements. These HCPs and implementation agreements include management measures and protections that are crafted to protect, restore, and enhance their value as habitat for covered species.

The issuance of a permit (under section 10(a) of the Act) in association with an HCP application is subject to consultation under section 7(a)(2) of the Act. While these consultations on permit issuance have not specifically addressed the issue of destruction or adverse modification of critical habitat for bull trout, they have addressed the very similar concept of jeopardy to bull trout in the plan area. Since these large regional HCPs address land use within the plan boundaries, habitat issues within the plan boundaries have been thoroughly addressed in the HCP and the consultation on the permit associated with the HCP. Our experience is that, under most circumstances, consultations under the jeopardy standard will reach the same result as consultations under the adverse modification standard. Common to both approaches is an appreciable detrimental effect on both survival and recovery of a listed species, in the case of critical habitat by reducing the value of the habitat so designated. Thus, actions satisfying the standard for adverse modification are nearly always found to also jeopardize the species concerned, and the existence of a critical habitat designation does not materially affect the outcome of consultation. Therefore, additional measures to protect the habitat from adverse modification above those addressing actions that may jeopardize the species are not likely to be required.

As noted above, lands within these HCPs are subject to disposal (*e.g.*, through sale or exchange), subject to various sideboards included in each HCP. In already approved HCPs, we have provided assurances to permit holders that once the protection and management required under the plans are in place, and for as long as the permit holders are fulfilling their obligations under the plans, no additional mitigation in the form of land or financial compensation will be required of the permit holders and in some cases, specified third parties.

The benefits of including HCP lands in critical habitat are normally small. The principal benefit of any designated critical habitat is that Federal require consultation under section 7 of the Act. Such consultation would ensure that adequate protection is provided to avoid adverse modification of critical habitat. However, if there is no Federal nexus, no consultation is required. Where HCPs are in place, our experience indicates that the benefit of designation is small or non-existent. Further, HCPs typically provide for greater conservation benefits to a covered species than section 7 consultations because HCPs assure the long-term protection and management of a covered species and its habitat. Such assurances are typically not provided by section 7 consultations which, in contrast to HCPs, often do not commit the project proponent to long-term special management or protections. In addition, HCP conservation protections cover all lands rather than just those lands where there is a Federal nexus.

The development and implementation of HCPs provide other important conservation benefits, including the development of biological information to guide conservation efforts and assist in species recovery and the creation of innovative solutions to conserve species while allowing for commercial activity. The educational benefits of critical habitat, including informing the public of areas that are important for the long-term survival and conservation of the species, are essentially the same as those that would occur from the public notice and comment procedures required to establish an HCP, as well as the public participation that occurs in the development of many regional HCPs. Also, the HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat used by a species, and the adaptive management provisions provide for ongoing data collection and analysis. The process enables us to understand the importance of such lands to the long-term survival of the species in the context of constructing a biologically configured system of interlinked habitat areas. For these reasons, then, we believe that designation of critical habitat normally has little benefit in areas covered by HCPs.

The benefits of excluding HCPs from being designated as critical habitat include relieving landowners, communities and counties of additional regulatory costs and delays that result from such a designation. Many HCPs, particularly large regional HCPs, take many years to develop and, upon completion, become regional conservation plans that are consistent with the recovery of covered species. Imposing an additional regulatory review after HCP completion would stifle conservation efforts and partnerships in many areas and would be viewed as a disincentive to those developing HCPs.

The benefits to the landowner community of excluding HCPs encourage the continued development of partnerships with participants, including States, local governments, conservation organizations, and private landowners, that together can implement conservation actions we would be unable to accomplish solely through regulatory control. By excluding areas covered by HCPs from critical habitat designation, we preserve these partnerships, encourage continued development of HCPs, and set the stage for more effective species conservation.

In general, we believe the benefits of critical habitat designation to be small in areas covered by approved HCPs. We also believe that the benefits of excluding HCPs from designation are significant. Weighing the small benefits of inclusion against the benefits of exclusion, including the benefits of relieving property owners of costs and delays related to regulations, together with the encouragement of conservation partnerships, we have excluded the WDNR, City of Seattle Cedar River Watershed, Tacoma Water, and Simpson Timber Company HCPs from this proposed critical habitat pursuant to section 4(b)(2) of the Act.

In the event that future HCPs covering bull trout are developed within the boundaries of designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential for the conservation of the bull trout by either directing development and habitat modification to nonessential areas, or appropriately modifying activities within essential habitat areas so that such activities will not adversely modify the primary constituent elements. Furthermore, we will complete intra-Service consultation on our issuances of section 10(a)(1)(B) permits for these HCPs to ensure permit issuance will not destroy or adversely modify critical habitat. If an HCP that addresses the bull trout as a covered species is ultimately approved, we may reassess the critical habitat boundaries in light of the HCP.

Relationship to the Washington State Forest Practices Rules and Regulations, as Amended by the Forest and Fish Law

A collaborative effort (known as the Forest and Fish Report or FFR) to address the needs of listed salmonids, and avoid conflicts between State regulations and the Act, was initiated by members of six caucuses: Federal agencies, State agencies, Native American Tribes, non-industrial forest landowners, environmental organizations, and the timber industry. In April of 1999, FFR reached a point where complete agreement by all parties was unlikely. The environmental organizations and some of the Native American Tribes did not support the final version of the report. FFR was adopted by the legislature, thereby amending the Revised Code of Washington with respect to the Washington Forest Practices Act (RCW 76.09), as well as the Washington Administrative Code with respect to the Washington Forest Practices Rules (WAC 222).

This collaborative effort addressed the needs of salmonids, other fish, and stream-associated amphibians, and specifically addressed the needs of bull trout and bull trout habitat in the following ways. Riparian buffers on fishbearing streams were designed to recruit the majority of the large wood which potentially could be recruited from these riparian areas. Because addressing the recruitment of large wood requires buffer widths greater than that needed to address many other riparian functions, these buffers also address the riparian functions of bank stability, shade, nutrient input, and sediment filtering. Riparian buffers on fishbearing streams likely account for half of the wood delivered to such streams. The remainder of large wood in these streams depends on episodic and catastrophic events for transport from upstream and upslope areas. These "upstream" wood-recruitment mechanisms are not well understood. Riparian buffers for streams above fishbearing streams include a buffer at the confluence with fishbearing streams to address temperature concerns as well as provide a run-out zone for events such as landslides and channelized debris flows. Above those areas, buffers under FFR rules need not be continuous, but are designed to maintain stream temperatures within normal parameters and will be placed along sensitive reaches and sites. Slope stability and the ability to harvest timber and construct roads on "at-risk" or unstable slopes are also addressed through these rules.

Road construction and maintenance is a large part of these regulations, requiring corrective measures to address existing problem areas. These rules are designed to ensure stream connectivity through road crossings, shunting of road-generated sediment away from aquatic resources, and integrity of road infrastructure. It mandates a process of identification of problem areas and correction of those road segments within specified timeframes.

We assessed FFR with respect to the primary constituent elements for bull trout critical habitat. Forest practices conducted consistent with the FFR are expected to maintain a high-level of water quality. In addition, the FFR is expected to maintain the thermal regime of streams within the range of normal variation, and contribute to the maintenance of complex stream channels, appropriate substrates, a natural hydrograph, ground-water sources and subsurface connectivity, migratory corridors, and an abundant food base. We do not expect forest practices to introduce or favor nonnative competitors or predators.

These rules apply to non-industrial forest landowners, family-held and

publicly-held industrial timber corporations, and some State lands. State lands managed by the WDNR west of the Cascade Crest are not subject to FFR as they are managed under their 1997 HCP with respect to bull trout. However, some provisions of FFR, such as road management and slope stability, will be voluntarily applied by WDNR on those west-side lands. These rules do apply to WDNR lands east of the Cascade Crest and non-HCP private lands statewide, regardless of the presence of bull trout or salmon. Therefore, FFR includes benefits for many species in areas with no listed species. The FFR rules continue to apply so long as harvested land will be replanted and remain in forestry. Individual counties generally administer timber harvests associated with conversion of forested lands to agriculture or development, and all counties are expected to administer conversion harvests consistent with FFR by the year 2005.

These State Forest Practices Rules allow for the development of alternate plans. It is anticipated that non-industrial forest landowners will seek alternate plans for several inter-related reasons: (1) Much of the non-industrial lands are located at lower elevations where a disproportionate amount of the streams contain fish; (2) streams are lower gradient and can be addressed with different buffering scenarios that provide equal or better protection while allowing additional management flexibility; and (3) many non-industrial forest landowners do not have additional lands in their portfolio which can be used to offset the economic effect to them from reserve areas covering high percentages of their ownerships. All alternate plans, whether developed in conjunction with an HCP or not, will be evaluated for the level of protection provided to the aquatic resources including bull trout. Alternate plans will be required to provide equal or better protection for these resources. If this can be accomplished on some lands and waters in a more-economical fashion, we expect landowners will attempt to avail themselves of these options.

We assessed the adequacy of FFR as a plan to determine whether lands covered by it were in need of the special management or protection that would require a designation. For the reasons discussed above, bull trout will benefit from the implementation of FFR. FFR has already been adopted by the legislature and has been implemented for several years. Forest Practice Rules are monitored by the WDNR to ensure compliance by landowners and operators. Effectiveness is ensured through a cooperative adaptive-management process that includes collection of basic information regarding the covered species and their habitats, research, effectiveness monitoring, and regulatory feedback.

For these reasons, we believe that FFR provides substantial protection and restoration for bull trout and bull trout habitat, and therefore, these areas do not meet the definition of critical habitat as they do not require special management consideration or protection. However, we also assessed the FFR area for exclusion pursuant to section 4(b)(2), and are proposing to exclude to exclude it under section 4(b)(2).

Relationship to Tribal Lands

None of the Jarbidge River population is under Tribal jurisdiction. We evaluated Tribal lands in Montana to determine if they are essential to the conservation of the species. None of the Belly River headwaters is under Tribal jurisdiction. We have proposed critical habitat for portions of the Saint Mary River, the headwaters of Lee Creek, the lower reaches of Otatso Creek, Kennedy Creek, Boulder Creek, Swiftcurrent Creek, and Divide Creek, and in Lower Saint Mary Lake on the Blackfeet Reservation. A total of approximately 41.9 mi (67.4 km) of stream segments and approximately 2,189 ac (886 ha) of lakes on Tribal lands are included in our proposed critical habitat designation.

Within the Coastal-Puget Sound population, we have proposed critical habitat for portions of the Nooksack River and Puget Sound nearshore adjacent to the Lummi Indian Reservation; portion of the Nooksack River adjacent to the Nooksack Indian Reservation; Swinomish Channel and portions of Puget Sound nearshore within or adjacent to the Swinomish Indian Reservation; portion of the Sauk River adjacent to the Sauk-Suiattle Indian Reservation; portions of the Snohomish River, and Puget Sound nearshore within or adjacent to the Tulalip Indian Reservation; portions of the White River within or adjacent to the Muckleshoot Indian Reservation; portions of the Puyallup River and Puget Sound nearshore within or adjacent to the Puyallup Indian Reservation; portions of the Nisqually River within or adjacent to the Nisqually Indian Reservation; portions of the Skokomish River, Nalley Slough, Skobob Creek, and Hood Canal nearshore within or adjacent to the Skokomish Indian Reservation; portions of the Dungeness River within or adjacent to the Jamestown S'Klallam Tribal lands; portions of the Elwha River and the Strait of Juan de Fuca nearshore within or adjacent to the Lower Elwha S'Klallam Indian Reservation; portions of the Hoh River and Pacific Coast nearshore within or adjacent to the Hoh Indian Reservation; portions or all of the Quinault River, Lake Quinault, Pacific Coast nearshore, Raft River, Queets River, Salmon River, Moclips River, Cook Creek, Elk within or adjacent to the Quinault Indian Reservation; and a portion of the Chehalis River within or adjacent to the Chehalis Indian Reservation.

Quinalt Indian Reservation

The Quinault Indian Nation and the Bureau of Indian Affairs (BIA) recently developed a forest management plan (FMP) for the entire Quinault Indian Reservation. The FMP covers all forestland (about 173,000 acres) under tribal and BIA timber management, including individually Indian owned trust and tribally owned land. Included in the area of the FMP are the lower Quinault River, the tributaries of the lower Quinault River, the lower Queets River, the Salmon River (including the Middle and South Fork Salmon Rivers), portions of the Raft River, and portions of the Moclips River. The FMP is a 10-year plan covering the period from October 2002 through September 2012. The FMP is being implemented by the Quinault Department of Natural Resources and the BIA Taholah Field Office. Many types of projects could occur under the FMP. These include timber harvest, road construction, fuels management, mineral pit management, cedar salvage, and adaptive management and monitoring plan development and use.

In 2003, we completed the bull trout consultation on the FMP (minus the North Boundary Area) and rendered a no jeopardy biological opinion on the Plan (USDI 2003). Although the upper Quinault Reservation (North Boundary Area) was not included as part of the biological opinion, provisions of the FMP will apply to the North Boundary Area. Consultation on timber management of the North Boundary Area occurred separately and also concluded with a no jeopardy biological opinion for bull trout (USDI 2000). Both biological opinions contain reasonable and prudent measures, with their implementing terms and conditions, which are designed to minimize impacts to bull trout that might otherwise result from the FMP.

Based on our analysis of the FMP and the North Boundary Area, as described in the two biological opinions, we have determined that forest management on

Quinault Reservation lands, with the terms and conditions from the biological opinions, provides a sufficient level of protection and certainty of implementation such that additional special management consideration or protection is not required. Therefore, we are proposing to exclude 161 km (100 mi) of streams within the reservation from the final designation of critical habitat for the bull trout pursuant to section 4(b)(2) of the Act. We are proposing to exclude all or portions of the following streams: Quinault River, Pacific Coast nearshore, Raft River, Queets River, Salmon River, Harlow Creek, Moclips River, North Fork Moclips River, Mounts Creek, Joe Creek, Cook Creek, Elk Creek, Red Creek, (lower) Boulder Creek, Ten O'Clock Creek, Prairie Creek, McCalla Creek, and (upper) Boulder Creek. In some cases, a stream segment proposed for exclusion has non-Tribal land ownership on one shore and, therefore, that segment of shore would not be managed as part of the Quinault FMP. However, for the above identified streams, except the Raft River, the majority of ownership is on Quinault reservation lands and is covered in the FMP; therefore we are proposing to exclude these streams from critical habitat for the bull trout. For the Raft River, where the majority of ownership is non-Tribal, we will be excluding only those segments of the Raft River that have Tribal ownership on both shores. On Lake Quinault only a small segment of the shoreline is covered by the FMP, and we are including Lake Quinault in our proposed designation of critical habitat.

The benefits of including Quinault reservation lands, with their approved FMP that provides measures to help protect the needs of bull trout, as critical habitat are small. The principal benefit of any designated critical habitat is that activities that may affect such habitat require consultation under section 7 of the Act if such action involves a Federal nexus. Where an approved management plan is in place, our experience indicates that this benefit is small or non-existent.

The benefits of excluding Tribal lands having approved resource management plans from being designated as critical habitat include relieving the Tribe from additional regulatory review and costs that result from such designation and promoting the conservation efforts and partnerships and encourage Tribes to develop species and habitat management plans. In general, we believe the benefits of critical habitat designation in areas covered by approved Tribal resource managements would be small while that the benefits of excluding the area covered by the Quinalt FMP are greater. Therefore, we are proposing to exclude areas covered by the Quinalt FMP from the designation of final critical habitat for the bull trout.

Proposed Critical Habitat Designation

Within the geographical areas presently known to be occupied by the Jarbidge River, Coastal-Puget Sound, and Saint Mary-Belly River populations, we are proposing to designate only areas currently known to be essential to the conservation of bull trout. These areas already contain features and habitat characteristics that are necessary to sustain the species. We are designating areas that currently have one or more of the primary constituent elements that provide essential life-cycle requisites of the species, as defined at 50 CFR 424.12(b). Moreover, certain areas with known occurrences of bull trout have not been designated as critical habitat. We did not designate critical habitat for some occurrences or habitats that are in highly fragmented areas or no longer have hydrologic conditions that are sufficient to maintain bull trout habitat. We do not believe, based on the best available scientific information, that these areas are essential to the conservation of the species.

The proposed critical habitat areas described below constitute our best assessment at this time of the stream reaches and lakes that are essential to the conservation of the Jarbidge River, Coastal-Puget Sound, and Saint Mary-Belly River bull trout populations. We are designating approximately 131 mi (211 km) of streams in Idaho and Nevada for the Jarbidge River population, and 2,290 mi (3,685 km) of streams, 52,540 ac (21,262 ha) of lakes, and 985 mi (1,585 km) of marine shoreline in Washington for the Coastal-Puget Sound population. For the Saint Mary-Belly River population, the critical habitat designation totals approximately 88 mi (142 km) of streams and 6,295 ac (2,548 ha) of lakes in Montana.

The lateral extent of critical habitat, for each designated stream reach, is the width of the stream channel as defined by its bankfull elevation. Bankfull elevation is the level at which water begins to leave the channel and move into the floodplain (Rosgen 1996) and is reached at a discharge which generally has a recurrence interval of 1 to 2 years on the annual flood series (Leopold *et al.* 1992). Critical habitat extends from the bankfull elevation on one side of the stream channel to the bankfull elevation on the opposite side. If bankfull elevation is not evident on either bank, the ordinary high-water line, as defined by the U.S. Army Corps of Engineers (Corps) in 33 CFR 329.11, shall be used to determine the lateral extent of critical habitat. Adjacent floodplains are not designated as critical habitat. However, it should be recognized that the quality of aquatic habitat within stream channels is intrinsically related to the character of the floodplains and associated riparian zones, and human activities that occur outside the river channels can have demonstrable effects on physical and biological features of the aquatic environment. In addition, human activities that occur within or adjacent to streams or stream reaches that flow into critical habitat can also have demonstrable effects on physical and biological features of designated reaches. The lateral extent of lakes and reservoirs is defined by the perimeter of the water body as mapped on standard 1:24,000 scale maps (comparable to the scale of a 7.5 minute U.S. Geological Survey Quadrangle topographic map). A brief discussion of each area designated as critical habitat is provided in the unit descriptions below. Additional detailed documentation concerning the essential nature of these areas is contained in our supporting record for this rulemaking.

The inshore extent of critical habitat for marine nearshore areas is the mean higher high-water (MHHW) line, including tidally influenced freshwater heads of estuaries. This refers to the average of all the higher high-water heights of the two daily tidal levels. Adjacent shoreline riparian areas, bluffs, and uplands are not proposed as critical habitat. However, it should be recognized that the quality of marine habitat along shorelines is intrinsically related to the character of these adjacent features, and human activities that occur outside of the MHHW can have major effects on physical and biological features of the marine environment. The offshore extent of critical habitat for marine nearshore areas is based on the extent of the photic zone, which is the layer of water in which organisms are exposed to light. Proposed critical habitat extends offshore to the depth of 33 feet (ft) (10 meters (m)) relative to mean lower low water (MLLW; average of all the lower low-water heights of the two daily tidal levels). This equates to the average depth of the photic zone, and is consistent with the offshore extent of the nearshore habitat identified under the Puget Sound Nearshore Ecosystem Restoration Project (Corps and WDFW 2001). This area between MHHW and minus 10 MLLW is considered the habitat most consistently used by bull trout in marine waters based on known use,

forage fish availability, and ongoing migration studies (Kramer 1994; Frederick Goetz, Corps, in litt. 2003), and captures geological and ecological processes important to maintaining these habitats. This area contains essential foraging habitat and migration corridors such as estuaries, bays, inlets, shallow subtidal areas, and intertidal flats.

The types and approximate percentages of land ownership adjacent to proposed critical habitat in aquatic areas are shown for the Jarbidge River population in Table 1, in Table 2 for the Coastal-Puget Sound population, and in Table 3 for the Saint Mary-Belly River population.

TABLE 1.—APPROXIMATE LINEAR QUANTITY OF PROPOSED CRITICAL HABITAT OF STREAMS (MILES (MI) (KILOMETERS (KM)), AND ADJACENT LAND OWNERSHIP PERCENTAGES FOR THE JARBIDGE RIVER POPULATION.

State	Streams	Federal (percent)	Tribal (percent)	State (percent)	Private (percent)
Nevada	93 mi (150 km)	91.7	0	0	8.3
Idaho	38 mi (61.6 km)	92.4	0	6.1	1.5
Total	131 mi (211 km)	92	0	3	5

TABLE 2.—APPROXIMATE LINEAR QUANTITY OF PROPOSED CRITICAL HABITAT OF STREAMS (MILES (MI) (KILOMETERS (KM)), ADJACENT SHORELINE (MI (KM)), AND SURFACE AREA OF LAKES (ACRES (AC) (HECTARES (HA)), AND ADJACENT LAND OWNERSHIP PERCENTAGES FOR THE COASTAL-PUGET SOUND RIVER POPULATION BY CRITICAL HABITAT SUBUNITS (CHSU) IN WASHINGTON, INCLUDING SUBTOTALS FOR UNIT 27: OLYMPIC PENINSULAR RIVER BASINS, AND UNIT 28: PUGET SOUND

CHSU	Marine shoreline (mi)	Streams (mi)	Lakes (ac)	Federal (percent)	Tribal (percent)	State (percent)	Private (percent)
Skokomish	0	60 mi (96.5 km)	4,007 ac 1,622 (ha).	54	3	4	39
Dungeness	0	30 mi (48 km)	0	59	<1	7	33
Elwha	0	55 mi (88.5 km)	746 ac (302 ha)	84	<2	6	8
Hoh	0	89 mi (143 km)	0	41	<1	14	45
Queets	0	139 mi (224 km)	0	56	14	18	11
Quinault	0	91 mi (146 km)	3,565 ac (1,443 ha).	60	40	0	0
Hood Canal	106 mi (170.5 km)	0	0	0	6	8	86
Strait of Juan de Fuca.	130 mi (209 km)	20 mi (32 km)	0	9	0	6	84
Pacific Coast	94 mi (151 km)	64 mi (103 km)	0	10	<1	8	82
Chehalis River/Grays Harbor	89 mi (143 km)	216 mi (347.5 km).	0	3	0	1	96
Subtotal: Unit 27.	419 mi (674 km)	764 mi (1,229 km)	8,318 ac (3,366 ha).	38	7	7	48
Chilliwack	0	29 mi (47 km)	0	65	0	0	35
Nooksack	0	187 mi (301 km)	0	18	1	11	69
Lower Skagit	0	414 mi (666 km)	7,024 ac (2,842 ha).	47	0	5	48
Upper Skagit	0	84 mi (135 km)	12,276 ac (4,968 ha).	86	0	0	14
Stillaguamish	0	181 mi (291 km)	0	23	0	10	66
Snohomish/ Skykomish.	0	254 mi (409 km)	0	20	1	7	72
Chester Lake	0	16 mi (26 km)	1,971 ac (798 ha)	0	0	0	100
Puyallup	0	235 mi (378 km)	0	33	4	2	61
Samish	0	24 mi (39 km)	0	0	0	0	100
Lake Washington	0	0	22,951 ac (9,288 ha).	1	0	3	96
Lower Green	0	62 mi (100 km)	0	0	0	18	82
Lower Nisqually	0	40 mi (64 km)	0	33	13	0	54
Puget Sound Marine.	566 mi (911 km)	0	0	3	15	6	76
Subtotal: Unit 28 0.	566 mi (911 km)	1,526 mi (2,455 km).	44,222 ac (17,910 ha).	25	3	5	67
Total for both units.	985 mi (1,585 km)	2,290 mi (3,685 km).	52,540 ac (21,262 ha).	32	5	6	57

TABLE 3.—APPROXIMATE LINEAR QUANTITY OF PROPOSED CRITICAL HABITAT OF STREAMS (MILES (MI) (KILOMETERS (KM)) AND SURFACE AREA OF LAKES (IN ACRES (AC) (HECTARES (HA)), AND ADJACENT LAND OWNERSHIP PERCENTAGES FOR THE SAINT MARY-BELLY RIVER POPULATION

State	Streams	Lakes	Federal (percent)	Tribal (percent)	State (percent)	Private (percent)
Montana	88 mi (142 km)	6,295 ac (2,548 ha)	45	45	0	10

Critical habitat includes bull trout habitat across the species' range in Idaho, Montana, Nevada, and Washington. Lands adjacent to designated critical habitat are under private, State, Tribal, and Federal ownership, with Federal lands including lands managed by the USFS and Bureau of Land Management (BLM). Three critical habitat units have been delineated. The areas we are designating as critical habitat, described below, constitute our best assessment of areas essential to the conservation of the Jarbidge River, Coastal-Puget Sound, and Saint Mary-Belly River populations of bull trout.

These critical habitat units correspond to recovery units identified in the Draft Recovery Plan (Service 2002, 2004). Brief descriptions of each unit, the critical habitat subunits (CHSUs) within them, and the specific areas designated as critical habitat, are presented below.

The streams, lakes, and marine shoreline indicated below are generally described from the bottom to the top of a watershed within a critical habitat unit or subunit. For example, river or stream "A" would be described from its mouth up to the first major tributary (stream "B") that is also being designated as critical habitat. At that point, tributary stream "B" and any of its associated tributaries that are also being designated would be described, again from the mouth of stream "B" upstream to either the next tributary being designated or to the limit of critical habitat within stream "B." Once this description is complete, the text again reverts to river/stream "A" and continues upstream, either to the next tributary being designated (*e.g.*, stream "C") or to the upstream limit of critical habitat in stream "A". This provides a "roadmap" that enables the reader to appreciate the extent of the proposal in a particular watershed or stream system, as well as to have the ability to work their way up from a landmark more likely to be familiar to locate a particular, generally more obscure, tributary in the upper watershed. Together with the maps included with this proposed rule, readers should be able to easily locate where a stream of interest that is being designated as bull trout critical habitat occurs on the landscape.

The legal descriptions provided in the regulatory portion of this proposed rule (see Regulation Promulgation section) correspond to the critical habitat units and subunits described below. However, the legal descriptions of individual streams and lakes within each subunit paragraph are arranged in alphabetical order by stream or lake name within a paragraph.

Unit 26: Jarbidge River Unit

The Jarbidge River Unit encompasses the Jarbidge and Bruneau River Basins, which drain into the Snake River within C.J. Strike Reservoir upstream of Grand View, Idaho. The Jarbidge River Unit is located within Owyhee County in southwestern Idaho and Elko County in northeastern Nevada.

The Jarbidge River Unit includes a total of approximately 131 mi (211 km) of streams proposed as critical habitat. Approximate percentages of land ownership associated with the streams proposed for designation are 92.4 percent Federal, 1.5 percent private, and 6.1 percent State in Idaho, and 91.7 percent Federal and 8.3 percent private in Nevada. The Jarbidge River Unit contains six local populations of resident and migratory bull trout. These stream segments and reservoirs provide either FMO habitat, or provide spawning and rearing habitat. These habitats are essential to the long-term conservation of the Jarbidge River population as they will help maintain populations and the migratory life-history form essential to the species' long-term conservation, and also provide habitat necessary for the recovered distribution of bull trout (Service 2004). The stream segments that make up the Jarbidge Unit are described below.

(A) Jarbidge River from the confluence with the Bruneau River approximately 29.4 mi (47.3 km) upstream to the joint confluence of the East and West Forks of the Jarbidge River. The mainstem Jarbidge River provides FMO habitat; the downstream extent of current use is unknown.

(B) West Fork of the Jarbidge River (also termed Jarbidge River) from the confluence with the East Fork of the Jarbidge River approximately 20.9 mi (33.6 km) upstream to the perennial headwaters. The lower West Fork of the Jarbidge River provides FMO habitat between the confluence with the East Fork and the confluence with Snowslide Gulch. Spawning and rearing habitat for the West Fork Jarbidge River local population and migratory bull trout currently are located upstream of Snowslide Gulch in the headwaters. Unnamed western headwater tributary from the confluence with the West Fork of the Jarbidge River approximately 0.9 mi (1.4 km) upstream to the perennial headwaters. The unnamed western headwater tributary provides additional spawning and rearing habitat for the West Fork Jarbidge River local population. Sawmill Creek, from the confluence with the West Fork of the Jarbidge River approximately 0.8 mi (1.3 km) upstream to the perennial headwaters, provides spawning and rearing habitat for the West Fork Jarbidge River local population.

(C) Deer Creek from the confluence with the West Fork of the Jarbidge River approximately 6.5 mi (10.4 km) upstream to the perennial headwaters. Deer Creek provides foraging habitat and a cool refuge from elevated temperatures in the lower West Fork of the Jarbidge River for migratory bull trout, but the extent and frequency of current occupancy is unknown. Deer Creek may also provide spawning and rearing habitat under recovered conditions.

(D) Jack Creek from the confluence with the West Fork of the Jarbidge River approximately 5.2 mi (8.4 km) upstream to the perennial headwaters. Lower Jack Creek provides FMO habitat necessary to maintain connectivity among local populations in the Jarbidge River population. Jack Creek provides spawning and rearing habitat upstream of the confluence with Jenny Creek.

(E) Pine Creek (also termed West Fork Pine Creek) from the confluence with the West Fork of the Jarbidge River approximately 4.5 mi (7.2 km) upstream to perennial headwaters. Unnamed western tributary from the confluence of Pine Creek approximately 1.0 mi (1.6 km) upstream to the perennial

headwaters. Unnamed eastern headwater tributary from the confluence of Pine Creek approximately 1.5 mi (2.4 km) upstream to the perennial headwaters. Pine Creek and its tributaries provide spawning and rearing habitat for the Pine Creek local population and migratory bull trout from the West Fork of the Jarbidge River.

(F) East Fork of the Jarbidge River from the confluence with the West Fork of the Jarbidge River approximately 23.1 mi (37.2 km) upstream to perennial headwaters. The lower East Fork of the Jarbidge River provides FMO habitat from the confluence with the West Fork upstream to the confluence of Fall Creek and provides connectivity for local populations. Spawning and rearing habitat is located upstream of Fall Creek in the headwaters. Unnamed western headwater tributary from the confluence with the East Fork of the Jarbidge River approximately 2.2 mi (3.5 km) upstream to the perennial headwaters. The unnamed western headwater tributary provides additional spawning and rearing habitat. Fall Creek from the confluence with the East Fork of the Jarbidge River approximately 4.3 mi (6.9 km) upstream to the perennial headwaters. Unnamed lower western tributary from the confluence with Fall Creek approximately 2.2 mi (3.5 km) upstream to the perennial headwaters. Unnamed upper western tributary from the confluence with Fall Creek upstream approximately 1.8 mi (2.9 km) to the perennial headwaters. Fall Creek and its tributaries provide spawning and rearing habitat for the East Fork Jarbidge River local population. Cougar Creek, from the confluence with the East Fork of the Jarbidge River approximately 4.2 mi (6.8 km) upstream to the perennial headwaters, provides spawning and rearing habitat for resident and possibly migratory bull trout from the East Fork of the Jarbidge River.

(G) Dave Creek from the confluence with the East Fork of the Jarbidge River approximately 9.9 mi (15.9 km) upstream to the perennial headwaters. Dave Creek provides FMO habitat in the lower reach and provides connectivity among local populations in the Jarbidge River population. Spawning and rearing habitat for the Dave Creek local population is present in the upper reach. Upper Dave Creek also likely provides spawning and rearing habitat for migratory bull trout from the East Fork of the Jarbidge River.

(H) The following reaches provide spawning and rearing habitat for the Slide Creek local population and possibly migratory bull trout from the East Fork of the Jarbidge River upstream to their respective perennial headwaters: Slide Creek from the confluence with the East Fork of the Jarbidge River approximately 5.4 mi (8.7 km); God's Pocket Creek from the confluence with Slide Creek approximately 3.9 mi (6.3 km); unnamed lower southern tributary from the confluence with Slide Creek approximately 1.6 mi (2.6 km); unnamed upper southern tributary from the confluence with Slide Creek approximately 1.8 mi (2.9 km); unnamed northern headwater tributary approximately 0.3 mi (0.5 km); unnamed eastern headwater tributary approximately 0.2 mi (0.3 km).

Unit 27: Olympic Peninsula River Basins

The Olympic Peninsula Unit is located in northwestern Washington. Bull trout populations inhabiting the Olympic Peninsular comprise the coastal component of the Coastal-Puget Sound population. The unit includes approximately 764 mi (1,229 km) of stream, 8,318 ac (3,366 ha) of lakes, and 419 mi (674 km) of marine shoreline proposed for designation as critical habitat for bull trout. This unit covers an area approximately 6.5 million ac (2.6 million ha), and is bordered by Hood Canal to the east, Strait of Juan de Fuca to the north, Pacific Ocean to the west and the Lower Columbia and Puget Sound Recovery Units to the south. It extends across portions of Grays Harbor, Clallam, Mason, Pacific, and Jefferson Counties. All of the major river basins initiate from the Olympic Mountains. The Olympic Peninsula Unit is divided into 10 critical habitat subunits (CHSUs). The Draft Recovery Plan (Service 2004) indicates the need to maintain these 10 local populations, to restore two identified potential local populations, and to maintain freshwater and marine FMO habitats within these CHSUs in order to provide for the recovered distribution, abundance, and productivity of bull trout. Although delta areas and small islands are difficult to map and may not be specifically identified by name, included within the critical habitat proposal are delta areas where streams form sloughs and braids, and the nearshore of small islands found within the proposed marine areas.

(i) Skokomish CHSU

The North Fork Skokomish River and the South Fork Skokomish River headwaters originate in the Olympic Mountains and flow eastward to join at the Skokomish River, which then flows into the southernmost portion of Hood Canal. The North Fork Skokomish River flows through Lake Cushman and Lake Kokanee before meeting with the South Fork Skokomish River. Approximately 60 mi (96.5 km) of stream and 4,011 ac (1,623 ha) of lake are being proposed as critical habitat in the Skokomish basin. Land ownership along the stream reaches and lakes proposed for critical habitat is 54 percent Federal, 4 percent State, 39 percent private, and 3 percent Tribal (3.0 mi (4.8 km) within the Skokomish Indian Reservation). The stream segments that make up the Skokomish CHSU are described below.

(A) The Skokomish River from its confluence with Hood Canal upstream 8.6 mi (13.8 km) to the confluence with the North and South Forks Skokomish Rivers and extending upstream in the following tributaries: Nalley Slough 0.5 mi (0.8 km) to a natural barrier; Skobob Creek 2.2 mi (3.5 km) to a natural barrier; Purdy Creek 1.3 mi (2.1 km) to a natural barrier; and Rickert Springs 0.3 mi (0.5 km) to its headwaters. Bull trout have been documented throughout the Skokomish River, which provides FMO habitat including a migratory corridor from Hood Canal to the North and South Fork Skokomish Rivers. Skobob Creek, Purdy Creek, and Rickert Springs have had bull trout documented in recent years (Marty Ereth, Skokomish Tribe, in litt. 2003; Larry Ogg, USFS, in litt. 2003), and they provide foraging, overwintering, and seasonal subadult rearing habitat in the Skokomish River. Nalley Slough is part of the braided Skokomish River and provides connectivity to the Skokomish estuary (WDFW 2003).

(B) The South Fork Skokomish River from its confluence with the Skokomish River upstream 25.0 mi (40.2 km) and extending upstream in the following tributaries: Brown Creek 5.3 mi (8.5 km); Lebar Creek 1.2 mi (1.9 km); Pine Creek 0.7 mi (1.1 km); Church Creek 0.4 mi (0.6 km). Multiple age classes of bull trout have been observed in the amphidromous reaches of Brown, Lebar, and Pine Creeks. These creeks are used for juvenile rearing, foraging, and overwintering. Juvenile bull trout have been observed throughout the South Fork Skokomish River, and spawning has been documented in Church Creek and the upper South Fork Skokomish River (Ogg and Stutsman 2002). Brown Creek has suitable, accessible spawning habitat, and is identified as a potential local population necessary for recovery in the Skokomish core area.

(C) North Fork Skokomish River from its confluence with the Skokomish River upstream 13.1 mi (21.1 km), ending at Lake Kokanee dam, and restarts again at the inlet to Lake Cushman, and including the area of inundation for

Lake Cushman (4,011 ac (1,623 ha)), and extending up the accessible reaches of the following tributaries: Elk Creek 0.8 mi (1.3 km); and Slate Creek 1.0 mi (1.6 km). Bull trout have been observed in the North Fork Skokomish River, which provides foraging and overwintering habitat and connectivity with the mainstem Skokomish River. Spawning has been documented in the upper North Fork Skokomish River, Elk Creek, and Slate Creek. Bull trout have been documented in Lake Cushman, but not in Lake Kokanee, which is located on the North Fork Skokomish River below Lake Cushman. Lake Kokanee is not being proposed as critical habitat, because implementation of the Federal Energy Regulatory Commission license for the Cushman project is expected to result in construction of trap-and-haul fish passage facilities (George Ging, Service, in litt. 2004). These facilities will restore connectivity between lower and upper North Fork Skokomish Rivers, but will bypass the inundated 2.3 mi (3.7 km) long Lake Kokanee section.

(ii) Dungeness River CHSU

The Dungeness CHSU includes the Dungeness River, its primary tributary, the Gray Wolf, and associated tributaries. The Dungeness River is located in the northeastern portion of the Olympic Peninsula and flows from its headwaters in the Olympic Mountains to the Strait of Juan de Fuca. Approximately 30 mi (48 km) of stream is being proposed as critical habitat in the Dungeness River basin. Land ownership along the stream reaches proposed for critical habitat is 59 percent Federal, 7 percent State, 33 percent private, and less than 1 percent Tribal (less than 1.0 mi (1.6 km) within Jamestown S'Klallam Tribal lands).

(A) The Dungeness River from its confluence with the Strait of Juan de Fuca upstream 18.7 mi (30.1 km) to an impassable barrier and extending up the following tributaries to their headwaters or an impassable barrier: Hurd Creek 0.5 mi (0.8 km); Gray Wolf River 9.4 mi (15.1 km); and Gold Creek 1.6 mi (2.6 km). The Dungeness River and its tributaries provide foraging, overwintering, and rearing habitat. The Dungeness River also serves as a corridor for movement to the Strait of Juan de Fuca (L. Ogg, pers. comm. 2004). Spawning and rearing has been documented in the Gray Wolf River (Randy Cooper, WDFW, in litt. 2002). Bull trout have also been observed in Hurd Creek and Gold Creek.

(iii) Elwha CHSU

The Elwha River originates on the south and east sides of Mount Olympus, flows south, and then turns northward before entering the Strait of Juan de Fuca. The Elwha Rivers flows through two reservoirs, Lake Mills and Lake Aldwell. Approximately 55 mi (88.5 km) of stream and 1,097 ac (444 ha) of lake are being proposed as critical habitat in the Elwha River basin. Land ownership along the stream reaches proposed for critical habitat is 84 percent Federal, 6 percent State, 8 percent private, and less than 2 percent Tribal (less than 1.0 mi (1.6 km) within Lower Elwha S'Klallam Tribal lands). The stream segments that make up the Elwha CHSU are described below.

(A) The Elwha River from its confluence with the Strait of Juan de Fuca upstream 38.8 mi (62.4 km) to an impassable barrier, including the area of inundation for Lake Aldwell (302 ac (122 ha)) and Lake Mills (444 ac (180 ha)), and extending upstream in the following tributaries: Little River 7.4 mi (11.9 km); Hughes Creek 0.2 mi (0.3 km); Griff Creek 0.8 mi (1.3 km); Boulder Creek 0.5 mi (0.8 km); Cat Creek 3.1 mi (5.0 km); Prescott Creek 0.2 mi (0.3 km); Hayes Creek 1.5 mi (2.4 km); Godkin Creek 1.0 mi (1.6 km); Buckinghorse Creek 0.6 mi (1.0 km); and Delabarre Creek 0.8 mi (1.3 km). Multiple age classes have been documented throughout the Elwha River which provides FMO habitat. Lake Aldwell, Little River, Hughes Creek, Griff Creek, Lake Mills, Boulder Creek, Cat Creek, Prescott Creek, Hayes Creek, Godkin Creek, Buckinghorse Creek, and Delabarre Creek have documented bull trout use (Morrill and McHenry 1994; Brenkman and Meyer 2001). The mainstem Elwha River and tributaries above Lake Mills are presumed to provide primary spawning and rearing habitat in the Elwha CHSU. Bull trout in this area are considered a single local population (Olympic Peninsula Bull Trout Recovery Unit, in litt. 2003).

The Elwha and Glines Canyon Dams are scheduled to be removed beginning in 2007, resulting in restoration of connectivity and anadromous salmonids, and increased abundance of bull trout. Because suitable spawning habitat is present, following dam removal, as abundance increases in the Elwha core area, it is expected that Little River will be used for spawning and rearing. Little River has been identified by the Olympic Peninsula Recovery Unit Team as a potential local population necessary for recovery in the Elwha core area. Following dam removal, it is expected that the bull trout amphidromous life-history form will be restored in the Elwha River, prey base will be increased as salmon re-colonize the river, and bull trout abundance will increase, resulting in greater use of accessible tributaries.

(iv) Hoh River CHSU

The Hoh River flows westward from its headwaters in the Baily Range and the north slope of Mount Olympus to its confluence with the Pacific Ocean. Approximately 89 mi (143 km) of stream is being proposed as critical habitat in the Hoh River basin. Land ownership along the stream reaches proposed for critical habitat is 41 percent Federal, 14 percent State, 45 percent private, and less than 1 percent Tribal (less than 1.0 mi (1.6 km) within Hoh Indian Reservation lands).

(A) The Hoh River from its confluence with the Pacific Ocean upstream 50.1 mi (80.6 km) to an impassable barrier and extending upstream in the following tributaries to an impassable barrier or headwaters: Nolan Creek 7.9 mi (12.7 km); Winfield Creek 5.8 mi (9.3 km); Owl Creek 3.9 mi (6.3 km); South Fork Hoh River 15.5 mi (24.9 km); Mount Tom Creek 5.0 mi (8.0 km); Cougar Creek 0.5 mi (0.8 km); OGS Creek 0.1 mi (0.2 km); and Hoh Creek 0.5 mi (0.8 km). Recent radio telemetry studies have documented bull trout throughout the Hoh River, which provides spawning, rearing, and FMO habitat. The Hoh River also serves as a migration corridor for bull trout moving to and from the Pacific Ocean. Spawning and juvenile rearing have been documented in the upper Hoh River and the South Fork Hoh River (Brenkman and Meyer 1999). Bull trout have also been documented in Nolan Creek, Mt. Tom Creek, Cougar Creek, OGS Creek, and Hoh Creek, with historic use reported in Owl and Winfield Creeks (McLeod 1944). All of these streams are accessible to bull trout, are occupied by anadromous salmonids, and likely provide bull trout foraging or overwintering habitat in the Hoh River basin.

(v) Queets River CHSU

The Queets River flows west from its headwaters in Mount Queets, Bear Pass, and Mount Barnes to its confluence with the Pacific Ocean. Major tributaries include the Sams and Clearwater Rivers. Approximately 139 mi (224.0 km) of stream is being proposed as critical habitat in the Queets River basin. Land ownership along the stream reaches proposed for critical habitat is 56 percent Federal, 18 percent State, 11 percent private, and 14 percent Tribal (approximately 20.0 mi (32.2 km) on Quinault Indian Nation lands).

(A) The Queets River from its confluence with the Pacific Ocean upstream 48.8 mi (78.5 km) to an impassable barrier and extending upstream in the following tributaries to an impassable barrier or headwaters: Clearwater River 36.8 mi (59.2 km); Salmon River 13.2 mi (21.2 km); Matheny Creek 17.7 mi (28.5 km); Sams River 9.5 mi (15.3 km); and Tshletshy Creek 13.2 mi (21.2 km). The Queets River and its tributaries provide FMO and rearing habitat. The Queets River also serves as a migration corridor for bull trout moving to and from the Pacific Ocean. Bull trout spawning has been observed in the upper Queets River above the confluence with Tshletshy Creek (Gross 2002). Bull trout have been documented in the Clearwater, Salmon, and Sams Rivers, and Matheny Creek, with historic use reported in Tshletshy Creek (McLeod 1944). Bull trout surveys have not been conducted in these streams since human access is extremely difficult.

(vi) Quinault River CHSU

The Quinault River originates in the Olympic Mountains and flows west to the Pacific Ocean. The Quinault CHSU includes the mainstem Quinault River, North Fork Quinault River, tributaries, and Lake Quinault. Approximately 91 mi (146 km) of stream and 3,570 ac (1,445 ha) are being proposed as critical habitat in the Quinault River basin. Land ownership along the stream reaches and lake proposed for critical habitat is 60 percent Federal and 40 percent Tribal (approximately 35.0 mi (56.3 km) are within Quinault Indian Nation lands).

(A) The Quinault River from its confluence with the Pacific Ocean upstream 64.6 mi (103.9 km) to an impassable barrier, including the area of inundation for Lake Quinault (3,543 ac (1,434 ha)), and extending upstream in the following tributaries to an impassable barrier or headwaters: Cook Creek from its confluence with the Quinault River upstream 4.7 mi (7.6 km); O'Neil Creek 0.7 mi (1.1 km); Ignar Creek 0.2 mi (0.3 km); and Pyrites Creek 0.4 mi (0.6 km). The Quinault River and its tributaries provide FMO and rearing habitat. The Quinault River also serves as a migration corridor for bull trout moving to and from the Pacific Ocean. Multiple age classes have been observed in upper Quinault River, and it's likely that spawning occurs there and its accessible tributaries (Olympic National Park, in litt. 2001). Bull trout recently have been documented in Cook Creek, Lake Quinault, O'Neil Creek, Ignar Creek, and Pyrites Creek (Olympic National Park, in litt. 2001; Dave Zajac, Service, pers. comm. 2002; Scott Craig, Service, in litt. 2003; Mark Ostwald, Service, in litt. 2003).

(B) The area of inundation for Irely Lake (27 ac (11 ha)), Irely Creek 0.1 mi (0.2 km); and Big Creek 7.0 mi (11.3). Bull trout recently have been documented in Irely Lake, with historic use reported in Big Creek (McLeod 1944; S. Brenkman, in litt. 2001). Irely Creek provides bull trout access to Irely Lake from Big Creek and the Quinault River.

(C) North Fork Quinault River from its confluence with the Quinault River upstream 10.7 mi (17.2 km) to an impassable barrier, and its tributary, Rustler Creek, upstream 2.8 mi (4.5 km) to an impassable barrier (Olympic National Park, in litt. 2001). Multiple age classes of bull trout have been observed in the North Fork Quinault River and Rustler Creek.

For the next four CHSUs, nearshore marine waters are essential for access to foraging habitat in watersheds that are not believed to have spawning populations. While in marine waters, bull trout appear to primarily occupy estuarine and nearshore habitats and feed on a variety of prey items, especially small marine fish such as herring, surf smelt, and sandlance (F. Goetz, in litt. 2003; Brenkman and Corbett 2003). It is likely that these waters are also used as refuge from high flows in the natal rivers. Although the extent of bull trout use in these waters and their independent tributaries are not well known, information for Puget Sound and Pacific Ocean nearshore marine use indicates that bull trout with access to marine waters use them to access prey base in both marine and independent freshwater tributaries. Independent tributaries that flow directly to marine waters are not expected to provide spawning habitat, but do provide essential foraging and overwintering habitat for bull trout outside their natal watersheds. Nearshore marine habitat is also essential for connectivity to and between these independent tributaries. Although use of FMO habitat may be seasonal or brief, it is nonetheless a critical element for migratory bull trout to persist (Lohr *et al.* 2001). The current distribution data most likely under-represents the amount of occupied marine shoreline, due to the depressed status of these populations, the seasonal and temporal variability in migratory behavior, and the difficulty of sampling in large estuarine and marine environments (Pentec Environmental 2002). As bull trout in these CHSUs recover and increase in abundance, it is expected that FMO habitat use of marine waters will also increase.

(vii) Hood Canal CHSU

The estuarine and nearshore marine waters of the southern and western boundaries of Hood Canal provide foraging and migration habitat for amphidromous bull trout outside of freshwater core areas. Land ownership along the nearshore marine habitat is 8 percent State, 86 percent private, and 6 percent Tribal (approximately 6.0 mi (9.6 km) within Skokomish Indian Reservation lands).

(A) Approximately 106 mi (171 km) of nearshore marine habitat on the southern and western borders of Hood Canal from an unnamed tributary south of Union River to the entrance to Fisherman's Harbor on the southern border of Toandos Peninsula is proposed as critical habitat. Amphidromous bull trout have been documented in estuaries and lower rivers of Hood Canal, including the Quilcene, Dosewallips, Duckabush, and Hamma Hamma Rivers on the western side of Hood Canal (Service 1913; McLeod 1944; Phil Hilgert, R2 Consulting, pers. comm. 2000; John Meyer and Chuck Hamstreet, Service, in litt. 2001). It is unlikely that these rivers provide spawning habitat but they have abundant prey base and do provide essential foraging and overwintering habitats outside natal watersheds.

(viii) Strait of Juan de Fuca CHSU

Approximately 130 mi (209 km) of nearshore marine habitat in the Strait of Juan de Fuca, and 20 mi (32 km) of independent streams draining into it are proposed as critical habitat. Land ownership along the stream reaches and nearshore proposed for critical habitat is approximately 9 percent Federal, 6 percent State, and 84 percent private.

(A) Nearshore marine habitat on the southern boundary of the Strait of Juan de Fuca for 130.0 mi (209.2 km) from its eastern boundary at Cape George to its western boundary at Pillar Point; Bell Creek from its confluence with the Strait of Juan de Fuca upstream 3.8 mi (6.1 km) to a natural barrier; Siebert Creek from its confluence with the Strait of Juan de Fuca upstream 6.3 mi (10.1 km) to its confluence with "0175" Creek (Phinney and Bucknell 1975); Morse Creek from its confluence with the Strait of Juan de Fuca upstream 4.9 mi (7.9 km) to a natural barrier; and Ennis Creek from its confluence with the Strait of Juan de Fuca upstream 5 mi (8 km) to a natural barrier. The estuarine and marine waters of the Strait of Juan de Fuca provide FMO habitat for amphidromous bull trout outside of

freshwater core areas. Bull trout have also been documented in Bell, Ennis, Morse, and Siebert Creeks (WDFW 1998; Joel Freudenthal, Clallam County, in litt. 2001; R. Cooper, in litt. 2003, indicating that they are used at least seasonally for foraging and overwintering. Use of these independent tributaries to the Strait of Juan de Fuca requires migration by bull trout from their natal rivers through the marine waters of the Strait of Juan de Fuca.

Although the extent of bull trout use along the southern shoreline of the Strait of Juan de Fuca and its independent tributaries is not well known, information for Puget Sound and Pacific Ocean nearshore marine use indicates that bull trout appear to primarily occupy estuarine and nearshore habitats and feed on a variety of prey items (F. Goetz, in litt. 2003; S. Brenkman, in litt. 2003).

(ix) Pacific Coast CHSU

Bull trout can be found throughout the eastern nearshore waters of the Pacific Ocean from Goodman Creek south to Grays Harbor. Approximately 94 mi (151 km) of nearshore marine habitat on the Pacific Coast, and 64 mi (103 km) of independent streams draining into the Pacific Ocean are proposed as critical habitat. Land ownership along the stream reaches proposed for critical habitat is 10 percent Federal, 8 percent State, 82 percent private, and less than 1 percent Tribal (less than 1.0 mi (1.6 km) within Chehalis Tribe Reservation lands).

(A) Nearshore marine habitat on the western coast of the Pacific Ocean for 93.8 mi (150.0 km) from its northern boundary at "0089" Creek (Phinney and Bucknell 1975) to its southern boundary at the mouth of Grays Harbor at the jetty on Point Brown; Goodman Creek from its confluence with the pacific Ocean upstream 10.9 mi (17.5 km) to its confluence with "0413" Creek (Phinney and Bucknell 1975); Mosquito Creek upstream from its confluence with the Pacific Ocean 6.9 mi (11.1 km) to a natural barrier; Cedar Creek from its confluence with the Pacific Ocean 4.2 mi (6.8 km) to its headwaters; Steamboat Creek from its confluence with the Pacific Ocean 3.6 mi (5.8 km) to a natural barrier; Kalaloch Creek from its confluence with the Pacific Ocean upstream 3.9 mi (6.3 km) to its confluence with West Fork Kalaloch Creek; Raft River upstream from its confluence with the Pacific Ocean 8.0 mi (12.9 km) to confluence with South Fork Raft River; Moclips River upstream from its confluence with the Pacific Ocean upstream 7.0 mi (11.3 km) to a natural barrier; Joe Creek upstream from its confluence with the Pacific Ocean upstream 3.6 mi (5.8 km) to a natural barrier; and Copalis River upstream from its confluence with the Pacific Ocean upstream 15.9 mi (25.6 km) to a natural barrier. Recent observations have documented bull trout use in the following independent tributaries: Raft, Moclips, and Copalis Rivers, Goodman, Cedar, Kalaloch, and Joe Creek (WDFW 1998; B. Freymond, WDFW, in litt. 2001; S. Brenkman, in litt. 2003; Scott Potter, Quinault Indian Nation, in litt. 2003; Steve Corbett, National Park Service, in litt. 2004). Although there are no recent surveys for bull trout in Mosquito Creek, historic use is documented in McLeod (1944).

(x) Chehalis River/Grays Harbor CHSU

The Chehalis River flows west to it confluence with Grays Harbor. Bull trout have been documented throughout the Chehalis River downstream from Garrard Creek and in Grays Harbor. Bull trout do not appear at this time to spawn in the Grays Harbor/Chehalis River basin and these fish probably originate from core areas north of the basin (Jeanes *et al.* 2003). Approximately 89 mi (142.5 km) of nearshore marine habitat in Grays Harbor and 216 mi (347.5 km) of rivers draining into Grays Harbor are proposed as critical habitat. Land ownership along the nearshore and river reaches proposed for critical habitat is 3 percent Federal, 1 percent State, and 96 percent private.

(A) Nearshore marine habitat of Grays Harbor for 88.6 mi (142.5 km) from its mouth at the Pacific Ocean, north to jetty at Point Brown, south to jetty at Point Chehalis, including the extent of tidal influence, and east to the Chehalis River; Humptulips River from its confluence with Grays Harbor upstream 27.9 mi (44.9 km) to the confluence with East and West Forks Humptulips River; Wishkah River from its confluence with Grays Harbor upstream 33.8 mi (54.4 km) to a natural barrier. The estuarine and marine waters of the Grays Harbor provide FMO habitat for amphidromous bull trout outside of freshwater core areas. There are abundant prey fish and seasonally abundant smolts in the Grays Harbor nearshore marine habitat, which provide essential forage for bull trout. Although no bull trout had been observed in Grays Harbor since 1981, during 2002 beach seining surveys targeting bull trout, three fish were captured (Jeanes *et al.* 2003). Bull trout have been documented in the Wishkah and Humptulips Rivers (Keizer 1990; Nate Dachtler, WDFW, in litt. 2001; M. Ereth, in litt. 2002). Bull trout are not known to spawn in either the Wishkah or Humptulips River basins, and these fish likely originate from core areas north of Grays Harbor. These river provide bull trout foraging and overwintering habitat.

(B) Chehalis River from its mouth at Grays Harbor upstream 47.0 mi (75.6 km) to its confluence with Garrard Creek, and Wynoochee River upstream 50.9 mi (81.9 km) to the Wynoochee Dam. The Chehalis River has both historic and recent documentation of bull trout (Brix 1974; Keizer 1990; Simensted *et al.* 2001; Jeanes *et al.* 2003). Bull trout have also been documented in the Wynoochee River (Keizer 1990; T. Hooper, NOAA-Fisheries, pers. comm. 2004). Bull trout have been observed entering these rivers following salmon and steelhead spawning runs and during smolt out-migrations. The Chehalis and Wynoochee Rivers provide FMO habitat and are accessible from the marine waters of Grays Harbor.

(C) Satsop River upstream 6.3 mi (10.1 km) to the confluence with West Fork Satsop River; West Fork Satsop River upstream 37.4 mi (60.2 km) to a natural barrier; and Canyon River upstream 13.1 mi (21.1 km) to a natural barrier. Although there are no recent observations of bull trout in the Satsop River, historically bull trout were regularly observed in the Satsop River, West Fork Satsop River and Canyon River (Keizer 1990; Jay Hunter, WDFW, in litt. 2001). These rivers are accessible from marine waters, and provide, at least seasonally, important foraging and overwintering habitat. Water temperatures are suitable for all bull trout life-history stages (L. Ogg, in litt. 2003).

Unit 28: Puget Sound

The Puget Sound Unit includes approximately 1,526 mi (2,455 km) of streams, and 44,222 ac (17,896 ha) of lakes, and 566 mi (911 km) of marine shoreline proposed for designation as critical habitat within the Puget Sound Recovery Unit. The unit covers an area of approximately 8.4 million ac (3.4 million ha) and is bordered by the Cascade crest to the East, Puget Sound to the West, the Lower Columbia and Olympic Peninsula Recovery Units to the South, and the United States-Canada border to the North. It extends across Whatcom, Skagit, Snohomish, King, Pierce, Thurston, and Island Counties. The major river basins initiate from the Cascade Mountain Range, and flow west discharging into Puget Sound, with the exception of the Chilliwack River system, which flows northwest into British Columbia discharging into the Fraser River. The Puget Sound Unit is

divided into eight CHSUs. The Draft Recovery Plan (Service 2004) identifies the need to maintain the 57 local populations and five potential local populations, and the freshwater and marine FMO habitats within these CHSUs as they are essential for the recovered distribution, abundance, and productivity of bull trout, especially the amphidromous life-history form. The State of Washington has assigned all streams a stream catalog number. If an unnamed stream, or stream with no official U.S. Geological Survey name, is proposed for critical habitat with the Puget Sound Unit, the stream catalog number is provided for reference.

(i) Chilliwack CHSU

The Chilliwack River system is a transboundary watershed flowing northwest into British Columbia, Canada, where it discharges into the Fraser River. The Chilliwack CHSU includes only those portions of this transboundary system that are within the United States. The Draft Bull Trout Recovery Plan (Service 2004) describes the Chilliwack core area as including portions of the Sumas River and Chilliwack River and its tributaries contained within the United States. A total of approximately 29 mi (47 km) of stream is proposed as critical habitat. Land ownership along the stream reaches proposed for critical habitat is 100 percent Federal.

(A) The Chilliwack River from the U.S.-Canada border upstream approximately 11.7 mi (18.8 km) to the limit of accessible headwater habitat at the confluence with Copper Creek; and the following tributaries provide spawning and rearing habitat for the local population upstream from their mouths to natural barriers: Bear Creek 0.3 mi (0.5 km); Indian Creek 1.0 mi (1.6 km); Brush Creek 0.3 mi (0.5 km); and Easy Creek 0.5 mi (0.8 km). Spawning adults have been observed in the Chilliwack River, and juveniles have been observed in Bear, Brush, Indian, and Easy Creeks (Reed Glesne, in litt. 1993; Doyle *et al.* 2000).

Little Chiliwack River upstream approximately 4.0 mi (6.4 km) to its headwaters, and provide spawning and rearing habitat for migratory bull trout in the local population (Service 2004). Juvenile bull trout were observed in the mid-1970s during the last survey of this stream (R. Glesne, in litt. 1993). This stream is within North Cascades National Park, so habitat remains essentially in pristine condition.

(B) Depot Creek from the U.S.-Canada border upstream 1.7 mi (2.7 km) to the limit of accessible headwater habitat provides spawning and rearing habitat for migratory bull trout in the local population (Service 2004). Bull trout spawning and rearing has been recorded within stream reaches in British Columbia, with accessible habitat extending to the border (M.A. Whelen and Associates and The Steelhead Society Habitat Restoration Corporation (TSSHRC) 1996). No surveys have been conducted in accessible stream reaches located within the United States upstream from the border.

(C) Silesia Creek from the U.S.-Canada border upstream approximately 9.5 mi (15.3 km) to the limit of accessible headwater habitat provides spawning and rearing habitat for migratory bull trout in the local population (Service 2004). Bull trout spawning and rearing has been recorded within stream reaches in British Columbia, with accessible habitat extending to the border (M.A. Whelen and Associates and TSSHRC 1996). No surveys have been conducted in accessible stream reaches located within the United States upstream from the border.

(ii) Nooksack CHSU

The Nooksack CHSU is located on the western slopes of the Cascade Mountains. The Nooksack River system flows west from the Cascade Mountain Range towards Puget Sound, discharging into Bellingham Bay. A total of approximately 187 mi (301 km) of stream is proposed as critical habitat. Land ownership along the stream reaches proposed for critical habitat is approximately 22 percent Federal, 11 percent State, less than 1 percent Tribal, and 67 percent private.

(A) The Nooksack River from its mouth at Puget Sound upstream approximately 39.6 mi (63.7 km) to the confluence of the North and Middle Forks of the Nooksack River, including associated sloughs, provides foraging and overwintering habitat, as well as an essential migratory corridor for amphidromous bull trout. Bull trout have been documented throughout the mainstem Nooksack River (WDFW 1998; Ned Currence, Lummi Nation, in litt. 2003; Treva Coe, Nooksack Tribe, in litt. 2003). Its tributary, Smith Creek, from its mouth upstream 2.7 mi (4.3 km) to the mouth of McCauley Creek provides FMO habitat. Subadult bull trout have been captured in Smith Creek.

(B) North Fork Nooksack River from its confluence with the Middle Fork Nooksack River upstream approximately 24.6 mi (39.6 km) to Nooksack Falls provides spawning and rearing habitat upstream of its confluence with Canyon Creek, and combined rearing and FMO habitat in its reaches downstream of Canyon Creek (WDFW 1998; Darren Sahlfeld, pers. comm. 2003; Ned Currence, Nooksack Tribe, in litt. 2003). Racehorse Creek upstream 1.1 mi (1.8 km) to a falls; and Kendall Creek upstream 2.7 mi (4.3 km) to the outlet of a wetland provide accessible FMO habitat. Bull trout have been documented in both Racehorse and Kendall Creeks.

The following tributaries provide accessible spawning and rearing habitat for the Lower North Fork Nooksack River and Canyon Creek local populations, from their mouths upstream to a natural barrier: Maple Creek 1.4 mi (2.2 km); Boulder Creek 1.3 mi (2.1 km); unnamed tributary (stream catalog #0425) 0.5 mi (0.8 km); McDonald Creek (stream catalog #0435) 0.9 mi (1.4 km); Wildcat Creek 1.0 mi (1.6 km); and Canyon Creek approximately 3.1 mi (5.0 km) to barrier falls. Bull trout have been documented in Maple, Boulder, McDonald, Wildcat, and Canyon Creeks.

The following tributaries provide spawning and rearing habitat for the Middle North Fork Nooksack River local population, from their mouths upstream to a natural barrier: Hedrick Creek 0.8 mi (1.3 km); Cornell Creek 1.0 mi (1.6 km); Gallop Creek 0.9 mi (1.4 km), and its tributary, Son of Gallop 0.4 mi (0.6 km). Bull trout have been documented in Hedrick, Gallop, and Son of Gallop Creeks. Cornell Creek is accessible from a known occupied stream, with historic use reported by Norgore and Anderson (1921). No recent surveys have been conducted to specifically detect bull trout.

(C) The following tributaries provide spawning and rearing habitat for the Glacier Creek local population, from their mouths upstream to natural barriers or confluence: Glacier Creek approximately 6.9 mi (11.1 km) to the barrier at the confluence with Grouse Creek, and its tributaries, Little Creek approximately 0.7 mi (1.1 km); Davis Creek 0.2 mi (0.3 km); Thompson Creek 2.1 mi (3.4 km); Deep Creek 0.2 mi (0.3 km); unnamed tributary (stream catalog #0476) 0.3 mi (0.5 km); Coal Creek (upper) 0.2 mi (0.3 km); and Falls Creek 0.8 mi (1.3 km) to the confluence with Lookout Creek. Bull trout have been documented in Glacier, Little, Davis, Thompson, Coal, and Falls Creeks (Doug Huddle, in litt. 1995; WDFW and USFS, in litt. 2002). Deep Creek and stream #0476 are also identified as occupied by bull trout (WDFW 2002).

(D) The following tributaries provide spawning and rearing habitat for the Upper North Fork Nooksack River local population, from their mouths upstream to natural barriers: Boyd Creek 0.4 mi (0.6 km); Cascade Creek 0.1 mi (0.2 km);

Deerhorn Creek 0.2 mi (0.3 km); Ditch Creek 0.2 mi (0.3 km); Chainup Creek 0.3 mi (0.5 km); Dead Horse Creek 0.3 mi (0.5 km); Powerhouse Creek 0.3 mi (0.5 km); and Wells Creek 1.5 mi (2.4 km). Bull trout have been documented in Boyd, Cascade, Deerhorn, Ditch, Chainup, Dead Horse, Powerhouse, and Wells Creeks (D. Huddle, in litt. 1995; WDFW and USFS, in litt. 2002).

(E) Middle Fork Nooksack River from the confluence with the North Fork Nooksack River upstream approximately 17.7 mi (28.5 km) to a gradient barrier near its confluence with Ridley Creek provides spawning and rearing habitat upstream of Box Canyon (STS Heislers Creek Hydro 1994; James Lee, Whatcom County River and Flood Section Engineer, pers. comm. 2003), and combined spawning, rearing, and FMO habitat in its reaches downstream of Box Canyon (WDFW 1998; Paul Schlenger, Anchor Environmental, LLC, in litt. 2002). The following tributaries all provide combined spawning, rearing, and FMO habitat for the Lower Middle Fork Nooksack River local population, from their mouths upstream to natural barriers: Canyon Creek (Canyon Lake Creek) 1.9 mi (3.1 km); unnamed tributary (stream catalog #0347) 1.5 mi (2.4 km); unnamed tributary (stream catalog #0349) 0.9 mi (1.4 km) to its confluence with unnamed tributary; Porter Creek 0.9 mi (1.4 km); and Peat Bog Creek (stream catalog #0352) 1.0 mi (1.6 km) to a lower lake outlet.

The following tributaries all provide spawning and rearing habitat for the Upper Middle Fork Nooksack River local population, from their mouths upstream to natural barriers: Clearwater Creek 4.5 mi (7.2 km); Galbraith Creek 0.4 mi (0.6 km); Sister Creek 1.0 mi (1.6 km); Warm Creek 0.5 mi (0.8 km); Wallace Creek 0.5 mi (0.8 km); Green Creek 0.5 mi (0.8 km); and Rankin Creek 0.6 mi (1.0 km). Bull trout have been documented in Clearwater and Warm Creeks (Jim Johnston, WDFW, in litt. 1999; FERC 2002). The other identified streams are accessible from a known occupied stream, with historic use reported in Galbraith Creek (Pautzke 1943), and Sister and Rankin Creeks (Norgore and Anderson 1921), and Wallace Creek (C. Kraemer, pers. comm. 2002). No recent surveys have been conducted to specifically detect bull trout in these streams. Once improved fish passage at Bellingham Diversion (just upstream of Box Canyon) is completed, it is expected that amphidromous bull trout will be restored to the upper Middle Fork Nooksack River. As a result, the prey base will increase as salmon re-colonize the river, and bull trout abundance will increase, resulting in greater use of accessible tributaries.

(F) South Fork Nooksack River from the confluence with the mainstem Nooksack River upstream approximately 40.0 (64.4 km) to headwaters provides spawning and rearing habitat upstream of Wanlick Creek (WDFW and USFS, in litt. 2002; Stan Zyskowski, National Park Service, pers. comm. 2003), and combined spawning, rearing, and FMO habitat in its reaches downstream of Wanlick Creek (WDFW, in litt. 1994). The following tributaries provide spawning and rearing habitat, and additional FMO habitat for the Lower and Upper South Fork Nooksack River local populations, from their mouths upstream to natural barriers: Hutchinson Creek 6.0 mi (9.6 km); Skookum Creek 2.2 mi (3.5 km); Cavanaugh Creek 0.6 mi (1.0 km) barrier; Deer Creek 0.6 mi (1.0 km); Howard Creek 0.8 mi (1.3 km); Bear Lake Outlet (stream catalog #0317) 0.2 mi (0.3 km); Bell Creek 0.3 mi (0.5 km); and Elbow Creek/Lake Doreen Outlet (stream catalog # 0331) 1.7 mi (2.7 km) to headwaters. Bull trout have been documented in Hutchinson, Skookum, Cavanaugh, Deer, and Bear Lake Outlet Creeks. Howard Creek is also identified as occupied by bull trout (WDFW 2002). The other identified streams are accessible from a known occupied stream, with historic use reported in Bell Creek and Elbow Creek/Lake Doreen Outlet (Norgore and Anderson 1921), and Edfro Creek (C. Kraemer, pers. comm. 2002). No recent surveys have been conducted to specifically detect bull trout, but water temperature data indicate habitat is optimal for spawning and rearing in most of these streams (Watershed Sciences LLC 2002).

(G) Wanlick Creek from the mouth upstream 4.5 mi (7.2 km) to the headwaters, and its tributaries; Monument Creek (stream catalog #0324) upstream 0.5 mi (0.8 km) to a natural barrier; and Loomis Creek upstream 1.0 mi (1.6 km) to its headwaters provide spawning and rearing habitat for the local population. Bull trout have been documented in Wanlick, Monument, and Loomis Creeks (Ecotrust, in litt. 2002; S. Zyskowski, pers comm. 2003).

(iii) Lower Skagit CHSU

The Lower Skagit CHSU is located on the western slopes of the Cascade Mountains. The Skagit River system initiates from British Columbia, Canada, and flows southwest into Ross Lake, a transboundary reservoir formed by Ross Dam. Immediately below Ross Dam is Diablo Lake, another reservoir formed behind Diablo Dam. The Skagit River flows through one more reservoir (Gorge Lake) formed by Gorge Dam, and then continues west discharging into Skagit Bay of Puget Sound. The Lower Skagit CHSU includes the mainstem, its major forks, lakes/reservoirs, and associated tributaries downstream of Diablo Dam. A total of approximately 414 mi (666 km) of stream and 7,024 ac (2,842 ha) of lake surface area in three lakes is proposed as critical habitat. Land ownership along the stream reaches and lakes proposed for critical habitat is 49 percent Federal, 4 percent State, and 47 percent private.

(A) The Skagit River from its mouth at Puget Sound upstream approximately 88.4 mi (142.2 km) to Diablo Dam including the North (6.4 mi (10.3 km)) and South (7.7 mi (12.4 km)) Forks of the Skagit River and associated sloughs connected to these forks and Puget Sound (*e.g.*, Freshwater Slough, Brandstedt Slough, Dry Slough) provide foraging and overwintering habitat, as well as an essential migratory corridor for amphidromous bull trout. Rearing habitat occurs upstream of the confluence with the Sauk River. The following tributaries provide FMO habitat outside of local populations for the Lower Skagit core area, from their mouths upstream to a natural or manmade barrier, or confluence: Nookachamps Creek 11.9 mi (19.1 km) to the confluence of its unnamed tributary (stream catalog #0261); Day Creek 6.7 mi (10.8 km); Jones Creek 1.6 mi (2.6 km); Alder Creek 2.4 mi (3.9 km) to the confluence of its unnamed tributary (stream catalog #0360); Grandy Creek 5.7 mi (9.2 km) to the outlet of Grandy Lake; Finney Creek 12.1 mi (19.5 km); Jackman Creek 1.4 mi (2.2 km); Rocky Creek approximately 0.7 mi (1.1 km); Corkindale Creek 1.0 mi (1.6 km); Diobsud Creek 1.8 mi (2.9 km); and Alma Creek 0.9 mi (1.4 km). The mainstem Skagit River and mouths of listed and unlisted tributaries also provide some post-dispersal rearing habitat. Nookachamps, Day, Jones, Alder, Grandy, Finney, Jackman, Rocky, Corkindale, Diobsud, and Alma Creeks are known to be occupied by bull trout (WDFW 2002).

Goodell Creek from the mouth upstream approximately 9.9 mi (15.9 km) to a gradient barrier provides spawning and rearing habitat for the local population. Newhalem Creek upstream 0.6 mi (1.0 km) to a natural barrier provides spawning and rearing habitat for the local population. Gorge Lake (220 ac (89 ha)) upstream of Gorge Dam provides FMO habitat for the Stetattle Creek potential local population of adfluvial bull trout. This lake may also provide some juvenile rearing habitat, especially near the

mouth of the lake's spawning tributaries. Stetattle Creek from the mouth upstream approximately 0.8 mi (1.3 km) to a natural barrier provides FMO habitat and spawning and rearing habitat for the potential local population.

(B) Baker River from the confluence with the Skagit River upstream approximately 11.6 mi (18.7 km) to a natural barrier, provides combined spawning and rearing, and FMO habitat upstream of its confluence with Baker Lake, and FMO habitat in its reaches downstream of Baker Lake. Lake Shannon (2,057 ac (832 ha)) and its associated arms provide FMO habitat, and Baker Lake (4,747 ac (1,921 ha)) and its associated arms currently provide FMO habitat for the Baker Lake local population of adfluvial bull trout. Baker Lake may also provide some juvenile rearing habitat, especially near the mouth of the lake's spawning tributaries. Sulphur Creek upstream 1.1 mi (1.8 km) to a natural barrier provides the available spawning and rearing habitat for the Sulphur Creek (Lake Shannon) potential local population. The following tributaries provide spawning and rearing habitat for the Baker Lake local population, from their mouths or confluence upstream to a natural barrier: Park Creek from its confluence with Baker Lake 1.5 mi (2.4 km); Swift Creek from its confluence with Baker Lake 1.0 mi (1.6 km); Lake Creek 0.5 mi (0.8 km); Sulphide Creek 1.3 mi (2.1 km); Crystal Creek 0.5 mi (0.8 km); Bald Eagle Creek 0.8 mi (1.3 km); and Pass Creek 0.4 mi (0.6 km). Bull trout have been documented in all these streams, and in Baker Lake and Lake Shannon (R. Glesne, in litt. 1993; WDFW 1998, 2002; R2 Resource Consultants 2003; Emily Greenberg and Marcus Appy, R2 Resource Consultants, Inc., in litt. 2003; S. Zyskowski, pers. comm. 2003).

(C) Sauk River from its confluence with the Skagit River upstream approximately 38.9 mi (62.6 km) to the confluence with the North and South Forks of Sauk River provides combined spawning, rearing, and FMO habitat (WDFW *et al.* 1997) for local populations in the Sauk River system. Dan Creek upstream 2.9 mi (4.7 km) to a natural barrier provides rearing and FMO habitat. Falls Creek upstream 0.9 mi (1.4 km) to a natural barrier; and North Fork Sauk River from the confluence with the South Fork Sauk River upstream 1.1 mi (1.8 km) to North Fork Falls provide spawning and rearing habitat for the Forks of Sauk River local population. Dan Creek, Falls Creek and North Fork Sauk River are known to be occupied by bull trout (WDFW *et al.* 1997; WDFW 2002).

(D) Suiattle River from its confluence with the Sauk River upstream approximately 37.8 (60.8 km) to a natural barrier provides spawning and rearing habitat upstream of river mile 30 (lower extent of Upper Suiattle River local population), and combined spawning, rearing, and FMO habitat in its reaches downstream of river mile 30 (WDFW 1998). Big Creek upstream 0.6 mi (1.0 km) to a natural barrier provides combined rearing and foraging habitat. The following tributaries provide spawning and rearing habitat for local bull trout populations, from their mouths upstream to a natural barrier, headwater, or confluence: Tenas Creek 1.5 mi (2.4 km); Straight Creek 1.4 mi (2.2 km), and its tributary Black Creek 1.0 mi (1.6 km); Buck Creek 7.6 mi (12.2 km) to its headwaters, and its tributary Horse Creek 1.6 mi (2.6 km) to the mouth of its unnamed tributary (stream catalog #0839); Lime Creek approximately 2.6 mi (4.2 km) to the mouth of Meadow Creek; Downey Creek 6.6 mi (10.6 km), and its tributary Goat Creek 0.5 mi (0.8 km); Sulphur Creek 6.0 mi (9.6 km); Milk Creek 3.2 mi (5.1 km); Canyon Creek 0.8 mi (1.3 km); Vista Creek 1.2 mi (1.9 km); Miners Creek 0.5 mi (0.8 km) to the mouth of an unnamed tributary (stream catalog #1049); Dusty Creek 3.2 mi (5.1 km) to accessible headwaters; and Small Creek approximately 1.5 mi (2.4 km) to accessible headwaters. All these streams are part of the current bull trout distribution (WDFW 2002).

(E) White Chuck River from the confluence with the Sauk River upstream approximately 20.6 mi (33.1 km) to a natural barrier provides spawning and rearing habitat for the Lower White Chuck River and Upper White Chuck River local populations (WDFW 2002). The following tributaries provide spawning and rearing habitat for the Lower White Chuck River local population, from their mouths upstream to a natural barrier: Black Oak Creek 0.6 mi (1.0 km); unnamed tributary (stream catalog #1119) 0.3 mi (0.5 km); Crystal Creek 0.2 mi (0.3 km); Pugh Creek 0.6 mi (1.0 km); Owl Creek 0.6 mi (1.0 km); and Camp Creek 1.0 mi (1.6 km). The following tributaries provide spawning and rearing habitat for the Upper White Chuck River local population, from their mouths upstream: Fire Creek 0.6 mi (1.0 km); Fourteenmile Creek 1.2 mi (1.9 km) to its headwaters; Pumice Creek 4.4 mi (7.1 km) to its headwaters; and Glacier Creek 2.0 mi (3.2 km) to accessible headwaters. All these streams are part of the current bull trout distribution (WDFW *et al.* 1997; WDFW 2002).

(F) South Fork Sauk River from the confluence with the North Fork Sauk River upstream 10.9 mi (17.5 km) to its confluence with Glacier Creek and Seventysix Gulch provides spawning and rearing habitat for the Forks of Sauk River local population downstream of Monte Cristo Lake, and for the Upper South Fork Sauk River local population upstream from Monte Cristo Lake. Merry Brook Creek upstream 0.2 mi (0.3 km) to a natural barrier; Bedal Creek upstream 3.2 mi (5.1 km) to its headwaters; Chocwick Creek upstream 1.6 mi (2.6 km) to its headwaters; and Elliot Creek upstream 3.3 mi (5.3 km) to its confluence with its unnamed tributary (stream catalog #1216) draining Ida Lake provide spawning and rearing habitat for the Forks of Sauk River local population. The following tributaries provide spawning and rearing habitat for the Upper South Fork Sauk River local population, from their mouths or confluence upstream to a natural barrier: Weden Creek 1.3 mi (2.1 km); Seventysix Gulch from the confluence with Glacier Creek 1.0 mi (1.6 km); and Glacier Creek from the confluence with Seventysix Gulch 1.3 mi (2.1 km). All these streams are part of the current bull trout distribution (WDFW *et al.* 1997; WDFW 2002).

(G) Illabot Creek from its confluence with the Skagit River upstream approximately 13.7 (22.0 km) to accessible headwaters, and its tributaries Arrow Creek upstream 1.3 mi (2.1 km) to accessible headwaters; and Otter Creek upstream 0.3 mi (0.5 km) to a natural barrier provide spawning and rearing habitat for the local population.

(H) Cascade River from its confluence with the Skagit River upstream approximately 18.2 mi (29.3 km) to the confluence of the North and South Forks of the Cascade River provides spawning and rearing habitat upstream of river mile 16 for the Cascade River local population, and combined rearing, foraging, and migration habitat below river mile 16 (approximately mouth of Hard Creek). Jordan Creek upstream 0.5 mi (0.8 km) to a natural barrier; Boulder Creek upstream 0.4 mi (0.6 km) to a natural barrier; and Marble Creek upstream 1.6 mi (2.6 km) to a natural barrier, provide combined rearing, foraging, and migration habitat. Kindy Creek upstream 2.3 mi (3.7 km) to its confluence with Mutchler Creek, and Sonny Boy Creek upstream 2.8 mi (4.5 km) to the extent of accessible headwater habitat provide spawning and rearing habitat for the Cascade River local population. South Fork Cascade River from the confluence with the North Fork Cascade River, upstream 6.3 mi (10.1 km) to the upper extent of

accessible headwater habitat provides spawning and rearing habitat for the South Fork Cascade River local population.

(I) Bacon Creek from its confluence with the Skagit River upstream approximately 8.3 mi (13.3 km) to a natural barrier, and its tributary East Fork Bacon Creek from the confluence with Bacon Creek upstream 4.0 mi (6.4 km) to the extent of accessible habitat provide spawning and rearing habitat for the local population.

(iv) Upper Skagit CHSU

The Upper Skagit CHSU is located on the upper western slopes of the Cascade Mountains. The Skagit River system initiates from British Columbia, Canada, and flows southwest into Ross Lake, a transboundary reservoir formed by Ross Dam. Immediately below Ross Dam is Diablo Lake, another reservoir formed behind Diablo Dam. These reservoirs provide foraging, migration, and overwintering habitat for adfluvial populations. A number of smaller tributaries feed into Ross Lake providing the spawning and rearing habitat for that portion of the population within the United States, whereas the upper Skagit River and its tributaries provide the spawning and rearing habitat in Canada. The Upper Skagit CHSU includes Diablo Lake and its tributaries, and only those portions of Ross Lake and its associated tributaries within the United States. A total of approximately 84 mi (135 km) of stream and 12,276 ac (4,968 ha) of lake surface area in two lakes is proposed as critical habitat. Land ownership along the stream reaches and lakes proposed for critical habitat is 84 percent Federal and 16 percent private.

(A) Diablo Lake (802 ac (325 ha)) and Ross Lake (11,474 ac (4,643 ha)) provide foraging, migration, and overwintering habitat for adfluvial bull trout in the Upper Skagit core area. Deer Creek from Diablo Lake upstream 0.6 mi (1.0 km) to a gradient change would provide spawning and rearing habitat for the potential local population established in Deer Creek. Bull trout were observed spawning in this stream in 1976 (R. Gkesne, in litt. 12993). Roland Creek from Ross Lake upstream 1.5 mi (2.4 km) to gradient barrier provides additional foraging and subadult rearing habitat; Pierce Creek upstream 0.6 mi (1.0 km) to a natural barrier provides spawning and rearing habitat for the Pierce Creek local population; Devil Creek from Ross Lake upstream 1.5 mi (2.4 km) to a natural barrier provides additional foraging and subadult rearing habitat; Big Beaver Creek from Ross Lake upstream 11.1 mi (17.9 km) to its confluence with Luna Creek (location of gradient barrier); Little Beaver Creek from Ross Lake upstream approximately 12.9 mi (20.8 km) to a gradient barrier just upstream of the confluence with Pass Creek; and Silver Creek from Ross Lake upstream approximately 4.4 mi (7.1 km) to gradient barrier provide spawning and rearing habitat for the Big Beaver Creek, Little Beaver Creek, and Silver Creek local populations, respectively.

(B) Thunder Creek from Diablo Lake upstream approximately 9.9 mi (15.9 km) to confluence with West Fork Thunder Creek provides spawning and rearing habitat for the Thunder Creek local population. Thunder Creek is part of the current bull trout distribution (WDFW 2002).

(C) Ruby Creek from Ross Lake upstream 4.2 mi (6.8 km) to the confluence of Granite and Canyon Creeks, and its tributary Granite Creek upstream 2.4 mi (3.9 km) to a gradient barrier provide part of the spawning and rearing habitat for the local population. Panther Creek upstream approximately 7.0 mi (11.3 km) to its confluence with Gabriel Creek (location of gradient barrier) provides spawning and rearing habitat for the Ruby Creek local population.

(D) Canyon Creek upstream 9.0 mi (14.5 km) to a gradient barrier located approximately 1.0 mi (1.6 km) above the confluence with North Fork Canyon Creek, and its tributary, Slate Creek upstream 0.5 mi (0.8 km) to a gradient barrier, provide part of the spawning and rearing habitat for the Ruby Creek local population. Bull trout have been documented in Canyon and Slate Creeks.

(E) Lightning Creek from Ross Lake upstream 11.0 mi (17.7 km) to the United States-Canadian border, and its tributary, Three Fools Creek, upstream 6.3 mi (10.1 km) to the confluence of Castle Creek; and Trouble Creek forks (location of a gradient barrier), provide spawning and rearing habitat for the local population. Bull trout have been documented in Lightning and Three Fools Creeks.

(v) Stillaguamish CHSU

The Stillaguamish CHSU is located on the western slopes of the Cascade Mountains and includes the mainstem Stillaguamish River and its two major forks, the North and South Forks, and their associated tributaries. The Stillaguamish River system flows west from the Cascade Mountain Range towards Puget Sound, discharging into Port Susan Bay at the north end of Camano Island. A total of approximately 181 mi (291 km) of stream is proposed as critical habitat. Land ownership along the stream reaches proposed for critical habitat is approximately 20 percent Federal, 11 percent State, and 69 percent private.

(A) The Stillaguamish River from its mouth at Puget Sound (including South (1.1 mi (1.8 km)) and West (1.2 mi (1.9 km)) Passes) upstream approximately 22.9 mi (35.8 km) through Hat Slough (2.4 mi (3.9 km)) to the confluence of the North and South Forks and its associated sloughs provides foraging and overwintering habitat, and an essential migratory corridor for amphidromous bull trout.

(B) North Fork Stillaguamish River from its confluence with the South Fork Stillaguamish River upstream approximately 37.7 mi (60.7 km) to a natural barrier provide rearing, foraging, and overwintering habitat for the North Fork Stillaguamish local population downstream from Boulder River, and spawning and rearing habitat for that population upstream of Boulder River. It also provides an essential migratory corridor for amphidromous bull trout. Boulder River 5.1 mi (8.2 km) to a natural barrier provides spawning and rearing habitat for the North Fork Stillaguamish River local population. Squire Creek from its mouth upstream 7.9 mi (12.7 km) provides rearing, foraging, and migration habitat, and potentially spawning habitat. Bull trout have been documented in the North Fork Stillaguamish River, Boulder River, and Squire Creek (WDFW 1998; Pete Castle, WDFW, pers. comm. 2003; George Pess, NOAA-Fisheries, in litt. 2003).

(C) Deer Creek from the confluence with the North Fork Stillaguamish River upstream 18.7 mi (30.1 km) to natural barrier provides combined spawning, rearing, foraging, and migration habitat for the Deer Creek local population. Higgins Creek upstream 4.9 mi (7.9 km) to accessible headwaters provides spawning and rearing habitat for the local population. Bull trout have been documented in Deer Creek and Higgins Creek.

(D) South Fork Stillaguamish River from its confluence with the North Fork Stillaguamish River upstream approximately 49.8 mi (80.1 km) to accessible headwaters provides spawning and rearing habitat upstream of Wiley Creek, and foraging and overwintering habitat downstream from Wiley Creek. It also provides an essential migratory corridor for amphidromous bull trout. Jim Creek upstream 12.2 mi (19.6 km) to Cub Creek provides some FMO habitat outside of local populations for the Stillaguamish core area. The South Fork

Stillaguamish River and mouths of listed and unlisted tributaries also provide some post-dispersal rearing habitat. The following tributaries provide spawning and rearing habitat for the local population, from their mouths upstream to a natural barrier: Big Four Creek 0.7 mi (1.1 km); Perry Creek 1.6 mi (2.6 km); Buck Creek 0.5 mi (0.8 km); and Palmer Creek 0.7 mi (1.1 km). Bull trout have been documented in Big Four, Perry, Buck, and Palmer Creeks (WDFW 2002; Karen Chang, USFS, in litt. 2003; Mark Downen, WDFW, in litt. 2003).

(E) Canyon Creek from the confluence with the South Fork Stillaguamish River upstream 11.1 mi (17.9 km) to confluence of North and South Forks provides FMO habitat below the unnamed tributary (stream catalog #0365), and spawning and rearing habitat for the South Fork Canyon Creek local population upstream of this unnamed tributary. North Fork Canyon Creek from the confluence with the South Fork upstream 0.5 mi (0.8 km) to a natural barrier; and South Fork Canyon Creek from the confluence with the North Fork upstream 1.6 mi (2.6 km) to a natural barrier just upstream of Saddle Creek provide spawning and rearing habitat for the local population. Bull trout have been documented in Canyon Creek, and the North and South Forks of Canyon Creek.

(vi) Snohomish-Skykomish CHSU

The Snohomish-Skykomish CHSU is located on the western slopes of the Cascade Mountains and includes the mainstem Snohomish River, the lower Snoqualmie River, mainstem Skykomish River and its two major forks, the North and South Forks, and associated tributaries accessible to bull trout. The Snohomish-Skykomish River system flows west from the Cascade Mountain Range towards Puget Sound, discharging into Possession Sound near the city of Everett. A total of approximately 254 mi (409 km) of stream is proposed as critical habitat. Land ownership along the stream reaches proposed for critical habitat is 17 percent Federal, 8 percent State, less than 1 percent Tribal, and 75 percent private (including county and city ownership).

(A) The Snohomish River from its mouth at Puget Sound upstream 20.1 mi (32.3 km) to the confluence of the Skykomish and Snoqualmie Rivers, including Ebey Slough (13.2 mi (21.2 km)), Steamboat Slough (5.9 mi (9.5 km)), and Union Slough (4.9 mi (7.9 km)), provide foraging and overwintering habitat, and an essential migratory corridor for amphidromous bull trout. Pilchuck River upstream 35.5 mi (57.1 km) to a natural barrier; provides FMO habitat in the lower reaches of the Snohomish River. Bull trout have been documented in the Snohomish and Pilchuck Rivers.

(B) Snoqualmie River from the mouth upstream approximately 39.3 mi (63.2 km) to Snoqualmie Falls; Tolt River upstream 8.4 mi (13.5 km) to confluence of North and South Forks of the Tolt River; North Fork Tolt River upstream 3.8 mi (6.1 km) to a natural barrier; and South Fork Tolt River upstream 8.1 mi (13.0 km) to a natural barrier provide FMO habitat for the Snohomish-Skykomish core area. Bull trout have been documented in all of these identified streams (KCDNR 2000).

(C) The following tributaries provide FMO habitat for the Snohomish-Skykomish core area upstream from their mouths or confluence: Skykomish River from its confluence with the Snohomish and Snoqualmie Rivers 29.0 mi (46.7 km) to the confluence of the North and South Forks; Sultan River 9.7 mi (15.6 km) to Everett Diversion Dam; Wallace River 8.9 mi (14.3 km) to Wallace Falls. The Skykomish River provides an essential migratory corridor for amphidromous bull trout. Bull trout have also been identified in the Sultan and Wallace Rivers

(D) The following tributaries provide spawning and rearing habitat for the North Fork Skykomish local population and extended rearing habitat for the Salmon Creek local population in the Snohomish-Skykomish core area, from their mouths upstream to a natural barrier or falls: North Fork Skykomish River approximately 19.0 mi (30.6 km) to a natural barrier falls located between Goblin and Quartz Creeks; Trout Creek 3.7 mi (5.9 km); West Cady Creek 0.7 mi (1.1 km); and Goblin Creek 0.4 mi (0.6 km). The North Fork Skykomish River also provides an essential migratory corridor for amphidromous bull trout. Salmon Creek upstream 2.5 mi (4.0 km) to a natural barrier, and South Fork Salmon Creek upstream 0.5 mi (0.8 km) to a natural barrier provide spawning and rearing habitat for the local population. Troublesome Creek upstream approximately 3.2 mi (5.1 km) to a natural barrier provides spawning and rearing habitat for the Troublesome Creek local population of resident bull trout upstream of the amphidromous barrier at rmi 0.25 (0.4 km), and additional spawning and rearing habitat for the North Fork Skykomish River local population downstream of the amphidromous barrier. Bull trout have been documented in North Fork Skykomish River, Trout Creek, West Cady Creek, Goblin Creek, Salmon Creek, South Fork Salmon Creek, and Troublesome Creek (WDFW 1998).

(E) South Fork Skykomish River from its confluence upstream approximately 19.6 mi (31.5 km) to the confluence of the Tye and Foss Rivers provides FMO habitat in the South Fork Skykomish River system. The South Fork Skykomish River also provides an essential migratory corridor for amphidromous bull trout.

Beckler River upstream 12.2 mi (19.6 km) to a natural barrier provides spawning and rearing habitat for the South Fork Skykomish River local population. Bull trout recently have been documented spawning in the Beckler River (C. Kraemer, in litt. 2003b). It is expected that as amphidromous bull trout increase in abundance, greater use of these streams and other accessible tributaries to the South Fork Skykomish and Beckler Rivers will occur.

(F) Foss River upstream 4.3 mi (6.9 km) to the confluence of the East and West Forks of Foss River provides foraging and overwintering habitat and potentially rearing habitat for the South Fork Skykomish River local population. It also provides an essential migratory corridor for amphidromous bull trout. East Fork Foss River upstream 1.0 mi (1.6 km) to a natural barrier provides habitat for spawning and rearing for the South Fork Skykomish River local population. Bull trout have been documented in the East Fork Foss River (WDFW 1998). It is expected that as amphidromous bull trout increase in abundance, greater use of these streams and other accessible tributaries will occur.

(vii) Chester Morse Lake CHSU

The Chester Morse Lake CHSU is located in the upper Cedar River watershed above a natural migration barrier, Lower Cedar Falls. This is a municipal watershed, providing the major source of water for the City of Seattle and surrounding communities within King County. The Chester Morse Lake CHSU includes Chester Morse Lake and its major tributaries, the Cedar and Rex Rivers, and a number of their associated tributaries. It also includes several minor tributaries to Chester Morse Lake. A total of approximately 16 mi (26 km) of stream and 1,971 ac (798 ha) of lake surface area is proposed as critical habitat. Land ownership along the stream reaches and lake proposed for critical habitat is 100 percent private (consists primarily of city ownership).

(A) Chester Morse Lake (1,769 ac (716 ha)) includes Masonry Pool (202 ac (82 ha)) and the main lake. Chester Morse Lake provides the only FMO habitat for

the population of adfluvial bull trout in the core area (WDFW 1998). The lake shoreline also supports juvenile rearing, especially near the mouths of the spawning tributaries. Rack Creek from its confluence with Chester Morse Lake upstream 0.5 mi (0.8 km) to a natural barrier provides spawning and rearing habitat for the local population. Shotgun Creek from its confluence with Chester Morse Lake upstream 0.3 mi (0.5 km) to natural barrier provides spawning and rearing habitat for the potential local population. Bull trout have been documented in the lake and in both Rack and Shotgun Creeks (Dwayne Paige, Seattle Public Utilities, in litt. 2003).

(B) The following tributaries provide spawning and rearing habitat, from their mouths or confluence upstream to a natural barrier or confluence: Cedar River from its confluence with Chester Morse Lake 8.0 mi (12.9 km) to its confluence with the North and South Forks of the Cedar River, including slough and side channel habitat in the lower river; unnamed tributary (stream catalog #0439) 0.1 mi (0.2 km); North Fork Cedar River from the confluence with the South Fork 0.7 mi (1.1 km); and South Fork Cedar River from the confluence with the North Fork 0.8 mi (1.3 km) to a manmade barrier. Bull trout have been documented in all these streams (D. Paige, in litt. 2003).

(C) Rex River from its confluence with Chester Morse Lake upstream 3.1 mi (5.0 km) to a natural barrier, and its tributaries, Cabin Creek upstream 0.8 mi (1.3 km) to a natural barrier; and Lindsay Creek upstream 0.3 mi (0.5 km) to a natural barrier provide spawning and rearing habitat for the local population in the Chester Morse Lake core area. Boulder Creek from its confluence with the Rex River upstream 1.5 mi (2.4 km) to a natural barrier provides spawning and rearing habitat for the local population. Bull trout have been documented in all these streams (D. Paige, in litt. 2003).

(viii) Puyallup CHSU

The Puyallup CHSU is located on the western slopes of the Cascade Mountains. The Puyallup River system is fed primarily by the glaciers of Mount Rainier, and flows west discharging into Puget Sound at Commencement Bay adjacent to the city of Tacoma. The Puyallup CHSU includes the Puyallup River and its two major tributary systems, the White River and Carbon River, and their associated tributaries accessible to bull trout. A total of approximately 235 mi (378 km) of stream is proposed as critical habitat. Land ownership along the stream reaches proposed for critical habitat is 33 percent Federal, 2 percent State, 5 percent Tribal, and 60 percent private.

(A) The Puyallup River from its mouth at Puget Sound upstream approximately 46.2 mi (74.3 km) to the confluence of the North and South Puyallup Rivers provides FMO habitat for the Puyallup core area. It also provides an essential migratory corridor for amphidromous bull trout. The Puyallup River tributary, Niesson Creek upstream 2.4 mi (3.9 km) to a natural barrier, provides FMO habitat for the lower Puyallup River. The following upper Puyallup River tributaries provide spawning and rearing habitat for the Upper Puyallup and Mowich Rivers local population, from their mouths upstream: Deer Creek 2.8 mi (4.5 km) to a natural barrier; Swift Creek 0.6 mi (1.0 km) to a natural barrier; South Puyallup River from the confluence with the North Puyallup River 7.7 mi (12.4 km) to the headwaters; and its tributary, St. Andrews Creek, 3.1 mi (5.0 km) to the headwaters. Bull trout have been documented in all these streams (Barbara Samora, Mount Rainier National Park, in litt. 2001; WDFW 2002).

(B) Mowich River from its confluence with the Puyallup River 7.5 mi (12.1 km) to the confluence of the North and South Mowich Rivers; South Mowich River 4.1 mi (6.6 km) to the headwaters provide spawning and rearing habitat for the Upper Puyallup and Mowich Rivers local population. Bull trout have been documented in the Mowich and South Fork Mowich Rivers (B. Samora, in litt. 2001).

(C) Carbon River from the confluence with the Puyallup River upstream approximately 30.4 mi (48.9 km) to accessible headwaters near the mouth of Spukwush Creek provides spawning and rearing habitat for the Carbon River local population upstream of river mile 15 (top of canyon reach near Fairfax Bridge), and FMO habitat downstream of river mile 15. The Carbon River provides an essential migratory corridor for amphidromous bull trout. The following tributaries provide spawning and rearing habitat for the local population from their mouths upstream to a natural barrier or falls: Ranger Creek 1.0 mi (1.6 km) to Ranger Falls; Chenuis Creek 0.1 mi (0.2 km) to Chenuis Falls; and Ipsut Creek 0.7 mi (1.1 km) to Isput Falls. Bull trout have been documented in Ranger, Chenuis, and Isput Creeks (B. Samora, in litt. 1998; Marks *et al.* 2002).

(D) White River from its confluence with Puyallup River upstream 72.2 mi (116.2 km) to the mouth of Inter Fork provides FMO habitat downstream of the confluence with the Clearwater River, and combined rearing and FMO habitat, and potentially spawning habitat upstream of the confluence. The following tributaries provide spawning and rearing habitat for the White River local population from their mouths upstream to a natural barrier or headwaters: Huckleberry Creek 7.1 mi (11.4 km); Silver Springs (near Silver Creek) 0.2 mi (0.3 km); Crystal Creek 1.0 mi (1.6 km); Klickitat Creek 0.5 mi (0.8 km); unnamed tributary (stream catalog #0364) 0.8 mi (1.3 km); and Fryingpan Creek 3.8 mi (6.1 km) to accessible headwaters provide spawning and rearing habitat for the local population. Bull trout have been documented in Huckleberry Creek, Silver Springs, Crystal Creek, Klickitat Creek, stream #3064, and Fryingpan Creek (Eugene Stagner, Service, pers comm. 2003; MRMP, in litt. 2001; Marks *et al.* 2002).

Clearwater River from the confluence with the White River 6.5 mi (10.4 km) upstream to a natural barrier provides spawning and rearing habitat for the Clearwater River potential local population, and additional FMO habitat for the Puyallup core area. Bull trout have been documented in the lower Clearwater River (Travis Nelson, WDFW, in litt. 2003).

(E) The following tributaries provide spawning and rearing habitat for the Greenwater River local population, from theirs mouth or confluence upstream to a natural barrier: Greenwater River from the confluence with the White River 12.5 mi (20.1 km); Midnight Creek (stream catalog #0126) 1.4 mi (2.2 km); Slide Creek 0.7 mi (1.1 km); and Pyramid Creek 1.3 mi (2.1 km). Bull trout have been documented in the Greenwater River, Midnight, Slide, and Pyramid Creeks (USFS, in litt. 1990, in litt. 1991).

(F) The following tributaries provide spawning and rearing habitat for the West Fork White River local population from their mouths or confluence upstream to a natural barrier: West Fork White River from the confluence with the White River upstream 16.0 mi (25.7 km); Cripple Creek 0.8 mi (1.3 km); unnamed tributary (stream catalog #0217) 0.5 mi (0.8 km); unnamed tributary (stream catalog #0234) 0.5 mi (0.8 km); its unnamed tributary (stream catalog #0226) 0.4 mi (0.6 km); and Lodi Creek 1.8 mi (2.9 km) to Afi Falls. Bull trout have been documented in the West Fork White River, Cripple Creek, stream #0217, stream #0226, stream #0234, and Lodi Creek (USFS, in litt. 1982; B. Samora, in litt. 2002).

(ix) Samish CHSU

The Samish CHSU is located in the Puget Sound lowlands with its headwaters in the broad flat valley floor above Wickersham. The Samish River system flows southwest towards Puget Sound, discharging into Samish Bay. The Samish CHSU includes the Samish River, its major tributary, Friday Creek, and other associated tributaries. The amphidromous bull trout using this productive salmon system are likely from several core areas within Puget Sound (*e.g.*, Nooksack, Lower Skagit, Stillaguamish). A total of approximately 24 mi (39 km) of stream is proposed as critical habitat. Land ownership along the stream reaches proposed for critical habitat is 100 percent private.

(A) The Samish River from the mouth at Puget Sound, upstream 23.8 mi (38.3 km) to an unnamed tributary (stream catalog #0079), provides FMO habitat for amphidromous bull trout outside of currently delineated core areas in the Puget Sound Recovery Unit. Bull trout have been documented in the Samish River since at least the 1970s (C. Kraemer, in litt. 2003c; Dean Toba, WDFW, pers. comm. 2003).

(x) Lake Washington CHSU

The Lake Washington CHSU lies within central Puget Sound. Lake Washington is connected to Puget Sound by the Lake Washington Ship Canal, which flows into Salmon Bay through the Ballard Locks system in Seattle. The Lake Washington CHSU includes Lake Washington, Cedar and Sammamish Rivers, and associated tributaries. It does not include the upper Cedar River basin above Cedar Falls. This productive salmon system supports bull trout foraging, migration, and overwintering habitat for amphidromous bull trout outside of currently designated core areas. The bull trout using this system are likely from several core areas within Puget Sound in close proximity to this system (*e.g.*, Stillaguamish, Snohomish-Skykomish) and perhaps from core areas further away. A total of approximately 22,951 ac (9,288 ha) of lake surface area is proposed as critical habitat. Land ownership around the lakes proposed for critical habitat is 1 percent Federal, 3 percent State, and 96 percent private (including county and city ownership).

(A) Lake Washington (21,915 ac (8,869 ha), including the Ship Canal and Lake Union (1,036 ac (419 ha)) between the Ballard Locks and Lake Washington, provide FMO habitat for amphidromous bull trout outside of currently delineated core areas in the Puget Sound Recovery Unit. Bull trout have been documented in various areas of Lake Washington and in the fish ladder at Ballard Locks (KCDNR 2000; Hans Berge, in litt. 2003).

(xi) Lower Green CHSU

The Lower Green CHSU includes the Duwamish and Green Rivers and associated tributaries below Tacoma's Headworks Diversion Dam. The Green River is a productive salmon system, initiating in the Cascade Mountains flowing west into Howard Hansen Reservoir. It is free flowing below the City of Tacoma's Headworks Diversion Dam (located approximately 4.5 mi (7.2 km) downstream of Howard Hansen Dam) eventually becoming the Duwamish River before discharging into Elliott Bay. This system supports foraging, migration, and overwintering habitat for amphidromous bull trout outside of currently designated core areas. The amphidromous bull trout using this system are likely from several core areas within Puget Sound in close proximity to this system (*e.g.*, Puyallup, Snohomish-Skykomish) and perhaps even from core areas further away. Historic accounts (Suckley and Cooper 1860) suggest that bull trout were much more abundant in the Green River and likely used this system for spawning and rearing in the past. A total of approximately 62 mi (100 km) of stream is proposed as critical habitat. Land ownership along the stream reaches proposed for critical habitat is 18 percent State, and 82 percent private (including city ownership).

(A) Duwamish River from the mouth at Puget Sound (including the East and West Waterways) upstream 13.1 mi (21.1 km) to the Black River, and the Green River from the confluence of the Black River upstream 48.9 mi (78.7 km) to the City of Tacoma's Headworks Diversion Dam provides FMO habitat for amphidromous bull trout outside of currently delineated core areas in the Puget Sound Recovery Unit. Bull trout have been documented in both the Duwamish and Green Rivers (KCDNR 2000; Berge and Mavros 2001; Jim Shannon, Taylor Associates, Inc., in litt. 2001).

(xii) Lower Nisqually CHSU

The Lower Nisqually CHSU includes the Nisqually River and associated tributaries below La Grande Dam. The Nisqually River system, fed primarily by the glaciers of Mount Rainier, flows west to Alder Lake and through Alder and La Grande Dams before discharging into Puget Sound at the Nisqually River Delta at the Nisqually National Wildlife Refuge. The Nisqually River system supports foraging, migration, and overwintering habitat for amphidromous bull trout outside of currently designated core areas. The amphidromous bull trout currently observed in this system and those likely to use this system in the future, are believed to be from other core areas within Puget Sound (*e.g.*, Puyallup, Snohomish-Skykomish). A total of approximately 40 mi (64 km) of stream is proposed as critical habitat. Land ownership along the stream reaches proposed for critical habitat is 33 percent Federal, 13 percent Tribal, and 54 percent private.

(A) The Nisqually River from the mouth at Puget Sound upstream 40.1 mi (64.5 km) to La Grande Dam provides FMO habitat for amphidromous bull trout outside of currently delineated core areas in the Puget Sound Recovery Unit. Although bull trout are now rarely observed in the Nisqually River (WDFW 1998; John Barr, Nisqually Tribe, pers. comm. 2003), historic accounts (Suckley and Cooper 1860) suggest that bull trout were much more abundant and likely used this system for spawning and rearing in the past. It is expected that amphidromous bull trout use of the Nisqually River will increase significantly as bull trout populations recover in the Puyallup core area.

(xiii) Puget Sound Marine CHSU

The estuarine and marine waters of Puget Sound provide foraging and migration habitat for amphidromous bull trout outside of freshwater core areas. Amphidromous bull trout use nearshore habitat along the eastern shore of Puget Sound from the Canadian border south to the Nisqually River delta. Bull trout have also been documented using nearshore habitat of islands along this eastern shore, especially in the northern part of the sound. The extent of bull trout use along the western Puget Sound shoreline is not well known, but currently available information suggest it is used to a much lesser degree. The current distribution data for bull trout most likely under represents the amount of occupied marine nearshore habitat, due to the depressed status of some amphidromous bull trout populations, the seasonal and temporal variability in their migratory behavior, and perhaps most importantly, the difficulty of sampling for subadult and adult life stages in large estuarine and marine environments. The Puget Sound Marine CHSU includes the estuarine and nearshore areas along Puget Sound shorelines. A total of approximately 566 mi (911 km) of marine and estuarine shoreline is proposed as critical habitat. Land ownership along marine nearshore

proposed for critical habitat is 3 percent Federal, 6 percent State, 15 percent Tribal, and 76 percent private (including county and city ownership).

(A) The eastern shoreline of Puget Sound (north) (129.4 mi (208.2 km)), including associated bays and estuaries, and Swinomish Channel (6.5 mi (10.5 km)) from the Canadian border to Harbor Park (Fidalgo Island), and from Sares Head (Fidalgo Island) to Nisqually Head at the southern end of the Nisqually River Delta provide important marine foraging and migration habitat for amphidromous bull trout.

(B) The shoreline of Lummi Island (eastern shoreline from Village Point to Carter Point) (13.4 mi (21.6 km)), Portage Island (8.0 mi (12.9 km)), Guemes Island (eastern shoreline from Southeast Point to Clark Point) (6.1 mi (9.8 km)), Whidbey Island (eastern shoreline from north end of West Beach to Possession Point) (91.1 mi (146.6 km)), Hope Island (2.5 mi (4.0 km)), Goat Island (1.8 mi (2.9 km)), Ika Island (2.3 mi (3.7 km)), Gedney Island (4.2 mi (6.8 km)), and Vashon Island (southeastern shoreline from northeast Summerhurst to Neill Point) (16.3 mi (26.2 km)) provide marine foraging and migration habitat for amphidromous bull trout. Bull trout have been documented in nearshore areas around Lummi, Whidbey, and Ika Islands. The remaining identified island shorelines are presumed occupied based on their proximity to known occupied areas, use documented along similar shorelines, and forage fish availability.

Unit 29: Saint Mary-Belly River

We are proposing to designate critical habitat for bull trout in 17 identified stream segments and six lakes in the Saint Mary River CHSU in Montana, and an additional single stream in the Belly River CHSU. The Saint Mary River CHSU contains five core areas and eight local populations of bull trout, and the Belly River CHSU includes only one core area and a single local population in the headwaters of the North Fork Belly River.

Within the Saint Mary-Belly River Recovery Unit, the documented historical distribution of bull trout is nearly basin wide, with the exception of blocked headwater areas (natural barriers) that occur with frequency in this rugged terrain. Within the U.S. portion of the Saint Mary River drainage, most major streams and lakes are occupied by bull trout.

As a result of the extreme topography in the high peaks of the Belly River headwaters, major portions of Glacier National Park were historically fishless and bull trout occupancy in that drainage is currently confined to only a minor portion of the U.S. habitat.

The total stream distance proposed for designation as critical habitat in Montana is about 88 mi (142 km), and the lakes have a surface coverage of about 6,295 ac (2,548 ha). All areas proposed as critical habitat are currently considered regularly occupied by bull trout, based on recent historical records.

(i) Saint Mary River CHSU

The Saint Mary River CHSU includes the Saint Mary River drainage in northwest Montana in its entirety. The drainage originates along the east slopes of the Rocky Mountains, with most of the headwaters emanating from the peaks and glacial lakes of Glacier National Park. The Saint Mary River flows directly north into Canada, where it joins the Belly and Waterton River drainages to form the Oldman River. Eventually, the Saint Mary River waters flow into Hudson Bay via the South Saskatchewan River system. The entire U.S. portion of the Saint Mary River drainage is located in Glacier County, Montana.

Land ownership in this CHSU is primarily public land. Land ownership along the streams proposed for critical habitat designation is about evenly split between about 45 percent that are in Glacier National Park and about 44 percent that are in Blackfeet Tribal ownership. The remaining 10 percent is in private ownership.

(A) The entire mainstem of the Saint Mary River in the U.S. is proposed for designation as critical bull trout FMO habitat, from the U.S./Canada border 15.5 mi (24.9 km) upstream to Lower Saint Mary Lake, including the basins of Lower Saint Mary Lake (2,189 ac (886 ha)) and Saint Mary Lake (3,883 ac (1,571 ha)) to their high water marks, and also the 1.1 mi (1.8 km) portion of the Saint Mary River between the lakes. The 0.6 mi (1.0 km) reach of the Saint Mary River upstream of Saint Mary Lake to the base of Saint Mary Falls, provides spawning and rearing habitat for bull trout.

(B) Portions of the mainstem of Lee Creek (4.4 mi (7.1 km)), its tributary Jule Creek (2.6 mi (4.2 km)), and the Middle Fork Lee Creek (2.7 mi (4.3 km)) from the U.S./Canada border upstream to identified natural or man-caused fish passage barriers in their upper reaches provide spawning and rearing habitat for bull trout that migrate from Canada.

(C) Kennedy Creek (13.7 mi (22.0 km)), from its confluence with the Saint Mary River to a natural barrier at the outlet of Poia Lake provides rearing habitat, and is one of two primary spawning streams documented within the basin.

(D) The lower 8.2 mi (13.2 km) of Otatso Creek, from its junction with Kennedy Creek to a natural barrier located near the Glacier National Park boundary with the Blackfeet Indian Reservation, provides rearing and potential spawning habitat for bull trout that most likely emigrate from upstream waters isolated above barriers in Otatso Creek, or from adjacent Kennedy Creek or other downstream waters.

(E) Swiftcurrent Creek, from its junction with Lower Saint Mary Lake upstream 5.7 mi (9.2 km) to Sherburne Dam provides FMO habitat for migratory bull trout.

(F) Boulder Creek, from its junction with Swiftcurrent Creek upstream 13.1 mi (21.1 km) to its headwaters (unnamed lakes at the base of Mount Siyeh) provides rearing habitat, and is one of two primary spawning streams used by migratory bull trout within the basin.

(G) Divide Creek, from its junction with the reach of the Saint Mary River between the Saint Mary lakes to a natural barrier located 9.2 mi (14.8 km) upstream in the headwaters west of White Calf Mountain provides spawning and rearing habitat.

(H) The two interconnected basins of Slide Lakes (45 ac (18 ha)) provide FMO habitat for the disjunct Slide Lakes core area. The following reaches provide spawning and rearing habitat for resident and/or migratory bull trout: the major tributary to Otatso Lake, upper Otatso Creek (1.0 mi (1.6 km)), extending from Slide Lakes to an unnamed barrier falls, including a short reach of stream between the lake basins (0.2 mi (0.3 km)). A reach of Otatso Creek (1.1 mi (1.8 km)) extending downstream from Slide Lakes to the natural barrier at the Reservation Boundary.

(I) The basin of Cracker Lake (42 ac (17 ha)) provides FMO habitat for a reproducing population of bull trout believed to have been introduced in the early 20th century. Its tributary, Canyon Creek, either upstream of the lake to its glacial outwash headwaters (0.7 mi (1.1 km)) or downstream (4.1 mi (6.6 km)) to the impounded pool of Lake Sherburne provides spawning and rearing habitat, though documentation is currently limited.

(J) The basin of Red Eagle Lake (136 ac (55 ha)) is FMO habitat for the disjunct Red Eagle Lake core area. Its tributary, Red Eagle Creek, to an unnamed barrier falls 1.2 mi (1.9 km) upstream from the lake provides spawning and rearing habitat. About 1.0 mi (1.6 km) of Red Eagle Creek

downstream from the lake may function as spawning and rearing habitat for this core area, and it is contiguous with the portion of Red Eagle Creek described for the Saint Mary River core area downstream.

(ii) Belly River CHSU

The Belly River CHSU includes the headwaters of the Belly River drainage in the northeast corner of Glacier National Park in Glacier County, northwest Montana. The drainage originates in glaciated lakes on the east slopes of the Rocky Mountains. Due to natural barriers, these lakes historically were mostly fishless. The Belly River flows directly north into Canada, where it joins the Waterton River drainage to the west and Saint Mary River drainage to the east to form much of the headwaters of the Oldman River basin. Eventually, the Belly River waters flow into Hudson Bay via the South Saskatchewan River system.

The entire headwaters portion of the Belly River drainage lies in Glacier National Park, with 100 percent of the land in Federal ownership. The Draft Recovery Plan (Service 2002) identified a single core area and only one local population of bull trout in the North Fork Belly River drainage in this recovery unit as essential to recovery.

The North Fork Belly River mainstem in the U.S., from the international border with Canada upstream to Miche Wabun Falls (1.5 mi (2.4 km)), is well-documented as the only spawning and rearing habitat for bull trout in this core area. The spawning fish migrate up the Belly River from FMO habitat located primarily in Alberta.

Effects of Critical Habitat Designation

Section 7 of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory. If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the action agency ensures that the permitted actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. "Reasonable and prudent alternatives" are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

Activities on Federal lands that may affect the bull trout or its critical habitat will require consultation under section 7 of the Act. Activities on private, State, county, or lands under local jurisdictions requiring a permit from a Federal agency, such as a permit from the Corps under section 404 of the Clean Water Act, or some other Federal action, including funding (*e.g.*, Federal Highway Administration (FHA), Federal Aviation Administration, or Federal Emergency Management Agency (FEMA)), will continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on non-Federal lands that are not federally funded or permitted, do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, those activities involving a Federal action that may adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that appreciably reduce the value of critical habitat for the conservation of the bull trout. Within critical habitat, this pertains only to those areas containing the primary constituent elements. We note that such activities may also jeopardize the continued existence of the species.

To properly portray the effects of critical habitat designation, we must first compare the requirements pursuant to section 7 of the Act for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 of the Act prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to "jeopardize the continued existence" of a species are those that would appreciably reduce the likelihood of the species' survival and recovery. Actions likely to "destroy or adversely modify" critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of the listed species.

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would often result in jeopardy to the species

concerned when the area of the proposed action is occupied by the species concerned.

A number of Federal activities have the potential to destroy or adversely modify critical habitat for the bull trout. These activities may include:

(1) Land and water management actions of Federal agencies (*e.g.*, Corps, Bureau of Reclamation, USFS, BLM, Natural Resources Conservation Service, and Bureau of Indian Affairs) and related or similar actions of other Federally regulated projects (*e.g.*, road and bridge construction activities by the FHA;

(2) Dredge and fill projects, sand and gravel mining, and bank stabilization activities conducted or authorized by the Corps; and

(3) National Pollutant Discharge Elimination System permits authorized by the Environmental Protection Agency (EPA)).

Specifically, activities that may destroy or adversely modify critical habitat are those that alter the primary constituent elements to an extent that the value of critical habitat for both the survival and recovery of the bull trout is appreciably reduced. Activities that, when carried out, funded, or authorized by a Federal agency, may destroy or adversely modify critical habitat for bull trout include, but are not limited to:

(1) Significant and detrimental altering of the existing regime of any of the proposed stream segments. Possible actions would include groundwater pumping, impoundment, water diversion, and hydropower generation.

(2) Alterations to the proposed stream segments that could indirectly cause significant and detrimental effects to bull trout habitat. Possible actions include vegetation manipulation, timber harvest, road construction and maintenance, prescribed fire, livestock grazing, off-road vehicle use, powerline or pipeline construction and repair, mining, and urban and suburban development. Riparian vegetation profoundly influences instream habitat conditions by providing shade, organic matter, root strength, bank stability, and large woody debris inputs to streams. These characteristics influence water temperature, structure and physical attributes (useable habitat space, depth, width, channel roughness, cover complexity), and food supply (Gregory *et al.* 1991; Sullivan *et al.* in Naiman *et al.* 2000). The importance of riparian vegetation and channel bank condition for providing rearing habitat for salmonids in general is well documented (*e.g.*, Bossu 1954 and Hunt 1969, cited in Beschta and Platts 1987; MBTSG 1998);

(3) Significant and detrimental altering of the channel morphology of any of the proposed stream segments. Possible actions would include channelization, impoundment, road and bridge construction, deprivation of substrate source, destruction and alteration of aquatic or riparian vegetation, reduction of available floodplain, removal of gravel or floodplain terrace materials, excessive sedimentation from mining, livestock grazing, road construction, timber harvest, off-road vehicle use, and other watershed and floodplain disturbances. We note that such actions in the upper watershed (beyond the riparian area) may also destroy or adversely modify critical habitat. For example, timber harvest activities and associated road construction in upland areas can lead to changes in channel morphology by altering sediment production, debris loading, and peak flows;

(4) Significant and detrimental alterations to the water chemistry in any of the proposed stream segments. Possible actions would include release of chemical or biological pollutants into the surface water or connected groundwater at a point source or by dispersed release (non-point);

(5) Activities that are likely to result in the introduction, spread, or augmentation of nonnative aquatic species in any of the proposed stream segments. Possible actions would include fish stocking for sport, aesthetics, biological control, or other purposes; use of live bait fish; aquaculture; construction and operation of canals; and interbasin water transfers; and

(6) Activities likely to create significant instream barriers to bull trout movement. Possible actions would include water diversions, impoundments, and hydropower generation where effective fish passage facilities are not provided.

If you have questions regarding whether specific activities will likely constitute destruction or adverse modification of critical habitat, contact the Field Supervisor of the nearest Fish and Wildlife Ecological Services Office. Requests for copies of the regulations on listed wildlife, and inquiries about prohibitions and permits may be addressed to the Division of Endangered Species, U.S. Fish and Wildlife Service, 911 NE 11th Avenue, Portland, OR 97232–4181 (telephone 503/231–6158; facsimile 503/231–6243).

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic impact, impact to national security, and other relevant impacts of designating a specific area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species.

We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to making a final determination. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://pacific.fws.gov/bulltrout*, or by contacting the John Young, Bull Trout Coordinator directly (see **ADDRESSES** section).

We will also evaluate the potential impacts of this proposed designation on any relevant factors, including but not limited to, national security, tribal nations, and conservation partnerships and programs that benefit the bull trout.

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Required Determinations

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements

in the proposed rule clearly stated? (2) Does the proposed rule contain technical jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of the sections, use of headings, paragraphing, and so forth) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make this proposed rule easier to understand?

Send a copy of any comments on how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: *Exsec@ios.doi.gov.*

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues, but it is not anticipated to have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the tight timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed this rule. The Service is preparing a draft economic analysis of this proposed action. We will use this analysis to meet the requirement of section 4(b)(2) of the Act to determine the economic consequences of designating the specific areas as critical habitat and possibly excluding any area from critical habitat if it is determined that the benefits of such exclusion outweigh the benefits of specifying such areas as part of the critical habitat, unless failure to designate such area as critical habitat will lead to the extinction of the Riverside fairy shrimp. This analysis will also be used to determine compliance with Executive Order 12866, Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act, and Executive Order 12630.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are listed above in the section on Section 7 Consultation.

The availability of the draft economic analysis will be announced in the **Federal Register** and in local newspapers so that it is available for public review and comments.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

At this time, we lack the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, the RFA finding is deferred until completion of the draft economic analysis prepared pursuant to section 4(b)(2) of the Act and Executive Order 12866. This draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, we will publish a notice of availability of the draft economic analysis of the proposed designation and reopen the public comment period for the proposed designation for an additional 60 days. We will include with the notice of availability, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination. We have concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that we make a sufficiently informed determination based on adequate economic information and provides the necessary opportunity for public comment.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule may be a significant regulatory action under Executive Order 12866.

Currently available information on the potential effects of this proposal on energy supply, distribution, and use is very limited and does not provide a basis for us to reach a definitive conclusion regarding such effects at this time. We will conduct an analysis of the potential economic impacts of this proposed critical habitat designation, as required under section 4(b)(2) of the Act. The economic assessment will include consideration of information relevant to effects on energy supply, distribution, and use. We will make the economic analysis available for public review and comment before completing a final designation. We also expect to obtain information on this topic as a result of public comments on the proposed rule. Should such economic analysis, public comments, or other information indicate that this rule will significantly affect energy supply, distribution, and use, we will take any actions that are appropriate.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute or regulation that would impose an enforceable duty upon State, local, tribal governments, or the private sector and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments" with two exceptions. It excludes "a condition of federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding" and the State, local, or tribal governments "lack authority" to adjust accordingly. (At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living;

Family Support Welfare Services; and Child Support Enforcement.) "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities who receive Federal funding, assistance, permits or otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) Due to current public knowledge of the species' protection, the prohibition against take of the species both within and outside of the designated areas, and the fact that critical habitat provides no incremental restrictions, we do not anticipate that this rule will significantly or uniquely affect small governments. As such, Small Government Agency Plan is not required. We will, however, further evaluate this issue as we conduct our economic analysis and revise this assessment if appropriate.

Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. The designation of critical habitat affects only Federal agency actions. The rule will not increase or decrease the current restrictions on private property concerning take of the bull trout. Due to current public knowledge of the species' protection, the prohibition against take of the species both within and outside of the designated areas, and the fact that critical habitat provides no incremental restrictions, we do not anticipate that property values will be affected by the proposed critical habitat designation. While real estate market values may temporarily decline following designation, due to the perception that critical habitat designation may impose additional regulatory burdens on land use, we expect any such impacts to be short term. Additionally, critical habitat designation does not preclude development of HCPs and issuance of incidental take permits. Owners of areas that are included in the designated critical habitat will continue to have opportunity to use their property in ways consistent with the survival of the bull trout."

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with DOI and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies. The designation of critical habitat in areas currently occupied by the bull trout imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Endangered Species Act. This proposed rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the bull trout.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

National Environmental Policy Act

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the National Environmental Policy Act in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996)).

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), Executive Order 13175, and 512 DM 2, we are coordinating with federally recognized Tribes on a government-to-government basis. Further, Secretarial Order 3206, "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act" (1997) provides that critical habitat should not be designated in an area that may impact Tribal trust resources unless it is determined to be essential to the conservation of a listed species. The Secretarial Order further states that in designating critical habitat, "the Service shall evaluate and document the extent to which the conservation needs of a listed species can be achieved by limiting the designation to other lands."

During our development of this proposed critical habitat designation for the Jarbidge River, Coastal-Puget Sound, and Saint Mary-Belly River populations of bull trout, we evaluated Tribal lands to determine if they are essential to the conservation of the species. There are no Tribal lands proposed as critical habitat within the Jarbidge River population area.

Within the Coastal-Puget Sound population, we have proposed to designate critical habitat for portions of land within or adjacent to the following Tribal reservations: Lummi Indian Reservation, Swinomish Indian

Reservation, Sauk-Suiattle Indian Reservation, Tulalip Indian Reservation, Muckleshoot Indian Reservation, Puyallup Indian Reservation, Nisqually Indian Reservation, Skokomish Indian Reservation, Jamestown S'Klallam Tribal lands, Lower Elwha S'Klallam Indian Reservation, Hoh Indian Reservation, Quinault Indian Reservation, and Chehalis Indian Reservation. We are proposing to exclude most of the Quinault Indian Reservation based on their Forest Management Plan. We have met with the Northwest Indian Fisheries Commission and some of the Tribes they represent. We plan to meet with the balance of the Tribes in the Olympic Peninsula and Puget Sound area to consult with them regarding the bull trout critical habitat process, and to discuss any existing or planned Tribal conservation measures for bull trout and the appropriateness of excluding additional Tribal lands in the final designation.

Within the Saint Mary-Belly River population, none of the Belly River headwaters is under Tribal jurisdiction. For the Saint Mary portion of the bull trout population, we have proposed critical habitat within the Blackfeet Reservation.

No specific management plans exist to guide Tribal fishery resource decisions in the Saint Mary-Belly River population. We conduct management surveys and make stocking recommendations and other proposals to the Tribe for their approval and implementation. Creston National Fish Hatchery conducts fish stocking activities in Tribal lakes per those recommendations.

We have had a number of government-to-government meetings with Blackfeet Tribal Council representatives to discuss bull trout critical habitat and associated recovery issues. The Blackfeet Fish and Wildlife Director or their representative biologist has been generally supportive of the development of this critical habitat proposal (Ira Newbreast, Blackfeet Tribe, pers. comm. 2002; G. Skunkcap, Blackfeet Tribe, pers. comm. 2002, 2003).

A total of approximately 229 mi (368 km) of stream segments on Tribal land within the Coastal-Puget Sound and Saint Mary-Belly River populations of bull trout are included in our proposed critical habitat designation. We will work closely with Tribes to protect essential bull trout habitat. We are committed to maintaining a positive working relationship with all of the Tribes, and will work with them on developing resource management plans for Tribal lands that include conservation measures for bull trout. We were required to prepare this critical habitat designation based on our analysis of whether habitat within these Tribal reservation lands is essential to the conservation of the species and may require special management considerations or protection. Prior to issuing a final determination, we will be consulting with Tribes that are included in this proposed designation of critical habitat, to assess the appropriateness of excluding those areas based on the conservation measures provided for the species. Please refer to the *Relationship to Section 4(b)(2) of the Act*—Relationship to Tribal Lands section of this rule for a more detailed discussion of Tribal lands included within this proposal.

References Cited

A complete list of all references cited in this proposed rule is available on request from the U.S. Fish and Wildlife Service, Branch of Endangered Species Office, Portland, OR (see **ADDRESSES** section).

Authors

The primary authors of this proposed rule are: John Young, U.S. Fish and Wildlife Service, Regional Office, Portland, OR; Wade Fredenberg, U.S. Fish and Wildlife Service, Creston Fish and Wildlife Center, Kalispell, MT; Selena Werdon, U.S. Fish and Wildlife Service, Nevada State Office, Reno, NV; Jeff Chan and Shelley Spalding, U.S. Fish and Wildlife Service, Western Washington Office, Lacey, WA.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Critical habitat for the bull trout (*Salvelinus confluentus*) in § 17.95(e) which was proposed on November 29, 2002, at 67 FR 71236, is proposed to be further amended by revising paragraphs (1), (2), and (4), and adding paragraphs (30) through (34) as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) * * *

Bull Trout (*Salvelinus confluentus*)

(1) Critical habitat is designated in the following counties and as described in paragraphs (2) through (34)

State	Counties
Idaho	Adams, Benewah, Blaine, Boise, Bonner, Boundary, Butte, Clearwater, Custer, Idaho, Kootenai, Lemhi, Latah, Lewis, Nez Perce, Owyhee, Pend Oreille, Shoshone, Valley, Washington.
Montana	Flathead, Glacier, Lake, Lewis and Clark, Lincoln, Mineral, Missoula, Powell, Ravalli, Sanders.
Nevada	Elko.
Oregon	Baker, Columbia, Crook, Deschutes, Gilliam, Grant, Harney, Hood River, Jefferson, Klamath, Lane, Linn, Malheur, Morrow, Multnomah, Sherman, Umatilla, Union, Wallowa, Wasco, Wheeler.
Washington	Asotin, Benton, Chelan, Clallam, Columbia, Clark, Cowlitz, Douglas, Franklin, Garfield, Grays Harbor, Island, King, Kittitas, Klickitat, Mason, Okanogan, Pacific, Pend Oreille, Pierce, Skagit, Skamania, Snohomish, Thurston, Wahkiakum, Walla Walla, Whitman, Yakima.

(2) Critical habitat includes the stream channels within the proposed stream reaches and inshore extent of critical habitat for marine nearshore areas (the mean high high-water (MHHW) line), including tidally influenced freshwater heads of estuaries indicated on the maps in paragraphs (30) through (34).

(i) Critical habitat includes the stream channels within the proposed stream reaches, and includes a lateral extent from the bankfull elevation on one bank to the bankfull elevation on the opposite bank. Bankfull elevation is the level at which water begins to leave the channel

and move into the floodplain and is reached at a discharge that generally has a recurrence interval of 1 to 2 years on the annual flood series. If bankfull elevation is not evident on either bank, the ordinary high-water line shall be used to determine the lateral extent of critical habitat. The lateral extent of proposed lakes and reservoirs is defined by the perimeter of the water body as mapped on standard 1:24,000 scale topographic maps.

(ii) Critical habitat includes the inshore extent of critical habitat for marine nearshore areas (the MHHW line), including tidally influenced freshwater heads of estuaries. This refers to the average of all the higher high water heights of the two daily tidal levels. Adjacent shoreline riparian areas, bluffs and uplands are not proposed as critical habitat.

However, it should be recognized that the quality of marine habitat along shorelines is intrinsically related to the character of these adjacent features, and human activities that occur outside of the MHHW can have major effects on physical and biological features of the marine environment. The offshore extent of critical habitat for marine nearshore areas is based on the extent of the photic zone, which is the layer of water in which organisms are exposed to light. Critical habitat extends offshore to the depth of 33 ft (10 m) relative to the MLLW (average of all the lower low-water heights of the two daily tidal levels). This equates to the average depth of the photic zone, and is consistent with the offshore extent of the nearshore habitat identified under the Puget Sound Nearshore Ecosystem Restoration Project (NOAA 2000; 68 FR 31689). This area between MHHW and minus 10 MLLW is considered the habitat most consistently used by bull trout in marine waters based on known use, forage fish availability, and ongoing migration studies, and captures geological and ecological processes important to maintaining these habitats. This area contains essential foraging habitat and migration corridors such as estuaries, bays, inlets, shallow subtidal areas, and intertidal flats.

* * * * *

(4) Critical habitat does not include non-Federal lands covered by an incidental take permit for bull trout issued under section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended on or before the date of publication of the final rule, as long as such permit, or a conservation easement providing comparable conservation benefits, remains legally operative on such lands.

* * * * *

(30) Index map of proposed critical habitat for the Olympic Peninsula, Puget Sound, Jarbidge, and Saint Mary-Belly populations of bull trout follows:

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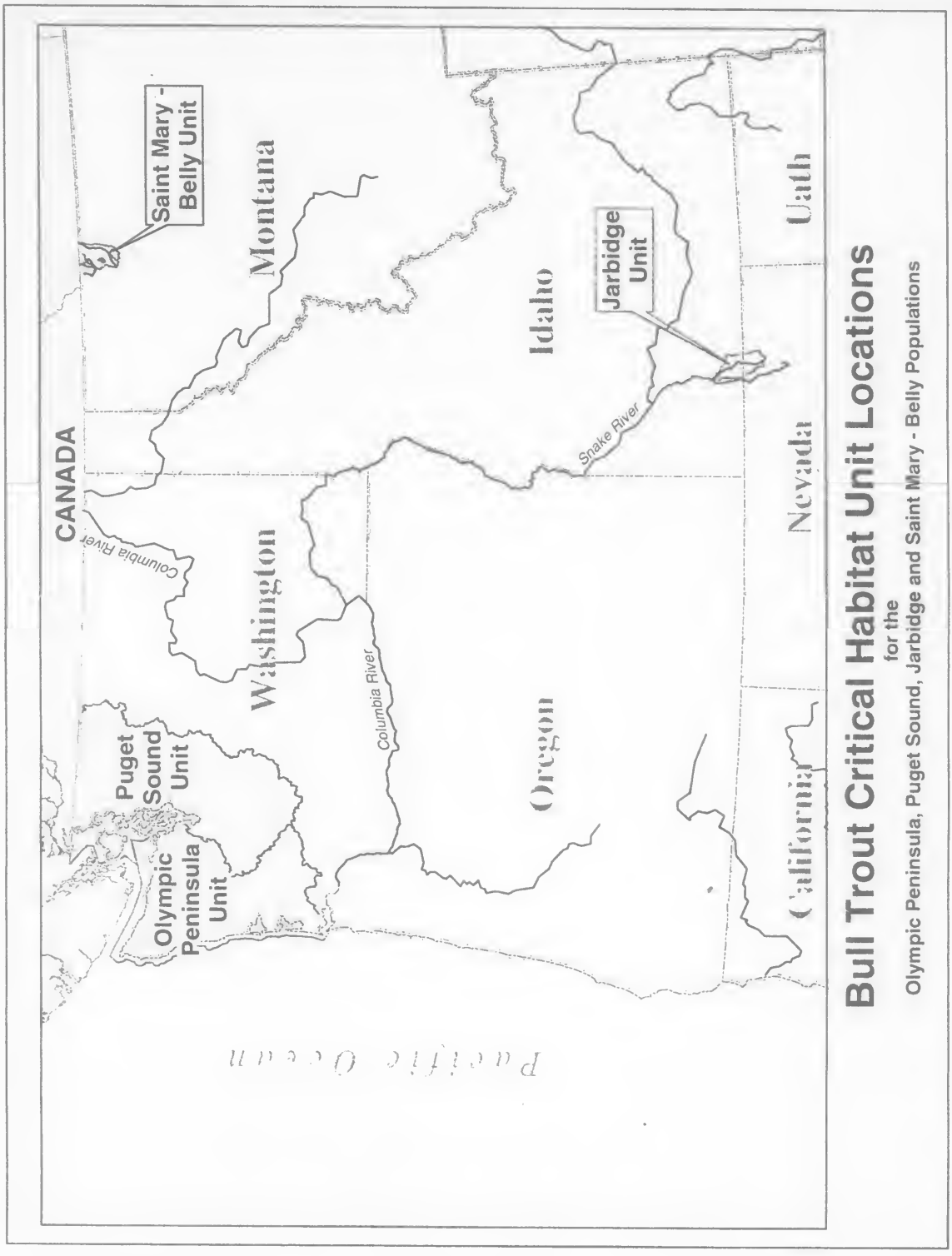


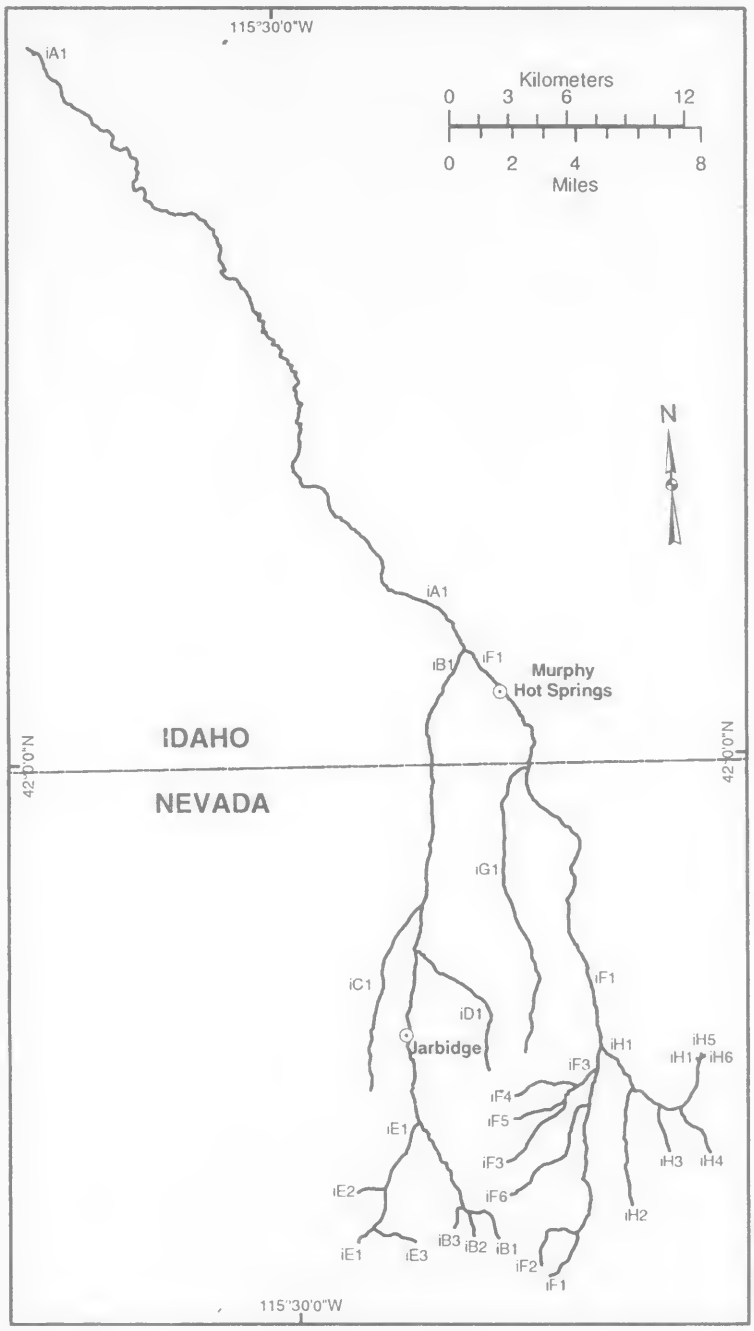
(31) Unit 26: Jarbidge River Unit

(i) Unit 26—Jarbidge River Unit Descriptions:

Location—name	From		To	
	Latitude	Longitude	Latitude	Longitude
A1—Jarbidge River	42.329 N.	115.651 W.	42.049 N.	115.390 W.
B1—West Fork Jarbidge River	42.049 N.	115.390 W.	41.780 N.	115.377 W.
B2—Unnamed W Trib off Jarbidge R	41.792 N.	115.396 W.	41.781 N.	115.392 W.
B3—Sawmill Creek	41.794 N.	115.398 W.	41.785 N.	115.405 W.
C1—Deer Creek	41.933 N.	115.419 W.	41.849 N.	115.454 W.
D1—Jack Creek	41.912 N.	115.424 W.	41.857 N.	115.380 W.
E1—Pine Creek	41.834 N.	115.424 W.	41.779 N.	115.464 W.
E2—Unnamed W Trib off Pine Creek	41.803 N.	115.446 W.	41.802 N.	115.464 W.
E3—Unnamed E Trib off Pine Creek	41.786 N.	115.454 W.	41.779 N.	115.428 W.
F1—East Fork Jarbidge River	42.049 N.	115.390 W.	41.762 N.	115.347 W.
F2—Unnamed Headwater Trib off E Fk Jarbidge R	41.782 N.	115.329 W.	41.767 N.	115.351 W.
F3—Fall Creek	41.856 N.	115.314 W.	41.815 N.	115.372 W.
F4—Unnamed Lower Trib off Fall Cr	41.849 N.	115.327 W.	41.845 N.	115.365 W.
F5—Unnamed Upper Trib off Fall Cr	41.843 N.	115.334 W.	41.834 N.	115.366 W.
F6—Cougar Creek	41.840 N.	115.320 W.	41.799 N.	115.369 W.
G1—Dave Creek	41.995 N.	115.352 W.	41.864 N.	115.358 W.
H1—Slide Creek	41.867 N.	115.312 W.	41.860 N.	115.253 W.
H2—Gods Pocket Creek	41.847 N.	115.292 W.	41.794 N.	115.295 W.
H3—Unnamed Lower Trib off Slide Cr	41.839 N.	115.276 W.	41.818 N.	115.271 W.
H4—Unnamed Upper Trib off Slide Cr	41.838 N.	115.264 W.	41.817 N.	115.246 W.
H5—Unnamed N Headwater Trib off Slide Cr	41.859 N.	115.252 W.	41.863 N.	115.250 W.
H6—Unnamed E Headwater Trib off Slide Cr	41.860 N.	115.250 W.	41.861 N.	115.247 W.

(ii) Map of Unit 26—Jarbidge River Unit follows:

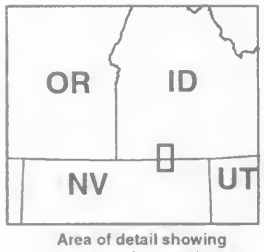
Proposed Critical Habitat for Bull Trout *(Salvelinus confluentus)*
Unit 26: Jarbidge River Unit



Proposed Critical Habitat (map key)

iA1-Jarbidge River
iB1-West Fork Jarbidge River
iB2-Unamed west tributary off Jarbidge River
iB3-Sawmill Creek
iC1-Deer Creek
iD1-Jack Creek
iE1-Pine Creek
iE2- Unnamed west tributary off Pine Creek
iE3- Unnamed east headwater tributary off Pine Creek
iF1-East Fork Jarbidge River
iF2- Unnamed west headwater tributary off East Fork Jarbidge River
iF3-Fall Creek
iF4- Unnamed lower west tributary off Fall Creek
iF5- Unnamed upper west tributary off Fall Creek
iF6-Cougar Creek
iG1-Dave Creek
iH1-Slide Creek
iH2-Gods Pocket Creek
iH3- Unnamed lower south tributary off Slide Creek
iH4- Unnamed upper south tributary off Slide Creek
iH5- Unnamed north headwater tributary off Slide Creek
iH6- Unnamed east headwater tributary off Slide Creek

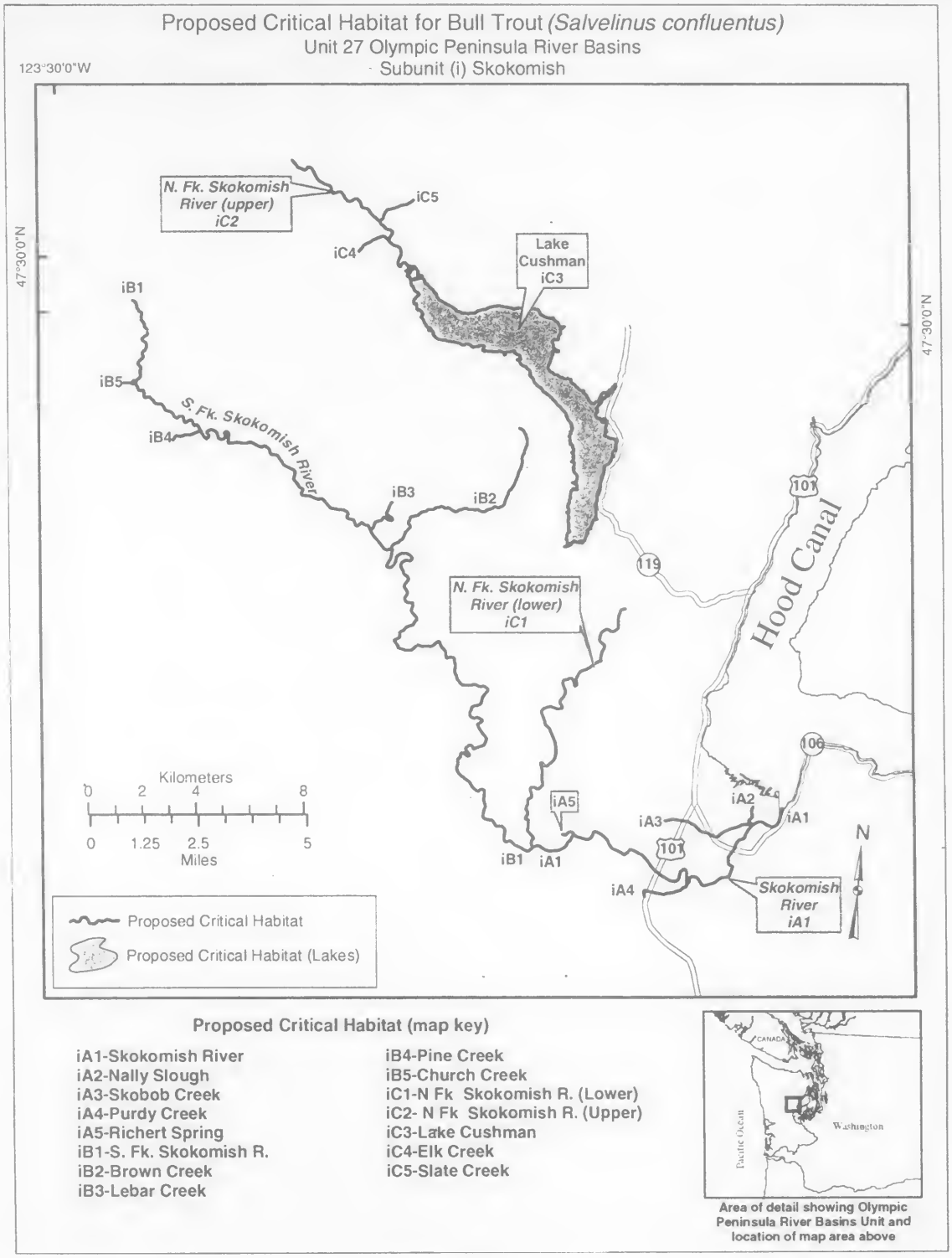
Proposed Critical Habitat



Area of detail showing location of maps above

Location—name	From		To	
	Latitude	Longitude	Latitude	Longitude
iA1—Skokomish River	47.335 N.	123.116 W.	47.315 N.	123.238 W.
iA2—Nalley Slough	47.334 N.	123.130 W.	47.328 N.	123.130 W.
iA3—Skobob Creek	47.328 N.	123.131 W.	47.328 N.	123.174 W.
iA4—Purdy Creek	47.307 N.	123.160 W.	47.302 N.	123.181 W.
iA5—Richert Spring	47.320 N.	123.218 W.	47.320 N.	123.224 W.
iB1—South Fork Skokomish River	47.315 N.	123.238 W.	47.488 N.	123.454 W.
iB2—Brown Creek	47.412 N.	123.318 W.	47.455 N.	123.259 W.
iB3—Lebar Creek	47.417 N.	123.329 W.	47.427 N.	123.319 W.
iB4—Pine Creek	47.446 N.	123.416 W.	47.443 N.	123.429 W.
iB5—Church Creek	47.461 N.	123.450 W.	47.460 N.	123.455 W.
iC1—North Fork Skokomish River (Lower)	47.315 N.	123.238 W.	47.398 N.	123.200 W.
iC2—North Fork Skokomish River (Upper)	47.419 N.	123.224 W.	47.539 N.	123.380 W.
iC3—Lake Cushman	Located at		47.478 N.	123.252 W.
iC4—Elk Creek W.	47.515 N.	123.330	47.510 N.	123.344 W.
iC5—Slate Creek W.	47.521 N.	123.335	47.529 N.	123.319 W.

(A) Map of Unit 27—Olympic Peninsula River Basin—Skokomish Critical Habitat Subunit follows:



(B) [Reserved]

(ii) Dungeness River Critical Habitat Subunit Descriptions:

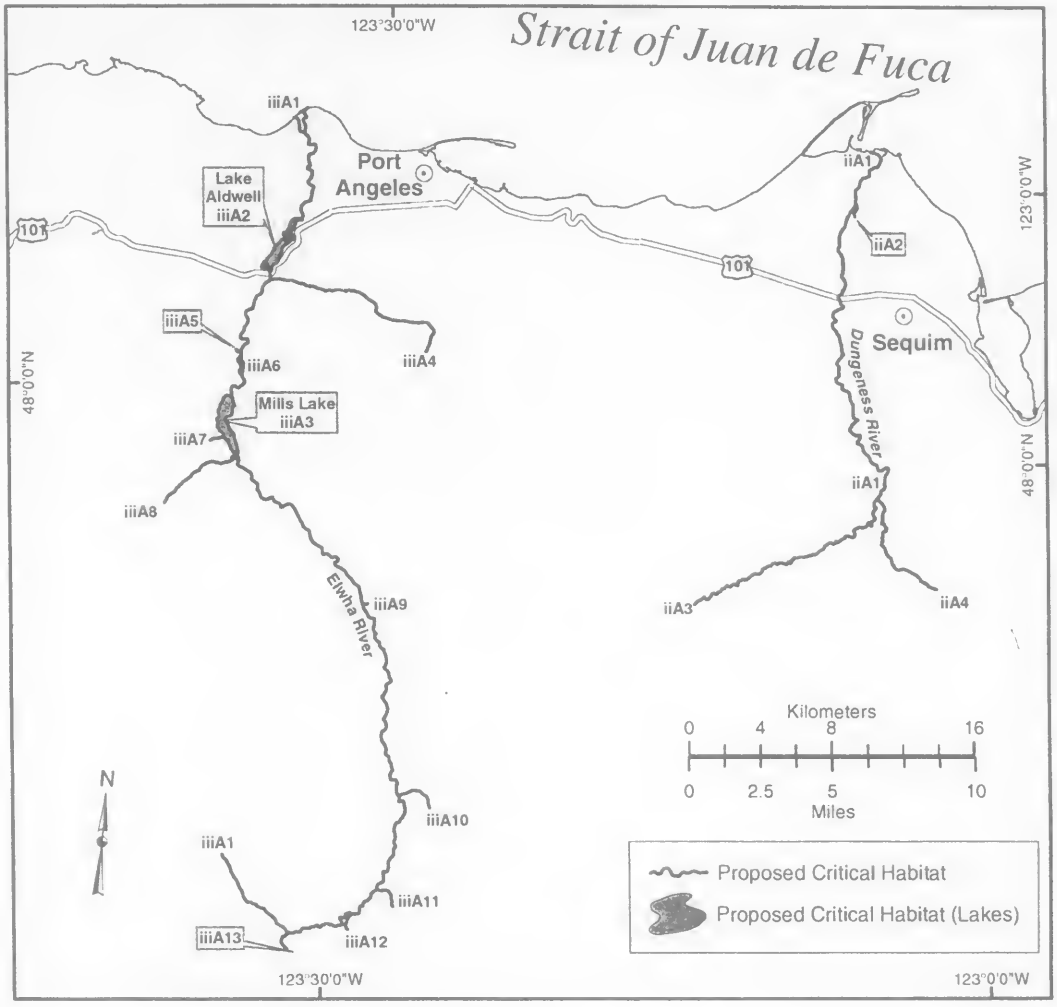
Location—name	From		To	
	Latitude	Longitude	Latitude	Longitude
iiA1—Dungeness River	48.151 N.	123.133 W.	47.942 N.	123.091 W.
iiA2—Hurd Creek	48.124 N.	123.142 W.	48.118 N.	123.142 W.
iiA3—Gray Wolf River	47.977 N.	123.111 W.	47.916 N.	123.242 W.
iiA4—Gold Creek	47.942 N.	123.091 W.	47.933 N.	123.062 W.

(iii) Elwha River Critical Habitat Subunit Descriptions:

Location—name	From		To	
	Latitude	Longitude	Latitude	Longitude
iiiA1—Elwha River	48.151 N.	123.558 W.	47.771 N.	123.580 W.
iiiA2—Lake Aldwell	Located at		48.080 N.	123.570 W.
iiiA3—Mills Lake	Located at		47.990 N.	123.604 W.
iiiA4—Little River	48.063 N.	123.576 W.	48.033 N.	123.456 W.
iiiA5—Hughes Creek	48.025 N.	123.594 W.	48.026 N.	123.598 W.
iiiA6—Griff Creek	48.013 N.	123.591 W.	48.023 N.	123.593 W.
iiiA7—Boulder Creek	47.982 N.	123.602 W.	47.979 N.	123.612 W.
iiiA8—Cat Creek	47.971 N.	123.593 W.	47.946 N.	123.642 W.
iiiA9—Prescott Creek	47.903 N.	123.490 W.	47.904 N.	123.486 W.
iiiA10—Hayes River	47.808 N.	123.453 W.	47.803 N.	123.428 W.
iiiA11—Godkin Creek	47.760 N.	123.464 W.	47.752 N.	123.451 W.
iiiA12—Buckinghorse Creek	47.747 N.	123.481 W.	47.739 N.	123.484 W.
iiiA13—Delabarre Creek	47.735 N.	123.526 W.	47.726 N.	123.527 W.

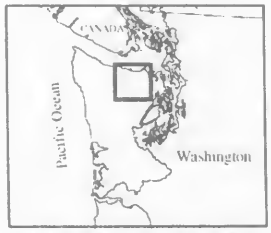
(A) Map of Unit 27—Olympic Peninsula River Basins—Dungeness River and Elwha River critical habitat subunits follow:

Proposed Critical Habitat for Bull Trout *(Salvelinus confluentus)*
Unit 27 Olympic Peninsula River Basins
Subunits (ii) - Dungeness and (iii) - Elwha



Proposed Critical Habitat (map key)

Dungeness CHSU
iiA1-Dungeness River
iiA2-Hurd Creek
iiA3-Gray Wolf River
iiA4-Gold Creek
Elwha CHSU
iiiA1-Elwha River
iiiA2-Lake Aldwell
iiiA3-Mills Lake
iiiA4-Little River
iiiA5-Hughes Creek
iiiA6-Griff Creek
iiiA7-Boulder Creek
iiiA8-Cat Creek
iiiA9-Prescott Creek
iiiA10-Hayes River
iiiA11-Godkin Creek
iiiA12-Buckinghorse Cr.
iiiA28-Slate Creek
iiiA13-Delabarre Creek



Area of detail showing Olympic Peninsula River Basins Unit and location of map area above

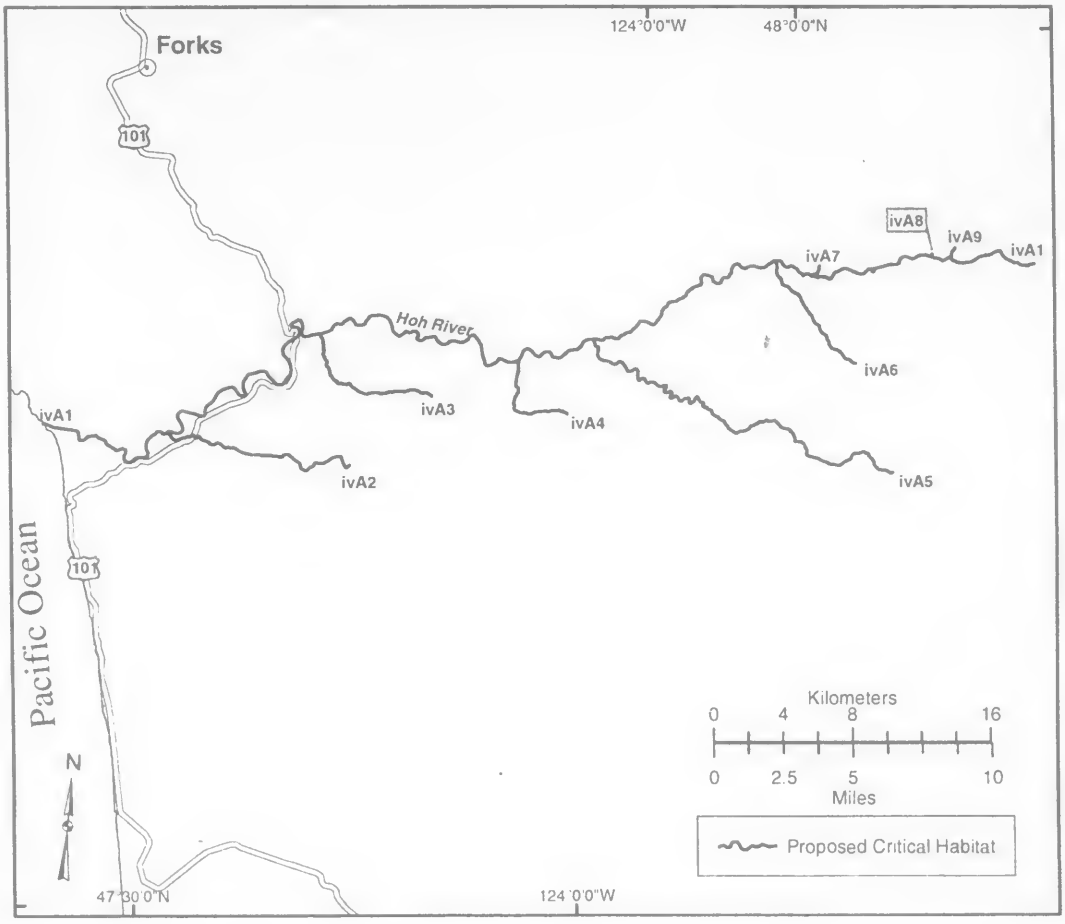
(B) [Reserved]

(iv) Hoh Critical Habitat Subunit Descriptions:

Location—name	From		To	
	Latitude	Longitude	Latitude	Longitude
ivA1—Hoh River	47.751 N.	124.437 W.	47.878 N.	123.688 W.
ivA2—Nolan Creek	47.752 N.	124.343 W.	47.743 N.	124.201 W.
ivA3—Winfield Creek	47.810 N.	124.231 W.	47.783 N.	124.142 W.
ivA4—Owl Creek	47.805 N.	124.078 W.	47.780 N.	124.037 W.
ivA5—South Fork Hoh River	47.820 N.	124.022 W.	47.764 N.	123.785 W.
ivA6—Mount Tom Creek	47.868 N.	123.887 W.	47.819 N.	123.820 W.
ivA7—Cougar Creek	47.862 N.	123.859 W.	47.868 N.	123.853 W.
ivA8—OGS Creek	47.878 N.	123.770 W.	47.879 N.	123.767 W.
ivA9—Hoh Creek	47.877 N.	123.753 W.	47.883 N.	123.750 W.

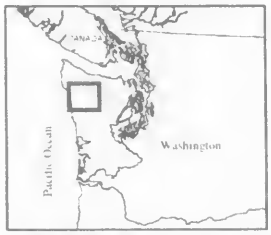
(A) Map of Unit 27—Olympic Peninsula River Basins—Hoh critical habitat subunit follows:

Proposed Critical Habitat for Bull Trout *(Salvelinus confluentus)*
Unit 27 Olympic Peninsula River Basins
Subunit (iv) Hoh



Proposed Critical Habitat (map key)

ivA1-Hoh River
ivA2-Nolan Creek
ivA3-Winfield Creek
ivA4-Owl Creek
ivA5-South Fork Hoh
ivA6-Mount Tom Creek
ivA7-Cougar Creek
ivA8-OGS Creek
ivA9-Hoh Creek



Area of detail showing Olympic Peninsula River Basins Unit and location of map area above

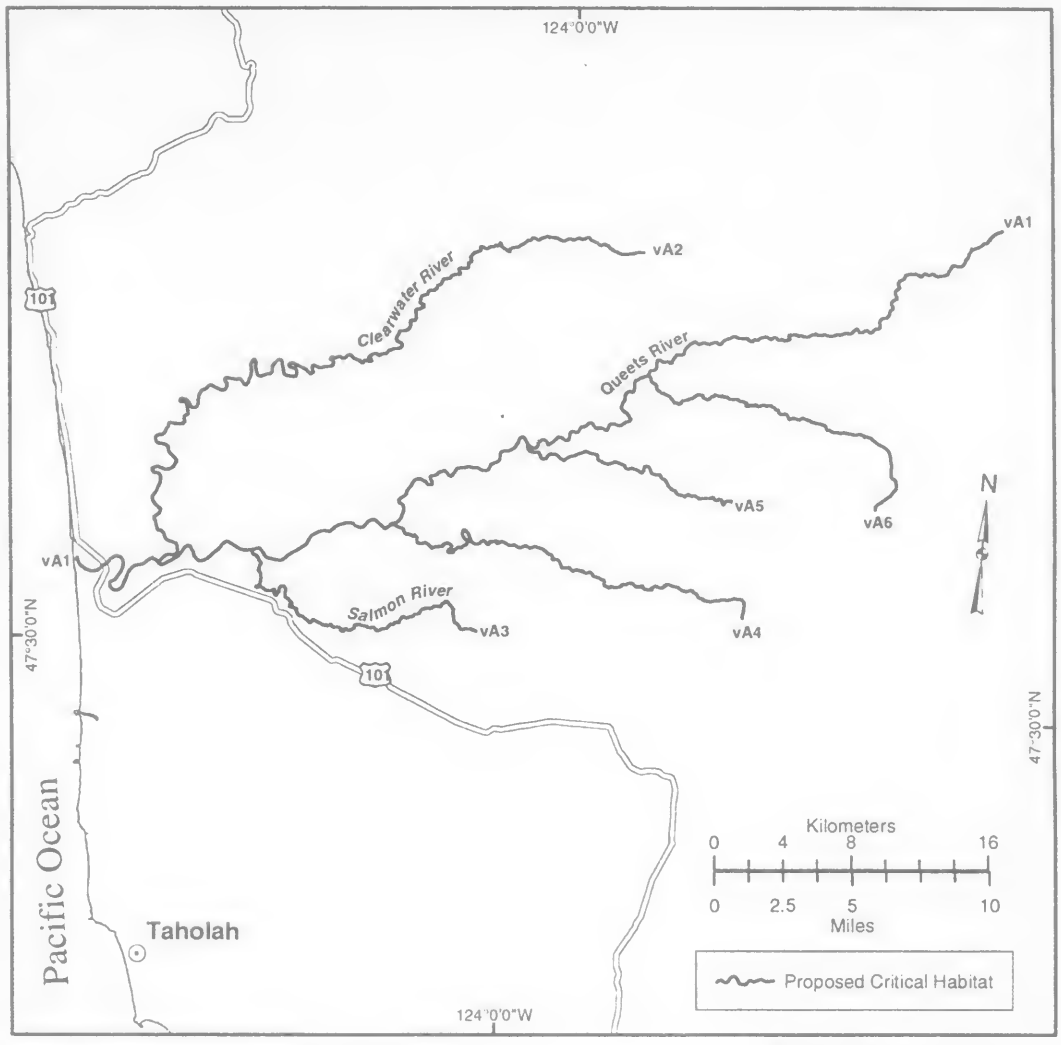
(B) [Reserved]

(v) Queets Critical Habitat Subunit Descriptions:

Location—name	From		To	
	Latitude	Longitude	Latitude	Longitude
vA1—Queets River	47.544 N.	124.354 W.	47.758 N.	123.657 W.
vA2—Clearwater River	47.546 N.	124.291 W.	47.730 N.	123.934 W.
vA3—Salmon River	47.557 N.	124.219 W.	47.524 N.	124.040 W.
vA4—Matheny Creek	47.576 N.	124.113 W.	47.543 N.	123.835 W.
vA5—Sams River	47.625 N.	124.012 W.	47.604 N.	123.851 W.
vA6—Tshletshy Creek	47.666 N.	123.923 W.	47.606 N.	123.739 W.

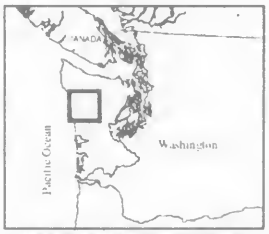
(A) Map of Unit 27—Olympic Peninsula River Basins—Queets critical habitat subunit follows:

Proposed Critical Habitat for Bull Trout *(Salvelinus confluentus)*
Unit 27 Olympic Peninsula River Basins
Subunit (v) Queets



Proposed Critical Habitat (map key)

vA1-Queets River
vA2-Clearwater River
vA3-Salmon River
vA4-Matheny Creek
vA5-Sams River
vA6-Tshletshy Creek



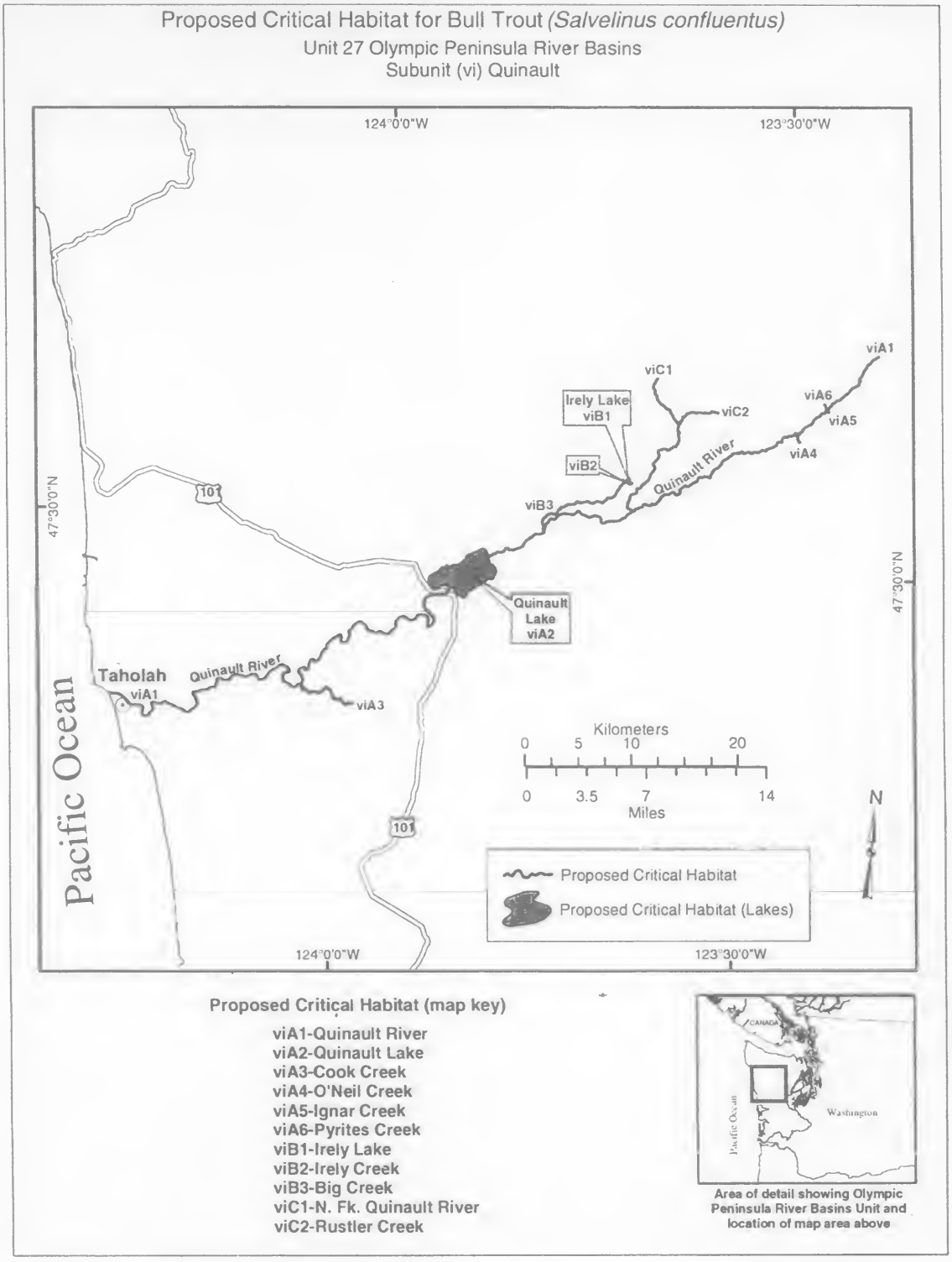
Area of detail showing Olympic Peninsula River Basins Unit and location of map area above

(B) [Reserved]

(vi) Quinault Critical Habitat Subunit Descriptions:

Location—name	From		To	
	Latitude	Longitude	Latitude	Longitude
viA1—Quinault River	47.349 N.	124.299 W.	47.687 N.	123.371 W.
viA2—Quinault Lake	Located at		47.566 N.	123.673 W.
viA3—Cook Creek	47.371 N.	124.061 W.	47.359 N.	123.995 W.
viA4—O'Neil Creek	47.616 N.	123.470 W.	47.610 N.	123.463 W.
viA5—Ignar Creek	47.639 N.	123.432 W.	47.637 N.	123.429 W.
viA6—Pyrites Creek	47.639 N.	123.432 W.	47.644 N.	123.435 W.
viB1—Irely Lake	Located at		47.566 N.	123.673 W.
viB2—Irely Creek	47.565 N.	123.678 W.	47.567 N.	123.672 W.
viB3—Big Creek	47.518 N.	123.773 W.	47.566 N.	123.680 W.
viC1—North Fork Quinault River	47.540 N.	123.666 W.	47.654 N.	123.646 W.
viC2—Rustler Creek	47.617 N.	123.615 W.	47.629 N.	123.568 W.

(A) Map of Unit 27—Olympic Peninsula River Basins—Quinault critical habitat subunit follows:



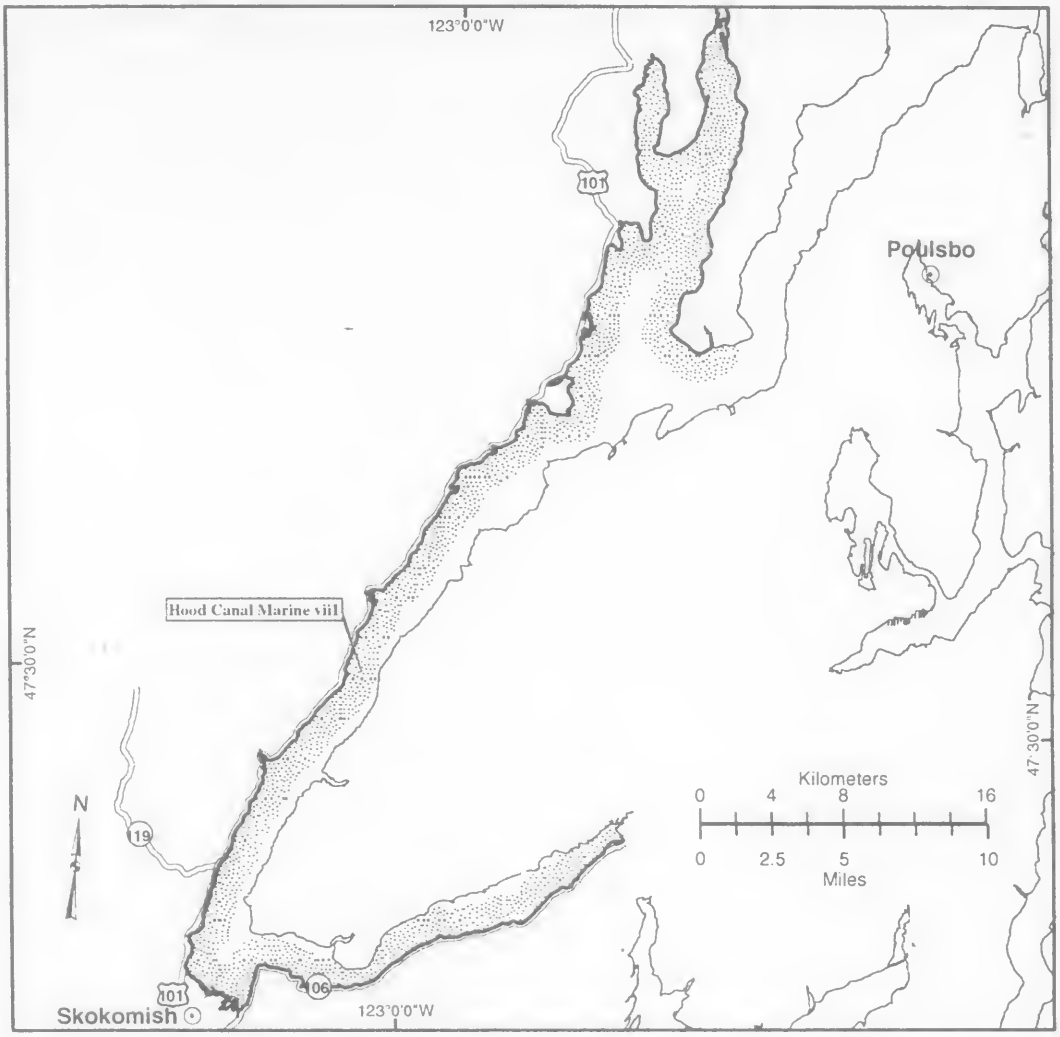
(B) [Reserved]

(vii) Hood Canal Critical Habitat Subunit Descriptions:

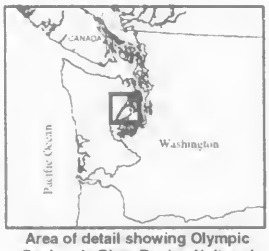
Location—name	From		To	
	Latitude	Longitude	Latitude	Longitude
viiA1—Hood Canal Marine	47.685 N.	122.800 W.	47.434 N.	122.841 W.

(A) Map of Unit 27—Olympic Peninsula River Basins—Hood Canal critical habitat subunit follows:

Proposed Critical Habitat for Bull Trout *(Salvelinus confluentus)*
Unit 27 Olympic Peninsula River Basins
Subunit (vii) Hood Canal (Marine)



Proposed Critical Habitat (Marine)*



Area of detail showing Olympic Peninsula River Basins Unit and location of map area above

* The indicated marine areas are intended to reflect a general diagrammatic representation of the critical habitat proposal. The specific proposal for marine areas was developed relative to the average depth limit of the photic zone. Please refer to the Proposed Critical Habitat Section in the proposed rule for specific details.

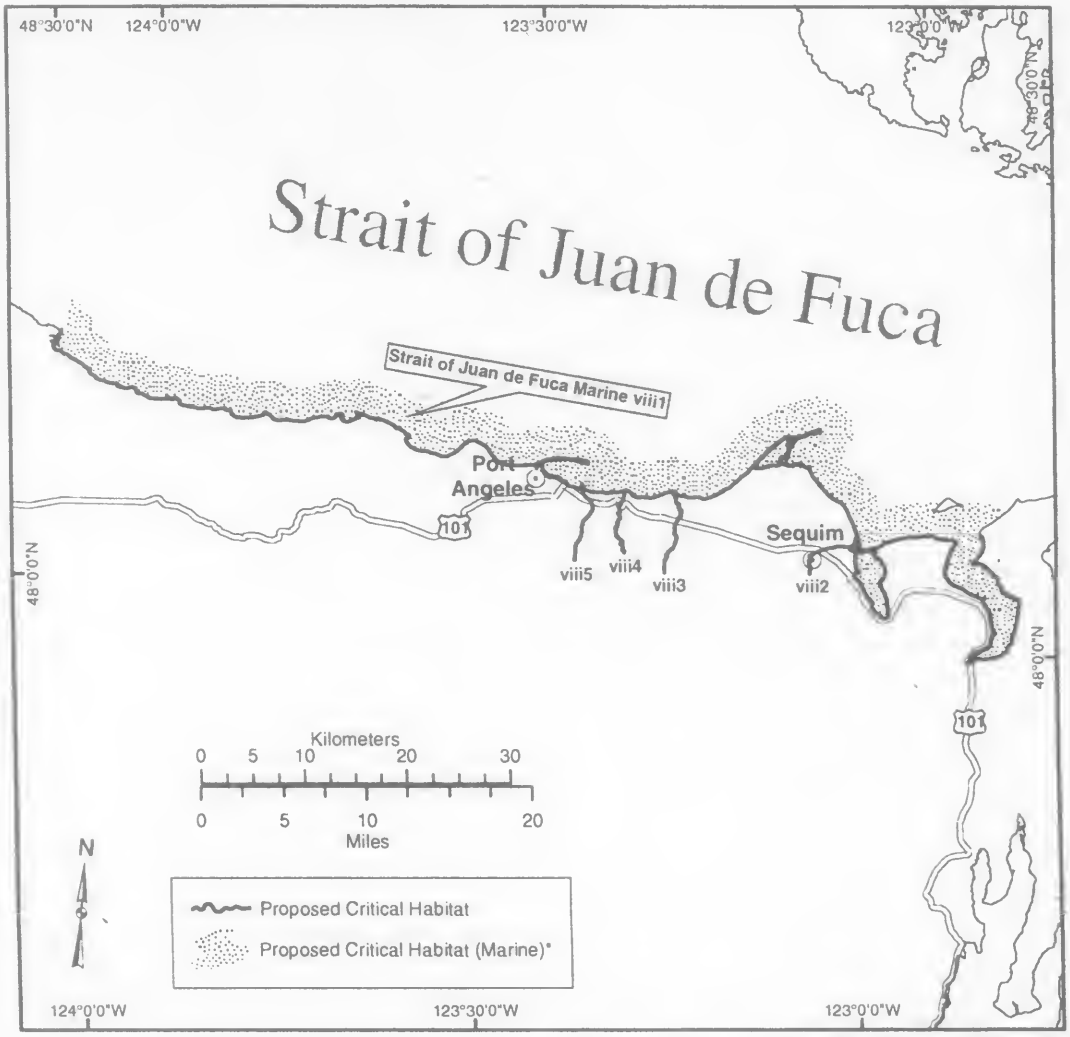
(B) [Reserved]

(viii) Strait of Juan de Fuca Critical Habitat Subunit Descriptions:

Location—name	From		To	
	Latitude	Longitude	Latitude	Longitude
viiiA1—Strait of Juan de Fuca Marine	48.103 N.	122.884 W.	48.217 N.	124.100 W.
viiiA2—Bell Creek	48.083 N.	123.052 W.	48.057 N.	123.102 W.
viiiA3—Siebert Creek	48.121 N.	123.289 W.	48.049 N.	123.291 W.
viiiA4—Morse Creek	48.118 N.	123.350 W.	48.064 N.	123.346 W.
viiiA5—Ennis Creek	48.117 N.	123.404 W.	48.053 N.	123.410 W.

(A) Map of Unit 27—Olympic Peninsula River Basins—Strait of Juan de Fuca critical habitat subunit follows:

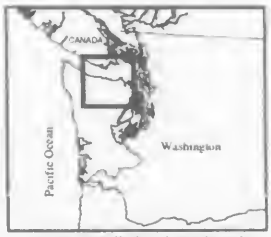
Proposed Critical Habitat for Bull Trout *(Salvelinus confluentus)*
Unit 27 Olympic Peninsula River Basins
Subunit (viii) Strait of Juan de Fuca



Proposed Critical Habitat (map key)

viii1-Strait of Juan de Fuca
viii2-Bell Creek
viii3-Siebert Creek
viii4-Morse Creek
viii5-Ennis Creek

*** The indicated marine areas are intended to reflect a general diagrammatic representation of the critical habitat proposal. The specific proposal for marine areas was developed relative to the average depth limit of the photic zone. Please refer to the Proposed Critical Habitat Section in the proposed rule for specific details.**



Area of detail showing Olympic Peninsula River Basins Unit and location of map area above

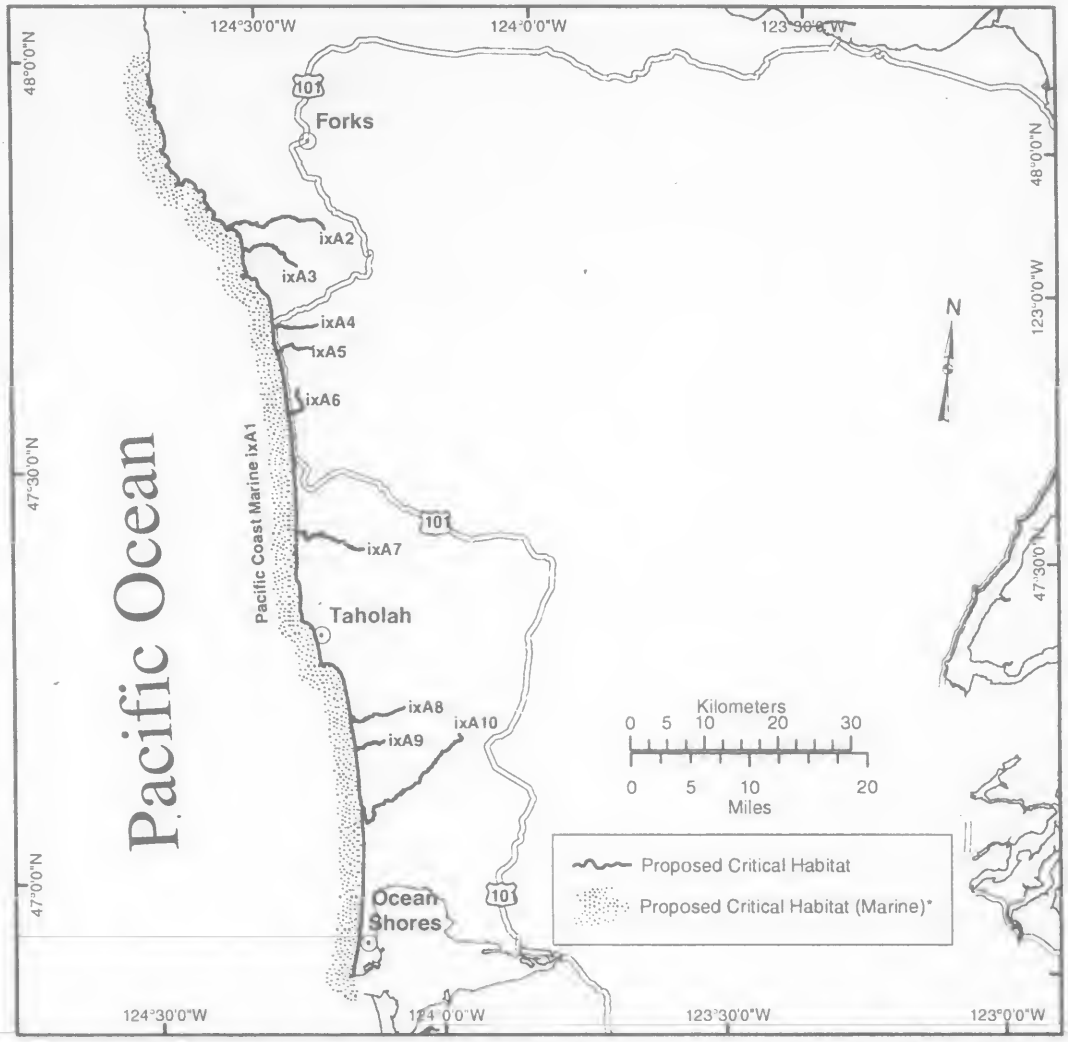
(B) [Reserved]

(ix) Pacific Coast Critical Habitat
Subunit Descriptions:

Location—name	From		To	
	Latitude	Longitude	Latitude	Longitude
ixA1—Pacific Coast Marine	48.003 N.	124.678 W.	46.927 N.	124.179 W.
ixA2—Goodman Creek	47.825 N.	124.512 W.	47.835 N.	124.338 W.
ixA3—Mosquito Creek	47.799 N.	124.481 W.	47.787 N.	124.382 W.
ixA4—Cedar Creek	47.712 N.	124.415 W.	47.717 N.	124.335 W.
ixA5—Steamboat Creek	47.679 N.	124.403 W.	47.688 N.	124.349 W.
ixA6—Kalaloch Creek	47.607 N.	124.374 W.	47.637 N.	124.360 W.
ixA7—Raft River	47.462 N.	124.341 W.	47.449 N.	124.219 W.
ixA8—Moclips River	47.248 N.	124.219 W.	47.260 N.	124.122 W.
ixA9—Joe Creek	47.206 N.	124.202 W.	47.217 N.	124.153 W.
ixA10—Copalis River	47.133 N.	124.180 W.	47.234 N.	124.020 W.

(A) Map of Unit 27—Olympic Peninsula River Basins—Pacific Coast critical habitat subunit follows:

Proposed Critical Habitat for Bull Trout *(Salvelinus confluentus)*
Unit 27 Olympic Peninsula River Basins
Subunit (ix) Pacific Coast



Proposed Critical Habitat (map key)

ixA1-Pacific Coast Marine
ixA2-Goodman Creek
ixA3-Mosquito Creek
ixA4-Cedar Creek
ixA5-Steamboat Creek
ixA6-Kalaloch Creek
ixA7-Raft River
ixA8-Moclips River
ixA9-Joe Creek
ixA10-Copalis River

Area of detail showing Olympic Peninsula River Basins Unit and location of map area above

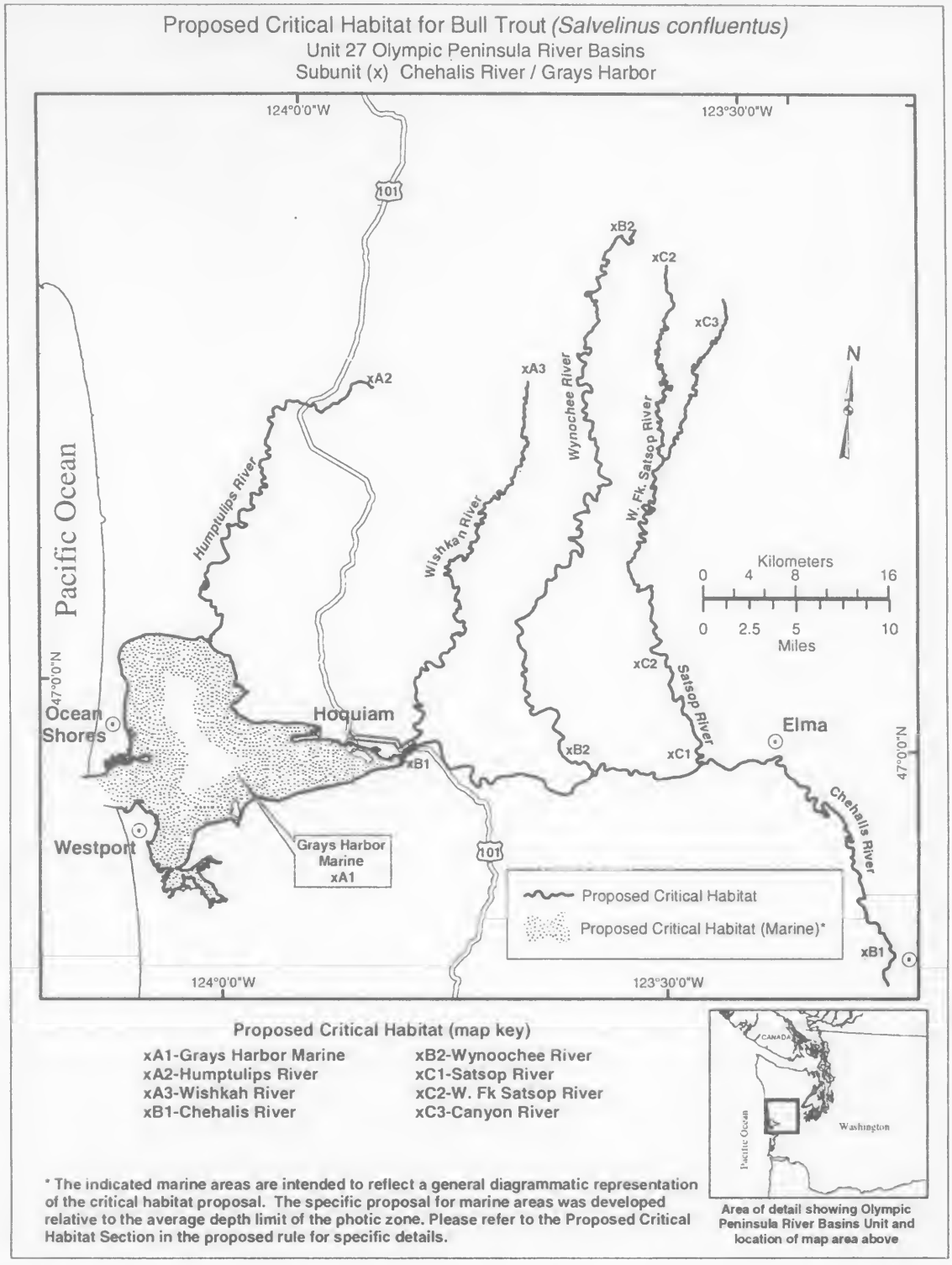
* The indicated marine areas are intended to reflect a general diagrammatic representation of the critical habitat proposal. The specific proposal for marine areas was developed relative to the average depth limit of the photic zone. Please refer to the Proposed Critical Habitat Section in the proposed rule for specific details.

(B) [Reserved]

(x) Chehalis River/Grays Harbor
Critical Habitat Subunit Descriptions:

Location—name	From		To	
	Latitude	Longitude	Latitude	Longitude
xA1—Grays Harbor Marine	46.927 N.	124.179 W.	46.906 N.	124.138 W.
xA2—Humptulips River	47.045 N.	124.048 W.	47.247 N.	123.888 W.
xA3—Wishkah River	46.973 N.	123.806 W.	47.261 N.	123.713 W.
xB1—Chehalis River	46.962 N.	123.823 W.	46.819 N.	123.252 W.
xB2—Wynoochee River	46.962 N.	123.606 W.	47.385 N.	123.604 W.
xC1—Satsop River	46.979 N.	123.480 W.	47.035 N.	123.524 W.
xC2—West Fork Satsop River	47.035 N.	123.524 W.	47.360 N.	123.565 W.
xC3—Canyon River	47.211 N.	123.551 W.	47.338 N.	123.498 W.

(A) Map of Unit 27—Olympic Peninsula River Basins—Chehalis River/Grays Harbor critical habitat subunit follows:



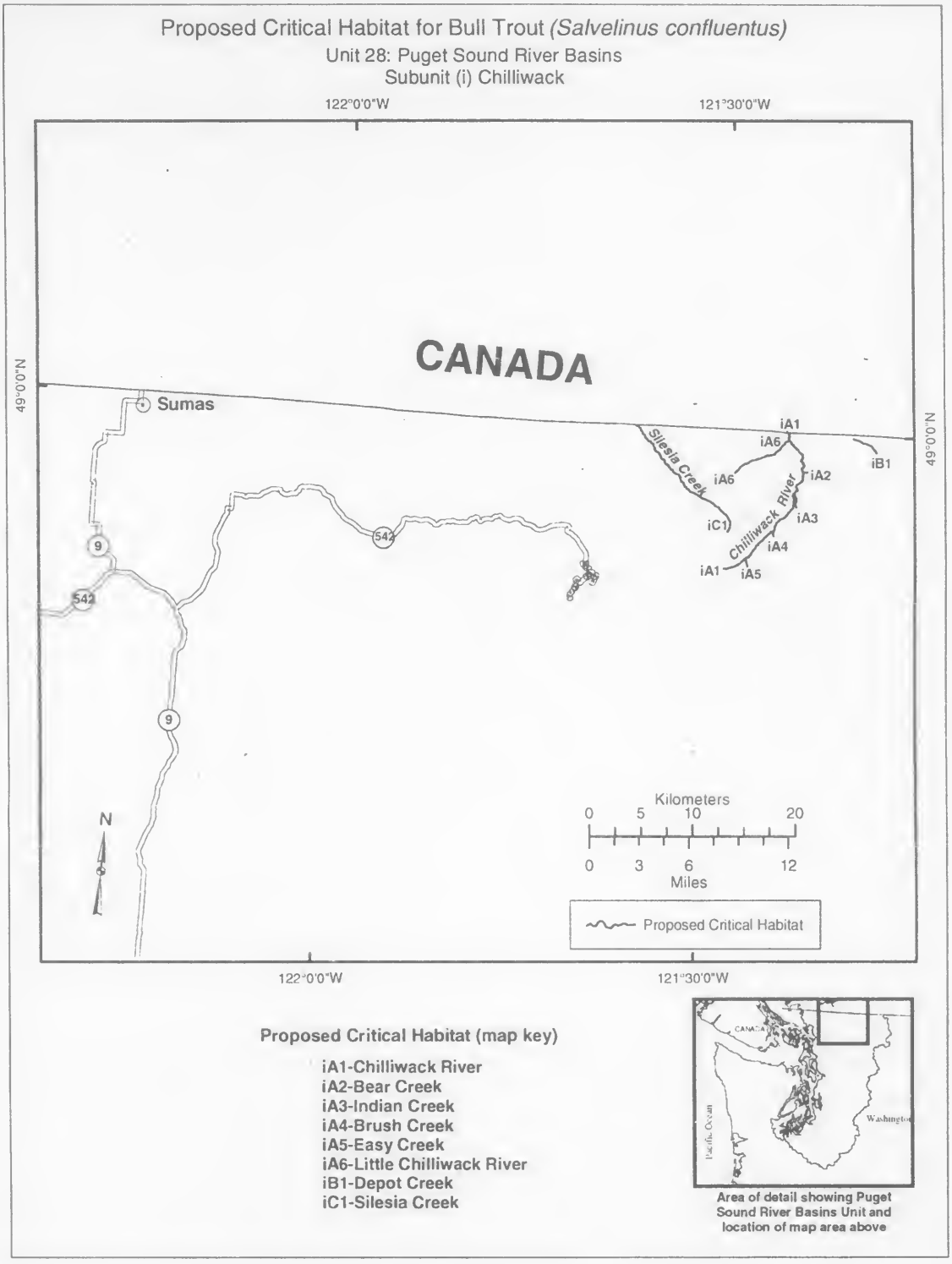
(B) [Reserved]

(33) Unit 28—Puget Sound Basins:

(i) Chilliwack Critical Habitat Subunit Descriptions:

Location—name	From		To	
	Latitude	Longitude	Latitude	Longitude
iA1—Chilliwack River	49.000 N.	121.410 W.	48.878 N.	121.486 W.
iA2—Bear Creek	48.965 N.	121.387 W.	48.966 N.	121.382 W.
iA3—Indian Creek	48.947 N.	121.397 W.	48.935 N.	121.394 W.
iA4—Brush Creek	48.913 N.	121.423 W.	48.909 N.	121.422 W.
iA5—Easy Creek	48.889 N.	121.457 W.	48.882 N.	121.455 W.
iA6—Little Chilliwack River	48.993 N.	121.407 W.	48.962 N.	121.477 W.
iB1—Depot Creek	48.997 N.	121.323 W.	48.986 N.	121.292 W.
iC1—Silesia Creek	48.999 N.	121.612 W.	48.911 N.	121.484 W.

(A) Map of Unit 28—Puget Sound Basins—Chilliwack critical habitat subunit follows:



(ii) Nooksack Critical Habitat Subunit Descriptions:

Location—name	From		To	
	Latitude	Longitude	Latitude	Longitude
iiA1—Nooksack River	48.771 N.	122.598 W.	48.834 N.	122.154 W.
iiA2—Smith Creek	48.856 N.	122.299 W.	48.841 N.	122.261 W.
iiB1—North Fork Nooksack River	48.834 N.	122.154 W.	48.907 N.	121.803 W.
iiB2—Racehorse Creek	48.889 N.	122.144 W.	48.884 N.	122.129 W.
iiB3—Kendall Creek	48.887 N.	122.148 W.	48.922 N.	122.144 W.
iiB4—Maple Creek	48.912 N.	122.078 W.	48.927 N.	122.076 W.
iiB5—Boulder Creek	48.925 N.	122.036 W.	48.937 N.	122.020 W.
iiB6—McDonald Creek (stream catalog #0435)	48.921 N.	122.015 W.	48.912 N.	122.018 W.
iiB7—Wildcat Creek	48.909 N.	122.000 W.	48.896 N.	122.005 W.
iiB8—Canyon Creek	48.906 N.	121.988 W.	48.932 N.	121.950 W.
iiB9—Hedrick Creek	48.899 N.	121.970 W.	48.890 N.	121.980 W.
iiB10—Comell Creek	48.899 N.	121.968 W.	48.887 N.	121.959 W.
iiB11—Gallop Creek	48.894 N.	121.942 W.	48.882 N.	121.946 W.
iiB12—Son of Gallop	48.889 N.	121.942 W.	48.884 N.	121.939 W.
iiC1—Glacier Creek	48.892 N.	121.938 W.	48.812 N.	121.889 W.
iiC2—Little Creek	48.884 N.	121.933 W.	48.876 N.	121.936 W.
iiC3—Davis Creek	48.882 N.	121.930 W.	48.879 N.	121.929 W.
iiC4—Thompson Creek	48.879 N.	121.913 W.	48.892 N.	121.879 W.
iiC5—Deep Creek	48.869 N.	121.907 W.	48.868 N.	121.910 W.
iiC6—Unnamed tributary (stream catalog #0476)	48.844 N.	121.901 W.	48.845 N.	121.895 W.
iiC7—Coal Creek (upper)	48.839 N.	121.902 W.	48.838 N.	121.905 W.
iiC8—Falls Creek	48.834 N.	121.901 W.	48.824 N.	121.905 W.
iiD1—Boyd Creek	48.903 N.	121.862 W.	48.897 N.	121.864 W.
iiD2—Cascade Creek	48.904 N.	121.838 W.	48.904 N.	121.838 W.
iiD3—Deerhorn Creek	48.903 N.	121.857 W.	48.906 N.	121.856 W.
iiD4—Ditch Creek	48.904 N.	121.850 W.	48.902 N.	121.848 W.
iiD5—Chainup Creek	48.904 N.	121.839 W.	48.908 N.	121.839 W.
iiD6—Deadhorse Creek	48.904 N.	121.837 W.	48.900 N.	121.835 W.
iiD7—Powerhouse Creek	48.908 N.	121.814 W.	48.911 N.	121.817 W.
iiD8—Wells Creek	48.905 N.	121.808 W.	48.890 N.	121.790 W.
iiE1—Middle Fork Nooksack River	48.834 N.	122.154 W.	48.725 N.	121.898 W.
iiE2—Canyon Creek (Canyon Lake Creek)	48.832 N.	122.143 W.	48.840 N.	122.110 W.
iiE3—unnamed tributary (stream catalog #0347)	48.829 N.	122.140 W.	48.821 N.	122.120 W.
iiE4—unnamed tributary (stream catalog #0349)	48.822 N.	122.133 W.	48.812 N.	122.124 W.
iiE5—Porter Creek	48.799 N.	122.126 W.	48.795 N.	122.113 W.
iiE6—Peat Bog Creek (stream catalog #0352)	48.790 N.	122.121 W.	48.780 N.	122.116 W.
iiE7—Clearwater Creek	48.771 N.	122.046 W.	48.805 N.	121.988 W.
iiE8—Galbraith Creek	48.759 N.	122.018 W.	48.755 N.	122.020 W.
iiE9—Sister Creek	48.755 N.	121.987 W.	48.746 N.	121.973 W.
iiE10—Warm Creek	48.756 N.	121.977 W.	48.761 N.	121.970 W.
iiE11—Wallace Creek	48.745 N.	121.950 W.	48.748 N.	121.941 W.
iiE12—Green Creek	48.738 N.	121.937 W.	48.732 N.	121.934 W.
iiE13—Rankin Creek	48.733 N.	121.919 W.	48.733 N.	121.907 W.
iiF1—South Fork Nooksack River	48.809 N.	122.202 W.	48.675 N.	121.940 W.
iiF2—Hutchinson Creek	48.707 N.	122.178 W.	48.733 N.	122.102 W.
iiF3—Skookum Creek	48.671 N.	122.140 W.	48.686 N.	122.105 W.
iiF4—Edfro Creek	48.661 N.	122.125 W.	48.664 N.	122.116 W.
iiF5—Cavanaugh Creek	48.647 N.	122.119 W.	48.645 N.	122.109 W.
iiF6—Deer Creek	48.610 N.	122.094 W.	48.603 N.	122.092 W.
iiF7—Howard Creek	48.609 N.	121.965 W.	48.619 N.	121.965 W.
iiF8—Bear Lake Outlet (stream catalog #0317)	48.607 N.	121.911 W.	48.610 N.	121.911 W.
iiF9—Bell Creek	48.681 N.	121.899 W.	48.685 N.	121.898 W.
iiF10—Elbow Creek/Lake Doreen Outlet (stream catalog # 0331)	48.685 N.	121.910 W.	48.707 N.	121.914 W.
iiG1—Wanlick Creek	48.644 N.	121.876 W.	48.670 N.	121.797 W.
iiG2—Monument Creek (stream catalog #0324)	48.652 N.	121.833 W.	48.647 N.	121.826 W.
iiG3—Loomis Creek	48.661 N.	121.813 W.	48.670 N.	121.826 W.

(A) Maps of Unit 28—Puget Sound Basins—Nooksack critical habitat subunit follow:

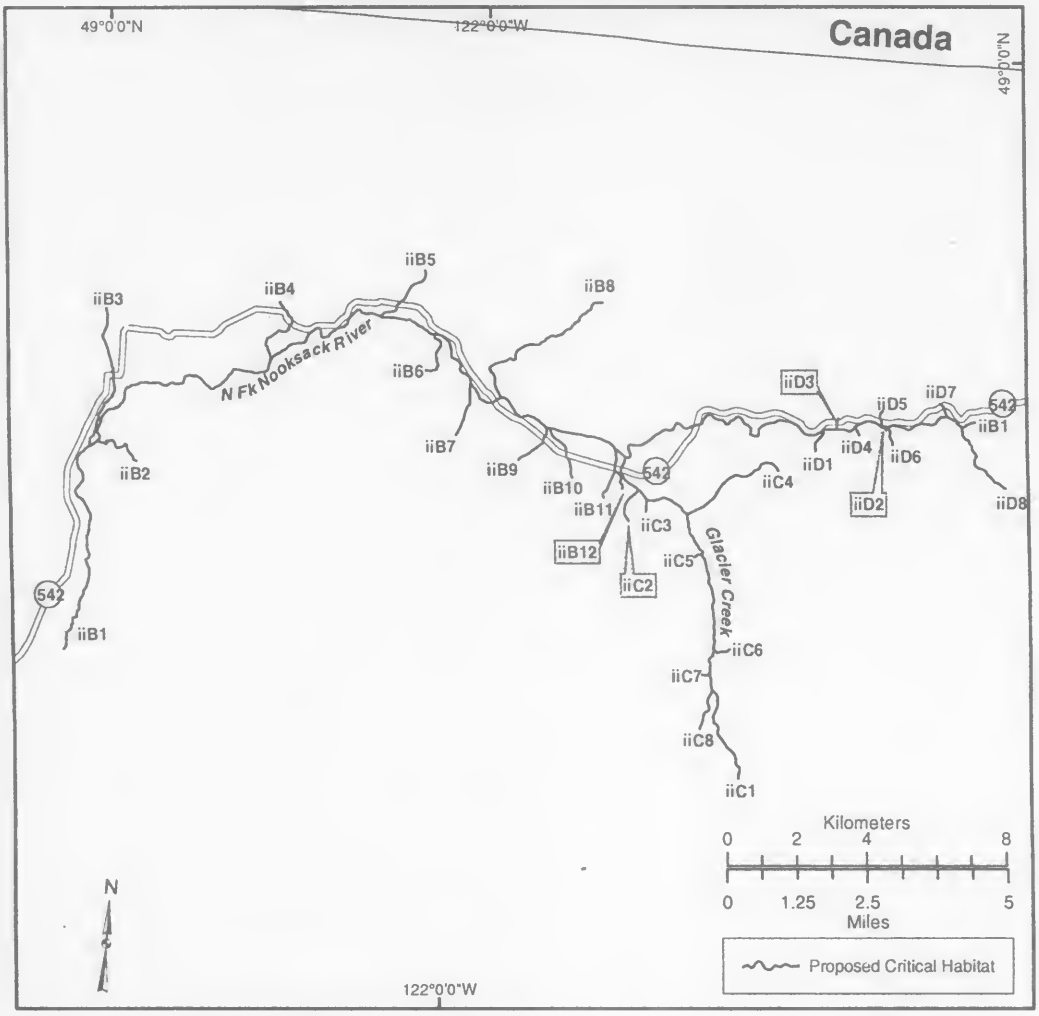
Proposed Critical Habitat for Bull Trout *(Salvelinus confluentus)*
Unit 28: Puget Sound River Basins
Subunit (ii) Nooksack (Mainstem Portion)

Proposed Critical Habitat (map key)

iiA1-Nooksack River
iiA2-Smith Creek

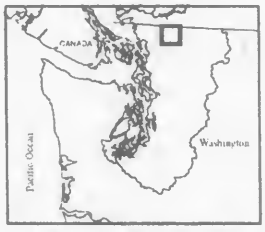
Area of detail showing Puget Sound River Basins Unit and location of map area above

Proposed Critical Habitat for Bull Trout *(Salvelinus confluentus)*
Unit 28: Puget Sound River Basins
Subunit (ii) Nooksack (North Fork Nooksack River Portion)



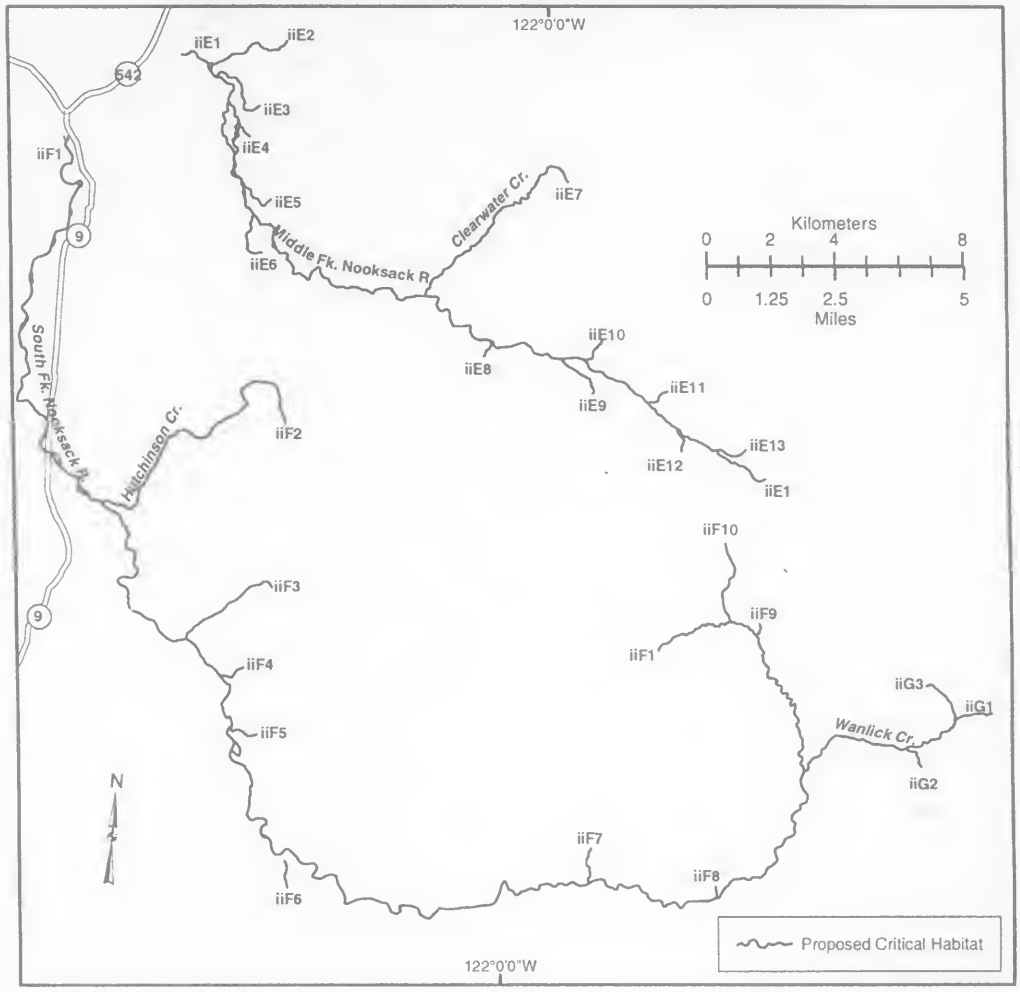
Proposed Critical Habitat (map key)

iiB1-North Fork Nooksack R.
iiB2-Racehorse Creek
iiB3-Kendall Creek
iiB4-Maple Creek
iiB5-Boulder Creek
iiB6-McDonald Creek(#0435)
iiB7-Wildcat Creek
iiB8-Canyon Creek
iiB9-Hedrick Creek
iiB10-Cornell Creek
iiB11-Gallop Creek
iiB12-Son of Gallop
iiC1-Glacier Creek
iiC2-Little Creek
iiC3-Davis Creek
iiC4-Thompson Creek
iiC5-Deep Creek
iiC6-unnamed trib. (#0476)
iiC7-Coal Creek (upper)
iiC8-Falls Creek
iiD1-Boyd Creek
iiD2-Cascade Creek
iiD3-Deerhorn Creek
iiD4-Ditch Creek
iiD5-Chainup Creek
iiD6-Deadhorse Creek
iiD7-Powerhouse Creek
iiD8-Wells Creek



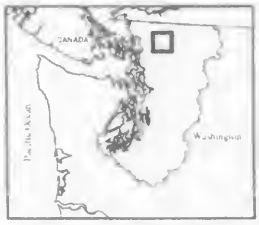
Area of detail showing Puget Sound River Basins Unit and location of map area above

Proposed Critical Habitat for Bull Trout *(Salvelinus confluentus)*
Unit 28: Puget Sound River Basins
Subunit (ii) Nooksack (Middle and South Fork Nooksack River Portion)



Proposed Critical Habitat (map key)

iiE1-Middle Fork Nooksack R.
iiE2-Canyon Cr. (Canyon Lake Cr)
iiE3-unnamed trib. (#0347)
iiE4-unnamed trib. (#0349)
iiE5-Porter Creek
iiE6-Peat Bog Creek (#0352)
iiE7-Clearwater Creek
iiE8-Galbraith Creek
iiE9-Sister Creek
iiE10-Warm Creek
iiE11-Wallace Creek
iiE12-Green Creek
iiF1-South Fork Nooksack R.
iiF2-Hutchinson Creek
iiF3-Skookum Creek
iiF4-Edfro Creek
iiF5-Cavanaugh Creek
iiF6-Deer Creek
iiF7-Howard Creek
iiF8-Bear Lake Outlet (#0317)
iiF9-Bell Creek
iiF10-Elbow Cr./Lk. Doreen Outlet
iiG1-Wanlick Creek
iiG2-Monument Creek(#0324)
iiG3-Loomis Creek



Area of detail showing Puget Sound River Basins Unit and location of map area

(B) [Reserved]

(iii) Lower Skagit Critical Habitat Subunit Descriptions:

Location—name	From		To	
	Latitude	Longitude	Latitude	Longitude
iiiA1—Skagit River	48.387 N.	122.366 W.	49.000 N.	121.078 W.
iiiA2—North Fork Skagit River	48.364 N.	122.472 W.	48.387 N.	122.366 W.
iiiA3—South Fork Skagit River	48.292 N.	122.367 W.	48.387 N.	122.366 W.
iiiA4—Nookachamps Creek	48.471 N.	122.296 W.	48.346 N.	122.202 W.
iiiA5—Day Creek	48.519 N.	122.065 W.	48.445 N.	122.006 W.
iiiA6—Jones Creek	48.524 N.	122.052 W.	48.542 N.	122.050 W.
iiiA7—Alder Creek	48.519 N.	121.954 W.	48.549 N.	121.954 W.
iiiA8—Grandy Creek	48.518 N.	121.879 W.	48.561 N.	121.823 W.
iiiA9—Finney Creek	48.524 N.	121.846 W.	48.465 N.	121.686 W.
iiiA10—Jackman Creek	48.523 N.	121.720 W.	48.529 N.	121.696 W.
iiiA11—Rocky Creek	48.501 N.	121.494 W.	48.510 N.	121.501 W.
iiiA12—Corkindale Creek	48.505 N.	121.485 W.	48.518 N.	121.482 W.
iiiA13—Diobsud Creek	48.559 N.	121.411 W.	48.576 N.	121.432 W.
iiiA14—Alma Creek	48.600 N.	121.361 W.	48.590 N.	121.355 W.
iiiA15—Goodell Creek	48.672 N.	121.264 W.	48.778 N.	121.351 W.
iiiA16—Newhalem Creek	48.671 N.	121.254 W.	48.663 N.	121.251 W.
iiiA17—Gorge Lake	Located at		48.703 N.	121.180 W.
iiiA18—Stetattle Creek	48.717 N.	121.148 W.	48.727 N.	121.154 W.
iiiB1—Baker River	48.534 N.	121.735 W.	48.821 N.	121.427 W.
iiiB2—Lake Shannon	Located at		48.590 N.	121.723 W.
iiiB3—Baker Lake	Located at		48.719 N.	121.660 W.
iiiB4—Sulphur Creek	48.648 N.	121.698 W.	48.659 N.	121.710 W.
iiiB5—Park Creek	48.724 N.	121.651 W.	48.741 N.	121.681 W.
iiiB6—Swift Creek	48.726 N.	121.648 W.	48.747 N.	121.657 W.
iiiB7—Lake Creek	48.762 N.	121.545 W.	48.769 N.	121.549 W.
iiiB8—Sulphide Creek	48.777 N.	121.532 W.	48.789 N.	121.551 W.
iiiB9—Crystal Creek	48.787 N.	121.501 W.	48.791 N.	121.509 W.
iiiB10—Bald Eagle Creek	48.800 N.	121.464 W.	48.797 N.	121.448 W.
iiiB11—Pass Creek	48.815 N.	121.462 W.	48.811 N.	121.457 W.
iiiC1—Sauk River	48.482 N.	121.604 W.	48.135 N.	121.422 W.
iiiC2—Dan Creek	48.298 N.	121.550 W.	48.265 N.	121.539 W.
iiiC3—Falls Creek	48.148 N.	121.436 W.	48.137 N.	121.431 W.
iiiC4—North Fork Sauk River	48.097 N.	121.388 W.	48.096 N.	121.369 W.
iiiD1—Suiattle River	48.330 N.	121.548 W.	48.162 N.	121.005 W.
iiiD2—Big Creek	48.345 N.	121.450 W.	48.344 N.	121.438 W.
iiiD3—Tenas Creek	48.324 N.	121.438 W.	48.335 N.	121.421 W.
iiiD4—Straight Creek	48.272 N.	121.397 W.	48.254 N.	121.397 W.
iiiD5—Black Creek	48.259 N.	121.401 W.	48.247 N.	121.412 W.
iiiD6—Buck Creek	48.265 N.	121.338 W.	48.353 N.	121.267 W.
iiiD7—Horse Creek	48.313 N.	121.285 W.	48.322 N.	121.256 W.
iiiD8—Lime Creek	48.252 N.	121.292 W.	48.218 N.	121.277 W.
iiiD9—Downey Creek	48.259 N.	121.224 W.	48.330 N.	121.148 W.
iiiD10—Goat Creek	48.328 N.	121.156 W.	48.334 N.	121.160 W.
iiiD11—Sulphur Creek	48.247 N.	121.192 W.	48.279 N.	121.084 W.
iiiD12—Milk Creek	48.221 N.	121.162 W.	48.178 N.	121.151 W.
iiiD13—Canyon Creek	48.211 N.	121.087 W.	48.220 N.	121.080 W.
iiiD14—Vista Creek	48.194 N.	121.046 W.	48.180 N.	121.055 W.
iiiD15—Miners Creek	48.187 N.	121.030 W.	48.190 N.	121.022 W.
iiiD16—Dusty Creek	48.177 N.	121.018 W.	48.139 N.	121.039 W.
iiiD17—Small Creek	48.162 N.	121.005 W.	48.158 N.	120.977 W.
iiiE1—White Chuck River	48.173 N.	121.471 W.	48.071 N.	121.150 W.
iiiE2—Black Oak Creek	48.177 N.	121.449 W.	48.185 N.	121.453 W.
iiiE3—unnamed tributary (stream catalog #1119)	48.181 N.	121.429 W.	48.185 N.	121.431 W.
iiiE4—Crystal Creek	48.181 N.	121.363 W.	48.183 N.	121.360 W.
iiiE5—Pugh Creek	48.172 N.	121.338 W.	48.165 N.	121.332 W.
iiiE6—Owl Creek	48.164 N.	121.299 W.	48.161 N.	121.287 W.
iiiE7—Camp Creek	48.159 N.	121.291 W.	48.150 N.	121.279 W.
iiiE8—Fire Creek	48.153 N.	121.243 W.	48.154 N.	121.231 W.
iiiE9—Fourteenmile Creek	48.140 N.	121.221 W.	48.126 N.	121.227 W.
iiiE10—Pumice Creek	48.148 N.	121.235 W.	48.141 N.	121.148 W.
iiiE11—Glacier Creek	48.130 N.	121.202 W.	48.131 N.	121.167 W.
iiiF1—South Fork Sauk River	48.097 N.	121.388 W.	47.987 N.	121.392 W.
iiiF2—Merry Brook W.	48.089 N.	121.391 W.	48.087 N.	121.387 W.
iiiF3—Bedal Creek	48.080 N.	121.394 W.	48.047 N.	121.350 W.
iiiF4—Chocwick Creek	48.074 N.	121.399 W.	48.055 N.	121.382 W.
iiiF5—Elliott Creek	48.057 N.	121.415 W.	48.027 N.	121.366 W.
iiiF6—Weden Creek	48.003 N.	121.438 W.	47.986 N.	121.443 W.
iiiF7—Seventysix Gulch	47.987 N.	121.392 W.	47.974 N.	121.383 W.
iiiF8—Glacier Creek	47.987 N.	121.392 W.	47.987 N.	121.367 W.
iiiG1—Illabot Creek	48.496 N.	121.530 W.	48.389 N.	121.318 W.
iiiG2—Arrow Creek	48.407 N.	121.389 W.	48.423 N.	121.395 W.
iiiG3—Otter Creek	48.421 N.	121.373 W.	48.424 N.	121.372 W.

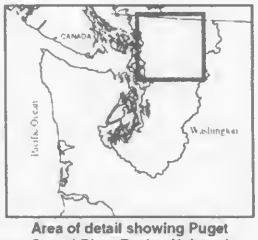
Location—name	From		To	
	Latitude	Longitude	Latitude	Longitude
iiiH1—Cascade River	48.524 N.	121.429 W.	48.463 N.	121.163 W.
iiiH2—Jordan Creek	48.522 N.	121.421 W.	48.515 N.	121.418 W.
iiiH3—Boulder Creek	48.518 N.	121.365 W.	48.512 N.	121.363 W.
iiiH4—Marble Creek	48.531 N.	121.281 W.	48.542 N.	121.251 W.
iiiH5—Kindy Creek	48.464 N.	121.207 W.	48.432 N.	121.206 W.
iiiH6—Sonny Boy Creek	48.462 N.	121.196 W.	48.427 N.	121.171 W.
iiiH7—South Fork Cascade River	48.463 N.	121.163 W.	48.391 N.	121.108 W.
iiil1—Bacon Creek	48.586 N.	121.394 W.	48.681 N.	121.462 W.
iiil2—East Fork Bacon Creek	48.661 N.	121.433 W.	48.713 N.	121.416 W.

(A) Maps of Unit 28—Puget Sound Basins—Lower Skagit critical habitat subunit follow:

Proposed Critical Habitat for Bull Trout *(Salvelinus confluentus)*
Unit 28: Puget Sound River Basins
Subunit (iii) Lower Skagit (Skagit River Portion)

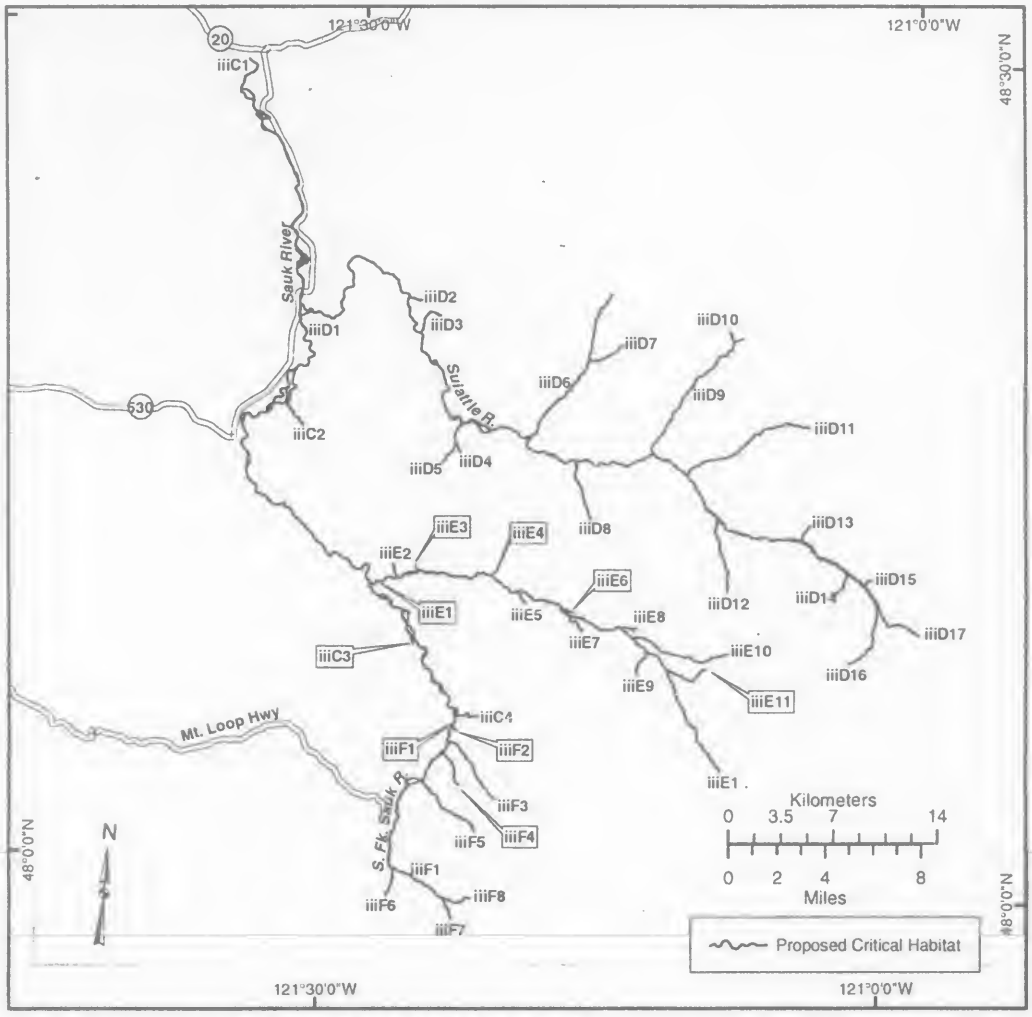
Proposed Critical Habitat (map key)

iiiA1-Skagit River
iiiA2-N. Fk. Skagit River
iiiA3-S. Fk. Skagit River
iiiA4-Nookachamps Creek
iiiA5-Day Creek
iiiA6-Jones Creek
iiiA7-Alder Creek
iiiA8-Grandy Creek
iiiA9-Finney Creek
iiiA10-Jackman Creek
iiiA11-Rocky Creek
iiiA12-Corkindale Creek
iiiA13-Diobsud Creek
iiiA14-Alma Creek
iiiA15-Goodell Creek
iiiA16-Newhalem Creek
iiiA17-Gorge Lake
iiiA18-Stetattle Creek
iiiB1-Baker River
iiiB2-Lake Shannon
iiiB3-Baker Lake
iiiB4-Sulphur Creek
iiiB5-Park Creek
iiiB6-Swift Creek
iiiB7-Lake Creek
iiiB8-Sulphide Creek
iiiB9-Crystal Creek
iiiB10-Bald Eagle Creek
iiiB11-Pass Creek
iiiG1-Illabot Creek
iiiG2-Arrow Creek
iiiG3-Otter Creek
iiiH1-Cascade River
iiiH2-Jordan Creek
iiiH3-Boulder Creek
iiiH4-Marble Creek
iiiH5-Kindy Creek
iiiH6-Sonny Boy Creek
iiiH7-S. Fk. Cascade River
iiil1-Bacon Creek
iiil2-E. Fk. Bacon Creek



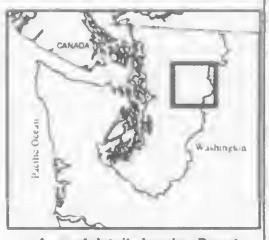
Area of detail showing Puget Sound River Basins Unit and location of map area above

Proposed Critical Habitat for Bull Trout *(Salvelinus confluentus)*
Unit 28: Puget Sound River Basins
Subunit (iii) Lower Skagit (Sauk River Portion)



Proposed Critical Habitat (map key)

iiiC1-Sauk River
iiiC2-Dan Creek
iiiC3-Falls Creek
iiiC4-N. Fk. Sauk River
iiiD1-Suiattle River
iiiD2-Big Creek
iiiD3-Tenas Creek
iiiD4-Straight Creek
iiiD5-Black Creek
iiiD6-Buck Creek
iiiD7-Horse Creek
iiiD8-Lime Creek
iiiD9-Downey Creek
iiiD10-Goat Creek
iiiD11-Sulphur Creek
iiiD12-Milk Creek
iiiD13-Canyon Creek
iiiD14-Vista Creek
iiiD15-Miners Creek
iiiD16-Dusty Creek
iiiD17-Small Creek
iiiE1-White Chuck River
iiiE2-Black Oak Creek
iiiE3-unnamed trib. (#1119)
iiiE4-Crystal Creek
iiiE5-Pugh Creek
iiiE6-Owl Creek
iiiE7-Camp Creek
iiiE8-Fire Creek
iiiE9-Fourteenmile Creek
iiiE10-Pumice Creek
iiiE11-Glacier Creek
iiiF1-S. Fk. Sauk River
iiiF2-Merry Brook
iiiF3-Bedal Creek
iiiF4-Chocwick Creek
iiiF5-Elliott Creek
iiiF6-Weden Creek
iiiF7-Seventysix Gulch
iiiF8-Glacier Creek



Area of detail showing Puget Sound River Basins Unit and location of map area above

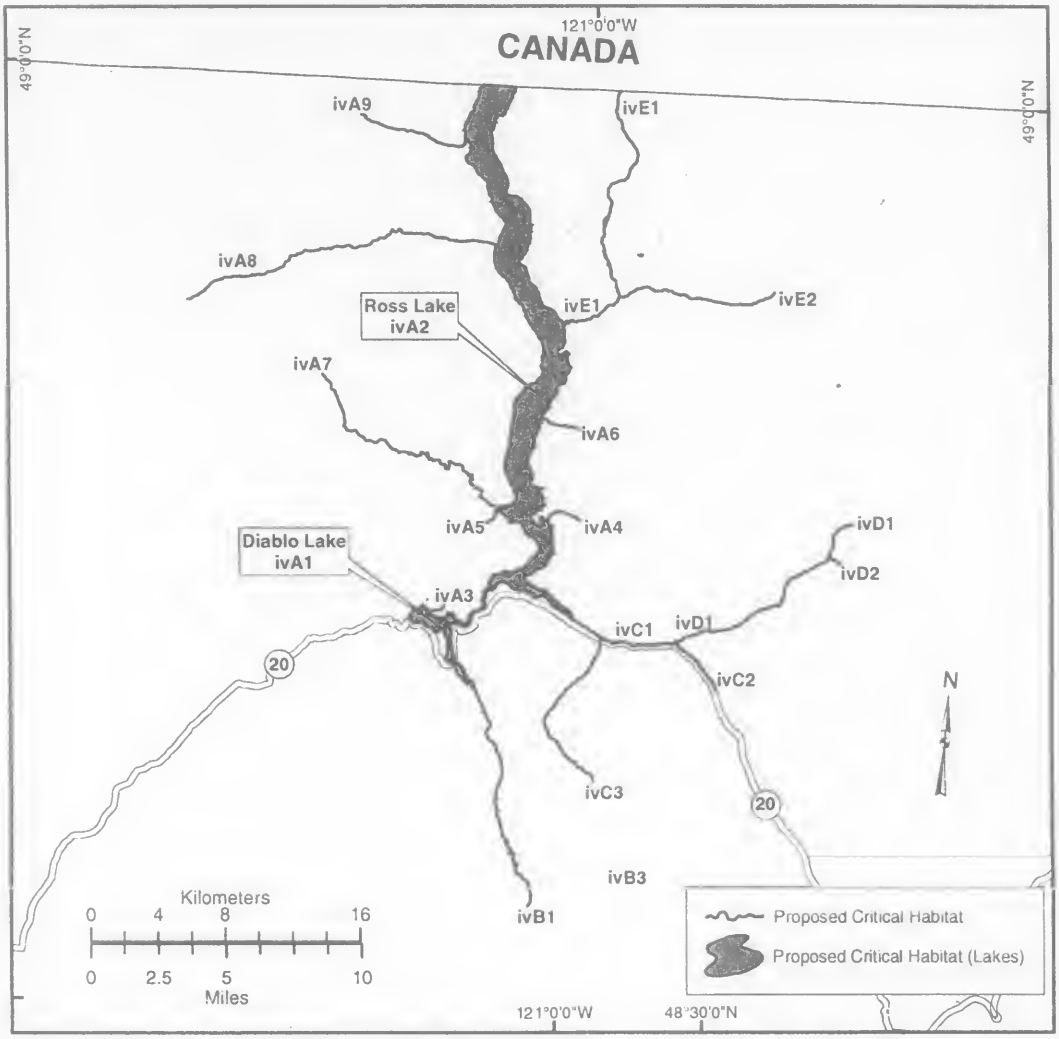
(B) [Reserved]

(iv) Upper Skagit Critical Habitat Subunit Descriptions:

Location—name	From		To	
	Latitude	Longitude	Latitude	Longitude
ivA1—Diablo Lake	Located at		48.712 N.	121.109 W.
ivA2—Ross Lake	Located at		48.870 N.	121.029 W.
ivA3—Deer Creek	48.715 N.	121.119 W.	48.721 N.	121.104 W.
ivA4—Roland Creek	48.762 N.	121.027 W.	48.770 N.	120.997 W.
ivA5—Pierce Creek	48.774 N.	121.060 W.	48.766 N.	121.072 W.
ivA6—Devils Creek	48.825 N.	121.042 W.	48.819 N.	121.001 W.
ivA7—Big Beaver Creek	48.773 N.	121.045 W.	48.842 N.	121.210 W.
ivA8—Little Beaver Creek	48.912 N.	121.064 W.	48.878 N.	121.322 W.
ivA9—Silver Creek	48.972 N.	121.092 W.	48.981 N.	121.188 W.
ivB1—Thunder Creek	48.712 N.	121.105 W.	48.563 N.	121.026 W.
ivC1—Ruby Creek	48.737 N.	121.046 W.	48.707 N.	120.916 W.
ivC2—Granite Creek	48.707 N.	120.916 W.	48.684 N.	120.882 W.
ivC3—Panther Creek	48.708 N.	120.975 W.	48.631 N.	120.977 W.
ivD1—Canyon Creek	48.707 N.	120.916 W.	48.775 N.	120.777 W.
ivD2—Slate Creek	48.757 N.	120.795 W.	48.754 N.	120.786 W.
ivE1—Lightning Creek	48.871 N.	121.027 W.	49.000 N.	120.978 W.
ivE2—Three Fools Creek	48.891 N.	120.973 W.	48.897 N.	120.847 W.

(A) Map of Unit 28—Puget Sound Basins—Upper Skagit critical habitat subunit follows:

Proposed Critical Habitat for Bull Trout *(Salvelinus confluentus)*
Unit 28: Puget Sound River Basins
Subunit (iv) Upper Skagit



Proposed Critical Habitat (map key)

ivA1-Diablo Lake
ivA2-Ross Lake
ivA3-Deer Creek
ivA4-Roland Creek
ivA5-Pierce Creek
ivA6-Devils Creek
ivA7-Big Beaver Creek
ivA8-Little Beaver Creek
ivA9-Silver Creek
ivB1-Thunder Creek
ivC1-Ruby Creek
ivC2-Granite Creek
ivC3-Panther Creek
ivD1-Canyon Creek
ivD2-Slate Creek
ivE1-Lightning Creek
ivE2-Three Fools Creek

Area of detail showing Puget Sound River Basins Unit and location of map area above

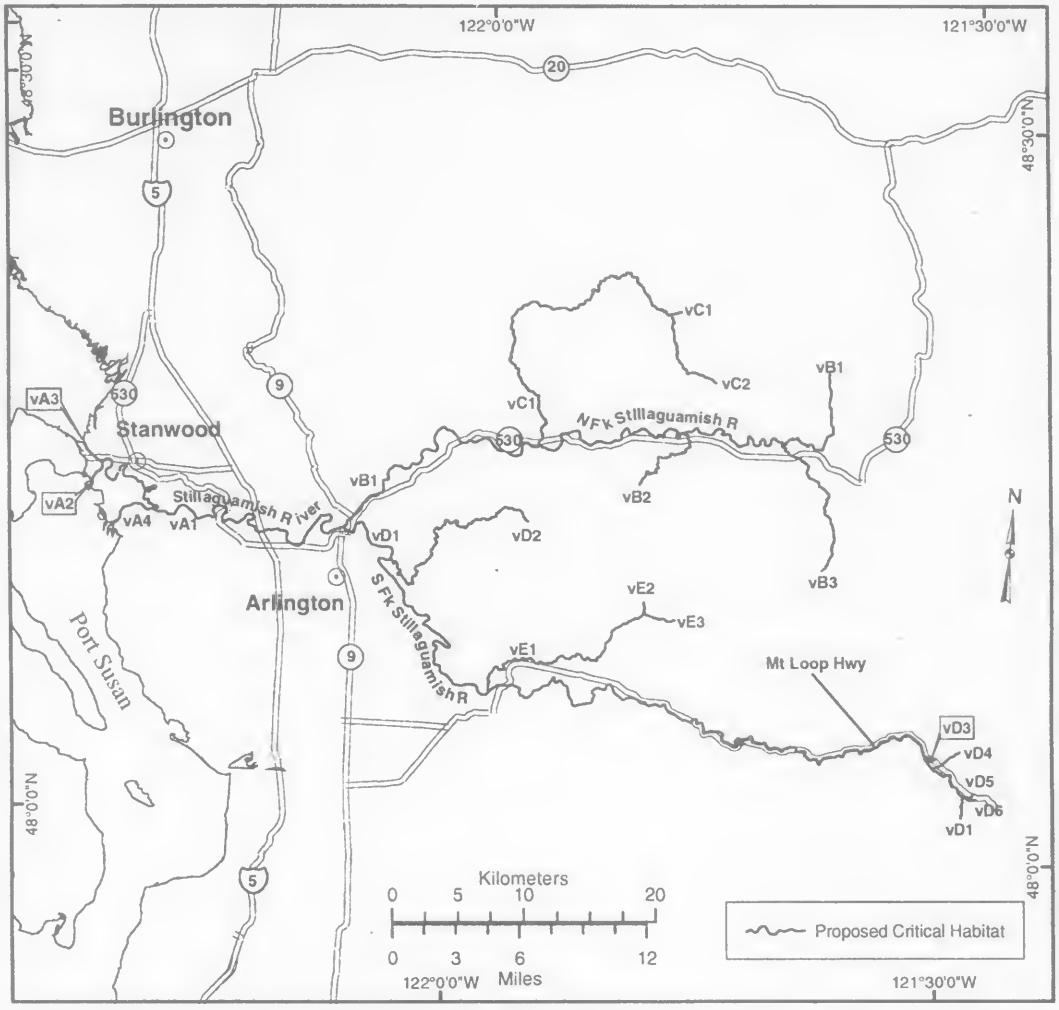
(B) [Reserved]

(v) Stillaguamish Critical Habitat Subunit Descriptions:

Location—name	From		To	
	Latitude	Longitude	Latitude	Longitude
vA1—Stillaguamish River	48.238 N.	122.377 W.	48.204 N.	122.126 W.
vA2—South Pass	48.226 N.	122.385 W.	48.238 N.	122.377 W.
vA3—West Pass	48.250 N.	122.396 W.	48.238 N.	122.377 W.
vA4—Hat Slough	48.197 N.	122.361 W.	48.209 N.	122.322 W.
vB1—North Fork Stillaguamish River	48.204 N.	122.126 W.	48.328 N.	121.639 W.
vB2—Boulder River	48.282 N.	121.786 W.	48.245 N.	121.827 W.
vB3—Squire Creek	48.280 N.	121.684 W.	48.194 N.	121.637 W.
vC1—Deer Creek	48.268 N.	121.931 W.	48.365 N.	121.793 W.
vC2—Higgins Creek	48.362 N.	121.806 W.	48.318 N.	121.754 W.
vD1—South Fork Stillaguamish River	48.204 N.	122.126 W.	48.030 N.	121.482 W.
vD2—Jim Creek	48.185 N.	122.076 W.	48.216 N.	121.939 W.
vD3—Big Four Creek	48.072 N.	121.523 W.	48.070 N.	121.511 W.
vD4—Perry Creek	48.063 N.	121.514 W.	48.076 N.	121.487 W.
vD5—Buck Creek	48.045 N.	121.480 W.	48.047 N.	121.471 W.
vD6—Palmer Creek	48.045 N.	121.481 W.	48.043 N.	121.468 W.
vE1—Canyon Creek	48.098 N.	121.969 W.	48.158 N.	121.816 W.
vE2—North Fork Canyon Creek	48.158 N.	121.816 W.	48.165 N.	121.817 W.
vE3—South Fork Canyon Creek	48.158 N.	121.816 W.	48.154 N.	121.784 W.

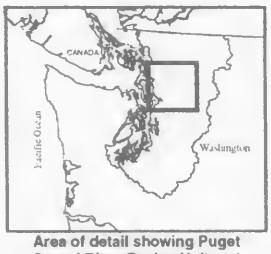
(A) Map of Unit 28—Puget Sound Basins—Stillaguamish critical habitat subunit follows:

Proposed Critical Habitat for Bull Trout *(Salvelinus confluentus)*
Unit 28: Puget Sound River Basins
Subunit (v) Stillaguamish



Proposed Critical Habitat (map key)

vA1-Stillaguamish River
vA2-South Pass
vA3-West Pass
vA4-Hat Slough
vB1-N. Fk. Stillaguamish R.
vB2-Boulder River
vB3-Squire Creek
vC1-Deer Creek
vC2-Higgins Creek
vD1-S. Fk. Stillaguamish R.
vD2-Jim Creek
vD3-Big Four Creek
vD4-Perry Creek
vD5-Buck Creek
vD6-Palmer Creek
vE1-Canyon Creek
vE4-N. Fk. Canyon Creek
vE5-S. Fk. Canyon Creek



Area of detail showing Puget Sound River Basins Unit and location of map area above

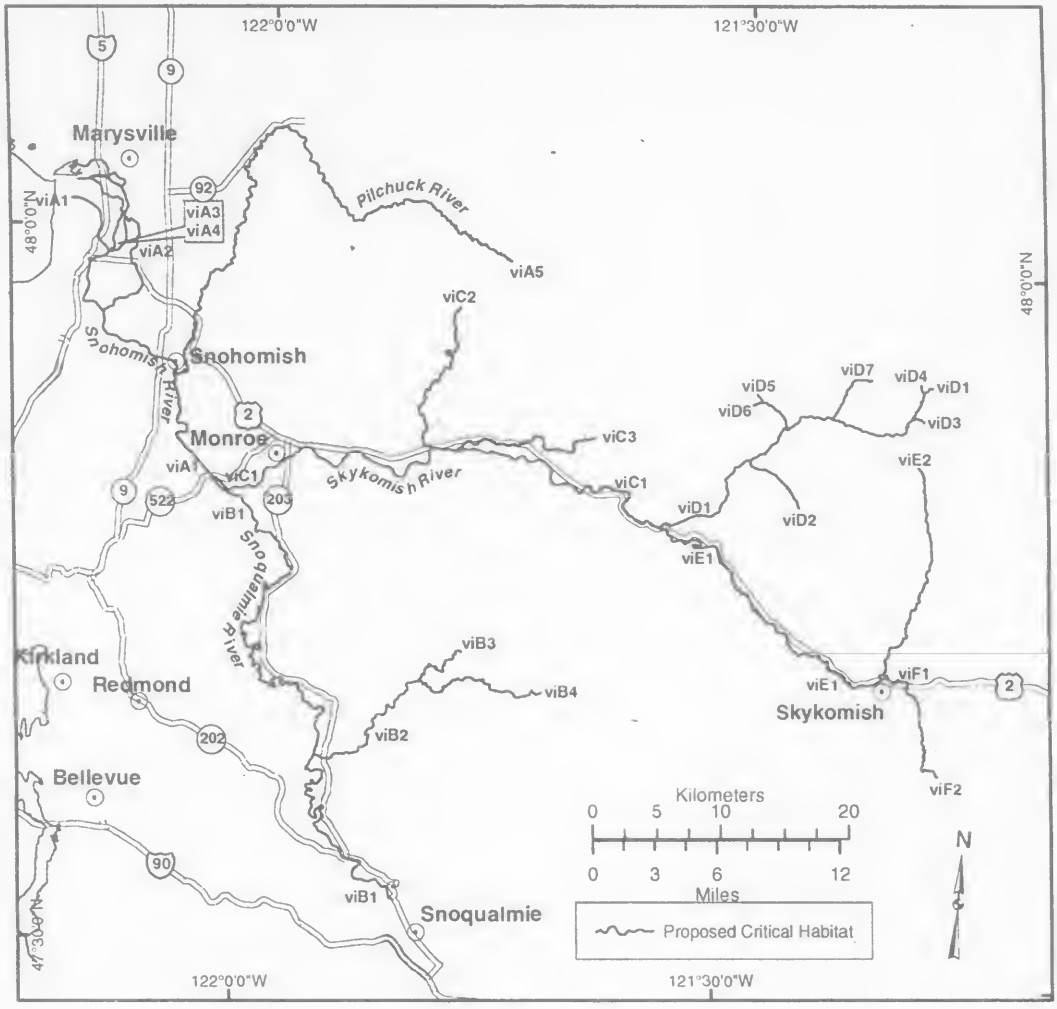
(B) [Reserved]

(vi) Snohomish/Skykomish Critical Habitat Subunit Descriptions:

Location—name	From		To	
	Latitude	Longitude	Latitude	Longitude
viA1—Snohomish River	48.020 N.	122.208 W.	47.830 N.	122.045 W.
viA2—Ebey Slough	48.022 N.	122.147 W.	47.941 N.	122.169 W.
viA3—Steamboat Slough	48.033 N.	122.203 W.	47.984 N.	122.168 W.
viA4—Union Slough	48.034 N.	122.190 W.	47.984 N.	122.166 W.
viA5—Pilchuck River	47.904 N.	122.090 W.	47.995 N.	121.745 W.
viB1—Snoqualmie River	47.830 N.	122.045 W.	47.541 N.	121.836 W.
viB2—Tolt River	47.641 N.	121.926 W.	47.696 N.	121.820 W.
viB3—North Fork Tolt River	47.710 N.	121.794 W.	47.718 N.	121.778 W.
viB4—South Fork Tolt River	47.696 N.	121.820 W.	47.693 N.	121.692 W.
viC1—Skykomish River	47.830 N.	122.045 W.	47.813 N.	121.578 W.
viC2—Sultan River	47.860 N.	121.819 W.	47.960 N.	121.795 W.
viC3—Wallace River	47.859 N.	121.794 W.	47.874 N.	121.648 W.
viD1—North Fork Skykomish River	47.813 N.	121.578 W.	47.922 N.	121.298 W.
viD2—Trout Creek	47.864 N.	121.487 W.	47.833 N.	121.433 W.
viD3—West Cady Creek	47.899 N.	121.318 W.	47.898 N.	121.306 W.
viD4—Goblin Creek	47.919 N.	121.307 W.	47.924 N.	121.311 W.
viD5—Salmon Creek	47.889 N.	121.451 W.	47.911 N.	121.481 W.
viD6—South Fork Salmon Creek	47.906 N.	121.475 W.	47.904 N.	121.485 W.
viD7—Troublesome Creek	47.897 N.	121.403 W.	47.925 N.	121.362 W.
viE1—South Fork Skykomish River	47.813 N.	121.578 W.	47.705 N.	121.305 W.
viE2—Beckler River	47.715 N.	121.339 W.	47.865 N.	121.310 W.
viF1—Foss River	47.653 N.	121.293 W.	47.705 N.	121.305 W.
viF2—East Fork Foss River	47.653 N.	121.293 W.	47.649 N.	121.276 W.

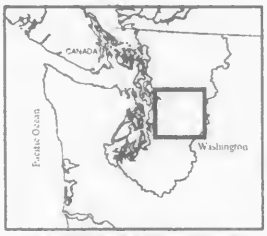
(A) Map of Unit 28—Puget Sound Basins—Snohomish/Skykomish critical habitat subunit follows:

Proposed Critical Habitat for Bull Trout *(Salvelinus confluentus)*
Unit 28: Puget Sound River Basins
Subunit (vi) Snohomish-Skykomish



Proposed Critical Habitat (map key)

viA1-Snohomish River
viA2-Ebey Slough
viA3-Steamboat Slough
viA4-Union Slough
viA5-Pilchuck River
viB1-Snoqualmie River
viB2-Tolt River
viB3-N. Fk. Tolt River
viB4-S. Fk. Tolt River
viC1-Skykomish River
viC2-Sultan River
viC3-Wallace River
viD1-N. Fk. Skykomish R.
viD2-Trout Creek
viD3-West Cady Creek
viD4-Goblin Creek
viD5-Salmon Creek
viD6-S. Fk. Salmon Creek
viD7-Troublesome Creek
viE1-S. Fk. Skykomish R.
viE2-Beckler River
viF1-Foss River
viF2-E. Fk. Foss River



Area of detail showing Puget Sound River Basins Unit and location of map area above

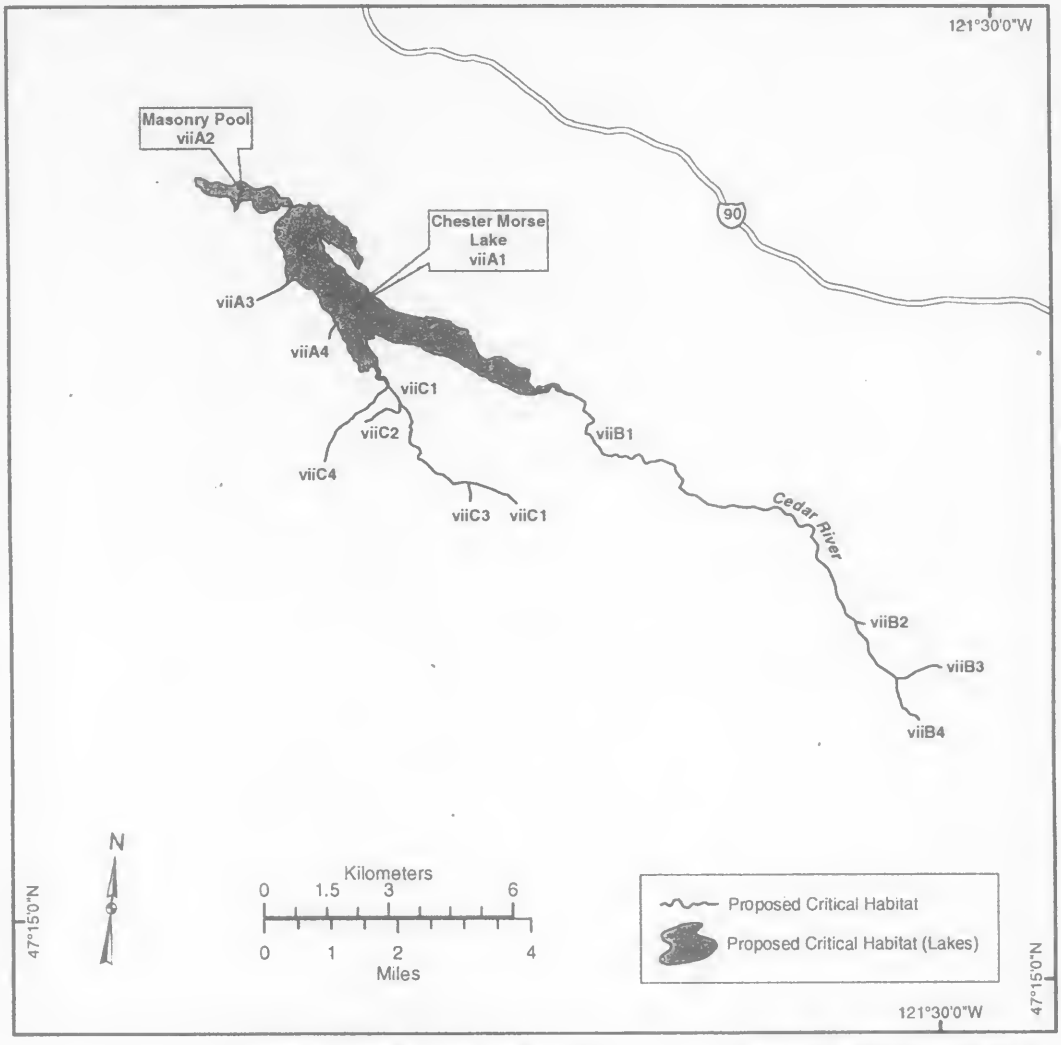
(B) [Reserved]

(vii) Chester Morse Lake Critical Habitat Subunit Descriptions:

Location—name	From		To	
	Latitude	Longitude	Latitude	Longitude
viiA1—Chester Morse Lake	Located at		47.411 N.	121.736 W.
viiA2—Masonry Pool	Located at		47.386 N.	121.697 W.
viiA3—Rack Creek	47.397 N.	121.716 W.	47.388 N.	121.730 W.
viiA4—Shotgun Creek	47.388 N.	121.701 W.	47.380 N.	121.706 W.
viiB1—Cedar River	47.412 N.	121.751 W.	47.313 N.	121.520 W.
viiB2—unnamed tributary (stream catalog #0439)	47.325 N.	121.534 W.	47.325 N.	121.531 W.
viiB3—North Fork Cedar River	47.313 N.	121.520 W.	47.317 N.	121.505 W.
viiB4—South Fork Cedar River	47.313 N.	121.520 W.	47.305 N.	121.512 W.
viiC1—Rex River	47.387 N.	121.697 W.	47.347 N.	121.644 W.
viiC2—Cabin Creek	47.367 N.	121.683 W.	47.363 N.	121.694 W.
viiC3—Lindsay Creek	47.351 N.	121.659 W.	47.347 N.	121.659 W.
viiC4—Boulder Creek	47.371 N.	121.687 W.	47.354 N.	121.706 W.

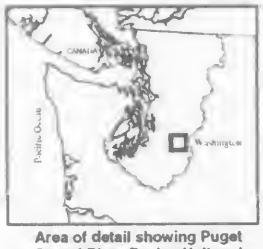
(A) Map of Unit 28—Puget Sound Basins—Chester Morse Lake critical habitat subunit follows:

Proposed Critical Habitat for Bull Trout *(Salvelinus confluentus)*
Unit 28: Puget Sound River Basins
Subunit (vii) Chester Morse Lake



Proposed Critical Habitat (map key)

viiA1-Chester Morse Lake
viiA2-Masonry Pool
viiA3-Rack Creek
viiA4-Shotgun Creek
viiB1-Cedar River
viiB2-unnamed tributary (#0439)
viiB3-North Fork Cedar River
viiB4-South Fork Cedar River
viiC1-Rex River
viiC2-Cabin Creek
viiC3-Lindsay Creek
viiC4-Boulder Creek



Area of detail showing Puget Sound River Basins Unit and location of map area above

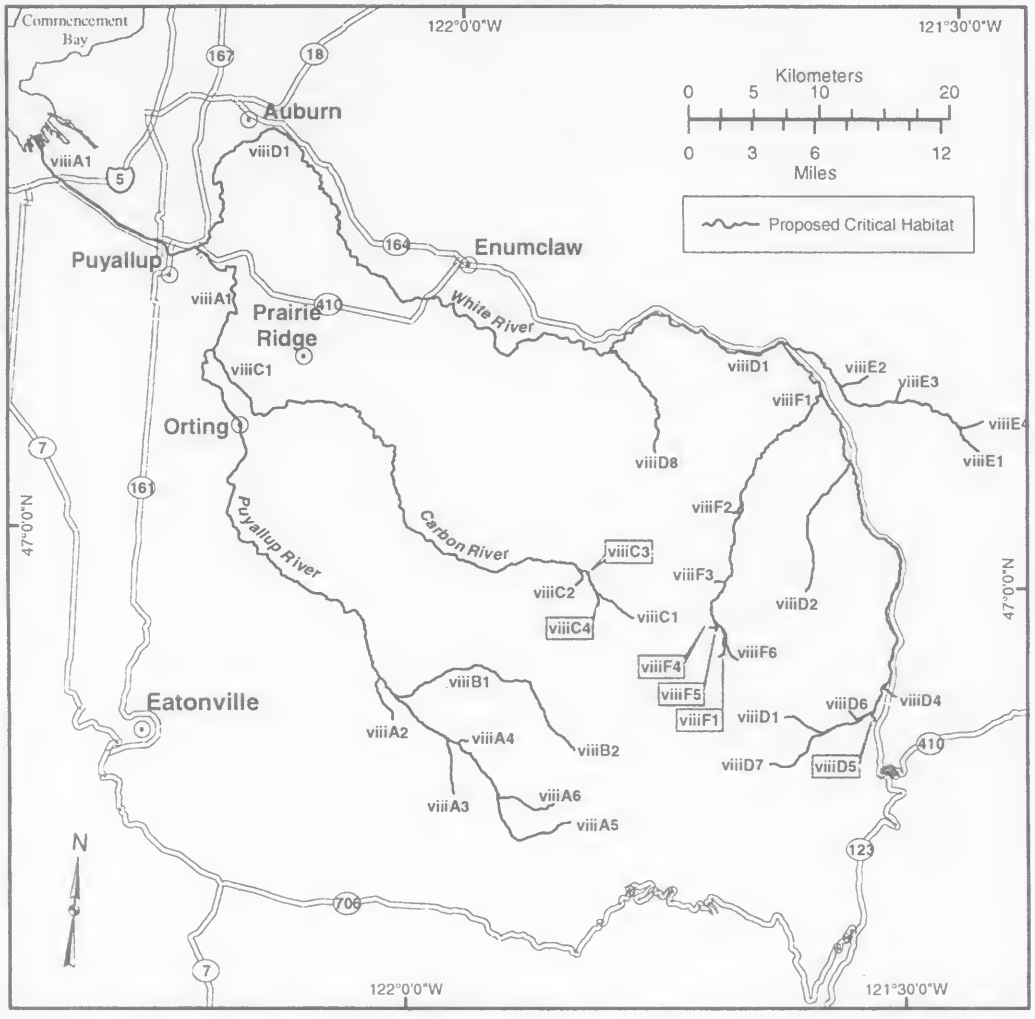
(B) [Reserved]

(viii) Puyallup Critical Habitat
Subunit Descriptions:

Location—Name	From		To	
	Latitude	Longitude	Latitude	Longitude
viiiA1—Puyallup River	47.269 N.	122.425 W.	46.864 N.	121.949 W.
viiiA2—Niesson Creek	46.913 N.	122.045 W.	46.884 N.	122.030 W.
viiiA3—Deer Creek	46.873 N.	121.973 W.	46.836 N.	121.964 W.
viiiA4—Swift Creek	46.870 N.	121.962 W	46.873 N.	121.953 W.
viiiA5—South Puyallup River	46.864 N.	121.949 W.	46.821 N.	121.846 W.
viiiA6—St. Andrews Creek	46.837 N.	121.920 W.	46.833 N.	121.864 W.
viiiB1—Mowich River	46.901 N.	122.030 W.	46.915 N.	121.894 W.
viiiB2—South Mowich River	46.915 N.	121.894 W.	46.871 N.	121.845 W.
viiiC1—Carbon River	47.130 N.	122.232 W.	46.964 N.	121.794 W.
viiiC2—Ranger Creek	46.995 N.	121.853 W.	46.984 N.	121.854 W.
viiiC3—Chenuis Creek	46.992 N.	121.842 W.	46.993 N.	121.841 W.
viiiC4—Ipsut Creek	46.980 N.	121.832 W.	46.971 N.	121.831 W.
viiiD1—White River	47.200 N.	122.257 W.	46.902 N.	121.636 W.
viiiD2—Huckleberry Creek	47.079 N.	121.585 W.	46.989 N.	121.622 W.
viiiD3—Silver Springs	46.996 N.	121.530 W.	46.998 N.	121.531 W.
viiiD4—Crystal Creek	46.929 N.	121.537 W.	46.920 N.	121.525 W.
viiiD5—Klickitat Creek	46.909 N.	121.548 W.	46.903 N.	121.546 W.
viiiD6—Unnamed tributary (stream catalog #0364)	46.905 N.	121.559 W.	46.909 N.	121.573 W.
viiiD7—Fryingpan Creek	46.891 N.	121.601 W.	46.869 N.	121.649 W.
viiiD8—Clearwater River	47.146 N.	121.833 W.	47.079 N.	121.781 W.
viiiE1—Greenwater River	47.159 N.	121.659 W.	47.093 N.	121.457 W.
viiiE2—Midnight Creek (stream catalog #0126)	47.131 N.	121.599 W.	47.139 N.	121.573 W.
viiiE3—Slide Creek	47.123 N.	121.542 W.	47.133 N.	121.539 W.
viiiE4—Pyramid Creek	47.109 N.	121.479 W.	47.113 N.	121.454 W.
viiiF1—West Fork White River	47.125 N.	121.618 W.	46.941 N.	121.707 W.
viiiF2—Cripple Creek	47.048 N.	121.692 W.	47.041 N.	121.695 W.
viiiF3—Unnamed tributary (stream catalog #0217)	46.992 N.	121.704 W.	46.992 N.	121.714 W.
viiiF4—Unnamed tributary (stream catalog #0234)	46.965 N.	121.712 W.	46.959 N.	121.711 W.
viiiF5—Unnamed tributary (stream catalog #0226)	46.962 N.	121.710 W.	46.960 N.	121.717 W.
viiiF6—Lodi Creek	46.960 N.	121.705 W.	46.940 N.	121.687 W.

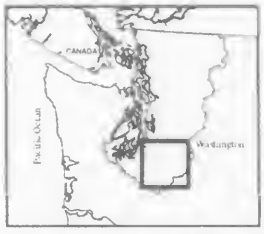
(A) Map of Unit 28—Puget Sound Basins—Puyallup critical habitat subunit follows:

Proposed Critical Habitat for Bull Trout *(Salvelinus confluentus)*
Unit 28: Puget Sound River Basins
Subunit (viii) Puyallup



Proposed Critical Habitat (map key)

viiiA1-Puyallup River
viiiA2-Niesson Creek
viiiA4-Deer Creek
viiiA4-Swift Creek
viiiA5-South Puyallup River
viiiA6-St.Andrews Creek
viiiB1-Mowich River
viiiB2-South Mowich River
viiiC1-Carbon River
viiiC2-Ranger Creek
viiiC3-Chenuis Creek
viiiC4-Ipsut Creek
viiiD1-White River
viiiD2-Huckleberry Creek
viiiD3-Silver Springs
viiiD4-Crystal Creek
viiiD5-Klickitat Creek
viiiD6-unnamed tributary (#0364)
viiiD7-Fryingpan Creek
viiiD8-Clearwater River
viiiE1-Greenwater River
viiiE2-Midnight Creek (#0126)
viiiE3-Slide Creek
viiiE4-Pyramid Creek
viiiF1-West Fork White River
viiiF2-Cripple Creek
viiiF3-unnamed tributary (#0217)
viiiF4-unnamed tributary (#0234)
viiiF5-unnamed tributary(#0226)
viiiF6-Lodi Creek



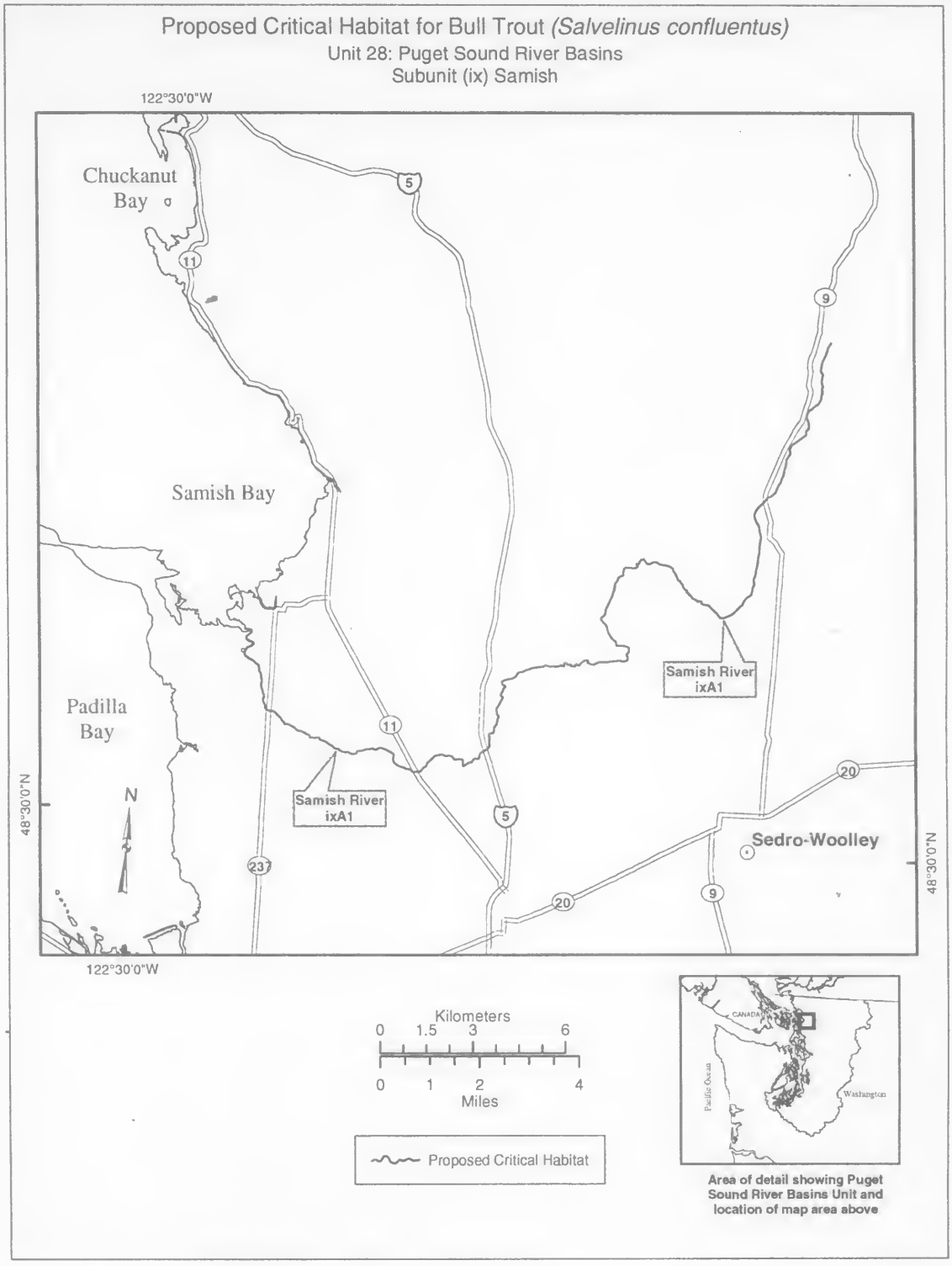
Area of detail showing Puget Sound River Basins Unit and location of map area

(B) [Reserved]

(ix) Samish Critical Habitat Subunit Descriptions:

Location—name	From		To	
	Latitude	Longitude	Latitude	Longitude
ixA1—Samish River	48.555 N.	122.456 W.	48.649 N.	122.207 W.

(A) Map of Unit 28—Puget Sound Basins—Samish critical habitat subunit follows:



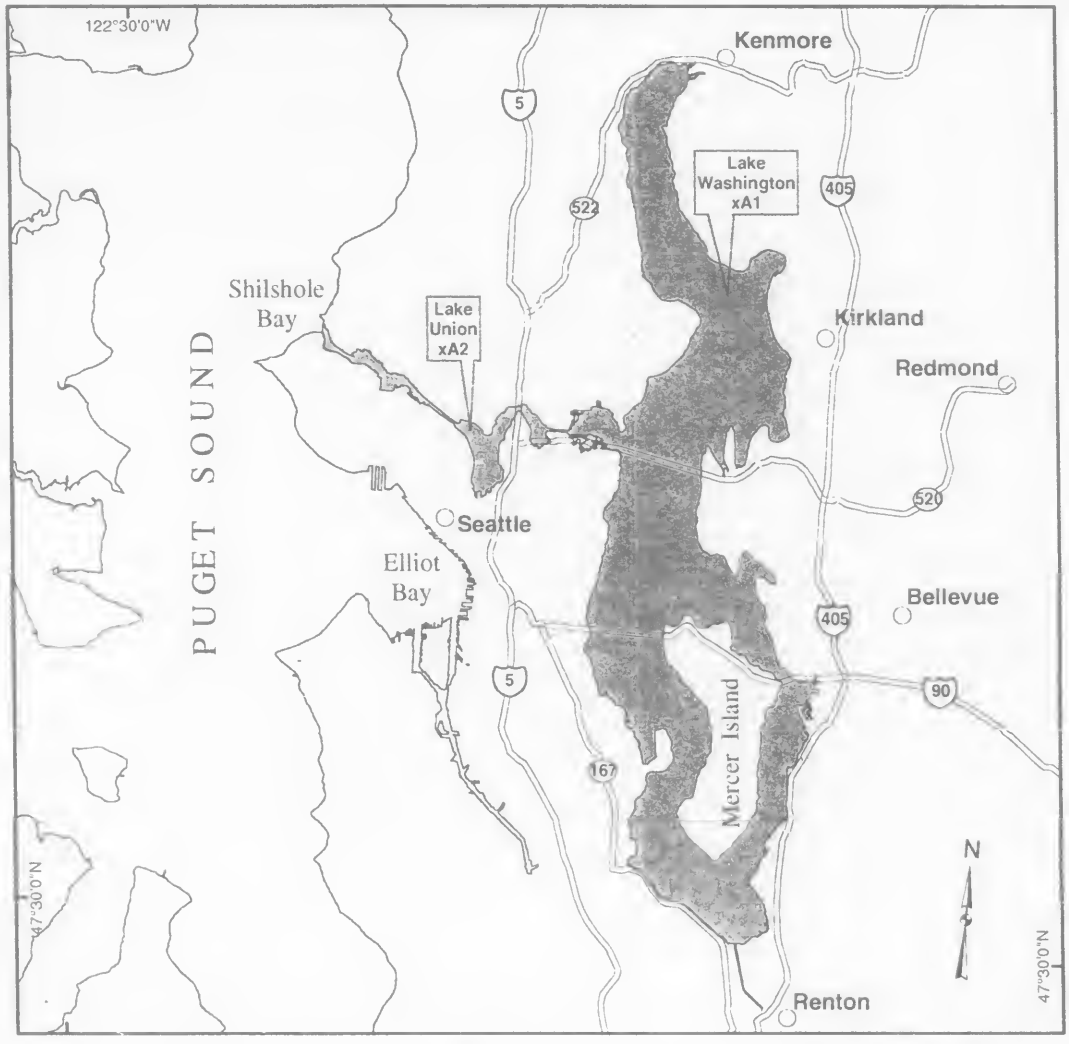
(B) [Reserved]

(x) Lake Washington Critical Habitat Subunit Descriptions:

Location—name	From		To	
	Latitude	Longitude	Latitude	Longitude
xA1—Lake Washington	Located at		47.604 N.	122.252 W.
xA2—Lake Union	Located at		47.639 N.	122.334 W.

(A) Map of Unit 28—Puget Sound Basins—Lake Washington critical habitat subunit follows:

Proposed Critical Habitat for Bull Trout *(Salvelinus confluentus)*
Unit 28: Puget Sound River Basins
Subunit (x) Lake Washington

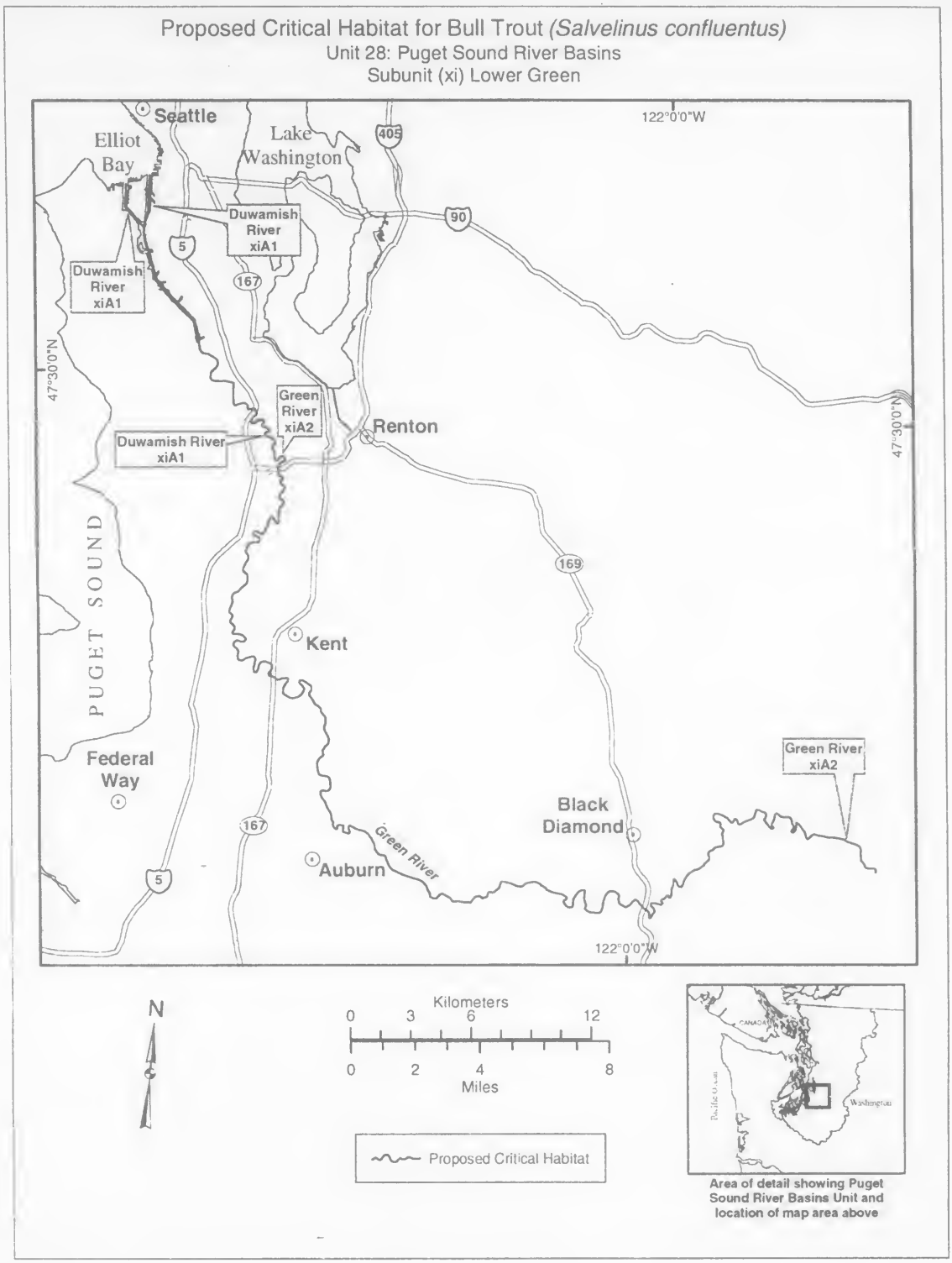


(B) [Reserved]

(xi) Lower Green Critical Habitat Subunit Descriptions:

Location—name	From		To	
	Latitude	Longitude	Latitude	Longitude
xiA1—East Duwamish Waterway	47.590 N.	122.343 W.	47.567 N.	122.346 W.
xiA1—Duwamish River	47.586 N.	122.359 W.	47.474 N.	122.250 W.
xiA2—Green River	47.474 N.	122.250 W.	47.299 N.	121.839 W.

(A) Map of Unit 28—Puget Sound Basins—Lower Green critical habitat subunit follows:

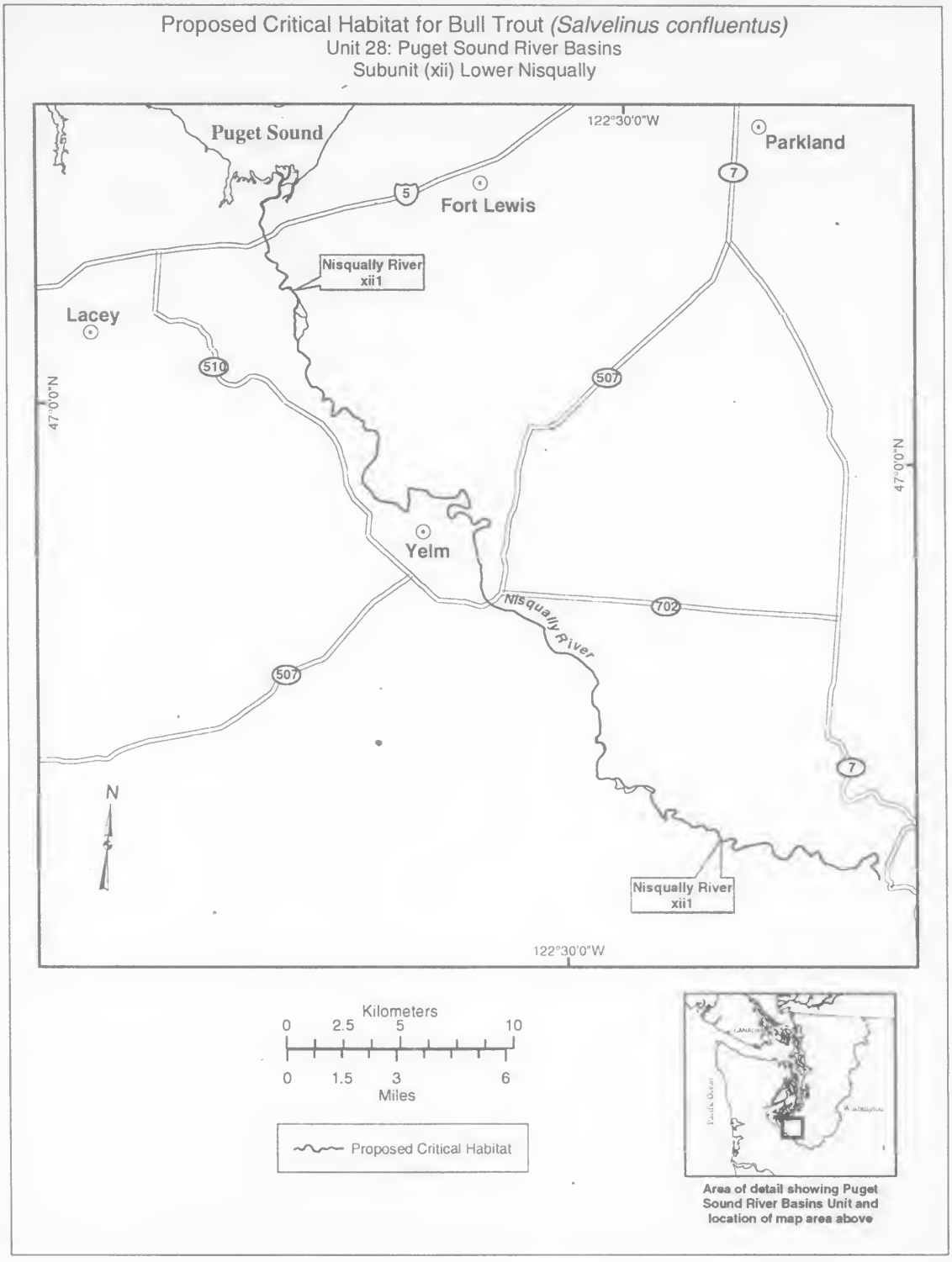


(B) [Reserved]

(xii) Lower Nisqually Critical Habitat Subunit Descriptions:

Location—name	From		To	
	Latitude	Longitude	Latitude	Longitude
xiiA1—Nisqually River	47.101 N.	122.691 W.	46.835 N.	122.323 W.

(A) Map of Unit 28—Puget Sound Basins—Lower Nisqually critical habitat subunit follows:



(A) Map of Unit 28—Puget Sound Basins—Samish critical habitat subunit

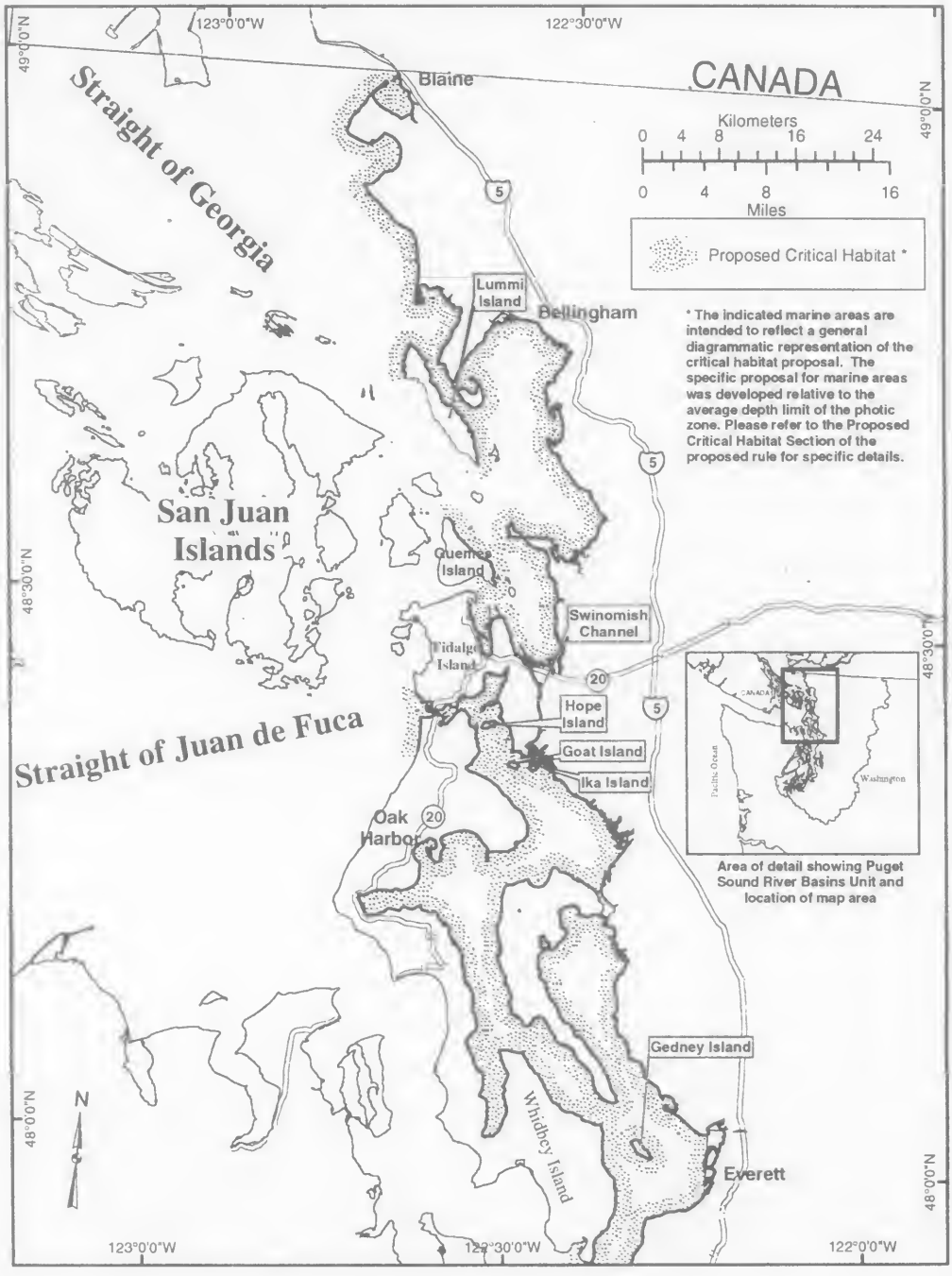
(B) [Reserved]

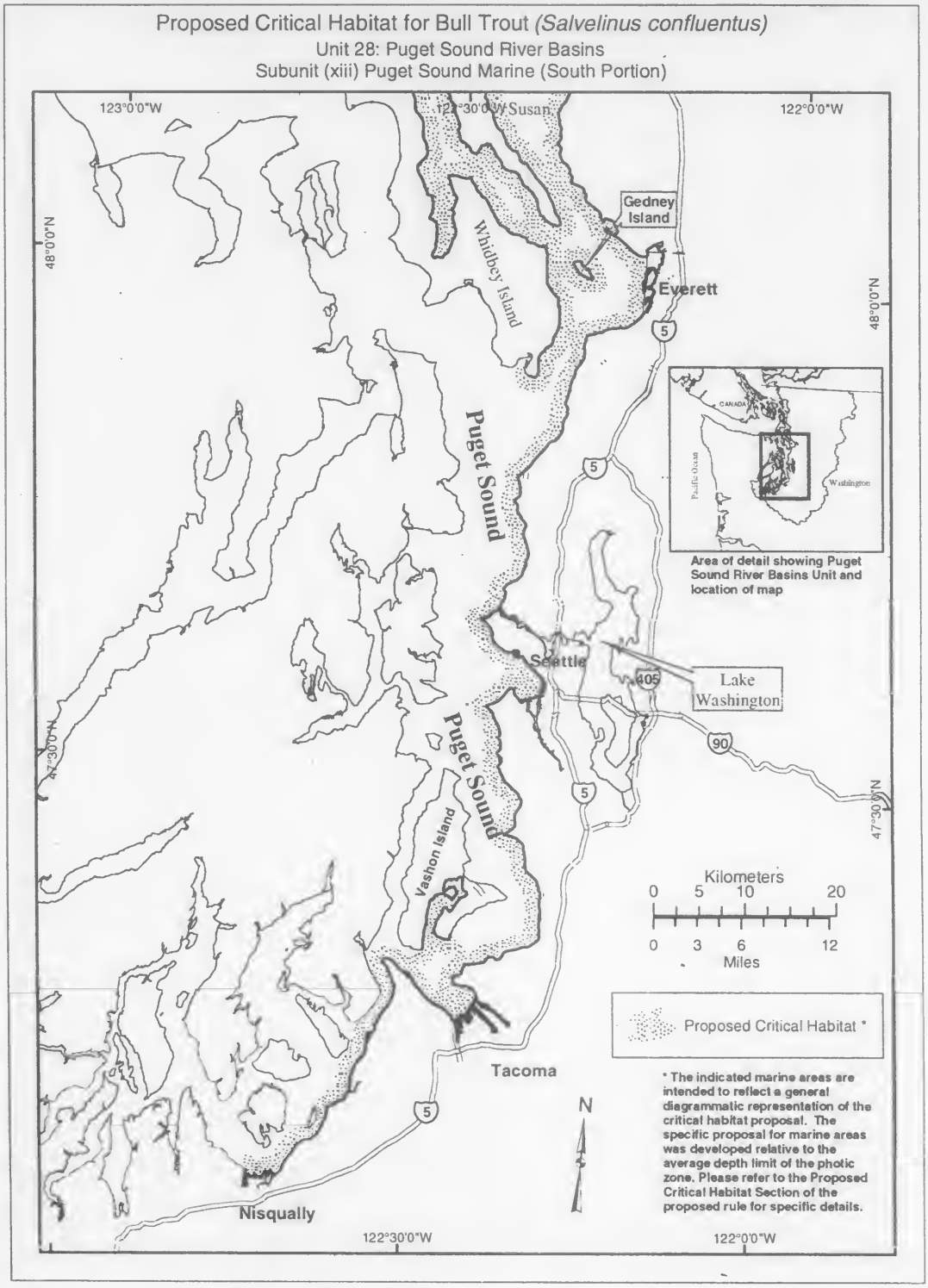
(xiii) Puget Sound Marine Critical Habitat Subunit Descriptions:

Location—name	From		To	
	Latitude	Longitude	Latitude	Longitude
xiiiA1—Eastern Shoreline Puget Sound (North)	48.511 N.	122.605 W.	49.000 N.	122.755 W.
xiiiA2—Swinomish Channel	48.372 N.	122.508 W.	48.455 N.	122.513 W.
xiiiA3—Eastern Shoreline Puget Sound (South)	47.102 N.	122.727 W.	48.426 N.	122.674 W.
xiiiB1—Eastern Shoreline Lummi Island	48.641 N.	122.608 W.	48.717 N.	122.718 W.
xiiiB2—Portage Island	Located at		48.701 N.	122.618 W.
xiiiB3—Eastern Shoreline Guemes Island	48.529 N.	122.572 W.	48.589 N.	122.645 W.
xiiiB4—Eastern Shoreline Whidbey Island	47.905 N.	122.387 W.	48.370 N.	122.665 W.
xiiiB5—Hope Island	Located at		48.399 N.	122.568 W.
xiiiB6—Goat Island	Located at		48.363 N.	122.529 W.
xiiiB7—Ika Island	Located at		48.363 N.	122.501 W.
xiiiB8—Gedney Island	Located at		48.013 N.	122.319 W.
xiiiB9—Southeastern Shoreline Vashon Island	47.331 N.	122.492 W.	47.349 N.	122.450 W.

(A) Maps of Unit 28—Puget Sound Basins—Puget Sound Marine critical habitat subunit follow:

Proposed Critical Habitat for Bull Trout *(Salvelinus confluentus)*
Unit 28: Puget Sound River Basins
Subunit (xiii) Puget Sound Marine (North Portion)





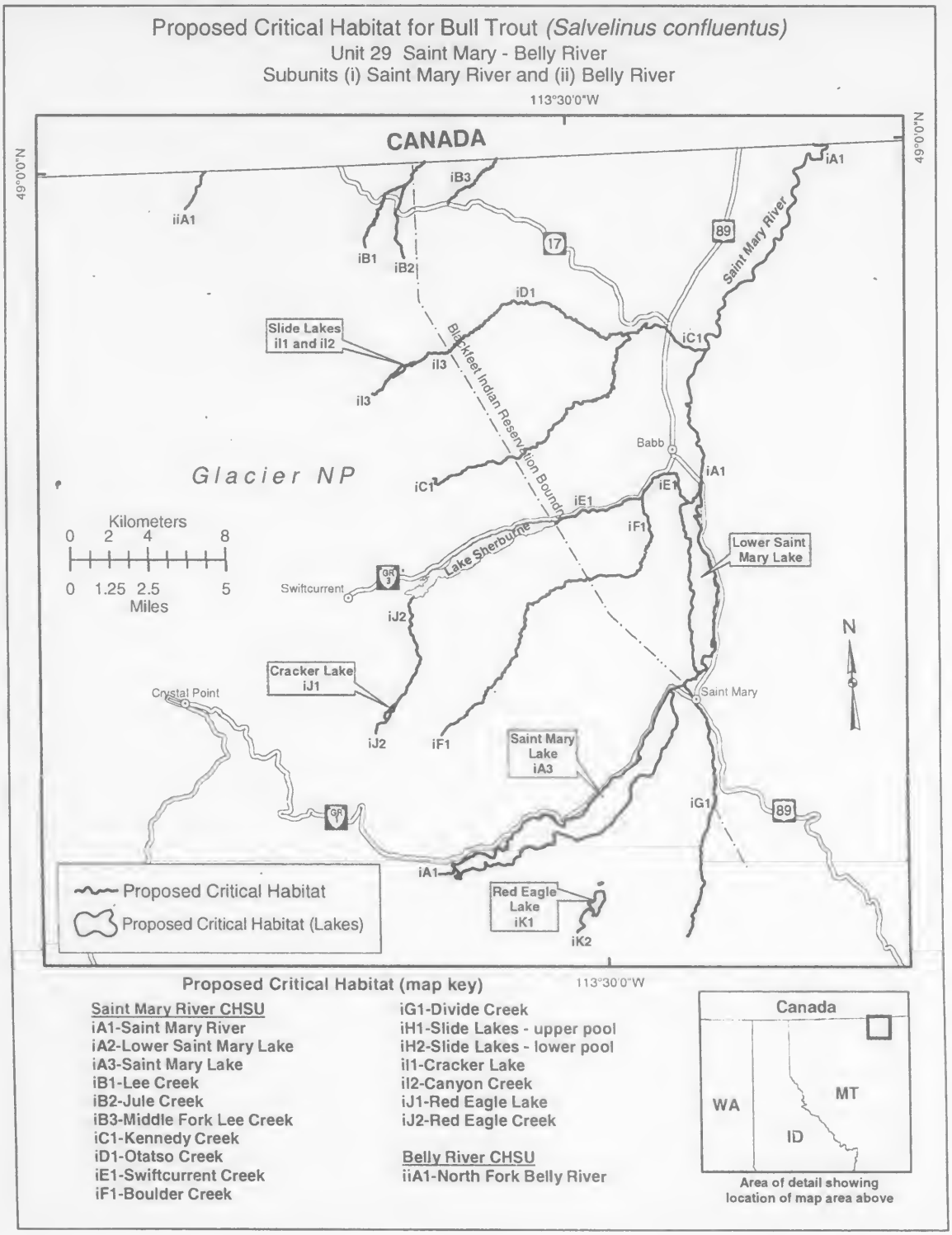
(34) Unit 29—Saint Mary—Belly: (i) Saint Mary River Critical Habitat Subunit Descriptions:

Location—name	From		To	
	Latitude	Longitude	Latitude	Longitude
iA1—Saint Mary River	48.998 N.	113.326 W.	48.668 N.	113.615 W.
iA2—Lower Saint Mary Lake	Located at		48.795 N.	113.419 W.
iA3—Saint Mary Lake	Located at		48.718 N.	113.465 W.
iB1—Lee Creek	48.998 N.	113.600 W.	48.960 N.	113.644 W.
iB2—Jule Creek	48.988 N.	113.613 W.	48.954 N.	113.617 W.
iB3—Middle Fork Lee Creek	48.998 N.	113.549 W.	48.978 N.	113.585 W.
iC1—Kennedy Creek	48.905 N.	113.409 W.	48.851 N.	113.604 W.
iD1—Otatso Creek	48.915 N.	113.464 W.	48.892 N.	113.644 W.
iE1—Swiftcurrent Creek	48.836 N.	113.428 W.	48.828 N.	113.521 W.
iF1—Boulder Creek	48.839 N.	113.459 W.	48.732 N.	113.608 W.
iG1—Divide Creek	48.751 N.	113.437 W.	48.634 N.	113.444 W.
iH1—Slide Lakes—upper pool	Located at		48.902 N.	113.623 W.
iH2—Slide Lakes—lower pool	Located at		48.905 N.	113.615 W.
iI1—Cracker Lake	Located at		48.744 N.	113.643 W.
iI2—Canyon Creek	48.796 N.	113.622 W.	48.734 N.	113.654 W.
iJ1—Red Eagle Lake	Located at		48.652 N.	113.505 W.
iJ2—Red Eagle Creek	48.648 N.	113.509 W.	48.638 N.	113.521 W.

(ii) Belly River Critical Habitat Subunit Descriptions:

Location—name	From		To	
	Latitude	Longitude	Latitude	Longitude
iiA1—North Fork Belly River	48.998 N.	113.754 W.	48.981 N.	113.770 W.

(A) Map of Unit 29—Saint Mary—Belly—Saint Mary River and Belly River Critical Habitat Subunits follows:


Proposed Critical Habitat for Bull Trout (Salvelinus confluentus)
Unit 29 Saint Mary - Belly River
Subunits (i) Saint Mary River and (ii) Belly River
113°30'0"W
49°0'0"N
CANADA
iiA1
iB3
iB1
iB2
17
89
iA1
Saint Mary River
iD1
Slide Lakes
iI1 and iI2
iI3
iI3
Blackfeet Indian Reservation Boundary
iC1
iC1
Babb
iA1
iE1
iE1
iF1
Glacier NP
Kilometers
0 2 4 8
0 1.25 2.5 5
Miles
Lower Saint
Mary Lake
Swiftcurrent
Lake Sherburne
iJ2
N
Cracker Lake
iJ1
Crystal Point
Saint Mary
iJ2
iF1
Saint Mary
Lake
iA3
iG1
89
iA1
Red Eagle
Lake
iK1
iK2
Proposed Critical Habitat
Proposed Critical Habitat (Lakes)
Proposed Critical Habitat (map key)
113°30'0"W
Saint Mary River CHSU
iA1-Saint Mary River
iA2-Lower Saint Mary Lake
iA3-Saint Mary Lake
iB1-Lee Creek
iB2-Jule Creek
iB3-Middle Fork Lee Creek
iC1-Kennedy Creek
iD1-Otatso Creek
iE1-Swiftcurrent Creek
iF1-Boulder Creek
iG1-Divide Creek
iH1-Slide Lakes - upper pool
iH2-Slide Lakes - lower pool
iI1-Cracker Lake
iI2-Canyon Creek
iJ1-Red Eagle Lake
iJ2-Red Eagle Creek
Belly River CHSU
iiA1-North Fork Belly River
Canada
WA
MT
ID
Area of detail showing
location of map area above

(B) [Reserved]

Dated: June 15, 2004.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–14014 Filed 6–23–04; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Friday,
June 25, 2004

Part IV

Department of Health and Human Services

Administration for Children and Families

National Child Welfare Resource Centers Cooperative Agreements; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

National Child Welfare Resource Centers Cooperative Agreements

Federal Agency Contact Name: Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau.

Funding Opportunity Title: Seven National Child Welfare Resource Centers.

Announcement Type: Cooperative Agreements-Initial.

Funding Opportunity Number: HHS–2004–ACF–ACYF–CZ–0026.

CFDA Number: 93.556.

Due Date for Applications: August 24, 2004.

I. Funding Opportunity Description

General Information: The Seven National Child Welfare Resource Centers

In order to more fully meet the promise, potential and challenges of the Adoption and Safe Families Act (ASFA) and other legislation that are transforming the child welfare field, the Administration on Children, Youth and Families proposes to establish a coordinated national technical assistance network that can address the range of challenges State child welfare systems confront in delivering effective services to children, youth and families. To accomplish this, seven new cooperative agreements will be awarded to establish National Resource Centers for Child Welfare Programs.

It is critically important that these national resource centers: (1) Function systematically as a network; (2) have the ability to work effectively in a rapidly changing environment; (3) deliver technical assistance in ways that best meet the needs of child welfare agencies; (4) document use of funds and the effectiveness of the services they deliver; and (5) use technology to support service delivery and knowledge management.

For over a decade, the Children's Bureau (CB) has been funding a network of National Resource Centers, Clearinghouses, and other national centers with expertise in specific topic areas related to child maltreatment and child welfare. Through this network the Children's Bureau provides training and technical assistance (T/TA) to the States to support and enhance States' service delivery systems. For more information on this network, see *http://nccanch.acf.hhs.gov/pubs/reslist/cbttan/index.cfm.*

Additionally, Section 1123A of the Social Security Act requires the Secretary to make technical assistance available to States, to the extent feasible, to enable them to develop and implement program improvement plans stemming from the Child and Family Service Reviews (CFSRs). Findings from the first round of CFSRs have demonstrated the need for a more integrated and coordinated technical assistance approach to assist States in meeting the goals of their program improvement plans (PIPs) and other child welfare systems change objectives.

Over the last four years, the Children's Bureau has worked closely with its entire network of National Resource Centers and Clearinghouses to begin to develop a more coordinated strategy and approach for working with the States. The changes started in the last four years have greatly increased the collaboration and coordination across the entire T/TA network. To this end, the Children's Bureau is committed to planning and implementing a stronger, more formalized, coordinated training and technical assistance strategy across the network of T/TA providers to support the States in the planning and implementation of the CFSRs and other child welfare systems change efforts.

One of the most immediate changes has been to direct the Children's Bureau network of T/TA Resource Centers to give priority to issues identified by the Children's Bureau as areas of greatest need. As a result, the focus of the majority of T/TA has been responding to State needs related to Federal reviews and implementation of program improvement plans. The Children's Bureau envisions that this new network of T/TA providers will need to be flexible and responsive to the issues that may arise over the next five years. Resource Centers funded by the Children's Bureau must have the capacity to adjust and refine their T/TA approaches based on ever changing needs and priorities from legislation and the field.

In this context, the Children's Bureau has modified the overall management of the National Resource Center programs in four significant ways: developing a single point of entry, coordination through the Training and Technical Assistance Coordination Committee, close coordination with other technical assistance providers and an identified evaluator of technical assistance efforts. The following section on Coordination of the Seven National Resource Centers provides details on these management strategies.

The current atmosphere of systems change and reform has brought a number of Child Protective Service (CPS) issues to the forefront. Effective T/TA strategy should not only analyze and respond to expressed needs, but also provide leadership to the field of child welfare through knowledge building and seeking out and disseminating evidenced-based practices. Given the limited resources available, this T/TA strategy must include a commitment to working with other Federal, State, and local resources and providers to maximize the T/TA available for States and insure positive outcomes for children, youth and families.

The National Resource Centers play a pivotal role in assisting States as they transform their service delivery systems to achieve safety and permanency for children and youth. Integrated into the role of every National Resource Center will be the responsibility of assisting States to improve performance in the areas of safety, permanency and well-being. These concepts must be integrally linked at each stage of service delivery to provide effective services to families, youth and children.

The purpose of these National Resource Centers is to build the capacity of State, local, Tribal, and other publicly administered or publicly supported child welfare agencies, and family and juvenile courts, through the provision of training, technical assistance and consultation on the full array of Federal requirements administered by the Children's Bureau. Special attention will be given to assisting States in improving conformity with the outcomes and systemic factors defined in the Child and Family Services Review (CFSR) and the results of other monitoring reviews conducted by the Children's Bureau (such as title IV–E, AFCARS and SACWIS). These efforts will focus on the development, expansion, strengthening and/or improvement of the quality and effectiveness of child welfare services to children, youth and families and on the information management systems used to record case activity. The National Resource Centers will focus efforts on strengthening the capacity of agencies to integrate policy and practice and to improve the delivery of services and the outcomes for children. A primary focus of all National Resource Centers will be to assist States in the planning and implementing of systemic change as defined in the States' program improvement plans (PIPs) related to all monitoring reviews.

In order to provide T/TA relevant to the monitoring reviews and related corrective action plans, and to meet

other legislative requirements and agency priorities, cooperative agreements to establish seven National Resource Centers for Child Welfare Programs will be awarded to organizations with expertise in the following topical areas:

- *Organizational Improvement.* Improving management and operations, bolstering organizational capacity and promoting service integration in order to improve outcomes for children, youth and families.
- *Child Protective Services.* Developing and integrating policies and practices that improve the prevention, reporting, assessment and treatment of child abuse and neglect.
- *Family-Centered Practice and Permanency Planning.* Institutionalizing a safety-focused, family-centered, and community-based approach to meet the multiple and complex needs of children, youth and families, developing, supporting and maintaining a range of services to safely maintain children in the home when appropriate; providing quality care for children and youth in the care and custody of the State; and moving children from foster care to safe permanent home placements effectively.
- *Data and Technology.* Supporting and enhancing State child welfare case management information systems and the collection and utilization of data and information that improve outcomes for children and their families and support informed decisions about policies, programs. and practices.
- *Legal and Judicial Issues.* Improving legal representation of agencies, children, youth and parents and supporting court improvement to establish processes that achieve timely and appropriate permanency for children and youth, and result in informed judicial decision making.
- *Special Needs Adoption.* Developing, supporting and maintaining a range of services to increase the number of children who are adopted from foster care and improving the effectiveness and quality of adoption and post-adoption services.
- *Youth Development.* Developing, supporting and maintaining a range of services and supports to assist youth in making a smooth transition to adulthood, achieving permanency, and reducing the likelihood of dependency on the adult social welfare system.

Recent shifts in the delivery of child welfare services have focused on family-centered, community-based and individually focused approaches. The National Resource Centers' services are expected to support such approaches in providing training and technical assistance on the delivery of State services.

Family-centered practice is designed to strengthen and empower families to protect and nurture their children; safely preserve family relationships and connections when appropriate; recognize the strong influence social systems have on individual behavior; enhance family autonomy; respect the rights, values and cultures of families; and focus on an entire family rather than selected individuals within a family.

Community-based practice is designed to support the needs of children within the context of their families and communities; emphasize prevention-oriented services and support; and provide local communities a role in identifying, designing, implementing and overseeing services within the community.

Individualized services are designed to tailor interventions to meet the specific needs of children, youth and families served; recognize that children, youth and families are affected by both individual and environmental factors; recognize that children, youth, families and the environments in which they operate are unique; and offer children, youth and families opportunities to provide input into their strengths, needs, and goals and the means to achieve those goals.

Coordination of the Seven National Child Welfare Resource Centers

The first round of CFS reviews has demonstrated the need for a more integrated and coordinated technical assistance approach to assist States to meet PIP objectives, especially since States that fail to meet objectives face penalties. In this context, the Children's Bureau has modified the overall management of the National Child Welfare Resource Center programs in four significant ways:

(1) The Children's Bureau is establishing a single point of entry for States and Tribes to request onsite training and technical assistance from National Child Welfare Resource Centers and AdoptUSKids. The National Child Welfare Resource Center on Organizational Improvement (NCWRCOI) will operate as this single point of entry. The other six national resource centers funded to provide T/TA to State child welfare agencies will need to work collaboratively with the NCWRCOI to ensure a coordinated and immediate response to on-site T/TA requests from the States, ACF Regional Offices, and the Children's Bureau.

(2) All National Resource Centers funded by the Children's Bureau will work with the Training and Technical Assistance Coordination Committee, which will be composed of Federal staff from the Children's Bureau and Regional Offices, and will provide direction to the strategic development of the training and technical assistance network.

(3) All National Resource Centers will work collaboratively with AdoptUSKids, the Children's Bureau Clearinghouses, and other members of the training and technical assistance network funded by the Children's Bureau, particularly as it relates to the Child and Family Service Reviews and other issues of priority identified by the Children's Bureau.

(4) The NCWRCOI will evaluate the results and benefits of the technical assistance provided by all seven National Child Welfare Resource Centers. The National Child Welfare Resource Centers will provide evaluation data to the NCWRCOI. The purpose of this evaluation is to track and coordinate activities in order to improve services and build knowledge. The evaluation will not be used to determine compliance or merit and the results of the evaluation will not be used to judge, award or penalize NRC performance.

Recent experience with the National Child Welfare Resource Centers has highlighted the importance of the centers working together to assist States in strategies towards systemic change. The need for integrating technical assistance from multiple National Child Welfare Resource Centers is clear. The combined knowledge and energies of the National Resource centers have been required in a number of projects and this trend is expected to continue. To assist with these issues, the Children's Bureau will create a Training and Technical Assistance Coordination Committee to work with the National Child Welfare Resource Center network. The Training and Technical Assistance Committee will be made up of Federal staff, including Federal Project Officers, CFSR National Review Team members, Regional Office and other Federal staff. It will coordinate with other training and technical assistance initiatives of the Children's Bureau and work with the seven National Child Welfare Resource Centers and AdoptUSKids to establish training and technical assistance priorities.

These resource centers will each serve as a primary contributor to a national repository of expertise and resources in the field of child welfare. They will engage in a process of knowledge building and knowledge transfer that takes place within and across resource

centers. In coordination with the Children's Bureau, these resource centers will identify promising practices and approaches that reflect the state of the art and contribute to improved outcomes for children, youth and families in the child welfare system. All training and technical assistance will be provided in the comprehensive context of child welfare services and will be integrated to assist States in meeting the legislative requirements and agency priorities of the Children's Bureau.

The National Child Welfare Resource Center network must have a commitment to working collaboratively with other Children's Bureau partners, including public/private, State, regional, and Federal partnerships in implementing their training and technical assistance efforts.

Programs of ACYF and the Children's Bureau

The Administration on Children, Youth and Families (ACYF) administers national programs for children and youth; works with States and local communities to develop services which support and strengthen family life; seeks joint ventures with the private sector to enhance the lives of children and their families; and provides information and other assistance to parents. The concerns of ACYF extend to all children from birth through adolescence. Many of the programs administered by the agency focus on children from low-income families; abused and neglected children; children and youth in need of foster care, independent living, adoption or other child welfare services; preschool children; children with disabilities; children of prisoners; runaway and homeless youth; and children from Native American and migrant families.

Within ACYF, the Children's Bureau plans, manages, coordinates, and supports child abuse and neglect prevention and child welfare services programs, and promotes continuous improvement in the delivery of child welfare services. Children's Bureau programs are designed to prevent neglect and abuse of children and to promote the safety, permanency, and well-being of all children, including those in foster care, available for adoption, recently adopted, abused, neglected, dependent, disabled, or homeless children and youth. The programs encourage strengthening the family unit to help prevent the unnecessary separation of children from their families, and support reunification of families when separation has occurred, as appropriate. The Children's Bureau also supports programs and services that encourage healthy marriage; promote family stability; support relationship building for parenting couples; reach out to and provide assistance to fathers; and emphasize the role of fathers in ensuring the well-being of their children.

State child welfare systems are designed to protect children who have suffered maltreatment, who are at risk for maltreatment, or who are under the care and placement responsibility of the State because their families are unable to care for them. These systems also focus on securing permanent living arrangements through foster care and adoption for children who are unable to return home.

The Children's Bureau fulfills its mission by providing leadership and conducting activities designed to assist and enhance national, State, and community efforts to prevent, assess, identify, and treat child abuse and neglect. These activities include data collection and analysis; research and demonstration programs, and grants to States for: Developing comprehensive, child-centered and family-focused child protective services systems; providing training and technical assistance to develop the necessary resources to implement successful, comprehensive, child and family protection strategies; developing comprehensive case-management information systems; and gathering, processing, and housing high-quality data.

Federal programs administered by the Bureau include the Foster Care and Adoption Assistance Programs, the Child and Family Services State Grants Program, Child Abuse Prevention and Treatment State Grant, Child Welfare Services Training Program, the Chafee Foster Care Independence Program and Education and Training Voucher Program, the Adoption Opportunities Program, the Abandoned Infants Assistance Program, the Court Improvement Program, the Infant Adoption Awareness Training Program, the Children's Justice Act Grants Program, Community-Based Grants for the Prevention of Child Abuse and Neglect, and several discretionary grant programs authorized by the Child Abuse Prevention and Treatment Act (CAPTA). For more information about Children's Bureau programs, visit *http://www.acf.hhs.gov/programs/cb.*

Legislation Governing ACYF and Children's Bureau Programs

This section provides a summary of key legislation governing and providing critical guidance to all of the National Child Welfare Resource Centers. During the past ten years, policymakers and the public have become increasingly concerned over the fate of children who come into contact with the child welfare system. Fortunately, the level of concern over children in child welfare has generated a productive climate of reform, evidenced by the passage of major pieces of Federal legislation listed and described below. For instance, ASFA, passed in 1997, requires a focus on results and accountability and makes it clear that child welfare services must lead to positive outcomes for children. This legislation provided the Federal government and its partners at the State and local levels with an important opportunity to reform and revitalize child welfare services.

The following table indicates the specific legislation which authorizes and/or provides funding for each of the individual National Child Welfare Resource Centers.

Priority area	Funding source/authorizing legislation
1. National Child Welfare Resource Center for Organizational Improvement.	Adoption Opportunities, Child Abuse Prevention and Treatment Act, Promoting Safe and Stable Families.
2. National Child Welfare Resource Center for Child Protective Services.	Child Abuse Prevention and Treatment Act.
3. National Resource Center for Family-Centered Practice and Permanency Planning.	Adoption Opportunities, Promoting Safe and Stable Families.
4. National Resource Center for Child Welfare Data and Technology	Title IV–E.
5. National Child Welfare Resource Center on Legal and Judicial Issues.	Adoption Opportunities, Child Abuse Prevention and Treatment Act, Promoting Safe and Stable Families.
6. National Resource Center for Special Needs Adoption	Adoption Opportunities.
7. National Resource Center for Youth Development	Adoption Opportunities, Chaffee, Promoting Safe and Stable Families.

With the passage of Public Law 96–272, the Adoption Assistance and Child Welfare Act of 1980, the Federal government established a clear focus on the need for permanency for children in foster care and the importance of permanency planning and timely decision-making for these children. At that time, the law increased protections for children in foster care by requiring case plans that included goals, a description of the placement and its appropriateness, required periodic administrative reviews and judicial permanency placement determinations.

In 1986, Congress amended Title IV–E of the Social Security Act (the Act) by adding section 479, which requires the Federal government to institute a foster care and adoption data collection system (known as AFCARS). The AFCARS collects case level information on all children in foster care for whom the State child welfare agency has responsibility for placement, care or supervision and on children who are adopted under the auspices of the State's public child welfare agency.

The Omnibus Budget Reconciliation Act (OBRA) of 1993 provided States with the opportunity to obtain 75 percent enhanced funding through the Title IV–E program of the Social Security Act to plan, design, develop, and implement a Statewide Automated Child Welfare Information System (SACWIS) (Federal fiscal years 1993–1996). Title V, Section 502 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 extended the SACWIS enhanced funding through Federal fiscal year 1997. Additionally, the legislation provided an enhanced SACWIS cost allocation to States so that Title IV–E would absorb all SACWIS costs for foster and adopted children, without regard to their Title IV–E eligibility. A SACWIS is expected to be a comprehensive, automated, case-management tool that supports social workers' foster care and adoption assistance case-management practice. Additionally, the systems may contain functionality that supports child protective and family preservation services, thereby providing a unified automated tool to support all child welfare services. By law, a SACWIS is required to support the reporting of data to Adoption and Foster Care Automated Reporting System (AFCARS) and the National Child Abuse and Neglect Data System.

The Multi-Ethnic Placement Act of 1994, as amended, prohibits the delay or denial of any adoption or placement in foster care due to the race, color or national origin of the child or the foster or adoptive parents and requires States to provide for diligent recruitment of potential foster and adoptive families that reflect the ethnic and racial diversity of children for whom homes are needed. Section 1808 of Public Law 104–188 affirms the prohibition against delaying or denying the placement of a child for adoption or foster care on the basis of race, color, or national origin of the foster or adoptive parents or the child involved [42 U.S.C. 1996b].

The Adoption Promotion Act of 2003 encourages States to focus greater effort on finding adoptive families for children ages nine and older. Under the legislation the Adoption Incentive Program will now include a targeted bonus for States successful in increasing the number of older children adopted from foster care, and continue to recognize overall progress in increasing adoptions from foster care.

States must implement the Indian Child Welfare Act (ICWA) [25 U.S.C. 1901 *et seq.*] which governs the jurisdiction, placement, termination of parental rights, and adoption of Native American children. This Act, passed in 1978, provided key standards that must be met by States when working with Tribal children, including notice to Tribes of State custody; standards for placement of Indian children in foster homes and termination of parental rights; active efforts to provide rehabilitative services; transfer of jurisdiction to Tribal courts and preferred placement of Indian children with extended families and other Indian families; and the Tribal right to intervene in State custody proceedings.

The Child Abuse Prevention and Treatment Act (CAPTA) recently reauthorized as part of the Keeping Children and Families Safe Act of 2003 (Pub. L. 108–36) [42 U.S.C. 5101 *et seq.*; 42 U.S.C. 5116 *et seq.*] is one of the key pieces of legislation that guides child protection. The reauthorization provides a number of amendments to the eligibility requirements for the CAPTA State grant including: policies and procedures that address the needs of drug-exposed infants; triage procedures for referral of children not at imminent risk of harm to community or preventative services; notification of an individual who is the subject of an investigation about allegations made against them; training for CPS workers on their legal duties and parents' rights; provisions to refer children under age three who are involved in a substantiated case to early intervention services under IDEA Part C. The 2003 Act amends other provisions of CAPTA including the authority for the National Clearinghouse on Child Abuse and Neglect, research and technical assistance, grants for demonstration programs and projects, Children's Justice Act grants, and Community-Based Grants for the Prevention of Child Abuse and Neglect (formerly known as the Community-Based Family Resource and Support Grants), and gives flexibility for States to determine open court policies in cases of child abuse and neglect.

In November 1997, the Adoption and Safe Families Act of 1997 (ASFA), Pub. L. 105–89 amended titles IV–B and IV–E of the Social Security Act. This law impacts the State child welfare system in two ways. It focuses on moving children who are languishing in the system into adoption or other permanent placements, and it seeks to change the experience of children entering the system to increase the timeliness of securing permanency. ASFA embodies five key principles:

1. The safety of children is the paramount concern that must guide all child welfare services.
2. Foster care is a temporary setting and not a place for children to grow up.
3. Permanency planning efforts for children should begin as soon as a child enters foster care and should be expedited by the provision of services to families.
4. The child welfare system must focus on results and accountability.
5. Innovative approaches are needed to achieve the goals of safety, permanency, and well-being.

To implement these principles, the law requires that child safety be the paramount concern in making service provision, placement, and permanency planning decisions. It reaffirms the importance of making reasonable efforts to preserve and reunify families, but also specifies that States are not required to make efforts to keep children with their parents when doing so places a child's safety in jeopardy. To ensure that the system respects a child's developmental needs, the law includes provisions that shorten the time frame for making permanency planning decisions, and that establish a time frame for initiating proceedings to terminate parental rights.

The law also calls for the Children's Bureau to focus on results, which has been at the heart of this reform effort. To this end, the Child and Family Services (CFS) review process was published in a final rule in the **Federal Register** (65 FR 40–4093) on January 25, 2000. Unlike previous review systems, the CFS reviews require States to demonstrate that children and families served by the child welfare system are experiencing positive results. By June

2004 all States, the District of Columbia and Puerto Rico will have completed CFS reviews. Thirty-two States have developed Program Improvement Plans (PIPs) to build on strengths and address areas needing improvement that were noted in the review process, with special attention to improving State capacity to create positive outcomes for children and families.

In 1999, the Chafee Foster Care Independence Program (CFCIP) was enacted under the Foster Care Independence Act of 1999, section 477 of the Social Security Act, as amended. This Act expanded the purposes and resources of the Federal Independent Living Program (ILP) originally enacted in 1986 under Public Law 96–272. CFCIP offers assistance to help current and former foster care youths achieve self-sufficiency. Grants are offered to States who submit a plan to assist youth in a wide variety of areas designed to support a successful transition to adulthood. Activities and programs include, but are not limited to help with education, employment, financial management, housing, emotional support and assured connections to caring adults for older youth in foster care as well as youth 18–21 who have aged out of the foster care system. A reporting system for States and a program evaluation component will be used to attain more knowledge about the outcomes of youth transitioning to adulthood.

Under Title II of the Promoting Safe and Stable Families Amendments (PSSF Amendments) of 2001, Public Law 107–133 is the Education and Training Vouchers for Youths Aging Out of Foster Care Program (ETV). It amends section 477 of Title IV–E of the Social Security Act, adding a new purpose to CFCIP specifically targeting additional resources to meet the education and training needs of youth aging out of foster care. The law authorizes payments to States for post secondary educational and training vouchers for youth that have aged out of foster care; or are otherwise eligible for services under the State program under this section. The full text of the above applicable laws enacted since 1996 can be found at *http://www.acf.hhs.gov/programs/cb/laws/index.htm.*

The Title IV–B, subpart 2, Promoting Safe and Stable Families program provides funds to states to provide family support, family preservation, time-limited family reunification services, and services to promote and support adoptions. These services are primarily aimed at preventing the risk of abuse and promoting nurturing families, assisting families at risk of having a child removed from their home, promoting the timely return of a child to his/her home, and if returning home is not an option, placement of a child in a permanent setting with services that support the family. As part of this program, the Court Improvement Program provides grants to help State courts improve their handling of proceedings relating to foster care and adoption. After an initial assessment of court practices and policies, States use these funds for improvements and reform activities. Typical activities include development of mediation programs, joint agency-court training, automated docketing and case tracking, linked agency-court data systems, one judge/one family models, time-specific docketing, formalized relationships with the child welfare agency, and legislative change.

Other General Information

Available Funds: Applicants should note that cooperative agreements to be awarded under this program announcement are subject to the availability of funds.

Assurances: By signing the "Signature of Authorized Representative" on the SF 424, the applicant is providing a certification for completing the cooperative agreement requirements that are listed under "assurances" in each of the individual NRC program descriptions.

Tips for Preparing a Competitive Application: It is essential that applicants read the entire announcement package carefully before preparing an application and include all of the required application forms and attachments. The application must reflect a thorough understanding of the purpose and objectives of the Children's Bureau priority-area initiatives. Reviewers expect applicants to understand the goals of the legislation and the Children's Bureau's interest in each topic. A "responsive application" is one that addresses all of the evaluation criteria in ways that demonstrate this understanding. Applications that are considered to be "unresponsive" generally receive very low scores and are rarely funded.

The Children's Bureau's Web site (*http://www.acf.dhhs.gov/programs/cb*) provides a wide range of information and links to other relevant Web sites. Before you begin preparing an application, we suggest that you learn more about the mission and programs of the Children's Bureau by exploring the Web site.

Organizing Your Application: The specific evaluation criteria in Section V of each priority area will be used to review and evaluate each application. The applicant should address each of these specific evaluation criteria in the project description. It is strongly recommended that applicants organize their proposals in the same sequence and using the same headings as these criteria, so that reviewers can readily find information that directly addresses each of the specific review criteria.

Table of Contents

Summary Award Information

Funding Instrument Type: Cooperative Agreement.

Description of Federal Substantial Involvement With Cooperative Agreement: Each National Child Welfare Resource Center will operate under a cooperative agreement. A cooperative agreement is a specific method of awarding Federal assistance in which substantial Federal involvement is anticipated. A cooperative agreement clearly defines the respective responsibilities of the Children's Bureau and the grantee prior to the award. The Children's Bureau anticipates that agency involvement will produce programmatic benefits to the recipient otherwise unavailable to them for carrying out the project. The involvement and collaboration includes Children's Bureau review and approval of planning stages of the activities before implementation phases may begin; Children's Bureau involvement in the establishment of policies and procedures that maximize open competition, and rigorous and impartial development, review and funding of sub-grant or sub-grant activities, if applicable; and Children's Bureau and recipient joint collaboration in the performance of key programmatic activities (*i.e.*, strategic planning, implementation, information technology enhancements, training and technical assistance, publications or products, and evaluation). Close monitoring by the Children's Bureau of the requirements stated in this announcement that limit the grantee's discretion with respect to scope of services offered, organizational structure

and management processes, coupled with close Children's Bureau monitoring during performance may, in order to ensure compliance with the intent of this funding, exceed those Federal stewardship responsibilities customary for grant activities.

Anticipated Total Funding: $6,700,000.

Anticipated Number of Awards: Seven.

Ceiling on Amount of Individual Awards: Individual priority areas vary from $800,000 to $1,400,000 in the first budget period of the project.

Floor of Individual Award Amounts: None.

Average Projected Award Amount: Individual priority areas vary from $800,000 to $1,400,000 in the first budget period of the project.

Project Periods for Awards: 60 months.

Priority Area 1—National Child Welfare Resource Center for Organizational Improvement

Purpose: The purpose of this Cooperative Agreement is to provide financial support for training and technical assistance to build the organizational capacity of State, local, Tribal and other publicly supported child welfare agencies in order to improve the outcomes of child welfare activities and to achieve the Adoption and Safe Families Act of 1997 (ASFA) goals of safety, permanency and well-being of children. This purpose will be accomplished by providing technical assistance, training, and consultation to child welfare agencies to strengthen, enhance, and focus their efforts to develop agency management structures and systems that improve the ability to administer titles IV–B and IV–E child welfare programs, including the development of program improvement plans in response to Child and Family Services Reviews.

The National Child Welfare Resource Center for Organizational Improvement is expected to provide these additional training and technical assistance management functions under this Cooperative Agreement:

• The first round of CFS reviews demonstrated the need for a more integrated and coordinated approach to assist States in meeting Program Improvement Plan objectives. In this context, the Children's Bureau is establishing a single point of entry for States and Tribes to request on-site training and technical assistance from the Children's Bureau's seven National Child Welfare Resource Centers and AdoptUSKids. The NCWRCOI is expected to serve this function.

• The National Child Welfare Resource Center on Organizational Improvement (NCWRCOI) will evaluate the results and benefits of the technical assistance provided by all seven National Child Welfare Resource Centers. The National Child Welfare Resource Centers will provide evaluation data to the NCWRCOI.

Activities to be conducted by the Resource Center for Organizational Improvement will include, but are not limited to:

(1) Identifying the organizational improvement needs of child welfare agencies and developing a national technical assistance and training strategy for organizational improvement that takes into consideration development of State Child and Family Services Plans and Program Improvement Plans, as well as CAPTA, Chafee and IV–B requirements;

(2) Providing technical assistance, training and consultation directly on-site as well as through state-of-the-art communication and technology-based methods to State, local, Tribal, and child welfare and child protective services agencies on issues of organizational improvement;

(3) Identifying and disseminating exemplary and innovative organizational improvement practices in such areas as strategic planning; team building; cross-program and cross-system coordination in the areas of mental health, health, education, substance abuse and domestic violence; quality assurance strategies; worker safety; caseloads and child welfare staffing, staff retention and training;

(4) Demonstrating a commitment to meaningful stakeholder involvement by involving courts, youth, Tribes and other relevant stakeholders in program planning, implementation and evaluation and other systems change initiatives;

(5) Coordinating with the Children's Bureau, ACF Regional Offices and State and Tribal agencies in the development of the annual technical assistance and training strategy;

(6) Providing specific training to States and their relevant stakeholders about strategic planning, program improvement plan development, implementation and monitoring, and integration of the program improvement plan into the Child and Family Services Plan;

(7) Providing a single point of entry for States and Tribes to request onsite T/TA from NRCs and AdoptUSKids. For each on-site T/TA request the NCWRCOI will involve the Regional Office Staff, the appropriate NRCs or AdoptUSKids, and Children's Bureau staff as needed, as well as any other critical stakeholder to facilitate an assessment of T/TA needs and a coordinated and immediate response that avoids delays or duplication of effort;

(8) Building the capacity of child welfare agencies and courts by coordinating twice-a-year team meetings of the Training and Technical Assistance Network funded by the Children's Bureau, and the Training and Technical Assistance Coordination Committee;

(9) Collaborating with other ACYF Resource Centers, other agencies in the Department of Health and Human Services and other agents of the Children's Bureau to strengthen TA efforts, avoid duplication and to manage resources effectively;

(10) Building the capacity of child welfare agencies and courts by managing, maintaining and updating to improve functionality, when needed, the web-based tracking system for training and technical assistance requests developed to track NRC's responses to all T/TA requests from State, local, Tribal and other publicly supported child welfare agencies;

(11) Evaluating the results and benefits of the technical assistance provided by all seven National Resource Centers in order to build knowledge and improve services;

(12) Supporting States and localities in developing and implementing their Program Improvement Plans resulting from Child and Family Service Reviews; and

(13) Building the capacity of child welfare agencies and courts by providing logistical arrangements and meeting planning for the annual national Child and Family Services Review conference.

Expected outcomes include the enhanced capacity of each State agency to:

(1) Develop, support, and maintain a range of services and supports which can be individualized to enhance positive outcomes in safety, permanency and well-being for children and families;

(2) Build interagency systems to expand and maintain required services;

(3) Coordinate the delivery of child welfare, health, mental health, substance abuse, domestic violence and educational services to children and families in the child welfare system;

(4) Develop and maintain effective training systems supporting family-centered, community-based practice;

(5) Promote the meaningful participation of stakeholders, including

courts, in the design, implementation and evaluation of funded services;

(6) Implement quality assurance systems that include a peer review component, effective data utilization and other evaluation methodologies to enhance positive outcomes for children and families in the areas of safety, permanency and well-being; and

(7) Build on and benefit from their State's Child and Family Services Review/ Program Improvement Planning processes.

The aim of the Child Welfare Resource Center for Organizational Improvement is to strengthen State, local and Tribal child welfare administrative and management systems that are critical to achieving child safety, permanency and well-being by guiding them in planning and implementing systemic change, especially in response to Child and Family Services Reviews. This Resource Center is expected to train and assist State, local, Tribal and other publicly supported child welfare agencies to establish effective interagency cooperation and collaboration that involves all stakeholders, and promotes public-private partnerships in the coordination of child welfare services. Training and technical assistance needs will be identified by NRC staff in collaboration with States, the CB T/TA Coordinating Committee and coordinated with other ongoing national training and technical assistance efforts. The Resource Center will also be actively involved with identifying other training and technical assistance needs based on their work with other child welfare organizations. Training outcomes should be achieved through a combination of strategies, including on-site training, on and off-site technical assistance, and consultation with all appropriate stakeholder groups. Additionally, this resource center will act as the single point of entry for technical assistance requests to all NRCs and AdoptUSKids, evaluation of T/TA provided by NRCs and will provide logistical assistance with the annual Child and Family Services Review conference.

II. Award Information

Funding Instrument Type: Cooperative agreement.

Description of Federal Substantial Involvement With Cooperative Agreement: Each National Child Welfare Resource Center will operate under a cooperative agreement. A cooperative agreement is a specific method of awarding Federal assistance in which substantial Federal involvement is anticipated. A cooperative agreement clearly defines the respective responsibilities of the Children's Bureau and the grantee prior to the award. The Children's Bureau anticipates that agency involvement will produce programmatic benefits to the recipient otherwise unavailable to them for carrying out the project. The involvement and collaboration includes Children's Bureau review and approval of planning stages of the activities before implementation phases may begin; Children's Bureau involvement in the establishment of policies and procedures that maximize open competition, and rigorous and impartial development, review and funding of sub-grant or sub-grant activities, if applicable; and Children's Bureau and recipient joint collaboration in the performance of key programmatic activities (*i.e.*, strategic planning, implementation, information technology enhancements, training and technical assistance, publications or products, and evaluation). Close monitoring by the Children's Bureau of the requirements stated in this announcement that limit the grantee's discretion with respect to scope of services offered, organizational structure and management processes, coupled with close Children's Bureau monitoring during performance may, in order to ensure compliance with the intent of this funding, exceed those Federal stewardship responsibilities customary for grant activities.

Anticipated Total Program Funding: The anticipated total for the award under this priority area in FY2004 is $1,400,000 in the first year of the project. It is anticipated that the award will increase to $1,750,000 in the remaining years of the project.

Anticipated Number of Awards: It is anticipated that one project will be funded.

Ceiling on Amount of Individual Awards: The grant amount will not exceed $1,400,000 in the first budget period of the project and $1,750,000 per budget period in the remaining years of the project. An application received that exceeds the upper value of the dollar range specified will be considered "non-responsive" and be returned to the applicant without further review.

Floor of Individual Award Amounts: None.

Average Anticipated Award Amount: $1,400,000 in the first budget period of the project and $1,750,000 per budget period in the remaining years of the project.

Project Periods for Awards: This grant will be awarded for a project period of 60 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of the grantee, and a determination that continued funding would be in the best interest of the government.

III. Eligibility Information

1. Eligible Applicants

State governments
County governments
City or township governments
State controlled institutions of higher education
Nonprofits having a 501(c)(3) status with the IRS, other than institutions of higher education
Nonprofits that do not have a 501(c)(3) status with the IRS, other than institutions of higher education
Private institutions of higher education
For-profit organization other than small businesses
Small businesses

Additional Information on Eligibility

Collaborative efforts and interdisciplinary approaches are acceptable. Applications from collaborations must identify a primary applicant responsible for administering the grants.

Non-profit organizations, including faith-based and community organizations are elgible to apply. Proof of non-profit status is any one of the following:

(a) A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS code.

(b) A copy of a currently valid IRS tax exemption certificate.

(c) A statement from a State taxing body, State Attorney General, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals.

(d) A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status.

(e) Any of the items in the subparagraphs immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

2. Cost Sharing or Matching

The grantee must provide at least 10 percent of the total approved cost of the project. The total approved cost is the sum of the Federal share and the non-

Federal share. Therefore, a project requesting $1,400,000 for the first year must include a match of at least $155,555 for that budget period. Applicants should provide a letter of commitment verifying the actual amount of the non-Federal share of project costs.

The following example shows how to calculate the required 10% match amount for a $1,400,000 grant:

$1,400,000 (Federal share)

divided by .90 (100% − 10%)

equals $1,555,555 (total project cost including match)

minus $1,400,000 (Federal share)

equals $155,555 (required 10% match)

The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. If approved for funding, grantees will be held accountable for the commitment of non-Federal resources and failure to provide the required amount will result in a disallowance of unmatched Federal funds.

3. Other (If Applicable)

On June 27, 2003, the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires all Federal grant applicants to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*http://www.Grants.gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you may request a number online at *http://www.dnb.com.*

Applications that exceed the $1,400,000 ceiling in the first year of the project and $1,750,000 per budget period ceiling in the remaining years of the project will be considered non-responsive and will not be eligible for funding under this announcement.

IV. Application and Submission Information

1. Address To Request Application Package

ACYF Operations Center, c/o The Dixon Group, Inc., 118 Q Street, NE., Washington, DC 20002–2132, (866) 796–1591.

2. Content and Form of Application Submission

You may submit your application to us either in electronic or paper format. To submit an application electronically, please use the *www.Grants.gov* apply site. If you use Grants.gov you will be able to download a copy of the application package, complete it off-line, and then upload and submit the application via the Grants.gov site. You may not e-mail an electronic copy of a grant application to us.

Please note the following if you plan to submit your application electronically via Grants.gov.

- Electronic submission is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation. We strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- To use Grants.gov, you, as the applicant, must have a DUNS Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five days to complete the CCR registration.
- You will not receive additional point value because you submit a grant application in paper format.
- You may submit all documents electronically, including all information typically included on the SF424 and all necessary assurances and certifications.
- Your application must comply with any page limitation requirements described in this program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The Administration for Children and Families will retrieve your application from Grants.gov.
- We may request that you provide original signatures on forms at a later date.
- You may access the electronic application for this program on *www.Grants.gov.*
- You must search for the downloadable application package by the CFDA number.

Each application must contain the following items in the order listed:

1. Application for Federal Assistance (Standard Form 424). Follow the instructions below and those that accompany the form.

In Item 5 of Form 424, put DUNS number in "Organizational DUNS:" box.

In Item 5 of Form 424, include name, phone number, and, if available, e-mail and fax numbers of the contact person.

In Item 8 of Form 424, check 'New.'

In Item 10 of Form 424, clearly identify the Catalog of Federal Domestic Assistance (CFDA) program title and number for the program for which funds are being requested as stated in the funding opportunity announcement.

In Item 11 of Form 424, identify the single priority area the application addresses.

In Item 12 of Form 424, identify the specific geographic area to be served.

In Item 14 of Form 424, identify Congressional districts of both the applicant and project.

2. Budget Information Non-Construction Programs (Form 424A) and Budget Justification.

Follow the instructions provided. Note that Federal funds provided to States and services or other resources purchased with Federal funds may not be used to match project grants.

3. Certifications/Assurances. Applicants requesting financial assistance for nonconstruction projects must file the Standard Form 424B, 'Assurances: Non-Construction Programs.' Applicants must sign and return the Standard Form 424B with their applications. Applicants must provide a certification regarding lobbying when applying for an award in excess of $100,000. Applicants must sign and return the certification with their applications.

Applicants must disclose lobbying activities on the Standard Form LLL when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form to report lobbying. Applicants must sign and return the disclosure form, if applicable, with their applications.

Applicants must make the appropriate certification regarding environmental tobacco smoke. By signing and submitting the application, the applicant is providing the certification and need not mail back the certification with the application.

If applicable, applicants must include a completed SPOC certification (Single Point of Contact) with the date of the SPOC contact entered in line 16, page 1 of the Form 424.

Assurances: By signing the "Signature of Authorized Representative" on the SF 424, the applicant is providing a certification and need not mail assurances for completing the following cooperative agreement requirements:

- The applicant will have the project fully functioning within 90 days of the notification of the award.
- The applicant will participate in any evaluation or technical assistance effort supported by ACYF.
- The applicant will submit all required semi-annual and final Financial Status Reports (SF269) and Program Performance Reports in a timely manner, in hard-copy and electronic formats (preferably MS WORD and PDF) as negotiated with the Federal Project Officer.
- The Resource Center Project Director or one key staff member will attend the following meetings in Washington, DC. A meeting with the Federal Project Officer and other ACYF staff within 60 days of receiving the award; two meetings annually, for one to two days each, with Children's Bureau staff and other training and technical assistance partners to plan a national training and technical assistance strategy; one meeting annually to participate in a Children's Bureau grantee meeting with the purpose of disseminating knowledge gained from work with State agencies and courts around child welfare issues.
- In situations where the applicant's organizational position on a particular policy and/or practice might differ from the Federal position, the Federal position will be used to guide the Resource Center activity and will be reflected in all public statements and publications of the Resource Center.
- The applicant will enter into a Cooperative Agreement with the Children's Bureau.
- The Resource Center will work in partnership with the Children's Bureau and the ACF Regional Offices by providing technical assistance to States that have needs identified through one of ACF's review processes.
- The Resource Center will work collaboratively with the other six National Resource Centers and AdoptUSKids and will serve as a single point of entry for States and Tribes to request onsite training and technical assistance to ensure a coordinated and immediate response.
- The Resource Center will work with the Training and Technical Assistance Coordination Committee, which will be composed of Federal staff from the Children's Bureau and Regional Offices and will provide direction to the strategic development of the training and technical assistance network.
- The Resource Center will work collaboratively with the CB Clearinghouses and other members of the training and technical assistance network funded by the Children's Bureau in providing training and technical assistance.

The Office for Human Research Protections of the U.S. Department of Health and Human Services provides Web site information and policy guidance on the Federal regulations pertaining to protection of human subjects (45 CFR part 46), informed consent, informed consent checklists, confidentiality of personal identification information, data collection procedures, and internal review boards: *http://ohrp.osophs.dhhs.gov/polasur.htm.*

If applicable, applicants must include a completed Form 310, Protection of Human Subjects.

In implementing their projects, grantees are expected to comply with all applicable administrative regulations regarding extent or types of costs. Applicable HHS regulations can be found in 45 CFR part 74 or 92.

4. Project Abstract/Summary (one page maximum). Clearly mark this page with the applicant name as shown on item 5 of the Form 424, identify the competitive priority area and the title of the proposed project as shown in item 11 and the service area as shown in item 12 of the Form 424. The summary description should not exceed 300 words.

Care should be taken to produce an abstract/summary that accurately and concisely reflects the proposed project. It should describe the objectives of the project, the approach to be used and the results or benefits expected.

5. Project Description for Evaluation. Applicants should organize their project description according to the Evaluation Criteria described in this priority area announcement providing information that addresses all the components.

6. Proof of non-profit status (if applicable). Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. Any of the following constitutes acceptable proof of such status:

a. A reference to the applicant organization's listing in the Internal Revenue Services' (IRS) most recent list of tax-exempt organizations described in the IRS Code.

b. A copy of a currently valid IRS tax exemption certificate.

c. A statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals.

d. A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status.

e. Any of the items immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

7. Indirect cost rate agreement. If claiming indirect costs, provide documentation that applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

8. Letters of agreement and memoranda of understanding. If applicable, include a letter of commitment or Memorandum of Understanding from each partner and/or sub-contractor describing their role, detailing specific tasks to be performed, and expressing commitment to participate if the proposed project is funded.

9. Provide a letter of commitment verifying the actual amount of the non-Federal share of project costs.

10. The application limit is 85 pages total including all forms and attachments. Submit one original and two copies.

To be considered for funding, each application must be submitted with the Standard Federal Forms (provided at the end of this announcement or through the electronic links provided) and following the guidance provided. The application must be signed by an individual authorized to act for the applicant organization and to assume responsibility for the obligations imposed by the terms and conditions of the grant award.

To be considered for funding, each applicant must submit one signed original and two additional copies of the application, including all forms and attachments, to the Application Receipt Point specified in the section titled Deadline. The original copy of the application must have original signatures, signed in *black* ink.

The application must be typed, double spaced, printed on only one side, with at least 1/2 inch margins on each side and 1 inch at the top and bottom, using standard 12 Point fonts (such as Times Roman or Courier). Pages must be numbered.

Pages over the page limit stated within this priority area announcement will be removed from the application

and will not be reviewed. All copies of an application must be submitted in a single package, and a separate package must be submitted for each priority area. The package must be clearly labeled for the specific priority area it is addressing.

Because each application will be duplicated, do not use or include separate covers, binders, clips, tabs, plastic inserts, maps, brochures, or any other items that cannot be processed easily on a photocopy machine with an automatic feed. Do not bind, clip, staple, or fasten in any way separate subsections of the application, including supporting documentation. Applicants are advised that the copies of the application submitted, not the original, will be reproduced by the Federal government for review. Each copy must be stapled securely in the upper left corner.

Applicants have the option of omitting from application copies (not originals) specific salary rates or amounts for individuals specified in the application budget. The copies may include summary salary information.

Private non-profit organizations are encouraged to submit with their applications the survey located under "Grant Related Documents and Forms" titled "Survey for Private, Non-Profit Grant Applicants."

Please see Section V.1. Criteria, for instructions on preparing the project summary/abstract and the full project description.

3. Submission Dates and Times

The closing time and date for receipt of applications is 4:30 p.m. eastern standard time (e.s.t.) on August 24, 2004. Mailed or handcarried applications received after 4:30 p.m. on the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the following address: ACYF Operations Center, c/o The Dixon Group, Inc., ATTN: Children's Bureau, 118 Q Street, NE., Washington, DC 20002–2132.

Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Applications hand-carried by applicants, applicant couriers, or by other representatives of the applicant shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., e.s.t., at ACYF Operations Center, c/o The Dixon Group, Inc., ATTN: Children's Bureau, 118 Q Street, NE., Washington, DC 20002–2132, between Monday and Friday (excluding Federal holidays). This address must appear on the envelope/package containing the application with the note "ATTN: Children's Bureau." Applicants are cautioned that express/overnight mail services do not always deliver as agreed. ACF cannot accommodate transmission of applications by fax.

Late applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of mail service. Determinations to extend or waive deadline requirements rest with the Chief Grants Management Officer.

Required Forms

What to submit	Required content	Required form or format	When to submit
1. SF424	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	See application due date.
2. SF424A	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	See application due date.
3.a. SF424B	Per requiredform	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	See application due date.
3.b. Certification regarding lobbying	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	See application due date.
3.c. Disclosure of Lobbying Activities (SF–LLL).	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	See application due date.
4. Project Summary/Abstract	Summary of application request	See instructions in this funding announcement.	See application due date.
5. Project Description	Responsiveness to evaluation criteria	See instructions in this funding announcement.	See application due date.
6. Proof of non-profit status	See above	See above	See application due date.
7. Indirect cost rate agreement	See above	See above	See application due date.
8. Letters of agreement & MOUs	See above	See above	See application due date.
9. Non-Federal share letter	See above	See above	See application due date.
Total application	See above	Application limit 85 pages total including all forms and attachments. Submit one original and two copies.	See application due date.

Additional Forms

Private, non-profit organizations are encouraged to submit with their applications the additional survey located under "Grant Related Documents and Forms" titled "Survey for Private, Non-Profit Grant Applicants."

What to submit	Required content	Required form or format	When to submit
Survey for Private, Non-Profit Grant Applicants.	Per required form	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.

4. Intergovernmental Review

State Single Point of Contact (SPOC)

This program is covered under Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

As of October 2003, of the most recent SPOC list, the following jurisdictions have elected not to participate in the Executive Order process. Applicants from these jurisdictions or for projects administered by Federally-recognized Indian Tribes need take no action in regard to E.O. 12372: Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington and Wyoming.

Although the jurisdictions listed above no longer participate in the process, entities which have met the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, *etc.*, does not have a SPOC. All remaining jurisdictions participate in the Executive Order process and have established SPOCs.

Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to differentiate clearly between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Washington, DC 20447.

The official list, including addresses, of the jurisdictions elected to participate in E.O. 12372 can be found on the following URL: *http://www.whitehouse.gov/omb/grants/spoc.html.*

5. Funding Restrictions

Grant awards will not allow reimbursement of pre-award costs.

Construction is not an allowable activity or expenditure under this solicitation.

Federal funds received as a result of this announcement cannot be paid as profit to grantees or sub-grantees, *i.e.*, any amount in excess of allowable direct and indirect costs of the recipient (45 CFR 74.81).

6. Other Submission Requirements

Submission by Mail: An applicant must provide an original application with all attachments, signed by an authorized representative and two copies. The application must be received at the address below by 4:30 p.m, eastern standard time on or before the closing date. Applications should be mailed to: ACYF Operations, The Dixon Group, ATTN: Children's Bureau, 118 Q Street, NE., Washington, DC 20002–2132.

For Hand Delivery: Applicant must provide an original application with all attachments, signed by an authorized representative and two copies. The application must be received at the address below by 4:30 p.m. eastern standard time on or before the closing date. Applications that are hand delivered will be accepted between the hours of 8 a.m. to 4:30 p.m., Monday through Friday. Applications may be delivered to: ACYF Operations, The Dixon Group, ATTN: Children's Bureau 118 Q Street, NE., Washington, DC 20002–2132. It is strongly recommended that applicants obtain documentation that the application was hand delivered on or before the closing date. Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

Electronic Submission: Please see Section IV.2. Content and Form of Application Submission, for guidelines and requirements when submitting applications electronically.

Electronic Address Where Applications Will Be Accepted: *www.Grants.gov.*

Address Where Hard Copy Applications Will Be Accepted: Children's Bureau Grant Receipt Point, ACYF Operations Center, c/o The Dixon Group, Inc., 118 Q Street, NE., Washington, DC 20002–2132

ACYF will not acknowledge receipt of hard copy application submissions.

V. Application Review Information

The following Paperwork Reduction Act information and General Instruction for Preparing Full Project Description apply to all seven Priority Areas under this funding announcement. The Specific Evaluation Criteria in this section apply to this Priority Area only.

The Paperwork Reduction Act of 1995 (Pub. L. 104–13)

Public reporting burden for this collection of information is estimated to average 40 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection information. The project description is approved under OMB control number 0970–0139 which expires 4/30/2007. 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.

Instruction

Introduction. Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions and the specified evaluation criteria. The instructions give a broad overview of what your project description should include while the evaluation criteria expands and clarifies more program-specific information that is needed.

1. Criteria

General Instruction for Preparing Full Project Description

Objectives and Need for Assistance. Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Approach. Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any "collection of information that is conducted or sponsored by ACF."

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Organizational Profiles. Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission.

The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code, or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Budget and Budget Justification. Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

Personnel. Description: Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, *etc.* Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits. Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel. Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops should be detailed in the budget.

Equipment. Description: "Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) $5,000. (Note: Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.)

Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

Supplies. Description: Costs of all tangible personal property other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

Contractual. Description: Costs of all contracts for services and goods except for those which belong under other categories such as equipment, supplies, construction, etc. Third-party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant, should be included under this category.

Justification: All procurement transactions shall be conducted in a manner to provide, to the maximum

extent practical, open and free competition. Recipients and sub-recipients, other than States that are required to use Part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 U.S.C. 403(11). Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc.

Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

Other. Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (non-contractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs.

Justification: Provide computations, a narrative description and a justification for each cost under this category.

Indirect Charges. Description: Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

Justification: An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

Specific Evaluation Criteria

The following criteria will be used to review and evaluate each application under this Priority Area. The applicant should address each criterion in the project description. The point values (summing up to 100) indicate the maximum numerical weight each criterion will be accorded in the review process.

Criterion 1. Objectives and Need for Assistance

In reviewing the objectives and need for assistance, the following factors will be considered: (20 points)

(1) The extent to which the applicant demonstrates a clear and thorough understanding of the need for providing coordinated training and technical assistance to public and private child welfare agencies responsible for serving the target population(s), and the goals of the applicable legislative mandates.

(2) The extent to which the training and technical assistance objectives of the project will build the capacity of State, and local public and private agencies to support effective efforts to develop, operate, expand, and enhance initiatives improving outcomes for children, youth and families served by these agencies.

(3) The extent to which the proposed project will produce significant results and benefits, and a high level of customer satisfaction on the part of agencies served and their State and local constituents.

Criterion 2. Approach

In reviewing the approach, the following factors will be considered: (50 points)

(1) The extent to which there is a reasonable timeline for implementing the proposed project, including the activities to be conducted in chronological order, showing a reasonable schedule of accomplishments and target dates and the factors that may accelerate or decelerate the work.

(2) The extent to which the applicant provides a workable plan of action and evaluation plan. The extent to which these plans relate to the stated objectives and scope of the project and reflect the intent of the legislative mandates.

(3) The extent to which the applicant describes sound strategies for providing technical assistance and effectively building the capacity of State, and local public and private agencies to fulfill the legislative mandates for the target population effectively.

(4) The extent to which the applicant presents a sound plan for providing technical assistance to the agencies on the development and implementation of evaluation processes that will determine the efficacy and impact of their networks, programs, and activities.

(5) The extent to which the applicant describes sound and effective strategies to help agencies successfully develop a family-focused, child-centered, multi-disciplinary approach to the delivery of child welfare services, supports and activities that fulfills the legislative mandates such as the Child and Family Services Plan requirements as well as the objectives of the Child and Family Service Reviews. The extent to which this plan includes sound and effective strategies that will be used to enhance the agency's capacity to promote successful stakeholder involvement in the planning, implementation, and evaluation of funded programs.

(6) The extent to which the applicant describes clear strategies to provide specific training to States and their relevant stakeholders about strategic planning, program improvement plan development, implementation and monitoring, and integration of the program improvement plan into the Child and Family Services Plan;

(7) The extent to which the applicant describes sound strategies for acting as the single point of entry for States and Tribes to request onsite T/TA from NRCs and AdoptUSKids. The extent to which this plan includes effectively facilitating the involvement of the Regional Office Staff, the appropriate NRCs or AdoptUSKids, and Children's Bureau staff as needed, as well as any other critical stakeholder, in an effective assessment of T/TA needs. The extent to which the applicant includes sound strategies for a coordinated and immediate response which avoids delays and duplication of efforts, and supports the effective design and implementation of sound TA work plans.

(8) The extent to which there are sound strategies for building the capacity of child welfare agencies and courts by effectively managing, maintaining and updating the functionality, as needed, of the web-based tracking system for training and technical assistance requests developed for the Children's Bureau to track NRC's responses to on-site T/TA requests from State and Tribal child welfare agencies

(9) The extent to which there are sound procedures for providing effective logistical support for the annual national Child and Family

Services Review conference and the two meetings for the Children's Bureau funded NRCs, the Children's Bureau and its Training and Technical Assistance Coordination Committee. The extent to which the plan includes collaboration with the Children's Bureau in setting dates, agendas and specific presentations.

(10) The extent to which the Resource Center's services, program activities, and materials will be developed and provided in a manner that is racially and culturally sensitive to the population(s) being served.

(11) The extent to which the applicant proposes a sound strategy for evaluating the training and technical assistance provided by the seven national resource centers in order to build knowledge and improve services. The extent to which this plan includes sound methods and criteria to evaluate the results and benefits of the technical assistance provided.

Criterion 3. Organizational Profiles (20 points)

In reviewing the organizational profiles, the following factors will be considered: (20 points)

(1) The extent to which the applicant organization and any partnering organizations collectively have sufficient experience and expertise (including experience on the national level) in: (1) Identifying the training and technical assistance needs of an agency or organization; (2) developing or participating in the development of a plan to meet those needs; (3) designing, developing and delivering training and technical assistance including recruiting, assigning, and deploying staff with appropriate experience; (4) coordinating with other National Resource Centers to identify services from those resource centers to meet the requested technical assistance needs; (5) developing evaluation strategies and providing technical assistance on evaluation methodologies, (6) designing, developing, delivering and evaluating training materials, (7) establishing effective working partnerships with other agencies and organizations; (8) managing, maintaining and updating functionality, as needed, of the web-based tracking system for training and technical assistance requests; and (9) the administration, development, implementation, management, and evaluation of similar projects. The extent to which each participating organization (including partners and/or subcontractors) possesses the organizational capability to fulfill their assigned roles and functions effectively (if the application involves partnering and/or subcontracting with other agencies/organizations).

(2) The extent to which the applicant's project director and key project staff possess sufficient relevant knowledge, experience and capabilities to implement and manage a project of this size, scope and complexity effectively. The extent to which the role, responsibilities and time commitments of each proposed project staff position, including consultants, subcontractors and/or partners, are clearly defined and appropriate to the successful implementation of the proposed project. The extent to which the author of this proposal will be closely involved throughout the implementation of the proposed project.

(3) The extent to which there is a sound management plan for achieving the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines and milestones for accomplishing project tasks and ensuring quality. The extent to which the plan clearly defines the role and responsibilities of the lead agency. The extent to which the plan clearly describes the effective management and coordination of activities carried out by any partners, subcontractors and consultants (if appropriate). The extent to which there would be a mutually beneficial relationship between the proposed project and other work planned, anticipated or underway with Federal assistance by the applicant.

Criterion 4. Budget and Budget Justification (10 points)

In reviewing the budget and budget justification, the following factors will be considered: (10 points)

(1) The extent to which the costs of the proposed project are reasonable, in view of the activities to be conducted and expected results and benefits.

(2) The extent to which the applicant's fiscal controls and accounting procedures would ensure prudent use, proper and timely disbursement and accurate accounting of funds received under this program announcement.

2. Review and Selection Process

When the Operations Center receives your application it will be screened to confirm that your application was received by the deadline. Federal staff will verify that you are an eligible applicant and that the application contains all the essential elements. Applications received from ineligible organizations and applications received after the deadline will be withdrawn from further consideration.

A panel of at least three reviewers (primarily experts from outside the Federal government) will use the evaluation criteria described in this announcement to evaluate each application. The reviewers will determine the strengths and weaknesses of each application, provide comments about the strengths and weaknesses and give each application a numerical score.

All applications will be reviewed and evaluated using four major criteria: (1) Objectives and need for assistance, (2) approach, (3) organizational profiles, and (4) budget and budget justification. Each criterion has been assigned a point value. The point values (summing up to 100) indicate the maximum numerical weight each criterion may be given in the review and evaluation process.

Reviewers also are evaluating the project products and materials that you propose. Reviewers will be looking to see that the total budget you propose and the way you have apportioned that budget are appropriate and reasonable for the project you have described. Remember that the reviewers only have the information that you give them—it needs to be clear, complete, and concise.

The results of the competitive review are a primary factor in making funding decisions. In addition, Federal staff conducts administrative reviews of the applications and, in light of the results of the competitive review, will recommend applications for funding to the ACYF Commissioner. ACYF reserves the option of discussing applications with other funding sources when this is in the best interest of the Federal government. ACYF may also solicit and consider comments from ACF Regional Office staff in making funding decisions. ACYF may take into consideration the involvement (financial and/or programmatic) of the private sector, national, or State or community foundations; a favorable balance between Federal and non-Federal funds for the proposed project; or the potential for high benefit from low Federal investment. ACYF may elect not to fund any applicants having known management, fiscal, reporting, programmatic, or other problems which make it unlikely that they would be able to provide effective services or effectively complete the proposed activity.

With the results of the peer review and the information from Federal staff, the Commissioner of ACYF makes the final funding decisions.

Available Funds: Applicants should note that grants to be awarded under this program announcement are subject to the availability of funds. The size of

the actual awards will vary. In cases where more applications are approved for funding than ACF can fund with the money available, the Grants Officer shall fund applications in their order of approval until funds run out. In this case, ACF has the option of carrying over the approved applications up to a year for funding consideration in a later competition of the same program. These applications need not be reviewed and scored again if the program's evaluation criteria have not changed. However, they must then be placed in rank order along with other applications in later competitions.

Priority Area 2—National Child Welfare Resource Center for Child Protective Services

Purpose: The purpose of the National Resource Center for Child Protective Services (NRCCPS) is to build the capacity of State, local, Tribal, and other publicly administered or publicly supported child welfare agencies to achieve safety, permanency and well-being for children and families; to provide effective child abuse and neglect prevention, investigation, comprehensive assessment, intervention, and treatment services to families using a family-centered approach; to implement the requirements of the Child Abuse Prevention and Treatment Act (CAPTA), as amended by the Keeping Children and Families Safe Act of 2003; and to achieve the goals of other related legislation administered by the Children's Bureau including ASFA and ICWA.

The National Resource Center for Child Protective Services will work with State, Tribal, and local agencies to integrate research and policy into the development and implementation of programs that support quality practice in preventing, reporting, assessing and treating child abuse and neglect. The National Resource Center for Child Protective Services will also engage in ancillary activities which support the delivery of training and technical assistance congruent with Federal priorities.

Training and technical assistance activities to be conducted by the NRCCPS will include, but are not limited to:

(1) Conducting regular and ongoing interagency needs assessments of State, Tribal, and local child protective services needs, incorporating applicable findings from other statewide needs assessments processes such as the Child and Family Services Review (CFSR);

(2) Assisting States in improving the delivery of prevention, investigation, comprehensive assessment, intervention and treatment services to at-risk, abused or neglected children and their families;

(3) Supporting States in their Program Improvement Plans regarding child abuse and neglect related issues identified through the CFSR;

(4) Fostering an understanding, appreciation and knowledge of family-centered practices including healthy marriage, community collaboration strategies, individualized services and how substance abuse and domestic violence impact on child maltreatment and on intervention strategies;

(5) Providing technical assistance, training and consultation directly on-site as well as through state-of-the-art communication and technology-based methods to State, local, Tribal, and child welfare and child protective services agencies;

(6) Identifying and disseminating promising and innovative practices that address emerging child welfare issues related to child abuse and neglect prevention, investigation, assessment, intervention, and treatment using a family-centered approach;

(7) Building the capacity of child welfare agencies and courts by developing and disseminating materials, including curricula, guidelines and training materials;

(8) Coordinating with the Children's Bureau, ACF Regional Offices and State and Tribal agencies in the development of the annual technical assistance and training strategy;

(9) Processing all on-site T/TA requests through the single point of entry established by the NCWRCOI, which will involve the Regional Office staff, the appropriate NRCs or AdoptUSKids, and Children's Bureau staff as needed, as well as any other critical stakeholder to facilitate an assessment of T/TA needs and a coordinated and immediate response that avoids delays or duplication of effort;

(10) Participating in twice-a-year team meetings of the Training and Technical Assistance Network funded by the Children's Bureau, and the Training and Technical Assistance Coordination Committee;

(11) Collaborating with other ACYF Resource Centers, other agencies in the Department of Health and Human Services and other agents of the Children's Bureau to strengthen TA efforts, avoid duplication and manage resources effectively;

(12) Building the capacity of child welfare agencies and courts by providing information and cooperation needed by the NCWRCOI as it manages, maintains and updates to improve functionality, when needed, the web-based tracking system for training and technical assistance requests developed to track NRC's responses to T/TA requests from State, local, Tribal and other publicly supported child welfare agencies; and

(13) Providing data needed by the NCWRCOI to evaluate the results and benefits of the technical assistance provided by the National Resource Center.

II. Award Information

Funding Instrument Type: Cooperative agreement.

Description of Federal Substantial Involvement With Cooperative Agreement: Each National Child Welfare Resource Center will operate under a cooperative agreement. A cooperative agreement is a specific method of awarding Federal assistance in which substantial Federal involvement is anticipated. A cooperative agreement clearly defines the respective responsibilities of the Children's Bureau and the grantee prior to the award. The Children's Bureau anticipates that agency involvement will produce programmatic benefits to the recipient otherwise unavailable to them for carrying out the project. The involvement and collaboration includes Children's Bureau review and approval of planning stages of the activities before implementation phases may begin; Children's Bureau involvement in the establishment of policies and procedures that maximize open competition, and rigorous and impartial development, review and funding of sub-grant or sub-grant activities, if applicable; and Children's Bureau and recipient joint collaboration in the performance of key programmatic activities (*i.e.*, strategic planning, implementation, information technology enhancements, training and technical assistance, publications or products, and evaluation). Close monitoring by the Children's Bureau of the requirements stated in this announcement that limit the grantee's discretion with respect to scope of services offered, organizational structure and management processes, coupled with close Children's Bureau monitoring during performance may, in order to ensure compliance with the intent of this funding, exceed those Federal stewardship responsibilities customary for grant activities.

Anticipated Total Program Funding: The anticipated total for the award under this priority area in FY2004 is $900,000.

Anticipated Number of Awards: It is anticipated that one project will be funded.

Ceiling on Amount of Individual Awards: The grant amount will not exceed $900,000 in the first budget period. An application received that exceeds the upper value of the dollar range specified will be considered "non-responsive" and be returned to the applicant without further review.

Floor of Individual Award Amounts: None.

Average Anticipated Award Amount: $900,000 per budget period.

Project Periods for Awards: This grant will be awarded for a project period of 60 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of the grantee, and a determination that continued funding would be in the best interest of the government.

III. Eligibility Information

1. Eligible Applicants

State governments
County governments
City or township governments
State controlled institutions of higher education
Nonprofits having a 501(c)(3) status with the IRS, other than institutions of higher education
Nonprofits that do not have a 501(c)(3) status with the IRS, other than institutions of higher education
Private institutions of higher education
For-profit organization other than small businesses
Small businesses

Additional Information on Eligibility: Collaborative efforts and interdisciplinary approaches are acceptable. Applications from collaborations must identify a primary applicant responsible for administering the grants.

Non-profit organizations, including faith-based and community organizations are elgible to apply. Proof of non-profit status is any one of the following:

(a) A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS code.

(b) A copy of a currently valid IRS tax exemption certificate.

(c) A statement from a State taxing body, State Attorney General, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals.

(d) A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status.

(e) Any of the items in the subparagraphs immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

2. Cost Sharing or Matching

The grantee must provide at least 10 percent of the total approved cost of the project. The total approved cost is the sum of the Federal share and the non-Federal share. Therefore, a project requesting $900,000 per budget period must include a match of at least $100,000 per budget period. Applicants should provide a letter of commitment verifying the actual amount of the non-Federal share of project costs.

The following example shows how to calculate the required 10% match amount for a $900,000 grant:

$900,000 (Federal share)
divided by .90 (100%–10%)
equals $1,000,000 (total project cost including match)
minus $900,000 (Federal share)
equals $100,000 (required 10% match)

The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. If approved for funding, grantees will be held accountable for the commitment of non-Federal resources and failure to provide the required amount will result in a disallowance of unmatched Federal funds.

3. Other (If Applicable)

On June 27, 2003, the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires all Federal grant applicants to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*www.Grants.gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you may request a number online at *http://www.dnb.com.*

Applications that exceed the $900,000 per budget period ceiling will be considered non-responsive and will not be eligible for funding under this announcement.

IV. Application and Submission Information

1. Address To Request Application Package

ACYF Operations Center, c/o The Dixon Group, Inc., 118 Q Street, NE., Washington, DC 20002–2132, (866) 796–1591.

2. Content and Form of Application Submission

You may submit your application to us either in electronic or paper format. To submit an application electronically, please use the *www.Grants.gov* apply site. If you use Grants.gov you will be able to download a copy of the application package, complete it off-line, and then upload and submit the application via the Grants.gov site. You may not e-mail an electronic copy of a grant application to us.

Please note the following if you plan to submit your application electronically via Grants.gov.

- Electronic submission is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation. We strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- To use Grants.gov, you, as the applicant, must have a DUNS Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five days to complete the CCR registration.
- You will not receive additional point value because you submit a grant application in paper format.
- You may submit all documents electronically, including all information typically included on the SF424 and all necessary assurances and certifications.
- Your application must comply with any page limitation requirements described in this program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov

tracking number. The Administration for Children and Families will retrieve your application from Grants.gov.

- We may request that you provide original signatures on forms at a later date.
- You may access the electronic application for this program on *www.Grants.gov.*
- You must search for the downloadable application package by the CFDA number.

Each application must contain the following items in the order listed:

1. Application for Federal Assistance (Standard Form 424). Follow the instructions below and those that accompany the form.

In Item 5 of Form 424, put DUNS number in "Organizational DUNS:" box.

In Item 5 of Form 424, include name, phone number, and, if available, e-mail and fax numbers of the contact person.

In Item 8 of Form 424, check 'New.'

In Item 10 of Form 424, clearly identify the Catalog of Federal Domestic Assistance (CFDA) program title and number for the program for which funds are being requested as stated in the funding opportunity announcement.

In Item 11 of Form 424, identify the single priority area the application addresses.

In Item 12 of Form 424, identify the specific geographic area to be served.

In Item 14 of Form 424, identify Congressional districts of both the applicant and project.

2. Budget Information Non-Construction Programs (Form 424A) and Budget Justification.

Follow the instructions provided. Note that Federal funds provided to States and services or other resources purchased with Federal funds may not be used to match project grants.

3. Certifications/Assurances. Applicants requesting financial assistance for nonconstruction projects must file the Standard Form 424B, 'Assurances: Non-Construction Programs.' Applicants must sign and return the Standard Form 424B with their applications. Applicants must provide a certification regarding lobbying when applying for an award in excess of $100,000. Applicants must sign and return the certification with their applications.

Applicants must disclose lobbying activities on the Standard Form LLL when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form to report lobbying. Applicants must sign and return the disclosure form, if applicable, with their applications.

Applicants must make the appropriate certification regarding environmental tobacco smoke. By signing and submitting the application, the applicant is providing the certification and need not mail back the certification with the application.

If applicable, applicants must include a completed SPOC certification (Single Point of Contact) with the date of the SPOC contact entered in line 16, page 1 of the Form 424.

Assurances: By signing the "Signature of Authorized Representative" on the SF 424, the applicant is providing a certification and need not mail assurances for completing the following cooperative agreement requirements:

- The applicant will have the project fully functioning within 90 days of the notification of the award.
- The applicant will participate in any evaluation or technical assistance effort supported by ACYF.
- The applicant will submit all required semi-annual and final Financial Status Reports (SF269) and Program Performance Reports in a timely manner, in hard-copy and electronic formats (preferably MS WORD and PDF) as negotiated with the Federal Project Officer.
- The Resource Center Project Director or one key staff member will attend the following meetings in Washington, DC: A meeting with the Federal Project Officer and other ACYF staff within 60 days of receiving the award; two meetings annually, for one to two days each, with Children's Bureau staff and other training and technical assistance partners to plan a national training and technical assistance strategy; one meeting annually to participate in a Children's Bureau grantee meeting with the purpose of disseminating knowledge gained from work with State agencies and courts around child welfare issues.
- In situations where the applicant's organizational position on a particular policy and/or practice might differ from the Federal position, the Federal position will be used to guide the Resource Center activity and will be reflected in all public statements and publications of the Resource Center.
- The applicant will enter into a Cooperative Agreement with the Children's Bureau.
- The Resource Center will work in partnership with the Children's Bureau and the ACF Regional Offices by providing technical assistance to States that have needs identified through one of ACF's review processes.
- The Resource Center will work collaboratively with the other six National Resource Centers and AdoptUSKids.
- The Resource Center will work with the Training and Technical Assistance Coordination Committee, which will be composed of Federal staff from the Children's Bureau and Regional Offices and which will provide direction to the strategic development of the training and technical assistance network.
- The Resource Center will work collaboratively with the CB Clearinghouses and other members of the training and technical assistance network funded by the Children's Bureau in providing training and technical assistance.
- The Resource Center will work directly with the National Child Welfare Resource Center for Organizational Improvement (NCWRCOI), which will serve as a single point of entry for States and Tribes to request onsite training and technical assistance to ensure a coordinated and immediate response.
- The Resource Center will provide evaluation data to the NCWRCOI that addresses both process and outcomes to evaluate the results and benefits of the technical assistance provided.

The Office for Human Research Protections of the U.S. Department of Health and Human Services provides Web site information and policy guidance on the Federal regulations pertaining to protection of human subjects (45 CFR part 46), informed consent, informed consent checklists, confidentiality of personal identification information, data collection procedures, and internal review boards: *http://ohrp.osophs.dhhs.gov/polasur.htm.*

If applicable, applicants must include a completed Form 310, Protection of Human Subjects.

In implementing their projects, grantees are expected to comply with all applicable administrative regulations regarding extent or types of costs. Applicable HHS regulations can be found in 45 CFR part 74 or 92.

4. Project Abstract/Summary (one page maximum). Clearly mark this page with the applicant name as shown on item 5 of the Form 424, identify the competitive grant priority area and the title of the proposed project as shown in item 11 and the service area as shown in item 12 of the Form 424. The summary description should not exceed 300 words.

Care should be taken to produce an abstract/summary that accurately and concisely reflects the proposed project. It should describe the objectives of the

project, the approach to be used and the results or benefits expected.

5. Project Description for Evaluation. Applicants should organize their project description according to the Evaluation Criteria described in this priority area announcement providing information that addresses all the components.

6. Proof of non-profit status (if applicable). Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. Any of the following constitutes acceptable proof of such status:

a. A reference to the applicant organization's listing in the Internal Revenue Services' (IRS) most recent list of tax-exempt organizations described in the IRS Code.

b. A copy of a currently valid IRS tax exemption certificate.

c. A statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals.

d. A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status.

e. Any of the items immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

7. Indirect cost rate agreement. If claiming indirect costs, provide documentation that applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

8. Letters of agreement and memoranda of understanding. If applicable, include a letter of commitment or Memorandum of Understanding from each partner and/or sub-contractor describing their role, detailing specific tasks to be performed, and expressing commitment to participate if the proposed project is funded.

9. Provide a letter of commitment verifying the actual amount of the non-Federal share of project costs.

10. The application limit is 75 pages total including all forms and attachments. Submit one original and two copies.

To be considered for funding, each application must be submitted with the Standard Federal Forms (provided at the end of this announcement or through the electronic links provided) and following the guidance provided. The application must be signed by an individual authorized to act for the applicant organization and to assume responsibility for the obligations imposed by the terms and conditions of the grant award.

To be considered for funding, each applicant must submit one signed original and two additional copies of the application, including all forms and attachments, to the Application Receipt Point specified in the section titled Deadline. The original copy of the application must have original signatures, signed in *black* ink.

The application must be typed, double spaced, printed on only one side, with at least 1/2 inch margins on each side and 1 inch at the top and bottom, using standard 12 Point fonts (such as Times Roman or Courier). Pages must be numbered.

Pages over the page limit stated within this priority area announcement will be removed from the application and will not be reviewed. All copies of an application must be submitted in a single package, and a separate package must be submitted for each priority area. The package must be clearly labeled for the specific priority area it is addressing.

Because each application will be duplicated, do not use or include separate covers, binders, clips, tabs, plastic inserts, maps, brochures, or any other items that cannot be processed easily on a photocopy machine with an automatic feed. Do not bind, clip, staple, or fasten in any way separate subsections of the application, including supporting documentation. Applicants are advised that the copies of the application submitted, not the original, will be reproduced by the Federal government for review. Each copy must be stapled securely in the upper left corner.

Applicants have the option of omitting from application copies (not originals) specific salary rates or amounts for individuals specified in the application budget. The copies may include summary salary information.

Private non-profit organizations are encouraged to submit with their applications the survey located under "Grant Related Documents and Forms" titled "Survey for Private, Non-Profit Grant Applicants."

Please see Section V.1. Criteria, for instructions on preparing the project summary/abstract and the full project description.

3. Submission Dates and Times

The closing time and date for receipt of applications is 4:30 p.m. eastern standard time (e.s.t.) on August 24, 2004. Mailed or handcarried applications received after 4:30 p.m. on the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the following address: ACYF Operations Center, c/o The Dixon Group, Inc., ATTN: Children's Bureau, 118 Q Street, NE., Washington, DC 20002–2132.

Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Applications hand-carried by applicants, applicant couriers, or by other representatives of the applicant shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., e.s.t., at ACYF Operations Center, c/o The Dixon Group, Inc., ATTN: Children's Bureau, 118 Q Street, NE., Washington, DC 20002–2132, between Monday and Friday (excluding Federal holidays). This address must appear on the envelope/package containing the application with the note "ATTN: Children's Bureau." Applicants are cautioned that express/overnight mail services do not always deliver as agreed. ACF cannot accommodate transmission of applications by fax.

Late applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of mail service. Determinations to extend or waive deadline requirements rest with the Chief Grants Management Officer.

Required Forms

What to submit	Required content	Required form or format	When to submit
1. SF424	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	See application due date.
2. SF424A	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	See application due date.
3.a. SF424B	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	See application due date.
3.b. Certification regarding lobbying.	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	See application due date.
3.c. Disclosure of Lobbying Activities (SF–LLL).	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	See application due date.
4. Project Summary/Abstract.	Summary of application request.	See instructions in this funding announcement	See application due date.
5. Project Description	Responsiveness to evaluation criteria.	See instructions in this funding announcement	See application due date.
6. Proof of non-profit status.	See above	See above	See application due date.
7. Indirect cost rate agreement.	See above	See above	See application due date.
8. Letters of agreement & MOUs.	See above	See above	See application due date.
9. Non-Federal share letter.	See above	See above	See application due date.
Total application	See above	Application limit 75 pages total including all forms and attachments. Submit one original and two copies.	See application due date.

Additional Forms

Private, non-profit organizations are encouraged to submit with their applications the additional survey located under "Grant Related Documents and Forms" titled "Survey for Private, Non-Profit Grant Applicants."

What to submit	Required content	Required form or format	When to submit
Survey for Private, Non-Profit Grant Applicants.	Per required form	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.

4. Intergovernmental Review

State Single Point of Contact (SPOC)

This program is covered under Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Programs", and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities". Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

As of October 2003, of the most recent SPOC list, the following jurisdictions have elected not to participate in the Executive Order process. Applicants from these jurisdictions or for projects administered by Federally-recognized Indian Tribes need take no action in regard to E.O. 12372: Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington and Wyoming.

Although the jurisdictions listed above no longer participate in the process, entities which have met the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC. All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to differentiate clearly between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Washington, DC 20447.

The official list, including addresses, of the jurisdictions elected to participate in E.O. 12372 can be found on the following URL: *http://www.whitehouse.gov/omb/grants/spoc.html.*

5. Funding Restrictions

Grant awards will not allow reimbursement of pre-award costs.

Construction is not an allowable activity or expenditure under this solicitation.

Federal funds received as a result of this announcement cannot be paid as profit to grantees or sub-grantees, i.e.,

any amount in excess of allowable direct and indirect costs of the recipient (45 CFR 74.81).

6. Other Submission Requirements

Submission by Mail: An applicant must provide an original application with all attachments, signed by an authorized representative and two copies. The application must be received at the address below by 4:30 p.m. eastern standard time on or before the closing date. Applications should be mailed to: ACYF Operations, The Dixon Group, ATTN: Children's Bureau, 118 Q Street, NE., Washington, DC 20002–2132.

For Hand Delivery: Applicant must provide an original application with all attachments, signed by an authorized representative and two copies. The application must be received at the address below by 4:30 PM Eastern Standard Time on or before the closing date. Applications that are hand delivered will be accepted between the hours of 8 a.m. to 4:30 p.m., Monday through Friday. Applications may be delivered to: ACYF Operations, The Dixon Group, ATTN: Children's Bureau 118 Q Street, NE, Washington, DC 20002–2132. It is strongly recommended that applicants obtain documentation that the application was hand delivered on or before the closing date. Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

Electronic Submission: Please see Section IV. 2. Content and Form of Application Submission, for guidelines and requirements when submitting applications electronically.

Electronic Address Where Applications Will Be Accepted: *www.Grants.gov.*

Address Where Hard Copy Applications Will Be Accepted: Children's Bureau Grant Receipt Point, ACYF Operations Center, c/o The Dixon Group, Inc., 118 Q Street, NE., Washington, DC 20002–2132 ACYF will not acknowledge receipt of hard copy application submissions.

V. Application Review Information

Refer to Priority Area 1, Section V. Application Review Information, for information on The Paperwork Reduction Act of 1995 (Pub. L. 104–13) and General Instruction for Preparing Full Project Description.

Specific Evaluation Criteria

The following criteria will be used to review and evaluate each application under this Priority Area. The applicant should address each criterion in the project description. The point values (summing up to 100) indicate the maximum numerical weight each criterion will be accorded in the review process.

Criterion 1. Objectives and Need for Assistance

In reviewing the objectives and need for assistance, the following factors will be considered: (20 points)

1. The extent to which the applicant demonstrates a clear and thorough understanding of the need for providing coordinated training and technical assistance about preventing, reporting, assessing and treating child abuse and neglect to public and private child welfare agencies responsible for serving the target population(s), and the goals of the applicable legislative mandates.

2. The extent to which the training and technical assistance objectives of the project will effectively build the capacity of State, and local public and private agencies to support effective efforts to develop, operate, expand, and enhance initiatives improving outcomes for children, youth and families served by these agencies.

3. The extent to which the proposed project will produce significant results and benefits, and a high level of customer satisfaction on the part of agencies served and their State and local constituents.

Criterion 2. Approach

In reviewing the approach, the following factors will be considered: (50 points)

1. The extent to which there is a reasonable timeline for implementing the proposed project, including the activities to be conducted in chronological order, showing a reasonable schedule of accomplishments and target dates and the factors that may accelerate or decelerate the work. The extent to which the applicant proposes appropriate outreach and engagement activities for States, Tribes and local agencies. The extent to which a reasonable number of States and Tribes will be targeted to receive T/TA from the NRC.

2. The extent to which the applicant provides a workable plan of action. The extent to which this plan relates to the stated objectives and scope of the project and reflects the intent of the applicable legislative mandates.

3. The extent to which the applicant describes sound strategies for providing technical assistance and effectively building the capacity of State, and local public and private agencies to fulfill the legislative mandates for the target population effectively. The extent to which the applicant presents a sound plan for effectively and efficiently providing technical assistance to the agencies in the areas of child abuse and neglect prevention, investigation, comprehensive assessment, intervention, and treatment and using a family-centered model and practices, *e.g.*, encouraging healthy marriage, community collaboration strategies, individualized services and addressing the impact of substance abuse and domestic violence on child maltreatment and on intervention strategies.

4. The extent to which the applicant will help child welfare and child protective services agencies improve services to over-represented populations, particularly minority families and children. The extent to which effective techniques will be used in assisting agencies to deliver culturally appropriate services.

5. The extent to which the Resource Center's services, program activities, and materials will be developed and provided in a manner that is racially and culturally sensitive to the population(s) being served.

6. The extent to which the applicant will effectively coordinate its activities with other National Resource Centers, AdoptUSKids, Clearinghouses, other members of the training and technical assistance network funded by the Children's Bureau, and the Training and Technical Assistance Coordination Committee made up of Federal staff from the Children's Bureau and Regional Offices.

7. The extent to which the applicant will collaborate effectively with the National Child Welfare Resource Center for Organizational Improvement in assessing training and technical assistance needs and developing and implementing a T/TA work plan in response to requests from States and Tribes for on-site training and technical assistance.

8. The extent to which the applicant will make significant annual contributions to the planning and implementation of a two to three day national meeting for Child Protective Services State Liaison Officers, and which may also include foster care managers, adoption specialists and other state staff involved in child welfare and child protective services programs.

9. The extent to which the applicant will provide effective support and coordination (which may include surveying State Liaison Officers regarding CAPTA implementation issues and TA needs) for the Child Protective Services State Liaison

Officers, under the direction of the Children's Bureau.

10. The extent to which the applicant will provide appropriate process and outcome evaluation data to the NCWRCOI, so it can evaluate the results and benefits of the technical assistance provided.

Criterion 3. Organizational Profiles

In reviewing the organizational profiles, the following factors will be considered: (20 points)

1. The extent to which the applicant organization and any partnering organizations collectively have sufficient experience and expertise (including experience on the national level) in: (1) Identifying the training and technical assistance needs of an agency or organization; (2) developing or participating in the development of a plan to meet those needs; (3) designing, developing and delivering training and technical assistance including recruiting, assigning, and deploying staff with appropriate experience; (4) developing evaluation strategies and providing technical assistance on evaluation methodologies, (5) designing, developing, delivering and evaluating training materials, (6) establishing effective working partnerships with other agencies and organizations; and (7) administering, developing, implementing, managing, and evaluating similar projects. The extent to which each participating organization (including partners and/or subcontractors) possesses the organizational capability to fulfill their assigned roles and functions effectively (if the application involves partnering and/or subcontracting with other agencies/organizations).

2. The extent to which the applicant's project director and key project staff possess sufficient relevant knowledge, experience and capabilities to implement and manage a project of this size, scope and complexity effectively. The extent to which the role, responsibilities and time commitments of each proposed project staff position, including consultants, subcontractors and/or partners, are clearly defined and appropriate to the successful implementation of the proposed project. The extent to which the author of this proposal will be closely involved throughout the implementation of the proposed project.

3. The extent to which there is a sound management plan for achieving the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines and milestones for accomplishing project tasks and ensuring quality. The extent to which the plan clearly defines the role and responsibilities of the lead agency. The extent to which the plan clearly describes the effective management and coordination of activities carried out by any partners, subcontractors and consultants (if appropriate). The extent to which there would be a mutually beneficial relationship between the proposed project and other work planned, anticipated or underway with Federal assistance by the applicant.

Criterion 4. Budget and Budget Justification

In reviewing the budget and budget justification, the following factors will be considered: (10 points)

1. The extent to which the costs of the proposed project are reasonable, in view of the activities to be conducted and expected results and benefits.

2. The extent to which the applicant's fiscal controls and accounting procedures would ensure prudent use, proper and timely disbursement and accurate accounting of funds received under this program announcement.

2. Review and Selection Process

When the Operations Center receives your application it will be screened to confirm that your application was received by the deadline. Federal staff will verify that you are an eligible applicant and that the application contains all the essential elements. Applications received from ineligible organizations and applications received after the deadline will be withdrawn from further consideration.

A panel of at least three reviewers (primarily experts from outside the Federal government) will use the evaluation criteria described in this announcement to evaluate each application. The reviewers will determine the strengths and weaknesses of each application, provide comments about the strengths and weaknesses and give each application a numerical score.

All applications will be reviewed and evaluated using four major criteria: (1) Objectives and need for assistance, (2) approach, (3) organizational profiles, and (4) budget and budget justification. Each criterion has been assigned a point value. The point values (summing up to 100) indicate the maximum numerical weight each criterion may be given in the review and evaluation process.

Reviewers also are evaluating the project products and materials that you propose. Reviewers will be looking to see that the total budget you propose and the way you have apportioned that budget are appropriate and reasonable for the project you have described. Remember that the reviewers only have the information that you give them "it needs to be clear, complete, and concise.

The results of the competitive review are a primary factor in making funding decisions. In addition, Federal staff conducts administrative reviews of the applications and, in light of the results of the competitive review, will recommend applications for funding to the ACYF Commissioner. ACYF reserves the option of discussing applications with other funding sources when this is in the best interest of the Federal government. ACYF may also solicit and consider comments from ACF Regional Office staff in making funding decisions. ACYF may take into consideration the involvement (financial and/or programmatic) of the private sector, national, or State or community foundations; a favorable balance between Federal and non-Federal funds for the proposed project; or the potential for high benefit from low Federal investment. ACYF may elect not to fund any applicants having known management, fiscal, reporting, programmatic, or other problems which make it unlikely that they would be able to provide effective services or effectively complete the proposed activity.

With the results of the peer review and the information from Federal staff, the Commissioner of ACYF makes the final funding decisions.

Available Funds: Applicants should note that grants to be awarded under this program announcement are subject to the availability of funds. The size of the actual awards will vary. In cases where more applications are approved for funding than ACF can fund with the money available, the Grants Officer shall fund applications in their order of approval until funds run out. In this case, ACF has the option of carrying over the approved applications up to a year for funding consideration in a later competition of the same program. These applications need not be reviewed and scored again if the program's evaluation criteria have not changed. However, they must then be placed in rank order along with other applications in later competitions.

Priority Area 3—National Resource Center for Family-Centered Practice and Permanency Planning

Purpose: The purpose of establishing the National Resource Center for Family Centered Practice and Permanency Planning is to build the capacity of State, local, Tribal, and other publicly administered or publicly supported child welfare agencies to institutionalize

a safety-focused, family-centered, and community-based approach to meet the multiple and complex needs of children and families; to develop, support and maintain a range of services to maintain children safely in the home when appropriate; to provide quality care for children in the care and custody of the State; to plan effectively for and move children from foster care to safe, permanent home placements; to assess the child and family's strengths and needs; to remediate family needs and build on strengths; to provide supports to prevent recidivism; to engage all family members, including fathers; to implement the Federal legislation administered by the Children's Bureau; and to achieve the goals of ASFA, MEPA and ICWA. Technical assistance activities to be conducted by the National Resource Center for Family-Centered Practice and Permanency Planning will include, but are not limited to:

(1) Fostering an understanding, appreciation, and knowledge of effective permanency planning, including concurrent planning, resulting in improved outcomes for the children, youth and families in the Child Welfare System;

(2) Facilitating and assisting State, local, tribal, public and private agencies in the coordinated planning and development of a range of services and supports to safely maintain children in the home when appropriate, provide quality care for children in the care and custody of the State and achieve permanency plans for children and youth;

(3) Conducting regular and ongoing needs assessments that will be used to identify unmet needs and which also incorporate findings from other statewide needs assessment processes such as the Child and Family Services Review; and developing a national technical assistance strategy to improve family-centered practice and permanency planning.

(4) Providing on-site technical assistance, training and consultation to State and Tribal child welfare agencies;

(5) Identifying and disseminating promising and innovative practices that address emerging child welfare issues related to safety-focused, family-centered practices and effective community collaboration strategies and foster care and permanency planning;

(6) Demonstrating a commitment to meaningful stakeholder involvement, especially youth in foster care and those members of other underrepresented or underserved groups;

(7) Supporting States in their Program Improvement Plans resulting from Child and Family Service Reviews;

(8) Building the capacity of child welfare agencies and courts by developing and disseminating materials, including curricula, guidelines and training materials;

(9) Providing financial support and effective coordination for the National Association of State Foster Care Managers (NASFCM). The purpose of this Association is to develop a collegial group of State foster care managers to keep each other informed on the latest program, policy and practice developments, laws, and strategies to maintain an efficient, state-of-the- art foster care and permanency planning program to improve the outcomes of safety, permanency and well-being for children in foster care. It is anticipated that NASFCM will meet once a year to discuss relevant issues and will include relevant Children's Bureau staff in the meeting;

(10) Coordinating with the Children's Bureau, ACF Regional Offices and State and Tribal agencies in the development of the annual technical assistance and training strategy;

(11) Processing all on-site T/TA requests through the single point of entry established by the NCWRCOI, which will involve the Regional Office staff, the appropriate NRCs or AdoptUSKids, and Children's Bureau staff as needed, as well as any other critical stakeholder to facilitate an assessment of T/TA needs and a coordinated and immediate response that avoids delays or duplication of effort;

(12) Participating in twice-a-year team meetings of the Training and Technical Assistance Network funded by the Children's Bureau, and the Training and Technical Assistance Coordination Committee;

(13) Collaborating with other ACYF Resource Centers, other agencies in the Department of Health and Human Services and other agents of the Children's Bureau to strengthen TA efforts, avoid duplication and manage resources effectively;

(14) Providing information and cooperation needed by the NCWRCOI as it manages, maintains and updates to improve functionality, when needed, the web-based tracking system for training and technical assistance requests developed for the Children's Bureau to track NRC's responses to T/TA requests from State, local, Tribal and other publicly supported child welfare agencies; and

(15) Providing data needed by the NCWRCOI to evaluate the results and benefits of the technical assistance provided by the National Resource Center.

Expected outcomes include the enhanced capacity of each State agency to:

(1) Develop, support, and maintain a range of services and supports, including effective safety-focused, family-centered practices and effective community collaboration strategies; prevention and support services for children and families to safely maintain children in the home when appropriate; supports to prevent recidivism after reunification; comprehensive family assessments; engagement of all members of the family, including fathers; integration of substance abuse and domestic violence services; and permanency planning services to assist children and their families in achieving positive outcomes in permanency, safety and well-being;

(2) Conduct interagency needs assessments of required services;

(3) Facilitate concurrent planning, dual licensure of foster homes and other effective permanency program and policy development; and to facilitate safety-focused, family-centered services, family assessment, encouraging healthy marriages, engagement of all family members, including fathers; collaborative community-based services; and substance abuse and domestic violence program and policy development;

(4) Coordinate the delivery of foster care and permanency planning services; and

(5) Promote the meaningful participation of stakeholders in the design and implementation of services.

The goal of the National Resource Center for Family-Centered Practice and Permanency Planning is to help strengthen the capacity of agencies to integrate policy and practice; to institutionalize a safety-focused, family-centered, and community-based approach to meet the multiple and complex needs of children and families; to develop, support and maintain a range of services to maintain children safely in the home when appropriate; to provide quality care for children in the care and custody of the State; to plan for and move children from foster care to safe, permanent home placements effectively; to assess the child and family's strengths and needs; to remediate family needs and build on strengths; to provide supports to prevent recidivism; to engage all family members, including fathers; and to implement the Federal legislation administered by the Children's Bureau. The Resource Center will also be

expected to build the capacity of child welfare agencies and courts by developing and distributing brochures, technical assistance announcements, articles, and other materials. The Resource Center will be expected to be creative and innovative in responding to questions and requests from the State agencies as well as developing new materials on cutting edge issues as they emerge from Federal and State legislation, new regulations and other developments in the child welfare field. Technical assistance outcomes should be achieved through a combination of strategies, including on-site training, on and off-site technical assistance, and consultation with all appropriate stakeholder groups. The Resource Center will be expected to forge strong links with the full range of Children's Bureau resource centers and support contractors, including joint training and technical assistance presentations and resources development.

II.Award Information

Funding Instrument Type: Cooperative agreement.

Description of Federal Substantial Involvement With Cooperative Agreement: Each National Child Welfare Resource Center will operate under a cooperative agreement. A cooperative agreement is a specific method of awarding Federal assistance in which substantial Federal involvement is anticipated. A cooperative agreement clearly defines the respective responsibilities of the Children's Bureau and the grantee prior to the award. The Children's Bureau anticipates that agency involvement will produce programmatic benefits to the recipient otherwise unavailable to them for carrying out the project. The involvement and collaboration includes Children's Bureau review and approval of planning stages of the activities before implementation phases may begin; Children's Bureau involvement in the establishment of policies and procedures that maximize open competition, and rigorous and impartial development, review and funding of sub-grant or sub-grant activities, if applicable; and Children's Bureau and recipient joint collaboration in the performance of key programmatic activities (*i.e.*, strategic planning, implementation, information technology enhancements, training and technical assistance, publications or products, and evaluation). Close monitoring by the Children's Bureau of the requirements stated in this announcement that limit the grantee's discretion with respect to scope of services offered, organizational structure and management processes, coupled with close Children's Bureau monitoring during performance may, in order to ensure compliance with the intent of this funding, exceed those Federal stewardship responsibilities customary for grant activities.

Anticipated Total Program Funding: The anticipated total for the award under this priority area in FY2004 is $1,200,000.

Anticipated Number of Awards: It is anticipated that one project will be funded.

Ceiling on Amount of Individual Awards: The award amount will not exceed $1,200,000 in the first budget period. An application received that exceeds the upper value of the dollar range specified will be considered "non-responsive" and be returned to the applicant without further review.

Floor of Individual Award Amounts: None.

Average Anticipated Award Amount: $1,200,000 per budget period.

Project Periods for Awards: This grant will be awarded for a project period of 60 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of the grantee, and a determination that continued funding would be in the best interest of the government.

III. Eligibility Information

1. Eligible Applicants

State governments
County governments
City or township governments
State controlled institutions of higher education
Nonprofits having a 501(c)(3) status with the IRS, other than institutions of higher education
Nonprofits that do not have a 501(c)(3) status with the IRS, other than institutions of higher education
Private institutions of higher education
For-profit organization other than small businesses
Small businesses

Additional Information on Eligibility: Collaborative efforts and interdisciplinary approaches are acceptable. Applications from collaborations must identify a primary applicant responsible for administering the grants.

Non-profit organizations, including faith-based and community organizations are eligible to apply. Proof of non-profit status is any one of the following:

(a) A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS code.

(b) A copy of a currently valid IRS tax exemption certificate.

(c) A statement from a State taxing body, State Attorney General, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals.

(d) A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status.

(e) Any of the items in the subparagraphs immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

2. Cost Sharing or Matching

The grantee must provide at least 10 percent of the total approved cost of the project. The total approved cost is the sum of the Federal share and the non-Federal share. Therefore, a project requesting $1,200,000 per budget period must include a match of at least $133,333 per budget period. Applicants should provide a letter of commitment verifying the actual amount of the non-Federal share of project costs.

The following example shows how to calculate the required 10% match amount for a $1,200,000 grant:

$1,200,000 (Federal share)
divided by .90 (100%–10%)
equals $1,333,333 (total project cost including match)
minus $1,200,000 (Federal share)
equals $133,333 (required 10% match)

The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. If approved for funding, grantees will be held accountable for the commitment of non-Federal resources and failure to provide the required amount will result in a disallowance of unmatched Federal funds.

3. Other (If Applicable)

On June 27, 2003, the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires all Federal grant applicants to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will

be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*www.Grants.gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you may request a number online at *http://www.dnb.com.*

Applications that exceed the $1,200,000 ceiling will be considered non-responsive and will not be eligible for funding under this announcement.

IV. Application and Submission Information

1. Address To Request Application Package

ACYF Operations Center, c/o The Dixon Group, Inc., 118 Q Street, NE., Washington, DC 20002–2132, (866) 796–1591.

2. Content and Form of Application Submission

You may submit your application to us either in electronic or paper format. To submit an application electronically, please use the *www.Grants.gov* apply site. If you use Grants.gov you will be able to download a copy of the application package, complete it off-line, and then upload and submit the application via the Grants.gov site. You may not e-mail an electronic copy of a grant application to us.

Please note the following if you plan to submit your application electronically via Grants.gov.

- Electronic submission is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation. We strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- To use Grants.gov, you, as the applicant, must have a DUNS Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five days to complete the CCR registration.
- You will not receive additional point value because you submit a grant application in paper format.
- You may submit all documents electronically, including all information typically included on the SF424 and all necessary assurances and certifications.
- Your application must comply with any page limitation requirements described in this program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The Administration for Children and Families will retrieve your application from Grants.gov.
- We may request that you provide original signatures on forms at a later date.
- You may access the electronic application for this program on *www.Grants.gov.*
- You must search for the downloadable application package by the CFDA number.

Each application must contain the following items in the order listed:

1. Application for Federal Assistance (Standard Form 424). Follow the instructions below and those that accompany the form.

In Item 5 of Form 424, put DUNS number in "Organizational DUNS:" box.

In Item 5 of Form 424, include name, phone number, and, if available, e-mail and fax numbers of the contact person.

In Item 8 of Form 424, check "New."

In Item 10 of Form 424, clearly identify the Catalog of Federal Domestic Assistance (CFDA) program title and number for the program for which funds are being requested as stated in the funding opportunity announcement.

In Item 11 of Form 424, identify the single priority area the application addresses.

In Item 12 of Form 424, identify the specific geographic area to be served.

In Item 14 of Form 424, identify Congressional districts of both the applicant and project.

2. Budget Information Non-Construction Programs (Form 424A) and Budget Justification.

Follow the instructions provided. Note that Federal funds provided to States and services or other resources purchased with Federal funds may not be used to match project grants.

3. Certifications/Assurances. Applicants requesting financial assistance for nonconstruction projects must file the Standard Form 424B, "Assurances: Non-Construction Programs." Applicants must sign and return the Standard Form 424B with their applications. Applicants must provide a certification regarding lobbying when applying for an award in excess of $100,000. Applicants must sign and return the certification with their applications.

Applicants must disclose lobbying activities on the Standard Form LLL when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form to report lobbying. Applicants must sign and return the disclosure form, if applicable, with their applications.

Applicants must make the appropriate certification regarding environmental tobacco smoke. By signing and submitting the application, the applicant is providing the certification and need not mail back the certification with the application.

If applicable, applicants must include a completed SPOC certification (Single Point of Contact) with the date of the SPOC contact entered in line 16, page 1 of the Form 424.

Assurances: By signing the "Signature of Authorized Representative" on the SF 424, the applicant is providing a certification and need not mail assurances for completing the following cooperative agreement requirements:

- The applicant will have the project fully functioning within 90 days of the notification of the award.
- The applicant will participate in any evaluation or technical assistance effort supported by ACYF.
- The applicant will submit all required semi-annual and final Financial Status Reports (SF269) and Program Performance Reports in a timely manner, in hard-copy and electronic formats (preferably MS WORD and PDF) as negotiated with the Federal Project Officer.
- The Resource Center Project Director or one key staff member will attend the following meetings in Washington, DC: A meeting with the Federal Project Officer and other ACYF staff within 60 days of receiving the award; two meetings annually, for one to two days each, with Children's Bureau staff and other training and technical assistance partners to plan a national training and technical assistance strategy; one meeting annually to participate in a Children's Bureau grantee meeting with the purpose of disseminating knowledge gained from work with State agencies and courts around child welfare issues.
- In situations where the applicant's organizational position on a particular policy and/or practice might differ from the Federal position, the Federal position will be used to guide the Resource Center activity and will be reflected in all public statements and publications of the Resource Center.
- The applicant will enter into a Cooperative Agreement with the Children's Bureau.

• The Resource Center will work in partnership with the Children's Bureau and the ACF Regional Offices by providing technical assistance to States that have needs identified through one of ACF's review processes.

• The Resource Center will work collaboratively with the other six National Resource Centers and AdoptUSKids.

• The Resource Center will work with the Training and Technical Assistance Coordination Committee, which will be composed of Federal staff from the Children's Bureau and Regional Offices and which will provide direction to the strategic development of the training and technical assistance network.

• The Resource Center will work collaboratively with the CB Clearinghouses and other members of the training and technical assistance network funded by the Children's Bureau in providing training and technical assistance.

• The Resource Center will work directly with the National Child Welfare Resource Center for Organizational Improvement (NCWRCOI), which will serve as a single point of entry for States and Tribes to request onsite training and technical assistance to ensure a coordinated and immediate response.

• The Resource Center will provide evaluation data to the NCWRCOI that addresses both process and outcomes to evaluate the results and benefits of the technical assistance provided.

The Office for Human Research Protections of the U.S. Department of Health and Human Services provides Web site information and policy guidance on the Federal regulations pertaining to protection of human subjects (45 CFR part 46), informed consent, informed consent checklists, confidentiality of personal identification information, data collection procedures, and internal review boards: *http://ohrp.osophs.dhhs.gov/polasur.htm.*

If applicable, applicants must include a completed Form 310, Protection of Human Subjects.

In implementing their projects, grantees are expected to comply with all applicable administrative regulations regarding extent or types of costs. Applicable HHS regulations can be found in 45 CFR part 74 or 92.

4. Project Abstract/Summary (one page maximum). Clearly mark this page with the applicant name as shown on item 5 of the Form 424, identify the competitive grant priority area and the title of the proposed project as shown in item 11 and the service area as shown in item 12 of the Form 424. The summary description should not exceed 300 words.

Care should be taken to produce an abstract/summary that accurately and concisely reflects the proposed project. It should describe the objectives of the project, the approach to be used and the results or benefits expected.

5. Project Description for Evaluation. Applicants should organize their project description according to the Evaluation Criteria described in this priority area announcement providing information that addresses all the components.

6. Proof of non-profit status (if applicable). Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. Any of the following constitutes acceptable proof of such status:

a. A reference to the applicant organization's listing in the Internal Revenue Services' (IRS) most recent list of tax-exempt organizations described in the IRS Code.

b. A copy of a currently valid IRS tax exemption certificate.

c. A statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals.

d. A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status.

e. Any of the items immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

7. Indirect cost rate agreement. If claiming indirect costs, provide documentation that applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

8. Letters of agreement and memoranda of understanding. If applicable, include a letter of commitment or Memorandum of Understanding from each partner and/or sub-contractor describing their role, detailing specific tasks to be performed, and expressing commitment to participate if the proposed project is funded.

9. Provide a letter of commitment verifying the actual amount of the non-Federal share of project costs.

10. The application limit is 75 pages total including all forms and attachments. Submit one original and two copies.

To be considered for funding, each application must be submitted with the Standard Federal Forms (provided at the end of this announcement or through the electronic links provided) and following the guidance provided. The application must be signed by an individual authorized to act for the applicant organization and to assume responsibility for the obligations imposed by the terms and conditions of the grant award.

To be considered for funding, each applicant must submit one signed original and two additional copies of the application, including all forms and attachments, to the Application Receipt Point specified in the section titled Deadline. The original copy of the application must have original signatures, signed in *black* ink.

The application must be typed, double spaced, printed on only one side, with at least 1/2 inch margins on each side and 1 inch at the top and bottom, using standard 12 Point fonts (such as Times Roman or Courier). Pages must be numbered.

Pages over the page limit stated within this priority area announcement will be removed from the application and will not be reviewed. All copies of an application must be submitted in a single package, and a separate package must be submitted for each priority area. The package must be clearly labeled for the specific priority area it is addressing.

Because each application will be duplicated, do not use or include separate covers, binders, clips, tabs, plastic inserts, maps, brochures, or any other items that cannot be processed easily on a photocopy machine with an automatic feed. Do not bind, clip, staple, or fasten in any way separate subsections of the application, including supporting documentation. Applicants are advised that the copies of the application submitted, not the original, will be reproduced by the Federal government for review. Each copy must be stapled securely in the upper left corner.

Applicants have the option of omitting from application copies (not originals) specific salary rates or amounts for individuals specified in the application budget. The copies may include summary salary information.

Private non-profit organizations are encouraged to submit with their applications the survey located under "Grant Related Documents and Forms" titled "Survey for Private, Non-Profit Grant Applicants."

Please see Section V.1. Criteria, for instructions on preparing the project summary/abstract and the full project description.

3. Submission Dates and Times

The closing time and date for receipt of applications is 4:30 p.m. eastern standard time (e.s.t.) on August 24, 2004. Mailed or handcarried applications received after 4:30 p.m. on the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the following address: ACYF Operations Center, c/o The Dixon Group, Inc., ATTN: Children's Bureau, 118 Q Street, NE., Washington, DC 20002–2132.

Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Applications hand-carried by applicants, applicant couriers, or by other representatives of the applicant shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., e.s.t., at ACYF Operations Center, c/o The Dixon Group, Inc., ATTN: Children's Bureau, 118 Q Street, NE., Washington, DC 20002–2132, between Monday and Friday (excluding Federal holidays). This address must appear on the envelope/package containing the application with the note "ATTN: Children's Bureau." Applicants are cautioned that express/overnight mail services do not always deliver as agreed. ACF cannot accommodate transmission of applications by fax.

Late applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, *etc.*) occur, or when there are widespread disruptions of mail service. Determinations to extend or waive deadline requirements rest with the Chief Grants Management Officer.

Required Forms

What to submit	Required content	Required form or format	When to submit
1. SF424	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	See application due date.
2. SF424A	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	See application due date.
3.a. SF424B	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	See application due date.
3.b. Certification regarding lobbying	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	See application due date.
3.c. Disclosure of Lobbying Activities (SF–LLL).	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	See application due date.
4. Project Summary/Abstract	Summary of application request	See instructions in this funding announcement.	See application due date.
5. Project Description	Responsiveness to evaluation criteria.	See instructions in this funding announcement.	See application due date.
6. Proof of non-profit status	See above	See above	See application due date.
7. Indirect cost rate agreement	See above	See above	See application due date.
8. Letters of agreement & MOUs	See above	See above	See application due date.
9. Non-Federal share letter	See above	See above	See application due date.
Total application	See above	Application limit 75 pages total including all forms and attachments. Submit one original and two copies.	See application due date.

Additional Forms

Private, non-profit organizations are encouraged to submit with their applications the additional survey located under "Grant Related Documents and Forms" titled "Survey for Private, Non-Profit Grant Applicants."

What to submit	Required content	Required form or format	When to submit
Survey for Private, Non-Profit Grant Applicants.	Per required form	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.

4. Intergovernmental Review

State Single Point of Contact (SPOC)

This program is covered under Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Programs", and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

As of October 2003, of the most recent SPOC list, the following jurisdictions have elected not to participate in the Executive Order process. Applicants from these jurisdictions or for projects administered by Federally-recognized Indian Tribes need take no action in regard to E.O. 12372: Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana,

Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington and Wyoming.

Although the jurisdictions listed above no longer participate in the process, entities which have met the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC. All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to differentiate clearly between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Washington, DC 20447.

The official list, including addresses, of the jurisdictions elected to participate in E.O. 12372 can be found on the following URL: *http://www.whitehouse.gov/omb/grants/spoc.html.*

5. Funding Restrictions

Grant awards will not allow reimbursement of pre-award costs.

Construction is not an allowable activity or expenditure under this solicitation.

Federal funds received as a result of this announcement cannot be paid as profit to grantees or sub-grantees, *i.e.*, any amount in excess of allowable direct and indirect costs of the recipient (45 CFR 74.81).

6. Other Submission Requirements

Submission by Mail: An applicant must provide an original application with all attachments, signed by an authorized representative and two copies. The application must be received at the address below by 4:30 p.m. eastern standard time on or before the closing date. Applications should be mailed to: ACYF Operations, The Dixon Group, ATTN: Children's Bureau, 118 Q Street, NE., Washington, DC 20002–2132.

For Hand Delivery: Applicant must provide an original application with all attachments, signed by an authorized representative and two copies. The application must be received at the address below by 4:30 p.m. eastern standard time on or before the closing date. Applications that are hand delivered will be accepted between the hours of 8 a.m. to 4:30 p.m., Monday through Friday. Applications may be delivered to: ACYF Operations, The Dixon Group, ATTN: Children's Bureau 118 Q Street, NE., Washington, DC 20002–2132. It is strongly recommended that applicants obtain documentation that the application was hand delivered on or before the closing date. Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

Electronic Submission: Please see Section IV. 2. Content and Form of Application Submission, for guidelines and requirements when submitting applications electronically.

Electronic Address Where Applications Will Be Accepted: *www.Grants.gov.*

Address Where Hard Copy Applications Will Be Accepted: Children's Bureau Grant Receipt Point, ACYF Operations Center, c/o The Dixon Group, Inc., 118 Q Street, NE., Washington, DC 20002–2132

ACYF will not acknowledge receipt of hard copy application submissions.

V. Application Review Information

Refer to Priority Area 1, Section V. Application Review Information, for information on The Paperwork Reduction Act of 1995 (Pub. L. 104–13) and General Instruction for Preparing Full Project Description.

Specific Evaluation Criteria

The following criteria will be used to review and evaluate each application under this Priority Area. The applicant should address each criterion in the project description. The point values (summing up to 100) indicate the maximum numerical weight each criterion will be accorded in the review process.

Criterion 1. Objectives and Need for Assistance

In reviewing the objectives and need for assistance, the following factors will be considered: (20 points)

(1) The extent to which the applicant demonstrates a clear and thorough understanding of the need for providing coordinated training and technical assistance about foster care and permanency planning and family-centered practice to public and private child welfare agencies responsible for serving the target population(s), and the goals of the applicable legislative mandates.

(2) The extent to which the training and technical assistance objectives of the project will build the capacity of State, and local public and private agencies to support effective efforts to develop, operate, expand, and enhance initiatives improving outcomes for children, youth and families served by these agencies.

(3) The extent to which the proposed project will produce significant results and benefits, and a high level of customer satisfaction on the part of agencies served and their State and local constituents.

Criterion 2. Approach

In reviewing the approach, the following factors will be considered: (50 points)

(1) The extent to which there is a reasonable timeline for implementing the proposed project, including the activities to be conducted in chronological order, showing a reasonable schedule of accomplishments and target dates and the factors that may accelerate or decelerate the work. The extent to which the applicant proposes appropriate outreach and engagement activities for States, Tribes and local agencies. The extent to which a reasonable number of States and Tribes will be targeted to receive T/TA from the NRC.

(2) The extent to which the applicant provides a workable plan of action. The extent to which this plan relates to the stated objectives and scope of the project and reflects the intent of the legislative mandates.

(3) The extent to which the applicant describes sound strategies for providing technical assistance and effectively building the capacity of State, and local public and private agencies in the following areas: Effective family-centered practice; safely maintaining

children in the home when appropriate and providing supports to prevent recidivism after reunification; collaborative, community-based services; integrated substance abuse and domestic violence services; conducting comprehensive family assessments; encouraging healthy marriages, engaging all family members, including fathers; and permanency planning to achieve permanency, safety and well-being for children and youth served by the child welfare system.

(4) The extent to which the applicant describes strategies which will be employed to help child welfare agencies deliver family-centered practices; and innovative and exemplary foster care and permanency planning programs. Include planning, collaboration, and implementation methods; service development strategies; practice techniques; resources such as training curricula and educational materials.

(5) The extent to which the applicant will help States improve services to underrepresented and over-represented populations, particularly minority families and children in care. The extent to which the Resource Center will effectively assess factors which impede the delivery of culturally appropriate services and assist agencies in reducing these factors. The extent to which the Resource Center's services, program activities, and materials will be developed and provided in a manner that is racially and culturally sensitive to the population(s) being served while being inclusive of a range of adoption resources.

(6) The extent to which the applicant provides a sound plan for assisting agencies in developing effective practices which are consistent with the anti-discriminatory placement and recruitment provisions of the Multiethnic Placement Act (MEPA), the Inter-Ethnic Adoption Provisions (IEP), and the interjurisdictional provisions of ASFA.

(7) The extent to which the applicant will collaborate effectively with the National Child Welfare Resource Center for Organizational Improvement in assessing training and technical assistance needs and developing and implementing a T/TA work plan in response to requests from States and Tribes for on-site training and technical assistance.

(8) The extent to which the applicant will provide appropriate process and outcome evaluation data to the NCWRCOI, so it can evaluate the results and benefits of the technical assistance provided.

(9) The extent to which the applicant will effectively coordinate its activities with other National Resource Centers, AdoptUSKids, Clearinghouses, other members of the training and technical assistance network funded by the Children's Bureau, and the Training and Technical Assistance Coordination Committee made up of Federal staff from the Children's Bureau and Regional Offices.

(10) The extent to which the applicant describes a sound plan for conducting or providing partial financial support for a two to three day national conference for State foster care managers that also includes adoption specialists and state staff involved in child welfare programs.

(11) The extent to which the applicant will provide financial support and effective coordination for the National Association of State Foster Care Managers (NASFCM) as described in the beginning of this funding announcement.

Criterion 3. Organizational Profiles

In reviewing the organizational profiles, the following factors will be considered: (20 points)

(1) The extent to which the applicant organization and any partnering organizations collectively have sufficient experience and expertise (including experience on the national level) in: (1) Identifying the training and technical assistance needs of an agency or organization; (2) developing or participating in the development of a plan to meet those needs; (3) designing, developing and delivering training and technical assistance including recruiting, assigning, and deploying staff with appropriate experience; (4) developing evaluation strategies and providing technical assistance on evaluation methodologies, (5) designing, developing, delivering and evaluating training materials, (6) establishing effective working partnerships with other agencies and organizations; and (7) administering, developing, implementing, managing, and evaluating similar projects. The extent to which each participating organization (including partners and/or subcontractors) possesses the organizational capability to fulfill their assigned roles and functions effectively (if the application involves partnering and/or subcontracting with other agencies/organizations).

(2) The extent to which the applicant's project director and key project staff possess sufficient relevant knowledge, experience and capabilities to implement and manage a project of this size, scope and complexity effectively. The extent to which the role, responsibilities and time commitments of each proposed project staff position, including consultants, subcontractors and/or partners, are clearly defined and appropriate to the successful implementation of the proposed project. The extent to which the author of this proposal will be closely involved throughout the implementation of the proposed project.

(3) The extent to which there is a sound management plan for achieving the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines and milestones for accomplishing project tasks and ensuring quality. The extent to which the plan clearly defines the role and responsibilities of the lead agency. The extent to which the plan clearly describes the effective management and coordination of activities carried out by any partners, subcontractors and consultants (if appropriate). The extent to which there would be a mutually beneficial relationship between the proposed project and other work planned, anticipated or underway with Federal assistance by the applicant.

Criterion 4. Budget and Budget Justification

In reviewing the budget and budget justification, the following factors will be considered: (10 points)

(1) The extent to which the costs of the proposed project are reasonable, in view of the activities to be conducted and expected results and benefits.

(2) The extent to which the applicant's fiscal controls and accounting procedures would ensure prudent use, proper and timely disbursement and accurate accounting of funds received under this program announcement.

2. Review and Selection Process

When the Operations Center receives your application it will be screened to confirm that your application was received by the deadline. Federal staff will verify that you are an eligible applicant and that the application contains all the essential elements. Applications received from ineligible organizations and applications received after the deadline will be withdrawn from further consideration.

A panel of at least three reviewers (primarily experts from outside the Federal government) will use the evaluation criteria described in this announcement to evaluate each application. The reviewers will determine the strengths and weaknesses of each application, provide comments about the strengths and weaknesses and give each application a numerical score.

All applications will be reviewed and evaluated using four major criteria: (1) Objectives and need for assistance, (2) approach, (3) organizational profiles, and (4) budget and budget justification. Each criterion has been assigned a point value. The point values (summing up to 100) indicate the maximum numerical weight each criterion may be given in the review and evaluation process.

Reviewers also are evaluating the project products and materials that you propose. Reviewers will be looking to see that the total budget you propose and the way you have apportioned that budget are appropriate and reasonable for the project you have described. Remember that the reviewers only have the information that you give them—it needs to be clear, complete, and concise.

The results of the competitive review are a primary factor in making funding decisions. In addition, Federal staff conducts administrative reviews of the applications and, in light of the results of the competitive review, will recommend applications for funding to the ACYF Commissioner. ACYF reserves the option of discussing applications with other funding sources when this is in the best interest of the Federal government. ACYF may also solicit and consider comments from ACF Regional Office staff in making funding decisions. ACYF may take into consideration the involvement (financial and/or programmatic) of the private sector, national, or State or community foundations; a favorable balance between Federal and non-Federal funds for the proposed project; or the potential for high benefit from low Federal investment. ACYF may elect not to fund any applicants having known management, fiscal, reporting, programmatic, or other problems which make it unlikely that they would be able to provide effective services or effectively complete the proposed activity.

With the results of the peer review and the information from Federal staff, the Commissioner of ACYF makes the final funding decisions.

Available Funds: Applicants should note that grants to be awarded under this program announcement are subject to the availability of funds. The size of the actual awards will vary. In cases where more applications are approved for funding than ACF can fund with the money available, the Grants Officer shall fund applications in their order of approval until funds run out. In this case, ACF has the option of carrying over the approved applications up to a year for funding consideration in a later competition of the same program. These applications need not be reviewed and scored again if the program's evaluation criteria have not changed. However, they must then be placed in rank order along with other applications in later competitions.

Priority Area 4—National Resource Center for Child Welfare Data and Technology

Purpose: The purpose of this Cooperative Agreement is to assist States to develop, implement and/or improve effective case management and data collection information systems and to use data to enable State child welfare agencies to manage child welfare programs in order to improve outcomes for children and families. This Resource Center will provide training and technical assistance to enhance State child welfare program managers' and caseworkers' ability to analyze data for purposes of program evaluation. This effort will also support the coordination of the information systems operated by child welfare agencies and family and juvenile courts that are used to manage child welfare cases. This Resource Center will provide support to States and ACF to increase the quality and utilization of Federal data collection and reporting efforts, such as, AFCARS, NCANDS, and Chafee.

Activities to be conducted during the five-year period covered by this cooperative agreement with the Resource Center for Child Welfare Data and Technology will include, but are not limited to:

(1) Coordinating with the Children's Bureau, ACF Regional Offices and State agencies in the development of a national training and technical assistance strategy to promote the effective analysis and use of data as well as improvements to State information systems;

(2) Providing on-site technical assistance, training and consultation to State and Tribal child welfare agencies to improve the collection, reporting, use, and analysis of Federal child welfare data, improve inter- and intra-departmental collaborations to improve outcomes for children and families, and enhance collaboration among child welfare practitioners, policy and information technology staffs;

(3) Enhancing the capacity of State personnel to recognize the relationship between the use of effective automation and obtaining reliable data to measure movement toward achieving established outcomes and program goals;

(4) Sharing information on the effective use of child welfare information systems, the collection and utilization of data, or the use of data in self-assessment activities, specifically between State child welfare agency and family and juvenile court staff as they develop information systems and use data generated by those systems to support the management of child welfare cases under their purview;

(5) Building the capacity of State and Tribal agency managers and administrators, workers and court personnel to use child welfare data in making policy, practice, and management decisions;

(6) Identifying and developing training curriculum to enhance cooperation between State program and State information system staff to work together to meet the challenge of data collection and use;

(7) Identifying and disseminating materials on exemplary and innovative child welfare information systems and technologies that are used to support practice and improve outcomes for children effectively;

(8) Identifying and disseminating materials on effective quality assurance strategies; worker training on data and information systems; agency and court information system collaboration, and data and technology practices;

(9) Coordinating with the Children's Bureau, State agencies and ACF Regional Offices in the development of annual data utilization and information systems conferences, including Regional meetings with States and Federal staff;

(10) Providing support to the National State peer-to-peer network, which supports and enhances networking among State child welfare staff, administrators, supervisors, and program managers, both technical and program personnel to design, develop and implement effective automation capable of supporting case practice;

(11) Supporting States and localities in their Program Improvement Plans resulting from Child and Family Service Reviews;

(12) Supporting States in their action plans resulting from AFCARS and SACWIS reviews;

(13) Supporting States in completing the development of their SACWIS systems;

(14) Coordinating with the Children's Bureau, ACF Regional Offices and State and Tribal agencies in the development of the annual technical assistance and training strategy;

(15) Processing all on-site T/TA requests through the single point of entry established by the NCWRCOI, which will involve the Regional Office staff, the appropriate NRCs or AdoptUSKids, and Children's Bureau staff as needed, as well as any other critical stakeholder to facilitate an

assessment of T/TA needs and a coordinated and immediate response that avoids delays or duplication of effort;

(16) Participating in twice-a-year team meetings of the Training and Technical Assistance Network funded by the Children's Bureau, and the Training and Technical Assistance Coordination Committee;

(17) Collaborating with other ACYF Resource Centers, other agencies in the Department of Health and Human Services and other agents of the Children's Bureau to strengthen TA efforts, avoid duplication and manage resources effectively;

(18) Providing information and cooperation needed by the NCWRCOI as it manages, maintains and updates to improve functionality, when needed, the web-based tracking system for training and technical assistance requests developed for the Children's Bureau to track NRCs responses to T/TA requests from State, local, Tribal and other publicly supported child welfare agencies; and

(19) Providing data needed by the NCWRCOI to evaluate the results and benefits of the technical assistance provided by the National Resource Center.

Expected outcomes include the enhanced capacity of each State agency to:

(1) Develop and maintain a range of services and supports to assist public agencies in developing and maintaining effective case management information systems;

(2) Conduct interagency needs assessments of required services;

(3) Facilitate the development and completion of the States' SACWIS;

(4) Conduct program evaluations that include a peer review component and other evaluation methodologies.

(5) Assist front-line workers, supervisors and administrators, as well as judges and court administrative personnel, in using technology and information to improve policy and practice in child welfare; and

(6) Evaluate how to verify that an agency's information system is equipped to meet the reporting requirements of AFCARS, NCANDS, and other future Federal data collection requirements.

This Resource Center is expected to train and assist State agencies to examine and analyze the effective use of automation in meeting program requirements, goals, objectives and data reporting requirements.

Training and technical assistance needs will be identified by NRC staff in collaboration with States, the CB T/TA Coordinating Committee, and coordinated with other ongoing national training and technical assistance efforts. The Resource Center will also be actively involved with identifying other training and technical assistance needs based on their work with the other NRCs and national organizations. Training outcomes should be achieved through a combination of strategies, including on-site training, on and off-site technical assistance, and consultation with all appropriate stakeholder groups.

II. Award Information

Funding Instrument Type: Cooperative agreement.

Description of Federal Substantial Involvement With Cooperative Agreement: Each National Child Welfare Resource Center will operate under a cooperative agreement. A cooperative agreement is a specific method of awarding Federal assistance in which substantial Federal involvement is anticipated. A cooperative agreement clearly defines the respective responsibilities of the Children's Bureau and the grantee prior to the award. The Children's Bureau anticipates that agency involvement will produce programmatic benefits to the recipient otherwise unavailable to them for carrying out the project. The involvement and collaboration includes Children's Bureau review and approval of planning stages of the activities before implementation phases may begin; Children's Bureau involvement in the establishment of policies and procedures that maximize open competition, and rigorous and impartial development, review and funding of sub-grant or sub-grant activities, if applicable; and Children's Bureau and recipient joint collaboration in the performance of key programmatic activities (*i.e.*, strategic planning, implementation, information technology enhancements, training and technical assistance, publications or products, and evaluation). Close monitoring by the Children's Bureau of the requirements stated in this announcement that limit the grantee's discretion with respect to scope of services offered, organizational structure and management processes, coupled with close Children's Bureau monitoring during performance may, in order to ensure compliance with the intent of this funding, exceed those Federal stewardship responsibilities customary for grant activities.

Anticipated Total Program Funding: The anticipated total for the award under this priority area in FY2004 is $800,000.

Anticipated Number of Awards: It is anticipated that one project will be funded.

Ceiling on Amount of Individual Awards: The award amount will not exceed $800,000 in the first budget period. An application received that exceeds the upper value of the dollar range specified will be considered "non-responsive" and be returned to the applicant without further review.

Floor of Individual Award Amounts: None.

Average Anticipated Award Amount: $800,000 per budget period.

Project Periods for Awards: This grant will be awarded for a project period of 60 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of the grantee, and a determination that continued funding would be in the best interest of the government.

III. Eligibility Information

1. Eligible Applicants

State governments
County governments
City or township governments
State controlled institutions of higher education
Nonprofits having a 501(c)(3) status with the IRS, other than institutions of higher education
Nonprofits that do not have a 501(c)(3) status with the IRS, other than institutions of higher education
Private institutions of higher education
For-profit organization other than small businesses
Small businesses

Additional Information on Eligibility: Collaborative efforts and interdisciplinary approaches are acceptable. Applications from collaborations must identify a primary applicant responsible for administering the grants.

Non-profit organizations, including faith-based and community organizations are eligible to apply. Proof of non-profit status is any one of the following:

(a) A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS code.

(b) A copy of a currently valid IRS tax exemption certificate.

(c) A statement from a State taxing body, State Attorney General, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net

earnings accrue to any private shareholders or individuals.

(d) A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status.

(e) Any of the items in the subparagraphs immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

2. Cost Sharing or Matching

The grantee must provide at least 10 percent of the total approved cost of the project. The total approved cost is the sum of the Federal share and the non-Federal share. Therefore, a project requesting $800,000 per budget period must include a match of at least $88,889 per budget period. Applicants should provide a letter of commitment verifying the actual amount of the non-Federal share of project costs.

The following example shows how to calculate the required 10% match amount for an $800,000 grant:

$800,000 (Federal share)
divided by .90 (100%–10%)
equals $888,889 (total project cost including match)
minus $800,000 (Federal share)
equals $88,889 (required 10% match)

The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. If approved for funding, grantees will be held accountable for the commitment of non-Federal resources and failure to provide the required amount will result in a disallowance of unmatched Federal funds.

3. Other (If Applicable)

On June 27, 2003, the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires all Federal grant applicants to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*www.Grants.gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you may request a number online at *http://www.dnb.com*.

Applications that exceed the $800,000 per budget period ceiling will be considered non-responsive and will not be eligible for funding under this announcement.

IV. Application and Submission Information

1. Address To Request Application Package

ACYF Operations Center, c/o The Dixon Group, Inc., 118 Q Street, NE., Washington, DC 20002–2132, (866) 796–1591.

2. Content and Form of Application Submission

You may submit your application to us either in electronic or paper format. To submit an application electronically, please use the *www.Grants.gov* apply site. If you use Grants.gov you will be able to download a copy of the application package, complete it off-line, and then upload and submit the application via the Grants.gov site. You may not e-mail an electronic copy of a grant application to us.

Please note the following if you plan to submit your application electronically via Grants.gov.

- Electronic submission is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation. We strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- To use Grants.gov, you, as the applicant, must have a DUNS Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five days to complete the CCR registration.
- You will not receive additional point value because you submit a grant application in paper format.
- You may submit all documents electronically, including all information typically included on the SF424 and all necessary assurances and certifications.
- Your application must comply with any page limitation requirements described in this program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The Administration for Children and Families will retrieve your application from Grants.gov.
- We may request that you provide original signatures on forms at a later date.
- You may access the electronic application for this program on *www.Grants.gov*.
- You must search for the downloadable application package by the CFDA number.

Each application must contain the following items in the order listed:

1. Application for Federal Assistance (Standard Form 424). Follow the instructions below and those that accompany the form.

In Item 5 of Form 424, put DUNS number in "Organizational DUNS:" box.

In Item 5 of Form 424, include name, phone number, and, if available, e-mail and fax numbers of the contact person.

In Item 8 of Form 424, check "New."

In Item 10 of Form 424, clearly identify the Catalog of Federal Domestic Assistance (CFDA) program title and number for the program for which funds are being requested as stated in the funding opportunity announcement.

In Item 11 of Form 424, identify the single priority area the application addresses.

In Item 12 of Form 424, identify the specific geographic area to be served.

In Item 14 of Form 424, identify Congressional districts of both the applicant and project.

2. Budget Information Non-Construction Programs (Form 424A) and Budget Justification.

Follow the instructions provided. Note that Federal funds provided to States and services or other resources purchased with Federal funds may not be used to match project grants.

3. Certifications/Assurances. Applicants requesting financial assistance for nonconstruction projects must file the Standard Form 424B, "Assurances: Non-Construction Programs." Applicants must sign and return the Standard Form 424B with their applications. Applicants must provide a certification regarding lobbying when applying for an award in excess of $100,000. Applicants must sign and return the certification with their applications.

Applicants must disclose lobbying activities on the Standard Form LLL when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form to report lobbying. Applicants must sign and return the disclosure form, if applicable, with their applications.

Applicants must make the appropriate certification regarding environmental tobacco smoke. By signing and submitting the application, the applicant is providing the certification and need not mail back the certification with the application.

If applicable, applicants must include a completed SPOC certification (Single Point of Contact) with the date of the SPOC contact entered in line 16, page 1 of the Form 424.

Assurances: By signing the "Signature of Authorized Representative" on the SF 424, the applicant is providing a certification and need not mail assurances for completing the following cooperative agreement requirements:

- The applicant will have the project fully functioning within 90 days of the notification of the award.
- The applicant will participate in any evaluation or technical assistance effort supported by ACYF.
- The applicant will submit all required semi-annual and final Financial Status Reports (SF269) and Program Performance Reports in a timely manner, in hard-copy and electronic formats (preferably MS WORD and PDF) as negotiated with the Federal Project Officer.
- The Resource Center Project Director or one key staff member will attend the following meetings in Washington, DC: A meeting with the Federal Project Officer and other ACYF staff within 60 days of receiving the award; two meetings annually, for one to two days each, with Children's Bureau staff and other training and technical assistance partners to plan a national training and technical assistance strategy; one meeting annually to participate in a Children's Bureau grantee meeting with the purpose of disseminating knowledge gained from work with State agencies and courts around child welfare issues.
- In situations where the applicant's organizational position on a particular policy and/or practice might differ from the Federal position, the Federal position will be used to guide the Resource Center activity and will be reflected in all public statements and publications of the Resource Center.
- The applicant will enter into a Cooperative Agreement with the Children's Bureau.
- The Resource Center will work in partnership with the Children's Bureau and the ACF Regional Offices by providing technical assistance to States that have needs identified through one of ACF's review processes.
- The Resource Center will work collaboratively with the other six National Resource Centers and AdoptUSKids.
- The Resource Center will work with the Training and Technical Assistance Coordination Committee, which will be composed of Federal staff from the Children's Bureau and Regional Offices and which will provide direction to the strategic development of the training and technical assistance network.
- The Resource Center will work collaboratively with the CB Clearinghouses and other members of the training and technical assistance network funded by the Children's Bureau in providing training and technical assistance.
- The Resource Center for Child Welfare Data and Technology, or any subgrantee, will not bid on any contractual work conducted by States to develop, implement or operate their child welfare management systems.
- The Resource Center will work directly with the National Child Welfare Resource Center for Organizational Improvement (NCWRCOI), which will serve as a single point of entry for States and Tribes to request onsite training and technical assistance to ensure a coordinated and immediate response.
- The Resource Center will provide evaluation data to the NCWRCOI that addresses both process and outcomes to evaluate the results and benefits of the technical assistance provided.

The Office for Human Research Protections of the U.S. Department of Health and Human Services provides Web site information and policy guidance on the Federal regulations pertaining to protection of human subjects (45 CFR part 46), informed consent, informed consent checklists, confidentiality of personal identification information, data collection procedures, and internal review boards: *http://ohrp.osophs.dhhs.gov/polasur.htm.*

If applicable, applicants must include a completed Form 310, Protection of Human Subjects.

In implementing their projects, grantees are expected to comply with all applicable administrative regulations regarding extent or types of costs. Applicable HHS regulations can be found in 45 CFR part 74 or 92.

4. Project Abstract/Summary (one page maximum). Clearly mark this page with the applicant name as shown on item 5 of the Form 424, identify the competitive grant priority area and the title of the proposed project as shown in item 11 and the service area as shown in item 12 of the Form 424. The summary description should not exceed 300 words.

Care should be taken to produce an abstract/summary that accurately and concisely reflects the proposed project. It should describe the objectives of the project, the approach to be used and the results or benefits expected.

5. Project Description for Evaluation. Applicants should organize their project description according to the Evaluation Criteria described in this priority area announcement providing information that addresses all the components.

6. Proof of non-profit status (if applicable). Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. Any of the following constitutes acceptable proof of such status:

a. A reference to the applicant organization's listing in the Internal Revenue Services' (IRS) most recent list of tax-exempt organizations described in the IRS Code.

b. A copy of a currently valid IRS tax exemption certificate.

c. A statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals.

d. A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status.

e. Any of the items immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

7. Indirect cost rate agreement. If claiming indirect costs, provide documentation that applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

8. Letters of agreement and memoranda of understanding. If applicable, include a letter of commitment or Memorandum of Understanding from each partner and/or sub-contractor describing their role, detailing specific tasks to be performed, and expressing commitment to participate if the proposed project is funded.

9. Provide a letter of commitment verifying the actual amount of the non-Federal share of project costs.

10. The application limit is 75 pages total including all forms and attachments. Submit one original and two copies.

To be considered for funding, each application must be submitted with the Standard Federal Forms (provided at the end of this announcement or through

the electronic links provided) and following the guidance provided. The application must be signed by an individual authorized to act for the applicant organization and to assume responsibility for the obligations imposed by the terms and conditions of the grant award.

To be considered for funding, each applicant must submit one signed original and two additional copies of the application, including all forms and attachments, to the Application Receipt Point specified in the section titled Deadline. The original copy of the application must have original signatures, signed in black ink.

The application must be typed, double spaced, printed on only one side, with at least ½ inch margins on each side and 1 inch at the top and bottom, using standard 12 Point fonts (such as Times Roman or Courier). Pages must be numbered.

Pages over the page limit stated within this priority area announcement will be removed from the application and will not be reviewed. All copies of an application must be submitted in a single package, and a separate package must be submitted for each priority area. The package must be clearly labeled for the specific priority area it is addressing.

Because each application will be duplicated, do not use or include separate covers, binders, clips, tabs, plastic inserts, maps, brochures, or any other items that cannot be processed easily on a photocopy machine with an automatic feed. Do not bind, clip, staple, or fasten in any way separate subsections of the application, including supporting documentation. Applicants are advised that the copies of the application submitted, not the original, will be reproduced by the Federal government for review. Each copy must be stapled securely in the upper left corner.

Applicants have the option of omitting from application copies (not originals) specific salary rates or amounts for individuals specified in the application budget. The copies may include summary salary information.

Private non-profit organizations are encouraged to submit with their applications the survey located under "Grant Related Documents and Forms" titled "Survey for Private, Non-Profit Grant Applicants."

Please see Section V.1. Criteria, for instructions on preparing the project summary/abstract and the full project description.

3. Submission Dates and Times

The closing time and date for receipt of applications is 4:30 p.m. eastern standard time (e.s.t.) on August 24, 2004. Mailed or handcarried applications received after 4:30 p.m. on the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the following address: ACYF Operations Center, c/o The Dixon Group, Inc., ATTN: Children's Bureau, 118 Q Street, NE., Washington, DC 20002–2132.

Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Applications hand-carried by applicants, applicant couriers, or by other representatives of the applicant shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., e.s.t., at ACYF Operations Center, c/o The Dixon Group, Inc., ATTN: Children's Bureau, 118 Q Street, NE., Washington, DC 20002–2132, between Monday and Friday (excluding Federal holidays). This address must appear on the envelope/package containing the application with the note "ATTN: Children's Bureau." Applicants are cautioned that express/overnight mail services do not always deliver as agreed. ACF cannot accommodate transmission of applications by fax.

Late applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of mail service. Determinations to extend or waive deadline requirements rest with the Chief Grants Management Officer.

Required Forms

What to submit	Required content	Required form or format	When to submit
1. SF424	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	See application due date.
2. SF424A	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	See application due date.
3.a. SF424B	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	See application due date.
3.b. Certification regarding	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	See application due date.
3.c. Disclosure of Lobbying Activities (SF–LLL).	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	See application due date.
4. Project Summary/Abstract	Summary of application request	See instructions in this funding announcement.	See application due date.
5. Project Description	Responsiveness to evaluation criteria	See instructions in this funding announcement.	See application due date.
6. Proof of non-profit status	See above	See above	See application due date.
7. Indirect cost rate agreement	See above	See above	See application due date.
8. Letters of agreement & MOUs	See above	See above	See application due date.
9. Non-Federal share letter	See above	See above	See application due date.

What to submit	Required content	Required form or format	When to submit
Total application	See above	Application limit 75 pages total including all forms and attachments. Submit one original two copies.	See application due date.

Additional Forms

Private, non-profit organizations are encouraged to submit with their applications the additional survey located under "Grant Related Documents and Forms" titled "Survey for Private, Non-Profit Grant Applicants."

What to submit	Required content	Required form or format	When to submit
Survey for Private, Non-Profit	Per required form	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.

4. Intergovernmental Review

State Single Point of Contact (SPOC)

This program is covered under Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Program" and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

As of October 2003, of the most recent SPOC list, the following jurisdictions have elected not to participate in the Executive Order process. Apllicants from these jurisdictions or for projects administered by Federally-recognized Indian Tribes need take no action in regard to E.O. 12372: Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Vriginia, Washington and Wyoming.

Although the jurisdictions listed above no longer participate in the process, entities which have met the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC. All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a) (2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to differentiate clearly between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Washington, DC 20447.

The official list, including addresses, of the jurisdictions elected to participate in E.O. 12372 can be found on the following URL: *http://www.whitehouse.gov/omb/grants/spoc.html.*

5. Funding Restrictions

Grant awards will not allow reimbursement of pre-award costs.

Construction is not an allowable activity or expenditure under this solicitation.

Federal funds received as a result of this announcement cannot be paid as profit to grantees or sub-grantees, *i.e.,* any amount in excess of allowable direct and indirect costs of the recipient (45 CFR 74.81).

6. Other Submission Requirements

Submission by Mail: An applicant must provide an original application with all attachments, signed by an authorized representative and two copies. The application must be received at the address below by 4:30 p.m. eastern standard time on or before the closing date. Applications should be mailed to: ACYF Operations, The Dixon Group, ATTN: Children's Bureau, 118 Q Street, NE., Washington, DC 20002–2132.

For Hand Delivery: Applicant must provide an original application with all attachments, signed by an authorized representative and two copies. The application must be received at the address below by 4:30 p.m. eastern standard time on or before the closing date. Applications that are hand delivered will be accepted between the hours of 8 a.m. to 4:30 p.m., Monday through Friday. Applications may be delivered to: ACYF Operations, The Dixon Group, ATTN: Children's Bureau 118 Q Street, NE., Washington, DC 20002–2132. It is strongly recommended that applicants obtain documentation that the application was hand delivered on or before the closing date. Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

Electronic Submission: Please see Section IV. 2. Content and Form of Application Submission, for guidelines and requirements when submitting applications electronically.

Electronic Address Where Applications Will Be Accepted: www.Grants.gov.

Address Where Hard Copy Applications Will Be Accepted: Children's Bureau Grant Receipt Point, ACYF Operations Center, c/o The Dixon Group, Inc., 118 Q Street NE., Washington, DC 20002–2132

ACYF will not acknowledge receipt of hard copy application submissions.

V. Application Review Information

Refer to Priority Area 1, Section V. Application Review Information, for information on The Paperwork Reduction Act of 1995 (Pub. L. 104–13)

and General Instruction for Preparing Full Project Description.

Specific Evaluation Criteria

The following criteria will be used to review and evaluate each application under this Priority Area. The applicant should address each criterion in the project description. The point values (summing up to 100) indicate the maximum numerical weight each criterion will be accorded in the review process.

Criterion 1. Objectives and Need for Assistance

In reviewing the objectives and need for assistance, the following factors will be considered: (20 points).

(1) The extent to which the applicant demonstrates a clear and thorough understanding of the need for providing coordinated training and technical assistance to public and private child welfare and youth serving agencies responsible for serving the target population(s), and the goals of the applicable legislative mandates.

(2) The extent to which the training and technical assistance objectives of the project will effectively build the capacity of State, and local public and private agencies to collect and use data as a management tool for evaluating child welfare programs and making changes based on the data and evaluations.

(3) The extent to which the applicant demonstrates a thorough understanding of the problems and issues regarding the integration of automation into every level of child welfare service including direct practice; supervision; management and administration; and ensuring data quality and comparability across States. The extent to which the applicant demonstrates a thorough understanding of the issues related to courts in the management, monitoring and decision-making process.

(4) The extent to which the applicant proposes a sound approach for effectively identifying strengths and weaknesses in existing child welfare information systems and for providing effective technical assistance to resolve problems for both the information systems and the use of data.

(5) The extent to which the proposed project will produce significant results and benefits, and a high level of customer satisfaction on the part of agencies served and their State and local constituents.

Criterion 2. Approach

In reviewing the approach, the following factors will be considered: (50 points).

(1) The extent to which there is a reasonable timeline for implementing the proposed project, including the activities to be conducted in chronological order, showing a reasonable schedule of accomplishments and target dates and the factors that may accelerate or decelerate the work.

(2) The extent to which the applicant provides a workable plan of action. The extent to which this plan relates to the stated objectives and scope of the project and reflects the intent of the applicable legislative mandates.

(3) The extent to which the applicant describes sound strategies to help agencies develop and maintain a comprehensive child welfare information system that fulfills Federal legislative and regulatory requirements. The extent to which these strategies will enhance the agency's capacity to promote stakeholder involvement in the planning, implementation, and evaluation of funded programs.

(4) The extent to which the applicant describes sound strategies to assist States to complete effective action plans associated with AFCARS and SACWIS reviews; and to assist States in successfully completing the development of their SACWIS systems.

(5) The extent to which the applicant describes sound strategies for identifying the most effective approach for successfully integrating the use of information systems into child welfare practice with the intent of supporting workers, improving services and measuring program performance and case outcomes.

(6) The extent to which there is a sound approach to assisting State agencies and courts in the analysis of implications of new legislative and/or regulatory requirements for change in systems and data requirements.

(7) The extent to which the applicant will effectively maintain the National and State peer-to-peer networks in the child welfare information and data usage fields to serve as peer consultants.

(8) The extent to which the applicant will effectively identify relevant emerging issues; models that delineate the effective and appropriate uses of technology in the administration and case management activities of child welfare programs; and innovative and exemplary information systems, data utilization and program and system evaluation approaches that will be of interest and use to State agencies and the courts. The extent to which the applicant will effectively evaluate new technological applications in the child welfare domain. The extent to which the applicant will also cooperate with the Children's Bureau in meetings, briefings, or other forums to disseminate knowledge gained from its work with States, other grantees and local communities around child welfare issues.

(9) The extent to which the applicant provides a sound plan for effectively assisting the Children's Bureau in planning, organizing and conducting at least one national data usage conference/meeting on an annual basis for States, court personnel and other relevant professionals, groups and organizations. (The conference/meeting may be an enhancement of an established national conference/meeting sponsored by ACF.)

(10) The extent to which the applicant will collaborate effectively with the National Child Welfare Resource Center for Organizational Improvement in assessing training and technical assistance needs and developing and implementing a T/TA work plan in response to requests from States and Tribes for on-site training and technical assistance.

(11) The extent to which the applicant will effectively coordinate its activities with other National Resource Centers, AdoptUSKids, Clearinghouses, other members of the training and technical assistance network funded by the Children's Bureau, and the Training and Technical Assistance Coordination Committee made up of Federal staff from the Children's Bureau and Regional Offices.

(12) The extent to which the applicant will provide appropriate process and outcome evaluation data to the NCWRCOI, so it can evaluate the results and benefits of the technical assistance provided.

Criterion 3. Organizational Profiles

In reviewing the organizational profiles, the following factors will be considered: (20 points).

(1) The extent to which the applicant organization and any partnering organizations collectively have sufficient experience and expertise (including experience on the national level) in: (1) Identifying the training and technical assistance needs of an agency or organization; (2) developing or participating in the development of a plan to meet those needs; (3) designing, developing and delivering training and technical assistance including recruiting, assigning, and deploying staff with appropriate experience; (4) developing evaluation strategies and providing technical assistance on evaluation methodologies, (5) designing, developing, delivering and evaluating training materials, (6) the development

and enhancement of automated child welfare information systems and the generation of high quality and consistent data; (7) the use of that data by child welfare agency and court staff; (8) establishing effective working partnerships with other agencies and organizations; and (9) administering, developing, implementing, managing, and evaluating similar projects. The extent to which each participating organization (including partners and/or subcontractors) possesses the organizational capability to fulfill their assigned roles and functions effectively (if the application involves partnering and/or subcontracting with other agencies/organizations).

(2) The extent to which the applicant's project director and key project staff possess sufficient relevant knowledge, experience and capabilities to implement and manage a project of this size, scope and complexity effectively. The extent to which the role, responsibilities and time commitments of each proposed project staff position, including consultants, subcontractors and/or partners, are clearly defined and appropriate to the successful implementation of the proposed project. The extent to which the author of this proposal will be closely involved throughout the implementation of the proposed project.

(3) The extent to which there is a sound management plan for achieving the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines and milestones for accomplishing project tasks and ensuring quality. The extent to which the plan clearly defines the role and responsibilities of the lead agency. The extent to which the plan clearly describes the effective management and coordination of activities carried out by any partners, subcontractors and consultants (if appropriate). The extent to which there would be a mutually beneficial relationship between the proposed project and other work planned, anticipated or underway with Federal assistance by the applicant.

Criterion 4. Budget and Budget Justification

In reviewing the budget and budget justification, the following factors will be considered: (10 points).

(1) The extent to which the costs of the proposed project are reasonable, in view of the activities to be conducted and expected results and benefits.

(2) The extent to which the applicant's fiscal controls and accounting procedures would ensure prudent use, proper and timely disbursement and accurate accounting of funds received under this program announcement.

2. Review and Selection Process

When the Operations Center receives your application it will be screened to confirm that your application was received by the deadline. Federal staff will verify that you are an eligible applicant and that the application contains all the essential elements. Applications received from ineligible organizations and applications received after the deadline will be withdrawn from further consideration.

A panel of at least three reviewers (primarily experts from outside the Federal government) will use the evaluation criteria described in this announcement to evaluate each application. The reviewers will determine the strengths and weaknesses of each application, provide comments about the strengths and weaknesses and give each application a numerical score.

All applications will be reviewed and evaluated using four major criteria: (1) Objectives and need for assistance, (2) approach, (3) organizational profiles, and (4) budget and budget justification. Each criterion has been assigned a point value. The point values (summing up to 100) indicate the maximum numerical weight each criterion may be given in the review and evaluation process.

Reviewers also are evaluating the project products and materials that you propose. Reviewers will be looking to see that the total budget you propose and the way you have apportioned that budget are appropriate and reasonable for the project you have described. Remember that the reviewers only have the information that you give them—it needs to be clear, complete, and concise.

The results of the competitive review are a primary factor in making funding decisions. In addition, Federal staff conducts administrative reviews of the applications and, in light of the results of the competitive review, will recommend applications for funding to the ACYF Commissioner. ACYF reserves the option of discussing applications with other funding sources when this is in the best interest of the Federal government. ACYF may also solicit and consider comments from ACF Regional Office staff in making funding decisions. ACYF may take into consideration the involvement (financial and/or programmatic) of the private sector, national, or State or community foundations; a favorable balance between Federal and non-Federal funds for the proposed project; or the potential for high benefit from low Federal investment. ACYF may elect not to fund any applicants having known management, fiscal, reporting, programmatic, or other problems which make it unlikely that they would be able to provide effective services or effectively complete the proposed activity.

With the results of the peer review and the information from Federal staff, the Commissioner of ACYF makes the final funding decisions.

Available Funds: Applicants should note that grants to be awarded under this program announcement are subject to the availability of funds. The size of the actual awards will vary. In cases where more applications are approved for funding than ACF can fund with the money available, the Grants Officer shall fund applications in their order of approval until funds run out. In this case, ACF has the option of carrying over the approved applications up to a year for funding consideration in a later competition of the same program. These applications need not be reviewed and scored again if the program's evaluation criteria have not changed. However, they must then be placed in rank order along with other applications in later competitions.

Priority Area 5—National Child Welfare Resource Center on Legal and Judicial Issues

Purpose: The purpose of this Cooperative Agreement is to provide financial support for training and technical assistance aimed at achieving safety, permanency and well being for abused and neglected children through improved legal representation and judicial decision-making. This training and technical assistance will build the capacity of public and private, non-profit child welfare agencies and juvenile and family courts by providing resources and consultation to help them improve outcomes for children and their families. Particular emphasis will be placed on supporting and enhancing activities carried out under the State Court Improvement Program (CIP), and increasing legal and court involvement in the development and implementation of Program Improvement Plans in response to the Child and Family Services Reviews.

Activities to be conducted by the National Child Welfare Resource Center for Legal and Judicial Issues will include, but are not limited to:

(1) Providing on-site technical assistance, training and consultation to State and Tribal child welfare agencies and juvenile and family courts on ASFA implementation, and to State courts on

implementation of their Court Improvement Programs;

(2) Supporting States and localities in integrating courts, and those who represent children, parents and agencies in courts, into the Child and Family Services Review (CFSR) process;

(3) Identifying and disseminating information about exemplary and innovative practices in the legal and judicial areas of child welfare, including CIP activities, agency and court collaboration, timely decisions on termination of parental rights, non-adversarial case resolution, reasonable efforts requirements, legal representation of children, parents and child welfare agencies, permanent guardianship, confidentiality, legal ethics for child welfare attorneys, action planning for courts and agency representatives, the interplay of domestic violence and child welfare, expediting dependency appeals, interjurisdictional issues, case tracking systems, judicial performance and workload issues, and other emerging child welfare issues;

(4) Developing publications, responding to requests for information, and providing resource information to child welfare professionals, lawyers, judges, child welfare and judicial educators, appellate courts, court administrators and individuals nationwide;

(5) Conducting regular and ongoing assessment of the legal and judicial needs of agencies and courts, identifying new unmet needs and developing a national technical assistance and training strategy for the next five years;

(6) Contributing to the annual planning and implementation of a national permanency partnership forum for child welfare agency staff and Court Improvement Program personnel;

(7) Coordinating and collaborating with other ACYF resource centers, AdoptUSKids, the National Child Welfare Resource Center for Organizational Improvement as the single-point of entry for requests for on-site training and technical assistance, the Training and Technical Assistance Coordination Committee made up of Federal staff from the Children's Bureau and Regional Offices, and other agencies in the Department to maximize technical assistance and training effectiveness, avoid duplication and manage resources effectively;

(8) Coordinating with the Children's Bureau, ACF Regional Offices and State and Tribal agencies in the development of the annual technical assistance and training strategy;

(9) Processing all on-site T/TA requests through the single point of entry established by the NCWRCOI, which will involve the Regional Office staff, the appropriate NRCs or AdoptUSKids, and Children's Bureau staff as needed, as well as any other critical stakeholder, to facilitate an assessment of T/TA needs and a coordinated and immediate response that avoids delays or duplication of effort;

(10) Participating in twice-a-year team meetings of the Training and Technical Assistance Network funded by the Children's Bureau, and the Training and Technical Assistance Coordination Committee;

(11) Collaborating with other ACYF Resource Centers, other agencies in the Department of Health and Human Services and other agents of the Children's Bureau to strengthen TA efforts, avoid duplication and manage resources effectively;

(12) Providing information and cooperation needed by the NCWRCOI as it manages, maintains and updates to improve functionality, when needed, the web-based tracking system for training and technical assistance requests developed for the Children's Bureau to track NRC's responses to T/TA requests from State, local, Tribal and other publicly supported child welfare agencies, and juvenile and family courts; and

(13) Providing data needed by the NCWRCOI to evaluate the results and benefits of the technical assistance provided by the National Resource Center.

The primary goal of the National Child Welfare Resource Center on Legal and Judicial Issues is to provide technical assistance to States on legal and judicial issues related to child welfare and child protection. This Resource Center provides extensive off-site and on-site technical assistance nationwide, including State-specific work as well as participation in regional and national conferences. The Resource Center will also be expected to develop and distribute brochures, technical assistance announcements, articles, and other materials, and maintain a Web site as well as appropriate listserves to disseminate information to lawyers, judges and court improvement coordinators.

The Resource Center will be expected to be creative and innovative in responding to questions and requests from the state agencies and courts, as well as in developing new materials on cutting edge issues as they emerge from legal decisions, Federal and State legislation, new regulations and other developments in the child welfare field. Critical to the work of the Resource Center is the ability to stimulate effective and lasting collaboration between State agencies and courts, and provide strong support for court improvements to build and sustain that collaboration. The Resource Center must have demonstrated ability to form partnerships with national legal and judicial organizations as well as independent consultants in the field, thus maximizing the breadth and substance of the training and technical assistance provided to the States. The Resource Center will be expected to forge strong links with the full range of the Children's Bureau resource centers and support contractors, resulting in joint training and technical assistance presentations and collaborative development of resources.

Expected outcomes will be the increased capacity of juvenile and family courts to expedite permanency through more informed and timely decision making, strong Court Improvement Programs nationwide implementing needed court reform, and better integration of courts and legal representatives into the implementation of Program Improvement Plans resulting from Child and Family Service Reviews.

Background on the Court Improvement Program

The State Court Improvement Program (CIP) was created as part of the Omnibus Budget Reconciliation Act (OBRA) of 1993, Public Law 103–66, which among other things, provided Federal funds to State child welfare agencies and Tribes for preventive services and services to families at risk or in crisis. OBRA designated a portion of these funds ($5 million in fiscal year 1995 and $10 million in each of FYs 1996 through 1998) for grants to State court systems to conduct assessments of their foster care and adoption laws and judicial processes, and to develop and implement a plan for system improvement. Awards are made to the highest State courts in States participating in the IV–E program.

The Adoption and Safe Families Act of 1997 (ASFA), Public Law 105–89, reauthorized the CIP through 2001, which Congress funded at $10 million annually. There were no substantive changes made to the CIP in the 1997 reauthorization.

The Promoting Safe and Stable Families Amendments of 2001, Public Law 107–133, reauthorized the Court Improvement Program through FY 2006. The law also expands the scope of the program to: (1) Include improvements that the highest courts deem necessary

to provide for the safety, well-being, and permanence of children in foster care, as set forth in ASFA; and (2) implement a corrective action plan, as necessary, in response to findings identified in a Child and Family Service Review of the State's child welfare system. Public Law 107–133 authorizes a mandatory funding level of $10 million for CIP and new discretionary funding for FYs 2002 through 2006. From any discretionary funding appropriated annually for the Promoting Safe and Stable Families Program, the law authorizes a 3.3 percent set-aside for the CIP. Finally, the Court Improvement Program authority was transferred to a new section 438 of the Social Security Act.

As of FY 2001 all eligible States (50 States, the District of Columbia, and Puerto Rico) are receiving annual Court Improvement Program grants. Typical activities include development of mediation programs, joint agency-court training, automated docketing and case tracking, linked agency-court data systems, one judge/one family models, time-specific docketing, formalized relationships with the child welfare agency, improvement of representation for children and families, CFSR program improvement plan (PIP) development and implementation, and legislative changes.

II. Award Information

Funding Instrument Type: Cooperative agreement.

Description of Federal Substantial Involvement With Cooperative Agreement: Each National Child Welfare Resource Center will operate under a cooperative agreement. A cooperative agreement is a specific method of awarding Federal assistance in which substantial Federal involvement is anticipated. A cooperative agreement clearly defines the respective responsibilities of the Children's Bureau and the grantee prior to the award. The Children's Bureau anticipates that agency involvement will produce programmatic benefits to the recipient otherwise unavailable to them for carrying out the project. The involvement and collaboration includes Children's Bureau review and approval of planning stages of the activities before implementation phases may begin; Children's Bureau involvement in the establishment of policies and procedures that maximize open competition, and rigorous and impartial development, review and funding of sub-grant or sub-grant activities, if applicable; and Children's Bureau and recipient joint collaboration in the performance of key programmatic activities (*i.e.*, strategic planning, implementation, information technology enhancements, training and technical assistance, publications or products, and evaluation). Close monitoring by the Children's Bureau of the requirements stated in this announcement that limit the grantee's discretion with respect to scope of services offered, organizational structure and management processes, coupled with close Children's Bureau monitoring during performance may, in order to ensure compliance with the intent of this funding, exceed those Federal stewardship responsibilities customary for grant activities.

Anticipated Total Program Funding: The anticipated total for the award under this priority area in FY2004 is $800,000.

Anticipated Number of Awards: It is anticipated that one project will be funded.

Ceiling on Amount of Individual Awards: The award amount will not exceed $800,000 in the first budget period. An application received that exceeds the upper value of the dollar range specified will be considered "non-responsive" and be returned to the applicant without further review.

Floor of Individual Award Amounts: None.

Average Anticipated Award Amount: $800,000 per budget period.

Project Periods for Awards: This grant will be awarded for a project period of 60 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of the grantee, and a determination that continued funding would be in the best interest of the government.

III. Eligibility Information

1. Eligible Applicants

State governments
County governments
City or township governments
State controlled institutions of higher education
Nonprofits having a 501(c)(3) status with the IRS, other than institutions of higher education
Nonprofits that do not have a 501(c)(3) status with the IRS, other than institutions of higher education
Private institutions of higher education
For-profit organization other than small businesses
Small businesses

Additional Information on Eligibility: Collaborative efforts and interdisciplinary approaches are acceptable. Applications from collaborations must identify a primary applicant responsible for administering the grants.

Non-profit organizations, including faith-based and community organizations are elgible to apply. Proof of non-profit status is any one of the following:

(a) A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS code.

(b) A copy of a currently valid IRS tax exemption certificate.

(c) A statement from a State taxing body, State Attorney General, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals.

(d) A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status.

(e) Any of the items in the subparagraphs immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

2. Cost Sharing or Matching

The grantee must provide at least 10 percent of the total approved cost of the project. The total approved cost is the sum of the Federal share and the non-Federal share. Therefore, a project requesting $800,000 per budget period must include a match of at least $88,889 per budget period. Applicants should provide a letter of commitment verifying the actual amount of the non-Federal share of project costs.

The following example shows how to calculate the required 10% match amount for an $800,000 grant:

$800,000 (Federal share)
divided by .90 (100% – 10%)
equals $888,889 (total project cost including match)
minus $800,000 (Federal share)
equals $88,889 (required 10% match)

The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. If approved for funding, grantees will be held accountable for the commitment of non-Federal resources and failure to provide the required amount will result in a disallowance of unmatched Federal funds.

3. Other (If Applicable)

On June 27, 2003, the Office of Management and Budget published in

the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires all Federal grant applicants to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*www.Grants.gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you may request a number online at *http://www.dnb.com.*

Applications that exceed the $800,000 per budget period ceiling will be considered non-responsive and will not be eligible for funding under this announcement.

IV. Application and Submission Information

1. Address To Request Application Package

ACYF Operations Center, c/o The Dixon Group, Inc., 118 Q Street, NE., Washington, DC 20002–2132, (866) 796–1591.

2. Content and Form of Application Submission

You may submit your application to us either in electronic or paper format. To submit an application electronically, please use the *www.Grants.gov* apply site. If you use Grants.gov you will be able to download a copy of the application package, complete it off-line, and then upload and submit the application via the Grants.gov site. You may not e-mail an electronic copy of a grant application to us.

Please note the following if you plan to submit your application electronically via Grants.gov.

- Electronic submission is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation. We strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- To use Grants.gov, you, as the applicant, must have a DUNS Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five days to complete the CCR registration.
- You will not receive additional point value because you submit a grant application in paper format.
- You may submit all documents electronically, including all information typically included on the SF424 and all necessary assurances and certifications.
- Your application must comply with any page limitation requirements described in this program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The Administration for Children and Families will retrieve your application form from Grants.gov.
- We may request that you provide original signatures on forms at a later date.
- You may access the electronic application for this program on *www.Grants.gov.*
- You must search for the downloadable application package by the CFDA number.

Each application must contain the following items in the order listed:

1. Application for Federal Assistance (Standard Form 424). Follow the instructions below and those that accompany the form.

In Item 5 of Form 424, put DUNS number in "Organizational DUNS:" box.

In Item 5 of Form 424, include name, phone number, and, if available, e-mail and fax numbers of the contact person.

In Item 8 of Form 424, check "New."

In Item 10 of Form 424, clearly identify the Catalog of Federal Domestic Assistance (CFDA) program title and number for the program for which funds are being requested as stated in the funding opportunity announcement.

In Item 11 of Form 424, identify the single priority area the application addresses.

In Item 12 of Form 424, identify the specific geographic area to be served.

In Item 14 of Form 424, identify Congressional districts of both the applicant and project.

2. Budget Information Non-Construction Programs (Form 424A) and Budget Justification.

Follow the instructions provided. Note that Federal funds provided to States and services or other resources purchased with Federal funds may not be used to match project grants.

3. Certifications/Assurances. Applicants requesting financial assistance for nonconstruction projects must file the Standard Form 424B, 'Assurances: Non-Construction Programs.' Applicants must sign and return the Standard Form 424B with their applications. Applicants must provide a certification regarding lobbying when applying for an award in excess of $100,000. Applicants must sign and return the certification with their applications.

Applicants must disclose lobbying activities on the Standard Form LLL when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form to report lobbying. Applicants must sign and return the disclosure form, if applicable, with their applications.

Applicants must make the appropriate certification regarding environmental tobacco smoke. By signing and submitting the application, the applicant is providing the certification and need not mail back the certification with the application.

If applicable, applicants must include a completed SPOC certification (Single Point of Contact) with the date of the SPOC contact entered in line 16, page 1 of the Form 424.

Assurances: By signing the "Signature of Authorized Representative" on the SF 424, the applicant is providing a certification and need not mail assurances for completing the following cooperative agreement requirements:

- The applicant will have the project fully functioning within 90 days of the notification of the award.
- The applicant will participate in any evaluation or technical assistance effort supported by ACYF.
- The applicant will submit all required semi-annual and final Financial Status Reports (SF269) and Program Performance Reports in a timely manner, in hard-copy and electronic formats (preferably MS WORD and PDF) as negotiated with the Federal Project Officer.
- The Resource Center Project Director or one key staff member will attend the following meetings in Washington, DC: A meeting with the Federal Project Officer and other ACYF staff within 60 days of receiving the award; two meetings annually, for one to two days each, with Children's Bureau staff and other training and technical assistance partners to plan a national training and technical assistance strategy; one meeting annually to participate in a Children's Bureau grantee meeting with the purpose of disseminating knowledge gained from work with State agencies and courts around child welfare issues.

• In situations where the applicant's organizational position on a particular policy and/or practice might differ from the Federal position, the Federal position will be used to guide the Resource Center activity and will be reflected in all public statements and publications of the Resource Center.

• The applicant will enter into a Cooperative Agreement with the Children's Bureau.

• The Resource Center will work in partnership with the Children's Bureau and the ACF Regional Offices by providing technical assistance to States that have needs identified through one of ACF's review processes.

• The Resource Center will work collaboratively with the other six National Resource Centers and AdoptUSKids.

• The Resource Center will work with the Training and Technical Assistance Coordination Committee, which will be composed of Federal staff from the Children's Bureau and Regional Offices and which will provide direction to the strategic development of the training and technical assistance network.

• The Resource Center will work collaboratively with the CB Clearinghouses and other members of the training and technical assistance network funded by the Children's Bureau in providing training and technical assistance.

• The Resource Center will work directly with the National Child Welfare Resource Center for Organizational Improvement (NCWRCOI), which will serve as a single point of entry for States and Tribes to request on-site training and technical assistance to ensure a coordinated and immediate response.

• The Resource Center will provide evaluation data to the NCWRCOI that addresses both process and outcomes to evaluate the results and benefits of the technical assistance provided.

The Office for Human Research Protections of the U.S. Department of Health and Human Services provides Web site information and policy guidance on the Federal regulations pertaining to protection of human subjects (45 CFR part 46), informed consent, informed consent checklists, confidentiality of personal identification information, data collection procedures, and internal review boards: *http://ohrp.osophs.dhhs.gov/polasur.htm.*

If applicable, applicants must include a completed Form 310, Protection of Human Subjects.

In implementing their projects, grantees are expected to comply with all applicable administrative regulations regarding extent or types of costs. Applicable HHS regulations can be found in 45 CFR part 74 or 92.

4. Project Abstract/Summary (one page maximum). Clearly mark this page with the applicant name as shown on item 5 of the Form 424, identify the competitive grant priority area and the title of the proposed project as shown in item 11 and the service area as shown in item 12 of the Form 424. The summary description should not exceed 300 words.

Care should be taken to produce an abstract/summary that accurately and concisely reflects the proposed project. It should describe the objectives of the project, the approach to be used and the results or benefits expected.

5. Project Description for Evaluation. Applicants should organize their project description according to the Evaluation Criteria described in this priority area announcement providing information that addresses all the components.

6. Proof of non-profit status (if applicable). Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. Any of the following constitutes acceptable proof of such status:

a. A reference to the applicant organization's listing in the Internal Revenue Services' (IRS) most recent list of tax-exempt organizations described in the IRS Code.

b. A copy of a currently valid IRS tax exemption certificate.

c. A statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals.

d. A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status.

e. Any of the items immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

7. Indirect cost rate agreement. If claiming indirect costs, provide documentation that applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

8. Letters of agreement and memoranda of understanding. If applicable, include a letter of commitment or Memorandum of Understanding from each partner and/or sub-contractor describing their role, detailing specific tasks to be performed, and expressing commitment to participate if the proposed project is funded.

9. Provide a letter of commitment verifying the actual amount of the non-Federal share of project costs.

10. The application limit is 75 pages total including all forms and attachments. Submit one original and two copies.

To be considered for funding, each application must be submitted with the Standard Federal Forms (provided at the end of this announcement or through the electronic links provided) and following the guidance provided. The application must be signed by an individual authorized to act for the applicant organization and to assume responsibility for the obligations imposed by the terms and conditions of the grant award.

To be considered for funding, each applicant must submit one signed original and two additional copies of the application, including all forms and attachments, to the Application Receipt Point specified in the section titled Deadline. The original copy of the application must have original signatures, signed in *black* ink.

The application must be typed, double spaced, printed on only one side, with at least ½ inch margins on each side and 1 inch at the top and bottom, using standard 12 Point fonts (such as Times Roman or Courier). Pages must be numbered.

Pages over the page limit stated within this priority area announcement will be removed from the application and will not be reviewed. All copies of an application must be submitted in a single package, and a separate package must be submitted for each priority area. The package must be clearly labeled for the specific priority area it is addressing.

Because each application will be duplicated, do not use or include separate covers, binders, clips, tabs, plastic inserts, maps, brochures, or any other items that cannot be processed easily on a photocopy machine with an automatic feed. Do not bind, clip, staple, or fasten in any way separate subsections of the application, including supporting documentation. Applicants are advised that the copies of the application submitted, not the original, will be reproduced by the Federal government for review. Each copy must be stapled securely in the upper left corner.

Applicants have the option of omitting from application copies (not originals) specific salary rates or amounts for individuals specified in the

application budget. The copies may include summary salary information.

Private non-profit organizations are encouraged to submit with their applications the survey located under "Grant Related Documents and Forms" titled "Survey for Private, Non-Profit Grant Applicants."

Please see Section V.1. Criteria, for instructions on preparing the project summary/abstract and the full project description.

3. Submission Dates and Times

The closing time and date for receipt of applications is 4:30 p.m. eastern standard time (e.s.t.) on August 24, 2004. Mailed or handcarried applications received after 4:30 p.m. on the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the following address: ACYF Operations Center, c/o The Dixon Group, Inc., ATTN: Children's Bureau, 118 Q Street, NE., Washington, DC 20002–2132.

Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Applications hand-carried by applicants, applicant couriers, or by other representatives of the applicant shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., e.s.t., at ACYF Operations Center, c/o The Dixon Group, Inc., ATTN: Children's Bureau, 118 Q Street, NE., Washington, DC 20002–2132, between Monday and Friday (excluding Federal holidays). This address must appear on the envelope/package containing the application with the note "ATTN: Children's Bureau." Applicants are cautioned that express/overnight mail services do not always deliver as agreed. ACF cannot accommodate transmission of applications by fax.

Late applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, *etc.*) occur, or when there are widespread disruptions of mail service. Determinations to extend or waive deadline requirements rest with the Chief Grants Management Officer.

Required Forms

What to submit	Required content	Required form or format	When to submit
1. SF424	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.*	See application due date.
2. SF424A	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	See application due date.
3.a. SF424B	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	See application due date.
3.b. Certification regarding lobbying	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	See application due date.
3.c. Disclosure of Lobbying Activities (SF–LLL).	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	See application due date.
4. Project Summary/Abstract	Summary of application request	See instructions in this funding announcement.	See application due date.
5. Project Description	Responsiveness to evaluation criteria	See instructions in this funding announcement.	See application due date.
6. Proof of non-profit status	See above	See above	See application due date.
7. Indirect cost rate agreement	See above	See above	See application due date.
8. Letters of agreement & MOUs	See above	See above	See application due date.
9. Non-Federal share letter	See above	See above	See application due date.
Total application	See above	Application limit 75 pages total including all forms and attachments. Submit one original and two copies.	See application due date.

Additional Forms

Private, non-profit organizations are encouraged to submit with their applications the additional survey located under "Grant Related Documents and Forms" titled "Survey for Private, Non-Profit Grant Applicants."

What to submit	Required contact	Required form or format	When to submit
Survey for Private, Non-Profit Grant Applications.	Per required form	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.

4. Intergovernmental Review

State Single Point of Contact (SPOC)

This program is covered under Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Programs", and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

As of October 2003, of the most recent SPOC list, the following jurisdictions have elected not to participate in the Executive Order process. Applicants from these jurisdictions or for projects administered by Federally-recognized Indian Tribes need take no action in regard to E.O. 12372: Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington and Wyoming.

Although the jurisdictions listed above no longer participate in the process, entities which have met the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC. All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a) (2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to differentiate clearly between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Washington, DC 20447.

The official list, including addresses, of the jurisdictions elected to participate in E.O. 12372 can be found on the following URL: *http://www.whitehouse.gov/omb/grants/spoc.html.*

5. Funding Restrictions

Grant awards will not allow reimbursement of pre-award costs.

Construction is not an allowable activity or expenditure under this solicitation.

Federal funds received as a result of this announcement cannot be paid as profit to grantees or sub-grantees, *i.e.,* any amount in excess of allowable direct and indirect costs of the recipient (45 CFR 74.81).

6. Other Submission Requirements

Submission by Mail: An applicant must provide an original application with all attachments, signed by an authorized representative and two copies. The application must be received at the address below by 4:30 p.m. eastern standard time on or before the closing date. Applications should be mailed to: ACYF Operations, The Dixon Group, ATTN: Children's Bureau, 118 Q Street, NE., Washington, DC 20002–2132.

For Hand Delivery: Applicant must provide an original application with all attachments, signed by an authorized representative and two copies. The application must be received at the address below by 4:30 p.m. eastern standard time on or before the closing date. Applications that are hand delivered will be accepted between the hours of 8 a.m. to 4:30 p.m., Monday through Friday. Applications may be delivered to: ACYF Operations, The Dixon Group, ATTN: Children's Bureau 118 Q Street, NE., Washington, DC 20002–2132. It is strongly recommended that applicants obtain documentation that the application was hand delivered on or before the closing date. Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

Electronic Submission: Please see Section IV. 2. Content and Form of Application Submission, for guidelines and requirements when submitting applications electronically.

Electronic Address Where Applications Will Be Accepted: www.Grants.gov.

Address Where Hard Copy Applications Will Be Accepted: Children's Bureau Grant Receipt Point, ACYF Operations Center, c/o The Dixon Group, Inc., 118 Q Street, NE., Washington, DC 20002–2132.

ACYF will not acknowledge receipt of hard copy application submissions.

V. Application Review Information

Refer to Priority Area 1, Section V. Application Review Information, for information on The Paperwork Reduction Act of 1995 (Pub. L. 104–13) and General Instruction for Preparing Full Project Description.

Specific Evaluation Criteria

The following criteria will be used to review and evaluate each application under this Priority Area. The applicant should address each criterion in the project description. The point values (summing up to 100) indicate the maximum numerical weight each criterion will be accorded in the review process.

Criterion 1. Objectives and Need for Assistance

In reviewing the objectives and need for assistance, the following factors will be considered: (20 points).

(1) The extent to which the applicant demonstrates a clear and thorough understanding of the need for providing coordinated training and technical assistance to public and private child welfare agencies and courts responsible

for serving the target population(s), and the goals of the applicable legislative mandates.

(2) The extent to which the training and technical assistance objectives of the project will effectively build the capacity of State, and local public and private agencies and courts to support effective efforts to develop, operate, expand, and enhance initiatives improving outcomes for children, youth and families served by these agencies and courts.

(3) The extent to which the proposed project will produce significant results and benefits, and a high level of customer satisfaction on the part of agencies and courts served and their State and local constituents.

Criterion 2. Approach

In reviewing the approach, the following factors will be considered: (50 points).

(1) The extent to which there is a reasonable timeline for implementing the proposed project, including the activities to be conducted in chronological order, showing a reasonable schedule of accomplishments and target dates and the factors that may accelerate or decelerate the work.

(2) The extent to which there is a sound plan to help agencies and courts develop activities that fulfill the legislative mandates and meet the objectives of the Child and Family Service Reviews. The extent to which this plan enhances agencies' capacity to promote stakeholder (especially courts and legal representatives of children, parents and child welfare agencies) involvement in the planning and implementation of the Program Improvement Plans (PIPs).

(3) The extent to which the Resource Center's services, program activities, and materials will be developed and provided in a manner that is racially and culturally sensitive to the population(s) being served.

(4) The extent to which the applicant will collaborate effectively with the National Child Welfare Resource Center for Organizational Improvement in assessing training and technical assistance needs and developing and implementing a T/TA work plan in response to requests from States and Tribes for on-site training and technical assistance.

(5) The extent to which the applicant will provide appropriate process and outcome evaluation data to the NCWRCOI, so it can evaluate the results and benefits of the technical assistance provided.

(6) The extent to which the applicant will assist courts nationwide to fulfill the mandate of the Court Improvement Program. The extent to which the applicant will implement innovative strategies to support the States in development of their re-assessments and strategic plans, and implementation of recommendations for system improvement.

(7) The extent to which the Resource Center will identify innovative and exemplary practices that would support the training and technical assistance objectives under this funding announcement. The extent to which the Resource Center will continually identify relevant emerging issues and the need for new and different services.

(8) The extent to which the applicant will establish and maintain an excellent national network of professionals in the field to serve as consultants. The extent to which there is a sound plan to link these individuals with persons, agencies or courts requesting assistance. The extent to which the Resource Center will ensure that the network promotes the provision of services that is responsive to diverse populations. The extent to which there is a sound plan to determine the quality of the consultation provided by eliciting consumer participation and feedback.

(9) The extent to which the applicant describes effective strategies which will be implemented to foster and strengthen communication and coordination activities with legal and judicial organizations as well as client and advocacy groups, agencies, and other professional organizations serving children, youth and families.

(10) The extent to which the applicant will effectively coordinate its activities with other National Resource Centers, AdoptUSKids, Clearinghouses, other members of the training and technical assistance network funded by the Children's Bureau, and the Training and Technical Assistance Coordination Committee made up of Federal staff from the Children's Bureau and Regional Offices.

(11) The extent to which the applicant describes a sound plan to help agencies and courts improve services, legal representation and decision-making to over-represented populations, particularly minority children in care and their families. The extent to which the applicant identifies techniques that will be used in assessing factors that impede the delivery of culturally appropriate services and strategies that will be used to assist in reducing the effect of those factors.

(12) The extent to which the applicant describes a sound plan for assisting agencies and courts in developing practices which are in compliance with the non-discrimination and recruitment provisions of the Multi-Ethnic Placement Act of 1994, as amended (MEPA) [42 U.S.C. 622] and Section 1808 of Public Law 104–188 "Removal of Barriers to Interethnic Adoption" [42 U.S.C. 1996b], as well as the inter-jurisdictional provisions of ASFA (Sec. 202(a)(3) Public Law 105–89) [42 U.S.C. 622(b)].

Criterion 3. Organizational Profiles

In reviewing the organizational profiles, the following factors will be considered: (20 points).

(1) The extent to which the applicant organization and any partnering organizations collectively have sufficient experience and expertise (including experience on the national level) in: (1) Identifying the training and technical assistance needs of an agency or court; (2) developing or participating in the development of a plan to meet those needs; (3) designing, developing and delivering training and technical assistance including recruiting, assigning, and deploying staff with appropriate experience; (4) developing evaluation strategies and providing technical assistance on evaluation methodologies; (5) designing, developing, delivering and evaluating training materials; (6) establishing effective working partnerships with other agencies and organizations; and (7) administering, developing, implementing, managing, and evaluating similar projects. The extent to which each participating organization (including partners and/or subcontractors) possesses the organizational capability to fulfill their assigned roles and functions effectively (if the application involves partnering and/or subcontracting with other agencies/organizations).

(2) The extent to which the applicant's project director and key project staff possess sufficient relevant knowledge, experience and capabilities to implement and manage a project of this size, scope and complexity effectively. The extent to which the role, responsibilities and time commitments of each proposed project staff position, including consultants, subcontractors and/or partners, are clearly defined and appropriate to the successful implementation of the proposed project. The extent to which the author of this proposal will be closely involved throughout the implementation of the proposed project.

(3) The extent to which there is a sound management plan for achieving the objectives of the proposed project on

time and within budget, including clearly defined responsibilities, timelines and milestones for accomplishing project tasks and ensuring quality. The extent to which the plan clearly defines the role and responsibilities of the lead organization. The extent to which the plan clearly describes the effective management and coordination of activities carried out by any partners, subcontractors and consultants (if appropriate). The extent to which there would be a mutually beneficial relationship between the proposed project and other work planned, anticipated or underway with Federal assistance by the applicant.

Criterion 4. Budget and Budget Justification

In reviewing the budget and budget justification, the following factors will be considered: (10 points).

(1) The extent to which the costs of the proposed project are reasonable, in view of the activities to be conducted and expected results and benefits.

(2) The extent to which the applicant's fiscal controls and accounting procedures would ensure prudent use, proper and timely disbursement and accurate accounting of funds received under this program announcement.

2. Review and Selection Process

When the Operations Center receives your application it will be screened to confirm that your application was received by the deadline. Federal staff will verify that you are an eligible applicant and that the application contains all the essential elements. Applications received from ineligible organizations and applications received after the deadline will be withdrawn from further consideration.

A panel of at least three reviewers (primarily experts from outside the Federal government) will use the evaluation criteria described in this announcement to evaluate each application. The reviewers will determine the strengths and weaknesses of each application, provide comments about the strengths and weaknesses and give each application a numerical score.

All applications will be reviewed and evaluated using four major criteria: (1) Objectives and need for assistance, (2) approach, (3) organizational profiles, and (4) budget and budget justification. Each criterion has been assigned a point value. The point values (summing up to 100) indicate the maximum numerical weight each criterion may be given in the review and evaluation process.

Reviewers also are evaluating the project products and materials that you propose. Reviewers will be looking to see that the total budget you propose and the way you have apportioned that budget are appropriate and reasonable for the project you have described. Remember that the reviewers only have the information that you give them—it needs to be clear, complete, and concise.

The results of the competitive review are a primary factor in making funding decisions. In addition, Federal staff conducts administrative reviews of the applications and, in light of the results of the competitive review, will recommend applications for funding to the ACYF Commissioner. ACYF reserves the option of discussing applications with other funding sources when this is in the best interest of the Federal government. ACYF may also solicit and consider comments from ACF Regional Office staff in making funding decisions. ACYF may take into consideration the involvement (financial and/or programmatic) of the private sector, national, or State or community foundations; a favorable balance between Federal and non-Federal funds for the proposed project; or the potential for high benefit from low Federal investment. ACYF may elect not to fund any applicants having known management, fiscal, reporting, programmatic, or other problems which make it unlikely that they would be able to provide effective services or effectively complete the proposed activity.

With the results of the peer review and the information from Federal staff, the Commissioner of ACYF makes the final funding decisions.

Available Funds: Applicants should note that grants to be awarded under this program announcement are subject to the availability of funds. The size of the actual awards will vary. In cases where more applications are approved for funding than ACF can fund with the money available, the Grants Officer shall fund applications in their order of approval until funds run out. In this case, ACF has the option of carrying over the approved applications up to a year for funding consideration in a later competition of the same program. These applications need not be reviewed and scored again if the program's evaluation criteria have not changed. However, they must then be placed in rank order along with other applications in later competitions.

Priority Area 6—National Resource Center for Special Needs Adoption

Purpose: The purpose of establishing the National Resource Center for Special Needs Adoption is to build the capacity of State, local, Tribal, and other publicly administered or publicly supported child welfare agencies and adoption agencies to integrate policy and practice; to develop, expand, strengthen and improve the quality and effectiveness of adoption services for children in the child welfare system; and to implement the Federal legislation administered by the Children's Bureau effectively. This Resource Center is expected to train and assist State agencies and adoption agencies to establish effective interagency cooperation and collaboration that involves all stakeholders, including youth, and promotes public-private partnerships in the coordination of adoption programs for children in the child welfare system. Activities to be conducted by the National Resource Center for Special Needs Adoption will include, but are not limited to the following:

(1) Fostering an understanding, appreciation, and knowledge of special needs adoption resulting in improved outcomes for children and youth in the child welfare system;

(2) Facilitating and assisting efforts of State, local, Tribal, public, and private agencies in the coordinated planning and development of a range of services and supports for the adoption of children from the child welfare system;

(3) Actively engaging in conducting regular and ongoing needs assessments that will be used to identify unmet needs and which also incorporates findings from other statewide needs assessment processes such as the Child and Family Services Review;

(4) Demonstrating a commitment to meaningful stakeholder involvement, especially youth in foster care and those members of other underrepresented or underserved groups;

(5) Providing on-site technical assistance, training and consultation to State and Tribal child welfare agencies;

(6) Supporting States in their Program Improvement Plans resulting from Child and Family Service Reviews;

(7) Promoting professional leadership development of minorities in the adoption field; and developing and disseminating materials, including curricula, guidelines and training materials;

(8) Providing financial support and coordination for the National Association of State Adoption Programs (NASAP). The purpose of this Association is to develop a collegial group of state adoption managers to keep each other informed on the latest program, policy and practice developments and adoption laws, and maintain an efficient, state-of-the-art

adoption services program to increase the numbers of children adopted, to support adoptive families and to remove geographical barriers when placing children across jurisdictions. It is anticipated that NASAP will meet once a year to discuss relevant issues and will include relevant Children's Bureau staff in the meeting;

(9) Coordinating with the Children's Bureau, ACF Regional Offices and State and Tribal agencies in the development of the annual technical assistance and training strategy;

(10) Processing all on-site T/TA requests through the single point of entry established by the NCWRCOI, which will involve the Regional Office staff, the appropriate NRCs or AdoptUSKids, and Children's Bureau staff as needed, as well as any other critical stakeholder, to facilitate an assessment of T/TA needs and a coordinated and immediate response that avoids delays or duplication of effort;

(11) Participating in twice-a-year team meetings of the Training and Technical Assistance Network funded by the Children's Bureau, and the Training and Technical Assistance Coordination Committee;

(12) Collaborating with other ACYF Resource Centers, other agencies in the Department of Health and Human Services and other agents of the Children's Bureau to strengthen TA efforts, avoid duplication and manage resources effectively;

(13) Providing information and cooperation needed by the NCWRCOI as it manages, maintains and updates to improve functionality, when needed, the web-based tracking system for training and technical assistance requests developed for the Children's Bureau to track NRCs responses to T/TA requests from State, local, Tribal and other publicly supported child welfare agencies; and

(14) Providing data needed by the NCWRCOI to evaluate the results and benefits of the technical assistance provided by the National Resource Center.

Expected outcomes include the enhanced capacity of each State agency to:

(1) Develop, support, and maintain a range of services and supports, including post-adoption services, for the adoption of children from the child welfare system;

(2) Conduct interagency needs assessments of required services;

(3) Facilitate special needs adoption program and policy development;

(4) Coordinate the delivery of special needs adoption services;

(5) Promote the meaningful participation of stakeholders in the design and implementation of services; and

(6) Conduct program evaluations.

The goal of the National Resource Center is to help strengthen the capacity of agencies to integrate policy and practice; to develop, expand, strengthen and improve the quality and effectiveness of adoption services for children in the child welfare system; and to implement the Federal legislation administered by the Children's Bureau effectively. This training and technical assistance is intended to build the capacity of State, local, Tribal, and other publicly administered or publicly supported child welfare agencies and adoption agencies. This Resource Center is expected to train and assist State agencies and adoption agencies to establish effective interagency cooperation and collaboration that involves all stakeholders, including youth, and promotes public-private partnerships in the coordination of adoption programs for children in the child welfare system.

Training and technical assistance needs will be identified by NRC staff in collaboration with States, the CB T/TA Coordinating Committee, the National Resource Center for Organizational Improvement, and coordinated with other ongoing national training and technical assistance efforts. The Resource Center will also be actively involved with identifying other training and technical assistance needs based on their work with the other child welfare organizations. The Resource Center will be expected to develop and distribute brochures, technical assistance announcements, articles, and other materials. The Resource Center will be expected to be creative and innovative in responding to questions and requests from state agencies as well as developing new materials on cutting edge issues as they emerge from Federal and state legislation, new regulations and other developments in the child welfare field. Technical assistance outcomes should be achieved through a combination of strategies, including on-site training, on and off-site technical assistance, and consultation with all appropriate stakeholder groups. The Resource Center will be expected to forge strong links with the full range of the Children's Bureau resource centers and support contractors, including joint training and technical assistance presentations and resources development.

II. Award Information

Funding Instrument Type: Cooperative agreement.

Description of Federal Substantial Involvement With Cooperative Agreement: Each National Child Welfare Resource Center will operate under a cooperative agreement. A cooperative agreement is a specific method of awarding Federal assistance in which substantial Federal involvement is anticipated. A cooperative agreement clearly defines the respective responsibilities of the Children's Bureau and the grantee prior to the award. The Children's Bureau anticipates that agency involvement will produce programmatic benefits to the recipient otherwise unavailable to them for carrying out the project. The involvement and collaboration includes Children's Bureau review and approval of planning stages of the activities before implementation phases may begin; Children's Bureau involvement in the establishment of policies and procedures that maximize open competition, and rigorous and impartial development, review and funding of sub-grant or sub-grant activities, if applicable; and Children's Bureau and recipient joint collaboration in the performance of key programmatic activities (*i.e.,* strategic planning, implementation, information technology enhancements, training and technical assistance, publications or products, and evaluation). Close monitoring by the Children's Bureau of the requirements stated in this announcement that limit the grantee's discretion with respect to scope of services offered, organizational structure and management processes, coupled with close Children's Bureau monitoring during performance may, in order to ensure compliance with the intent of this funding, exceed those Federal stewardship responsibilities customary for grant activities.

Anticipated Total Program Funding: The anticipated total for the award under this priority area in FY2004 is $800,000.

Anticipated Number of Awards: It is anticipated that one project will be funded.

Ceiling on Amount of Individual Awards: The grant amount will not exceed $800,000 in the first budget period. An application received that exceeds the upper value of the dollar range specified will be considered "non-responsive" and be returned to the applicant without further review.

Floor of Individual Award Amounts: None.

Average Anticipated Award Amount: $800,000 per budget period.

Project Periods for Awards: This grant will be awarded for a project period of 60 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of the grantee, and a determination that continued funding would be in the best interest of the government.

III. Eligibility Information

1. Eligible Applicants

State governments
County governments
City or township governments
State controlled institutions of higher education
Nonprofits having a 501(c)(3) status with the IRS, other than institutions of higher education
Nonprofits that do not have a 501(c)(3) status with the IRS, other than institutions of higher education
Private institutions of higher education
For-profit organization other than small businesses
Small businesses

Additional Information on Eligibility: Collaborative efforts and interdisciplinary approaches are acceptable. Applications from collaborations must identify a primary applicant responsible for administering the grants.

Non-profit organizations, including faith-based and community organizations are elgible to apply. Proof of non-profit status is any one of the following:

(a) A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS code.

(b) A copy of a currently valid IRS tax exemption certificate.

(c) A statement from a State taxing body, State Attorney General, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals.

(d) A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status.

(e) Any of the items in the subparagraphs immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

2. Cost Sharing or Matching

The grantee must provide at least 10 percent of the total approved cost of the project. The total approved cost is the sum of the Federal share and the non-Federal share. Therefore, a project requesting $800,000 per budget period must include a match of at least $88,889 per budget period. Applicants should provide a letter of commitment verifying the actual amount of the non-Federal share of project costs.

The following example shows how to calculate the required 10% match amount for an $800,000 grant:

$800,000 (Federal share)
divided by .90 (100%–10%)
equals $888,889 (total project cost including match)
minus $800,000 (Federal share)
equals $88,889 (required 10% match)

The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. If approved for funding, grantees will be held accountable for the commitment of non-Federal resources and failure to provide the required amount will result in a disallowance of unmatched Federal funds.

3. Other (If Applicable)

On June 27, 2003, the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires all Federal grant applicants to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*www.Grants.gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you may request a number online at *http://www.dnb.com.*

Applications that exceed the $800,000 per budget period ceiling will be considered non-responsive and will not be eligible for funding under this announcement.

IV. Application and Submission Information

1. Address To Request Application Package

ACYF Operations Center, c/o The Dixon Group, Inc., 118 Q Street, NE., Washington, DC 20002–2132, (866) 796–1591.

2. Content and Form of Application Submission

You may submit your application to us either in electronic or paper format. To submit an application electronically, please use the *www.Grants.gov* apply site. If you use Grants.gov you will be able to download a copy of the application package, complete it off-line, and then upload and submit the application via the Grants.gov site. You may not e-mail an electronic copy of a grant application to us.

Please note the following if you plan to submit your application electronically via Grants.gov.

- Electronic submission is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation. We strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- To use Grants.gov, you, as the applicant, must have a DUNS Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five days to complete the CCR registration.
- You will not receive additional point value because you submit a grant application in paper format.
- You may submit all documents electronically, including all information typically included on the SF424 and all necessary assurances and certifications.
- Your application must comply with any page limitation requirements described in this program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The Administration for Children and Families will retrieve your application from Grants.gov.
- We may request that you provide original signatures on forms at a later date.
- You may access the electronic application for this program on *www.Grants.gov.*
- You must search for the downloadable application package by the CFDA number.

Each application must contain the following items in the order listed:

1. Application for Federal Assistance (Standard Form 424). Follow the instructions below and those that accompany the form.

In Item 5 of Form 424, put DUNS number in "Organizational DUNS:" box.

In Item 5 of Form 424, include name, phone number, and, if available, e-mail and fax numbers of the contact person.

In Item 8 of Form 424, check 'New.'

In Item 10 of Form 424, clearly identify the Catalog of Federal Domestic Assistance (CFDA) program title and number for the program for which funds are being requested as stated in the funding opportunity announcement.

In Item 11 of Form 424, identify the single priority area the application addresses.

In Item 12 of Form 424, identify the specific geographic area to be served.

In Item 14 of Form 424, identify Congressional districts of both the applicant and project.

2. Budget Information Non-Construction Programs (Form 424A) and Budget Justification.

Follow the instructions provided. Note that Federal funds provided to States and services or other resources purchased with Federal funds may not be used to match project grants.

3. Certifications/Assurances. Applicants requesting financial assistance for nonconstruction projects must file the Standard Form 424B, 'Assurances: Non-Construction Programs.' Applicants must sign and return the Standard Form 424B with their applications. Applicants must provide a certification regarding lobbying when applying for an award in excess of $100,000. Applicants must sign and return the certification with their applications.

Applicants must disclose lobbying activities on the Standard Form LLL when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form to report lobbying. Applicants must sign and return the disclosure form, if applicable, with their applications.

Applicants must make the appropriate certification regarding environmental tobacco smoke. By signing and submitting the application, the applicant is providing the certification and need not mail back the certification with the application.

If applicable, applicants must include a completed SPOC certification (Single Point of Contact) with the date of the SPOC contact entered in line 16, page 1 of the Form 424.

Assurances: By signing the "Signature of Authorized Representative" on the SF 424, the applicant is providing a certification and need not mail assurances for completing the following cooperative agreement requirements:

- The applicant will have the project fully functioning within 90 days of the notification of the award.
- The applicant will participate in any evaluation or technical assistance effort supported by ACYF.
- The applicant will submit all required semi-annual and final Financial Status Reports (SF269) and Program Performance Reports in a timely manner, in hard-copy and electronic formats (preferably MS WORD and PDF) as negotiated with the Federal Project Officer.
- The Resource Center Project Director or one key staff member will attend the following meetings in Washington, DC: A meeting with the Federal Project Officer and other ACYF staff within 60 days of receiving the award; two meetings annually, for one to two days each, with Children's Bureau staff and other training and technical assistance partners to plan a national training and technical assistance strategy; one meeting annually to participate in a Children's Bureau grantee meeting with the purpose of disseminating knowledge gained from work with State agencies and courts around child welfare issues.
- In situations where the applicant's organizational position on a particular policy and/or practice might differ from the Federal position, the Federal position will be used to guide the Resource Center activity and will be reflected in all public statements and publications of the Resource Center.
- The applicant will enter into a Cooperative Agreement with the Children's Bureau.
- The Resource Center will work in partnership with the Children's Bureau and the ACF Regional Offices by providing technical assistance to States that have needs identified through one of ACF's review processes.
- The Resource Center will work collaboratively with the other six National Resource Centers and AdoptUSKids.
- The Resource Center will work with the Training and Technical Assistance Coordination Committee, which will be composed of Federal staff from the Children's Bureau and Regional Offices and which will provide direction to the strategic development of the training and technical assistance network.
- The Resource Center will work collaboratively with the CB Clearinghouses and other members of the training and technical assistance network funded by the Children's Bureau in providing training and technical assistance.
- The Resource Center will work directly with the National Child Welfare Resource Center for Organizational Improvement (NCWRCOI), which will serve as a single point of entry for States and Tribes to request onsite training and technical assistance to ensure a coordinated and immediate response.
- The Resource Center will provide evaluation data to the NCWRCOI that addresses both process and outcomes to evaluate the results and benefits of the technical assistance provided.

The Office for Human Research Protections of the U.S. Department of Health and Human Services provides Web site information and policy guidance on the Federal regulations pertaining to protection of human subjects (45 CFR part 46), informed consent, informed consent checklists, confidentiality of personal identification information, data collection procedures, and internal review boards: *http://ohrp.osophs.dhhs.gov/polasur.htm.*

If applicable, applicants must include a completed Form 310, Protection of Human Subjects.

In implementing their projects, grantees are expected to comply with all applicable administrative regulations regarding extent or types of costs. Applicable HHS regulations can be found in 45 CFR part 74 or 92.

4. Project Abstract/Summary (one page maximum). Clearly mark this page with the applicant name as shown on item 5 of the Form 424, identify the competitive grant priority area and the title of the proposed project as shown in item 11 and the service area as shown in item 12 of the Form 424. The summary description should not exceed 300 words.

Care should be taken to produce an abstract/summary that accurately and concisely reflects the proposed project. It should describe the objectives of the project, the approach to be used and the results or benefits expected.

5. Project Description for Evaluation. Applicants should organize their project description according to the Evaluation Criteria described in this priority area announcement providing information that addresses all the components.

6. Proof of non-profit status. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. Any of the following constitutes acceptable proof of such status:

a. A reference to the applicant organization's listing in the Internal

Revenue Services' (IRS) most recent list of tax-exempt organizations described in the IRS Code.

b. A copy of a currently valid IRS tax exemption certificate.

c. A statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals.

d. A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status.

e. Any of the items immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

7. Indirect cost rate agreement. If claiming indirect costs, provide documentation that applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

8. Letters of agreement and memoranda of understanding. If applicable, include a letter of commitment or Memorandum of Understanding from each partner and/or sub-contractor describing their role, detailing specific tasks to be performed, and expressing commitment to participate if the proposed project is funded.

9. Provide a letter of commitment verifying the actual amount of the non-Federal share of project costs.

10. The application limit is 75 pages total including all forms and attachments. Submit one original and two copies.

To be considered for funding, each application must be submitted with the Standard Federal Forms (provided at the end of this announcement or through the electronic links provided) and following the guidance provided. The application must be signed by an individual authorized to act for the applicant organization and to assume responsibility for the obligations imposed by the terms and conditions of the grant award.

To be considered for funding, each applicant must submit one signed original and two additional copies of the application, including all forms and attachments, to the Application Receipt Point specified in the section titled Deadline. The original copy of the application must have original signatures, signed in *black ink.*

The application must be typed, double spaced, printed on only one side, with at least 1/2 inch margins on each side and 1 inch at the top and bottom, using standard 12 Point fonts (such as Times Roman or Courier). Pages must be numbered.

Pages over the page limit stated within this priority area announcement will be removed from the application and will not be reviewed. All copies of an application must be submitted in a single package, and a separate package must be submitted for each priority area. The package must be clearly labeled for the specific priority area it is addressing.

Because each application will be duplicated, do not use or include separate covers, binders, clips, tabs, plastic inserts, maps, brochures, or any other items that cannot be processed easily on a photocopy machine with an automatic feed. Do not bind, clip, staple, or fasten in any way separate subsections of the application, including supporting documentation. Applicants are advised that the copies of the application submitted, not the original, will be reproduced by the Federal government for review. Each copy must be stapled securely in the upper left corner.

Applicants have the option of omitting from application copies (not originals) specific salary rates or amounts for individuals specified in the application budget. The copies may include summary salary information.

Private non-profit organizations are encouraged to submit with their applications the survey located under "Grant Related Documents and Forms" titled "Survey for Private, Non-Profit Grant Applicants."

Please see Section V.1. Criteria, for instructions on preparing the project summary/abstract and the full project description.

3. Submission Dates and Times

The closing time and date for receipt of applications is 4:30 p.m. eastern standard time (e.s.t.) on August 24, 2004. Mailed or handcarried applications received after 4:30 p.m. on the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the following address: ACYF Operations Center, c/o The Dixon Group, Inc., ATTN: Children's Bureau, 118 Q Street, NE., Washington, DC 20002–2132.

Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Applications hand-carried by applicants, applicant couriers, or by other representatives of the applicant shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., e.s.t., at ACYF Operations Center, c/o The Dixon Group, Inc., ATTN: Children's Bureau, 118 Q Street, NE., Washington, DC 20002–2132, between Monday and Friday (excluding Federal holidays). This address must appear on the envelope/package containing the application with the note "ATTN: Children's Bureau." Applicants are cautioned that express/overnight mail services do not always deliver as agreed. ACF cannot accommodate transmission of applications by fax.

Late applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, *etc.*) occur, or when there are widespread disruptions of mail service. Determinations to extend or waive deadline requirements rest with the Chief Grants Management Officer.

Required Forms

What to submit	Required content	Required form or format	When to submit
1. SF424	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	See application due date.
2. SF424A	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	See application due date.
3.a. SF424B	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	See application due date.
3.b. Certification regarding lobbying	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm*	See application due date.

What to submit	Required content	Required form or format	When to submit
3.c. Disclosure of Lobbying Activities (SF–LLL).	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	See application due date.
4. Project Summary/Abstract	Summary of application request.	See instructions in this funding announcement.	See application due date.
5. Project Description	Responsiveness to evaluation criteria.	See instructions in this funding announcement.	See application due date.
6. Proof of non-profit status	See above	See above	See application due date.
7. Indirect cost rate agreement	See above	See above	See application due date.
8. Letters of agreement & MOUs	See above	See above	See application due date.
9. Non-Federal share letter	See above	See above	See application due date.
Total application	See above	Application limit 75 pages total including all forms and attachments. Submit one original and two copies.	See application due date.

Additional Forms

Private, non-profit organizations are encouraged to submit with their applications the additional survey located under "Grant Related Documents and Forms" titled "Survey for Private, Non-Profit Grant Applicants."

What to submit	Required content	Required form or format	When to submit
Survey for Private, Non-Profit Grant Applicants.	Per required form	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.

4. Intergovernmental Review

State Single Point of Contact (SPOC)

This program is covered under Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

As of October 2003, of the most recent SPOC list, the following jurisdictions have elected not to participate in the Executive Order process. Applicants from these jurisdictions or for projects administered by Federally-recognized Indian Tribes need take no action in regard to E.O. 12372: Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington and Wyoming.

Although the jurisdictions listed above no longer participate in the process, entities which have met the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC. All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to differentiate clearly between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Washington, DC 20447.

The official list, including addresses, of the jurisdictions elected to participate in E.O. 12372 can be found on the following URL: *http://www.whitehouse.gov/omb/grants/spoc.html.*

5. Funding Restrictions

Grant awards will not allow reimbursement of pre-award costs.

Construction is not an allowable activity or expenditure under this solicitation.

Federal funds received as a result of this announcement cannot be paid as profit to grantees or sub-grantees, *i.e.*, any amount in excess of allowable direct and indirect costs of the recipient (45 CFR 74.81).

6. Other Submission Requirements

Submission by Mail: An applicant must provide an original application with all attachments, signed by an authorized representative and two copies. The application must be received at the address below by 4:30 p.m. eastern standard time on or before the closing date. Applications should be mailed to: ACYF Operations, The Dixon Group, ATTN: Children's Bureau, 118 Q Street, NE., Washington, DC 20002–2132.

For Hand Delivery: Applicant must provide an original application with all attachments, signed by an authorized representative and two copies. The application must be received at the address below by 4:30 p.m. eastern

standard time on or before the closing date. Applications that are hand delivered will be accepted between the hours of 8 a.m. to 4:30 p.m., Monday through Friday. Applications may be delivered to: ACYF Operations, The Dixon Group, ATTN: Children's Bureau 118 Q Street, NE., Washington, DC 20002–2132. It is strongly recommended that applicants obtain documentation that the application was hand delivered on or before the closing date. Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

Electronic Submission: Please see Section IV. 2. Content and Form of Application Submission, for guidelines and requirements when submitting applications electronically.

Electronic Address Where Applications Will Be Accepted: *www.Grants.gov.*

Address Where Hard Copy Applications Will Be Accepted: Children's Bureau Grant Receipt Point, ACYF Operations Center, c/o The Dixon Group, Inc., 118 Q Street, NE., Washington, DC 20002–2132.

ACYF will not acknowledge receipt of hard copy application submissions.

V. Application Review Information

Refer to Priority Area 1, Section V. Application Review Information, for information on The Paperwork Reduction Act of 1995 (Pub. L.# 104–13) and General Instruction for Preparing Full Project Description.

Specific Evaluation Criteria

The following criteria will be used to review and evaluate each application under this Priority Area. The applicant should address each criterion in the project description. The point values (summing up to 100) indicate the maximum numerical weight each criterion will be accorded in the review process.

Criterion 1. Objectives and Need for Assistance

In reviewing the objectives and need for assistance, the following factors will be considered: (20 points)

(1)The extent to which the applicant demonstrates a clear and thorough understanding of the need for providing coordinated training and technical assistance to public and private child welfare agencies responsible for serving the target population(s), and the goals of the applicable legislative mandates.

(2)The extent to which the training and technical assistance objectives of the project will effectively build the capacity of State, and local public and private agencies to support effective efforts to develop, operate, expand, and enhance initiatives improving outcomes for children, youth and families served by these agencies.

(3)The extent to which the proposed project will produce significant results and benefits, and a high level of customer satisfaction on the part of agencies served and their State and local constituents.

Criterion 2. Approach

In reviewing the approach, the following factors will be considered: (50 points)

(1) The extent to which there is a reasonable timeline for implementing the proposed project, including the activities to be conducted in chronological order, showing a reasonable schedule of accomplishments and target dates and the factors that may accelerate or decelerate the work.

(2) The extent to which the applicant provides a workable plan of action. The extent to which this plan relates to the stated objectives and scope of the project and reflects the intent of the applicable legislative mandates.

(3) The extent to which the applicant describes sound strategies for providing technical assistance and effectively building the capacity of State, and local public and private agencies to fulfill the legislative mandates for the target population effectively. The extent to which the applicant presents a sound plan for effectively and efficiently providing technical assistance to the agencies in the early identification and follow-up of children for whom adoptive placement is the plan, and for distributing effective models for increasing the rate of adoptive placements of children with special needs who are legally free for adoption, including a focus on children over age eight, and siblings, and for providing post-adoption services.

(4) The extent to which the applicant proposes to implement effective strategies to help child welfare and adoption agencies develop an innovative and exemplary adoption program; effective planning, collaboration, and implementation methods; effective service development strategies; effective practice techniques; useful resources such as training curricula and educational materials; and rigorous research and program evaluation components.

(5) The extent to which the applicant describes a sound plan to help child welfare and adoption agencies improve services to underrepresented and over-represented populations, particularly minority families and children in care. The extent to which effective techniques would be used in assessing factors which impede the delivery of culturally appropriate services and strategies to assist agencies in reducing these factors. The extent to which the Resource Center's services, program activities, and materials developed are provided in a manner that is racially and culturally sensitive to the population(s) being served while being inclusive of a range of adoption resources. The extent to which there is a sound approach to develop a national network of professionals in the adoption field to serve as consultants to individuals and agencies that are requesting assistance to ensure that their services are appropriate for racially and culturally diverse target populations.

(6) The extent to which there is a sound plan for assisting agencies in developing adoption practices which are consistent with the anti-discriminatory placement and recruitment provisions of the Multiethnic Placement Act (MEPA), the Inter-Ethnic Adoption Provisions (IEP), and the interjurisdictional provisions of ASFA.

(7) The extent to which the applicant will effectively coordinate its activities with other National Resource Centers, AdoptUSKids, Clearinghouses, other members of the training and technical assistance network funded by the Children's Bureau, and the Training and Technical Assistance Coordination Committee made up of Federal staff from the Children's Bureau and Regional Offices.

(8) The extent to which the applicant describes a sound plan for conducting or providing partial financial support for a two to three day national conference for State adoption specialists that also includes foster care managers and state staff involved in child welfare programs.

(9) The extent to which the applicant describes a sound plan for providing financial support and coordination for the National Association of State Adoption Programs (NASAP), in accordance with the requirements of this funding announcement.

(10) The extent to which the applicant will collaborate effectively with the National Child Welfare Resource Center for Organizational Improvement in assessing training and technical assistance needs and developing and implementing a T/TA work plan in response to requests from States and Tribes for on-site training and technical assistance.

(11) The extent to which the applicant will provide appropriate process and outcome evaluation data to the

NCWRCOI, so it can evaluate the results and benefits of the technical assistance provided.

Criterion 3. Organizational Profiles

In reviewing the organizational profiles, the following factors will be considered: (20 points).

(1) The extent to which the applicant organization and any partnering organizations collectively have sufficient experience and expertise (including experience on the national level) in: (1) Identifying the training and technical assistance needs of an agency or organization; (2) developing or participating in the development of a plan to meet those needs; (3) designing, developing and delivering training and technical assistance including recruiting, assigning, and deploying staff with appropriate experience; (4) developing evaluation strategies and providing technical assistance on evaluation methodologies, (5) designing, developing, delivering and evaluating training materials, (6) establishing effective working partnerships with other agencies and organizations; and (7) administering, developing, implementing, managing, and evaluating similar projects. The extent to which each participating organization (including partners and/or subcontractors) possesses the organizational capability to fulfill their assigned roles and functions effectively (if the application involves partnering and/or subcontracting with other agencies/organizations).

(2) The extent to which the applicant's project director and key project staff possess sufficient relevant knowledge, experience and capabilities to implement and manage a project of this size, scope and complexity effectively. The extent to which the role, responsibilities and time commitments of each proposed project staff position, including consultants, subcontractors and/or partners, are clearly defined and appropriate to the successful implementation of the proposed project. The extent to which the author of this proposal will be closely involved throughout the implementation of the proposed project.

(3) The extent to which there is a sound management plan for achieving the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines and milestones for accomplishing project tasks and ensuring quality. The extent to which the plan clearly defines the role and responsibilities of the lead agency. The extent to which the plan clearly describes the effective management and coordination of activities carried out by any partners, subcontractors and consultants (if appropriate). The extent to which there would be a mutually beneficial relationship between the proposed project and other work planned, anticipated or underway with Federal assistance by the applicant.

Criterion 4. Budget and Budget Justification

In reviewing the budget and budget justification, the following factors will be considered: (10 points).

(1) The extent to which the costs of the proposed project are reasonable, in view of the activities to be conducted and expected results and benefits.

(2) The extent to which the applicant's fiscal controls and accounting procedures would ensure prudent use, proper and timely disbursement and accurate accounting of funds received under this program announcement.

2. Review and Selection Process.

When the Operations Center receives your application it will be screened to confirm that your application was received by the deadline. Federal staff will verify that you are an eligible applicant and that the application contains all the essential elements. Applications received from ineligible organizations and applications received after the deadline will be withdrawn from further consideration.

A panel of at least three reviewers (primarily experts from outside the Federal government) will use the evaluation criteria described in this announcement to evaluate each application. The reviewers will determine the strengths and weaknesses of each application, provide comments about the strengths and weaknesses and give each application a numerical score.

All applications will be reviewed and evaluated using four major criteria: (1) Objectives and need for assistance, (2) approach, (3) organizational profiles, and (4) budget and budget justification. Each criterion has been assigned a point value. The point values (summing up to 100) indicate the maximum numerical weight each criterion may be given in the review and evaluation process.

Reviewers also are evaluating the project products and materials that you propose. Reviewers will be looking to see that the total budget you propose and the way you have apportioned that budget are appropriate and reasonable for the project you have described. Remember that the reviewers only have the information that you give them—it needs to be clear, complete, and concise.

The results of the competitive review are a primary factor in making funding decisions. In addition, Federal staff conducts administrative reviews of the applications and, in light of the results of the competitive review, will recommend applications for funding to the ACYF Commissioner. ACYF reserves the option of discussing applications with other funding sources when this is in the best interest of the Federal government. ACYF may also solicit and consider comments from ACF Regional Office staff in making funding decisions. ACYF may take into consideration the involvement (financial and/or programmatic) of the private sector, national, or State or community foundations; a favorable balance between Federal and non-Federal funds for the proposed project; or the potential for high benefit from low Federal investment. ACYF may elect not to fund any applicants having known management, fiscal, reporting, programmatic, or other problems which make it unlikely that they would be able to provide effective services or effectively complete the proposed activity.

With the results of the peer review and the information from Federal staff, the Commissioner of ACYF makes the final funding decisions.

Available Funds: Applicants should note that grants to be awarded under this program announcement are subject to the availability of funds. The size of the actual awards will vary. In cases where more applications are approved for funding than ACF can fund with the money available, the Grants Officer shall fund applications in their order of approval until funds run out. In this case, ACF has the option of carrying over the approved applications up to a year for funding consideration in a later competition of the same program. These applications need not be reviewed and scored again if the program's evaluation criteria have not changed. However, they must then be placed in rank order along with other applications in later competitions.

Priority Area 7—National Resource Center for Youth Development

Purpose: The purpose of this Cooperative Agreement is to provide financial support for training and technical assistance to promote the purposes of the John H. Chafee Foster Care Independence Program(CFCIP) and the Education and Training Vouchers (ETV) Program, and to achieve the goals of safety, permanency and well-being for youth in the child welfare system. This training and technical assistance is intended to build the capacity of public

and private, non-profit child welfare and youth-serving agencies to:

(1) Foster an understanding, appreciation, and knowledge of positive youth development in order to be effective in improving outcomes for older children and youth in the child welfare system;

(2) Facilitate and assist efforts of State, local, Tribal, public, and private agencies in the coordinated planning and development of a range of services and supports for youth in the child welfare system and those transitioning to self-sufficiency;

(3) Actively engage in conducting regular and ongoing needs assessments that will be used to identify unmet needs and which also incorporates findings from other statewide and local needs assessment processes;

(4) Demonstrate a commitment to meaningful stakeholder involvement, especially current and former foster care youth and those members of other underrepresented or underserved groups;

(5) Provide on-site technical assistance, training and consultation to State and Tribal child welfare and youth-serving agencies;

(6) Plan and implement two annual national conferences: Pathways to Adulthood and Foster Youth Leadership.

(7) Support States and localities in their Program Improvement Plans resulting from Child and Family Service Reviews;

(8) Coordinate with the Children's Bureau, ACF Regional Offices, and State and Tribal agencies in the development of the annual technical assistance and training strategy;

(9) Process all on-site T/TA requests through the single point of entry established by the NCWRCOI, which will involve the Regional Office staff, the appropriate NRCs or AdoptUSKids, and Children's Bureau staff as needed, as well as any other critical stakeholder, to facilitate an assessment of T/TA needs and a coordinated and immediate response that avoids delays or duplication of effort:

(10) Participate in twice-a-year team meetings of the Training and Technical Assistance Network funded by the Children's Bureau, and the Training and Technical Assistance Coordination Committee;

(11) Collaborate with other ACYF Resource Centers, other agencies in the Department of Health and Human Services and other agents of the Children's Bureau to strengthen TA efforts, avoid duplication and manage resources effectively;

(12) Provide information and cooperation needed by the NCWRCOI as it manages, maintains and updates to improve functionality, when needed, the web-based tracking system for training and technical assistance requests developed for the Children's Bureau to track NRCs responses to T/TA requests from State, local, Tribal and other publicly supported child welfare agencies; and

(13) Provide data needed by the NCWRCOI to evaluate the results and benefits of the technical assistance provided by the National Resource Center.

Expected outcomes include the enhanced capacity of each State agency to:

(1) Develop, support, and maintain a range of services and supports to assist youth in making a smoother transition to adulthood and to reduce the likelihood of continued dependency on the adult social welfare system through a focus on positive youth development;

(2) Conduct interagency needs assessments of required services;

(3) Facilitate CFCIP and ETV program and policy development;

(4) Coordinate the delivery of independent living and transitional support services;

(5) Promote the meaningful participation of stakeholders, including youth in the design, implementation and evaluation of funded services; and

(6) Enhance the capacity of the State Independent Living agency to become more active participants in their State's Child and Family Services Review/ Program Improvement Planning processes.

This Resource Center is expected to train and assist State agencies and youth-serving organizations to establish effective interagency cooperation and collaboration that involves all stakeholders, including youth, and promotes public-private partnerships in the coordination of IL and transition support for foster youth programs. Training and technical assistance needs will be identified by agency staff in collaboration with the Training and Technical Assistance Coordination Committee, the National Resource Center for Organizational Improvement and ACYF Central and Regional Office personnel, and coordinated with other ongoing national training and technical assistance efforts. The Resource Center will also be actively involved with identifying other training and technical assistance needs and resources based on their work with the other youth-serving organizations, including ACYF's Family and Youth Services Bureau (FYSB) and their activities *http://www.acf.hhs.gov/programs/fysb/* . Training outcomes should be achieved through a combination of strategies, including on-site training, on and off-site technical assistance, and consultation with all appropriate stakeholder groups.

II. Award Information

Funding Instrument Type: Cooperative agreement.

Description of Federal Substantial Involvement With Cooperative Agreement: Each National Child Welfare Resource Center will operate under a cooperative agreement. A cooperative agreement is a specific method of awarding Federal assistance in which substantial Federal involvement is anticipated. A cooperative agreement clearly defines the respective responsibilities of the Children's Bureau and the grantee prior to the award. The Children's Bureau anticipates that agency involvement will produce programmatic benefits to the recipient otherwise unavailable to them for carrying out the project. The involvement and collaboration includes Children's Bureau review and approval of planning stages of the activities before implementation phases may begin; Children's Bureau involvement in the establishment of policies and procedures that maximize open competition, and rigorous and impartial development, review and funding of sub-grant or sub-grant activities, if applicable; and Children's Bureau and recipient joint collaboration in the performance of key programmatic activities (*i.e.*, strategic planning, implementation, information technology enhancements, training and technical assistance, publications or products, and evaluation). Close monitoring by the Children's Bureau of the requirements stated in this announcement that limit the grantee's discretion with respect to scope of services offered, organizational structure and management processes, coupled with close Children's Bureau monitoring during performance may, in order to ensure compliance with the intent of this funding, exceed those Federal stewardship responsibilities customary for grant activities.

Anticipated Total Program Funding: The anticipated total for the award under this priority area in FY2004 is $800,000.

Anticipated Number of Awards: It is anticipated that one project will be funded.

Ceiling on Amount of Individual Awards: The award amount will not exceed $800,000 in the first budget period. An application received that exceeds the upper value of the dollar

range specified will be considered "non-responsive" and be returned to the applicant without further review.

Floor of Individual Award Amounts: None.

Average Anticipated Award Amount: $800,000 per budget period.

Project Periods for Awards: This grant will be awarded for a project period of 60 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of the grantee, and a determination that continued funding would be in the best interest of the government.

III. Eligibility Information

1. Eligible Applicants

State governments
County governments
City or township governments
State controlled institutions of higher education
Nonprofits having a 501(c)(3) status with the IRS, other than institutions of higher education
Nonprofits that do not have a 501(c)(3) status with the IRS, other than institutions of higher education
Private institutions of higher education
For-profit organization other than small businesses
Small businesses

Additional Information on Eligibility

Collaborative efforts and interdisciplinary approaches are acceptable. Applications from collaborations must identify a primary applicant responsible for administering the grants.

Non-profit organizations, including faith-based and community organizations are elgible to apply. Proof of non-profit status is any one of the following:

(a) A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS code.

(b) A copy of a currently valid IRS tax exemption certificate.

(c) A statement from a State taxing body, State Attorney General, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals.

(d) A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status.

(e) Any of the items in the subparagraphs immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

2. Cost Sharing or Matching

The grantee must provide at least 10 percent of the total approved cost of the project. The total approved cost is the sum of the Federal share and the non-Federal share. Therefore, a project requesting $800,000 per budget period must include a match of at least $88,889 per budget period. Applicants should provide a letter of commitment verifying the actual amount of the non-Federal share of project costs.

The following example shows how to calculate the required 10% match amount for an $800,000 grant:

$800,000 (Federal share)
divided by .90 (100%–10%)
equals $888,889 (total project cost including match)
minus $800,000 (Federal share)
equals $88,889 (required 10% match)

The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. If approved for funding, grantees will be held accountable for the commitment of non-Federal resources and failure to provide the required amount will result in a disallowance of unmatched Federal funds.

3. Other (If Applicable)

On June 27, 2003, the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires all Federal grant applicants to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*www.Grants.gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you may request a number online at *http://www.dnb.com.*

Applications that exceed the $800,000 per budget period ceiling will be considered non-responsive and will not be eligible for funding under this announcement.

IV. Application and Submission Information

1. Address To Request Application Package

ACYF Operations Center, c/o The Dixon Group, Inc., 118 Q Street, NE., Washington, DC 20002–2132, (866) 796–1591.

2. Content and Form of Application Submission

You may submit your application to us either in electronic or paper format. To submit an application electronically, please use the *www.Grants.gov* apply site. If you use Grants.gov you will be able to download a copy of the application package, complete it off-line, and then upload and submit the application via the Grants.gov site. You may not e-mail an electronic copy of a grant application to us.

Please note the following if you plan to submit your application electronically via Grants.gov.

- Electronic submission is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation. We strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- To use Grants.gov, you, as the applicant, must have a DUNS Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five days to complete the CCR registration.
- You will not receive additional point value because you submit a grant application in paper format.
- You may submit all documents electronically, including all information typically included on the SF424 and all necessary assurances and certifications.
- Your application must comply with any page limitation requirements described in this program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The Administration for Children and Families will retrieve your application from Grants.gov.
- We may request that you provide original signatures on forms at a later date.
- You may access the electronic application for this program on *www.Grants.gov*

• You must search for the downloadable application package by the CFDA number.

Each application must contain the following items in the order listed:

1. Application for Federal Assistance (Standard Form 424). Follow the instructions below and those that accompany the form.

In Item 5 of Form 424, put DUNS number in "Organizational DUNS:" box.

In Item 5 of Form 424, include name, phone number, and, if available, e-mail and fax numbers of the contact person.

In Item 8 of Form 424, check 'New.'

In Item 10 of Form 424, clearly identify the Catalog of Federal Domestic Assistance (CFDA) program title and number for the program for which funds are being requested as stated in the funding opportunity announcement.

In Item 11 of Form 424, identify the single priority area the application addresses.

In Item 12 of Form 424, identify the specific geographic area to be served.

In Item 14 of Form 424, identify Congressional districts of both the applicant and project.

2. Budget Information Non-Construction Programs (Form 424A) and Budget Justification.

Follow the instructions provided. Note that Federal funds provided to States and services or other resources purchased with Federal funds may not be used to match project grants.

3. Certifications/Assurances. Applicants requesting financial assistance for nonconstruction projects must file the Standard Form 424B, 'Assurances: Non-Construction Programs.'

Applicants must sign and return the Standard Form 424B with their applications. Applicants must provide a certification regarding lobbying when applying for an award in excess of $100,000. Applicants must sign and return the certification with their applications.

Applicants must disclose lobbying activities on the Standard Form LLL when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form to report lobbying. Applicants must sign and return the disclosure form, if applicable, with their applications.

Applicants must make the appropriate certification regarding environmental tobacco smoke. By signing and submitting the application, the applicant is providing the certification and need not mail back the certification with the application.

If applicable, applicants must include a completed SPOC certification (Single Point of Contact) with the date of the SPOC contact entered in line 16, page 1 of the Form 424.

Assurances: By signing the "Signature of Authorized Representative" on the SF 424, the applicant is providing a certification and need not mail assurances for completing the following cooperative agreement requirements:

• The applicant will have the project fully functioning within 90 days of the notification of the award.

• The applicant will participate in any evaluation or technical assistance effort supported by ACYF.

• The applicant will submit all required semi-annual and final Financial Status Reports (SF269) and Program Performance Reports in a timely manner, in hard-copy and electronic formats (preferably MS WORD and PDF) as negotiated with the Federal Project Officer.

• The Resource Center Project Director or one key staff member will attend the following meetings in Washington, DC: A meeting with the Federal Project Officer and other ACYF staff within 60 days of receiving the award; two meetings annually, for one to two days each, with Children's Bureau staff and other training and technical assistance partners to plan a national training and technical assistance strategy; one meeting annually to participate in a Children's Bureau grantee meeting with the purpose of disseminating knowledge gained from work with State agencies and courts around child welfare issues.

• In situations where the applicant's organizational position on a particular policy and/or practice might differ from the Federal position, the Federal position will be used to guide the Resource Center activity and will be reflected in all public statements and publications of the Resource Center.

• The applicant will enter into a Cooperative Agreement with the Children's Bureau.

• The Resource Center will work in partnership with the Children's Bureau and the ACF Regional Offices by providing technical assistance to States that have needs identified through one of ACF's review processes.

• The Resource Center will work collaboratively with the other six National Resource Centers and AdoptUSKids.

• The Resource Center will work with the Training and Technical Assistance Coordination Committee, which will be composed of Federal staff from the Children's Bureau and Regional Offices and which will provide direction to the strategic development of the training and technical assistance network.

• The Resource Center will work collaboratively with the CB Clearinghouses and other members of the training and technical assistance network funded by the Children's Bureau in providing training and technical assistance.

• The Resource Center will work directly with the National Child Welfare Resource Center for Organizational Improvement (NCWRCOI), which will serve as a single point of entry for States and Tribes to request onsite training and technical assistance to ensure a coordinated and immediate response.

• The Resource Center will provide evaluation data to the NCWRCOI that addresses both process and outcomes to evaluate the results and benefits of the technical assistance provided.

The Office for Human Research Protections of the U.S. Department of Health and Human Services provides Web site information and policy guidance on the Federal regulations pertaining to protection of human subjects (45 CFR part 46), informed consent, informed consent checklists, confidentiality of personal identification information, data collection procedures, and internal review boards: *http://ohrp.osophs.dhhs.gov/polasur.htm.*

If applicable, applicants must include a completed Form 310, Protection of Human Subjects.

In implementing their projects, grantees are expected to comply with all applicable administrative regulations regarding extent or types of costs. Applicable HHS regulations can be found in 45 CFR part 74 or 92.

4. Project Abstract/Summary (one page maximum). Clearly mark this page with the applicant name as shown on item 5 of the Form 424, identify the competitive grant priority area and the title of the proposed project as shown in item 11 and the service area as shown in item 12 of the Form 424. The summary description should not exceed 300 words.

Care should be taken to produce an abstract/summary that accurately and concisely reflects the proposed project. It should describe the objectives of the project, the approach to be used and the results or benefits expected.

5. Project Description for Evaluation. Applicants should organize their project description according to the Evaluation Criteria described in this priority area announcement providing information that addresses all the components.

6. Proof of non-profit status. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the

time of submission. Any of the following constitutes acceptable proof of such status:

a. A reference to the applicant organization's listing in the Internal Revenue Services' (IRS) most recent list of tax-exempt organizations described in the IRS Code.

b. A copy of a currently valid IRS tax exemption certificate.

c. A statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals.

d. A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status.

e. Any of the items immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

7. Indirect cost rate agreement. If claiming indirect costs, provide documentation that applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

8. Letters of agreement and memoranda of understanding. If applicable, include a letter of commitment or Memorandum of Understanding from each partner and/or sub-contractor describing their role, detailing specific tasks to be performed, and expressing commitment to participate if the proposed project is funded.

9. Provide a letter of commitment verifying the actual amount of the non-Federal share of project costs.

10. The application limit is 75 pages total including all forms and attachments. Submit one original and two copies.

To be considered for funding, each application must be submitted with the Standard Federal Forms (provided at the end of this announcement or through the electronic links provided) and following the guidance provided. The application must be signed by an individual authorized to act for the applicant organization and to assume responsibility for the obligations imposed by the terms and conditions of the grant award.

To be considered for funding, each applicant must submit one signed original and two additional copies of the application, including all forms and attachments, to the Application Receipt Point. The original copy of the application must have original signatures, signed in *black* ink.

The application must be typed, double spaced, printed on only one side, with at least ½ inch margins on each side and 1 inch at the top and bottom, using standard 12 Point fonts (such as Times Roman or Courier). Pages must be numbered.

Pages over the page limit stated within this priority area announcement will be removed from the application and will not be reviewed. All copies of an application must be submitted in a single package, and a separate package must be submitted for each priority area. The package must be clearly labeled for the specific priority area it is addressing.

Because each application will be duplicated, do not use or include separate covers, binders, clips, tabs, plastic inserts, maps, brochures, or any other items that cannot be processed easily on a photocopy machine with an automatic feed. Do not bind, clip, staple, or fasten in any way separate subsections of the application, including supporting documentation. Applicants are advised that the copies of the application submitted, not the original, will be reproduced by the Federal government for review. Each copy must be stapled securely in the upper left corner.

Applicants have the option of omitting from application copies (not originals) specific salary rates or amounts for individuals specified in the application budget. The copies may include summary salary information.

Private non-profit organizations are encouraged to submit with their applications the survey located under "Grant Related Documents and Forms" titled "Survey for Private, Non-Profit Grant Applicants."

Please see Section V.1. Criteria, for instructions on preparing the project summary/abstract and the full project description.

3. Submission Dates and Times

The closing time and date for receipt of applications is 4:30 p.m. eastern standard time (e.s.t.) on August 24, 2004. Mailed or handcarried applications received after 4:30 p.m. on the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the following address: ACYF Operations Center, c/o The Dixon Group, Inc., ATTN: Children's Bureau, 118 Q Street, NE., Washington, DC 20002–2132.

Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Applications hand-carried by applicants, applicant couriers, or by other representatives of the applicant shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., e.s.t., at ACYF Operations Center, c/o The Dixon Group, Inc., ATTN: Children's Bureau, 118 Q Street, NE., Washington, DC 20002–2132, between Monday and Friday (excluding Federal holidays). This address must appear on the envelope/package containing the application with the note "ATTN: Children's Bureau." Applicants are cautioned that express/overnight mail services do not always deliver as agreed. ACF cannot accommodate transmission of applications by fax.

Late applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, *etc.*) occur, or when there are widespread disruptions of mail service. Determinations to extend or waive deadline requirements rest with the Chief Grants Management Officer.

Required Forms

What to submit	Required content	Required form or format	When to submit
1. SF424	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm*	See application due date.
2. SF424A	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm*	See application due date.
3.a. SF424B	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm*	See application due date.

What to submit	Required content	Required form or format	When to submit
3.b. Certification regarding lobbying	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm*	See application due date.
3.c. Disclosure of Lobbying Activities (SF–LLL).	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm*	See application due date.
4. Project Summary/Abstract	Summary of application request.	See instructions in this funding announcement.	See application due date.
5. Project Description	Responsiveness to evaluation criteria.	See instructions in this funding announcement.	See application due date.
6. Proof of non-profit status	See above	See above	See application due date.
7. Indirect cost rate agreement	See above	See above	See application due date.
8. Letters of agreement & MOUs	See above	See above	See application due date.
9. Non-Federal share letter	See above	See above	See application due date.
Total application	See above	Application limit 75 pages total including all forms and attachments. Submit one original and two copies.	See application due date.

Additional Forms

Private, non-profit organizations are encouraged to submit with their applications the additional survey located under "Grant Related Documents and Forms" titled "Survey for Private, Non-Profit Grant Applicants."

What to submit	Required content	Required form or format	When to submit
Survey for Private, Non-Profit Grant Applicants.	Per required form	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.

4. Intergovernmental Review

State Single Point of Contact (SPOC)

This program is covered under Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Programs", and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

As of October 2003, of the most recent SPOC list, the following jurisdictions have elected not to participate in the Executive Order process. Applicants from these jurisdictions or for projects administered by Federally-recognized Indian Tribes need take no action in regard to E.O. 12372: Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington and Wyoming.

Although the jurisdictions listed above no longer participate in the process, entities which have met the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC. All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a) (2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to differentiate clearly between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Washington, DC 20447.

The official list, including addresses, of the jurisdictions elected to participate in E.O. 12372 can be found on the following URL: *http://www.whitehouse.gov/omb/grants/spoc.html.*

5. Funding Restrictions

Grant awards will not allow reimbursement of pre-award costs.

Construction is not an allowable activity or expenditure under this solicitation.

Federal funds received as a result of this announcement cannot be paid as profit to grantees or sub-grantees, *i.e.*, any amount in excess of allowable direct and indirect costs of the recipient (45 CFR 74.81).

6. Other Submission Requirements

Submission by Mail: An applicant must provide an original application with all attachments, signed by an authorized representative and two copies. The application must be received at the address below by 4:30 p.m. eastern standard time on or before the closing date. Applications should be mailed to: ACYF Operations, The Dixon Group, ATTN: Children's Bureau, 118 Q Street, NE., Washington, DC 20002–2132.

For Hand Delivery: Applicant must provide an original application with all attachments, signed by an authorized representative and two copies. The application must be received at the address below by 4:30 p.m. eastern standard time on or before the closing date. Applications that are hand delivered will be accepted between the hours of 8 a.m. to 4:30 p.m., Monday through Friday. Applications may be delivered to: ACYF Operations, The Dixon Group, ATTN: Children's Bureau 118 Q Street, NE., Washington, DC 20002–2132. It is strongly recommended that applicants obtain documentation that the application was hand delivered on or before the closing date. Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

Electronic Submission: Please see Section IV. 2. Content and Form of Application Submission, for guidelines and requirements when submitting applications electronically.

Electronic Address Where Applications Will Be Accepted: *www.Grants.gov.*

Address Where Hard Copy Applications Will Be Accepted: Children's Bureau Grant Receipt Point, ACYF Operations Center, c/o The Dixon Group, Inc., 118 Q Street, NE., Washington, DC 20002–2132.

ACYF will not acknowledge receipt of hard copy application submissions.

V. Application Review Information

Refer to Priority Area 1, Section V. Application Review Information, for information on The Paperwork Reduction Act of 1995 (Pub. L. 104–13) and General Instruction for Preparing Full Project Description.

Specific Evaluation Criteria

The following criteria will be used to review and evaluate each application under this Priority Area. The applicant should address each criterion in the project description. The point values (summing up to 100) indicate the maximum numerical weight each criterion will be accorded in the review process.

Criterion 1. Objectives and Need for Assistance

In reviewing the objectives and need for assistance, the following factors will be considered: (20 points)

(1) The extent to which the applicant demonstrates a clear and thorough understanding of the need for providing coordinated training and technical assistance to public and private child welfare and youth-serving agencies responsible for serving the target population(s), and demonstrates a thorough understanding of the goals of the legislative mandates.

(2) The extent to which the training and technical assistance objectives of the project will effectively build the capacity of State, and local public and private agencies to support effective efforts to develop, operate, expand, and enhance initiatives improving outcomes for children, youth and families served by these agencies.

(3) The extent to which the proposed project will produce significant results and benefits, and a high level of customer satisfaction on the part of agencies served and their State and local constituents.

Criterion 2. Approach

In reviewing the approach, the following factors will be considered: (50 points)

(1) The extent to which there is a reasonable timeline for implementing the proposed project, including the activities to be conducted in chronological order, showing a reasonable schedule of accomplishments and target dates and the factors that may accelerate or decelerate the work.

(2) The extent to which the applicant provides a workable plan of action. The extent to which this plan relates to the stated objectives and scope of the project and reflects the intent of the applicable legislative mandates.

(3) The extent to which the applicant describes sound strategies for providing technical assistance and effectively building the capacity of State, and local public and private agencies to fulfill the legislative mandates for the target population effectively. The extent to which the applicant presents a sound plan for effectively and efficiently providing technical assistance to the agencies in the delivery of independent living and youth development services, supports and activities.

(4) The extent to which the applicant proposes to implement sound strategies to help lead agencies effectively (1) develop a successful youth-focused, multi-disciplinary approach to the delivery of independent living and youth development services; (2) provide supports and activities that fulfill the legislative mandates; and (3) meet the objectives of the Child and Family Service Reviews. The extent to which the applicant would implement strategies that will enhance the agency's capacity to promote stakeholder involvement in the planning, implementation, and evaluation of funded programs.

(5) The extent to which the applicant describes a sound plan for promoting: (1) Interagency collaboration and implementation of new procedures for blending funding streams; and (2) management improvement strategies that facilitate interagency coordination as mandated by the CFCIP legislation. The extent to which the applicant will help independent living programs find ways to become more active and effective participants in the Child and Family Service Reviews and Program Improvement Planning processes in their States.

(6) The extent to which the applicant describes a sound plan for implementing two annual national conferences: Pathways to Adulthood and Foster Youth Leadership.

(7) The extent to which the applicant will collaborate effectively with the National Child Welfare Resource Center for Organizational Improvement in assessing training and technical assistance needs and developing and implementing a T/TA work plan in response to requests from States and Tribes for on-site training and technical assistance.

(8) The extent to which the applicant will effectively coordinate its activities with other National Resource Centers, AdoptUSKids, Clearinghouses, other members of the training and technical assistance network funded by the Children's Bureau, FYSB, and the Training and Technical Assistance Coordination Committee made up of Federal staff from the Children's Bureau and Regional Offices.

(9) The extent to which the Resource Center's services, program activities, and materials will be developed and provided in a manner that is racially and culturally sensitive to the population(s) being served.

(10) The extent to which the applicant will provide appropriate process and outcome evaluation data to the NCWRCOI, so it can evaluate the results and benefits of the technical assistance provided.

Criterion 3. Organizational Profiles

In reviewing the organizational profiles, the following factors will be considered: (20 points).

(1) The extent to which the applicant organization and any partnering organizations collectively have sufficient experience and expertise (including experience on the national level) in: (1) Identifying the training and technical assistance needs of an agency or organization; (2) developing or participating in the development of a plan to meet those needs; (3) designing, developing and delivering training and

technical assistance including recruiting, assigning, and deploying staff with appropriate experience; (4) developing evaluation strategies and providing technical assistance on evaluation methodologies, (5) designing, developing, delivering and evaluating training materials, (6) establishing effective working partnerships with other agencies and organizations; and (7) administering, developing, implementing, managing, and evaluating similar projects. The extent to which each participating organization (including partners and/or subcontractors) possesses the organizational capability to fulfill their assigned roles and functions effectively (if the application involves partnering and/or subcontracting with other agencies/organizations.

(2) The extent to which the applicant's project director and key project staff possess sufficient relevant knowledge, experience and capabilities to implement and manage a project of this size, scope and complexity effectively. The extent to which the role, responsibilities and time commitments of each proposed project staff position, including consultants, subcontractors and/or partners, are clearly defined and appropriate to the successful implementation of the proposed project. The extent to which the author of this proposal will be closely involved throughout the implementation of the proposed project.

(3) The extent to which there is a sound management plan for achieving the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines and milestones for accomplishing project tasks and ensuring quality. The extent to which the plan clearly defines the role and responsibilities of the lead agency. The extent to which the plan clearly describes the effective management and coordination of activities carried out by any partners, subcontractors and consultants (if appropriate). The extent to which there would be a mutually beneficial relationship between the proposed project and other work planned, anticipated or underway with Federal assistance by the applicant.

Criterion 4. Budget and Budget Justification

In reviewing the budget and budget justification, the following factors will be considered: (10 points).

(1) The extent to which the costs of the proposed project are reasonable, in view of the activities to be conducted and expected results and benefits.

(2) The extent to which the applicant's fiscal controls and accounting procedures would ensure prudent use, proper and timely disbursement and accurate accounting of funds received under this program announcement.

2. Review and Selection Process

When the Operations Center receives your application it will be screened to confirm that your application was received by the deadline. Federal staff will verify that you are an eligible applicant and that the application contains all the essential elements. Applications received from ineligible organizations and applications received after the deadline will be withdrawn from further consideration.

A panel of at least three reviewers (primarily experts from outside the Federal government) will use the evaluation criteria described in this announcement to evaluate each application. The reviewers will determine the strengths and weaknesses of each application, provide comments about the strengths and weaknesses and give each application a numerical score.

All applications will be reviewed and evaluated using four major criteria: (1) Objectives and need for assistance, (2) approach, (3) organizational profiles, and (4) budget and budget justification. Each criterion has been assigned a point value. The point values (summing up to 100) indicate the maximum numerical weight each criterion may be given in the review and evaluation process.

Reviewers also are evaluating the project products and materials that you propose. Reviewers will be looking to see that the total budget you propose and the way you have apportioned that budget are appropriate and reasonable for the project you have described. Remember that the reviewers only have the information that you give them "it needs to be clear, complete, and concise.

The results of the competitive review are a primary factor in making funding decisions. In addition, Federal staff conducts administrative reviews of the applications and, in light of the results of the competitive review, will recommend applications for funding to the ACYF Commissioner. ACYF reserves the option of discussing applications with other funding sources when this is in the best interest of the Federal government. ACYF may also solicit and consider comments from ACF Regional Office staff in making funding decisions. ACYF may take into consideration the involvement (financial and/or programmatic) of the private sector, national, or State or community foundations; a favorable balance between Federal and non-Federal funds for the proposed project; or the potential for high benefit from low Federal investment. ACYF may elect not to fund any applicants having known management, fiscal, reporting, programmatic, or other problems which make it unlikely that they would be able to provide effective services or effectively complete the proposed activity.

With the results of the peer review and the information from Federal staff, the Commissioner of ACYF makes the final funding decisions.

VI. Award Administration Information

The following Award Administration Information applies to all seven of the Priority Areas in this Funding Announcement.

1. Award Notices

Anticipated Announcement and Award Dates: Applications will be reviewed during the summer of 2004. Grant awards will have a start date no later than September 30, 2004.

Award Notices: Successful applicants will receive a Financial Assistance Award which will set forth the amount of funds granted, the terms and conditions of the grant or cooperative agreement, the effective date of the grant, the budget period for which initial support will be given, the non-Federal share to be provided, and the total project period for which support is contemplated. The Grants Management Office issues the award notice.

The Commissioner will notify organizations in writing when their applications will not be funded. Every effort will be made to notify all unsuccessful applicants as soon as possible after final decisions are made.

2. Administrative and National Policy Requirements

45 CFR Part 74 and 45 CFR Part 92

Conditions of the Cooperative Agreement: Each National Child Welfare Resource Center will operate under a cooperative agreement. A cooperative agreement is a specific method of awarding Federal assistance in which substantial Federal involvement is anticipated. A cooperative agreement clearly defines the respective responsibilities of the Children's Bureau and the grantee prior to the award. The Children's Bureau anticipates that agency involvement will produce programmatic benefits to the recipient otherwise unavailable to them for carrying out the project. The involvement and collaboration includes

Children's Bureau review and approval of planning stages of the activities before implementation phases may begin; Children's Bureau involvement in the establishment of policies and procedures that maximize open competition, and rigorous and impartial development, review and funding of sub-grant or sub-grant activities, if applicable; and Children's Bureau and recipient joint collaboration in the performance of key programmatic activities (*i.e.*, strategic planning, implementation, information technology enhancements, training and technical assistance, publications or products, and evaluation). Close monitoring by the Children's Bureau of the requirements stated in this announcement that limit the grantee's discretion with respect to scope of services offered, organizational structure and management processes, coupled with close Children's Bureau monitoring during performance may, in order to ensure compliance with the intent of this funding, exceed those Federal stewardship responsibilities customary for grant activities.

Faith-based organizations that receive funding may not use Federal financial assistance, including funds, to meet any cost-sharing requirements or to support inherently religious activities, such as worship, religious instruction, or prayer.

3. Reporting

Reporting Requirements: Programmatic Reports and Financial Reports are required semi-annually. All required reports must be submitted in a timely manner, in recommended formats (to be provided), and the final report must also be submitted on disk or electronically using a standard word-processing program.

Within 90 days of project end date, the applicant must submit a copy of the final report and any program products to the National Clearinghouse on Child Abuse and Neglect, 330 C Street, SW., Washington, DC 20447. This is in addition to the standard requirement that the final program report must also be submitted to the Grants Management Specialist and the Federal Project Officer.

VII. Agency Contacts

The following Agency Contacts Information applies to all seven of the Priority Areas in this Funding Announcement.

Program Office Contact

LaChundra Thomas, 330 C St., SW., Washington, DC 20447, 202–205–8252, *lthomas@acf.hhs.gov.*

Grants Management Office Contact

William Wilson, 330 C St, SW., Washington, DC 20447, 202–205–8913; *wwilson@acf.hhs.gov.*

General

The Dixon Group, ACYF Operations Center, 118 Q Street, NE., Washington, DC 20002–2132, Telephone: (866) 796–1591.

VIII. Other Information

The following information applies to all seven of the Priority Areas in this Funding Announcement.

Additional information about this program and its purpose can be located on the following Web sites: *http://www.acf.hhs.gov/programs/cb/; http://www.acf.hhs.gov/programs/fysb/.*

Dated: June 15, 2004.

Joan E. Ohl,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 04–14170 Filed 6–24–04; 8:45 am]

BILLING CODE 4184–01–P

Federal Register

Friday,
June 25, 2004

Part V

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 403, 412, et al.
Medicare Program; Proposed Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2005 Rates; Correction; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 403, 412, 413, 418, 460, 480, 482, 483, 485, and 489

[CMS–1428–CN]

RIN 0938–AL23

Medicare Program; Proposed Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2005 Rates; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Correction of proposed rule.

SUMMARY: This document corrects technical errors that occurred in the proposed rule entitled "Medicare Program; Proposed Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2005 Rates," including technical errors in four of the tables containing the proposed wage index values for FY 2005 (69 FR 28196, May 18, 2004).

FOR FURTHER INFORMATION CONTACT: James Hart, (410) 786–9520.

SUPPLEMENTARY INFORMATION:

I. Background

FR Doc. 04–10932 contains our proposed rule to update the Medicare hospital inpatient prospective payment system for fiscal year (FY) 2005 and to implement a number of changes made by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108–173 (69 FR 28196, May 18, 2004). We have identified a number of technical errors and are correcting them in sections II. and III. of this preamble. These errors include:

- On page 28223, third column, lines 57 through 60, in our discussion of drug-eluting stents under section "b. Coronary Stent Procedures" under item "16. Other DRG Issues," we cited incorrect numbers of cases involving drug-eluting stents in DRGs 526 and 527 from the FY 2003 MedPAR file.
- On page 28224, second column, under section "d. Implantable Cardiac Defibrillators" under item "16. Other DRG Issues," we discussed a request for a national coverage determination (NCD) we had received on potential payment mechanisms to encourage the use of simple, single-lead implantable defibrillators when medically indicated, rather than expensive, technologically complex devices. The proposed rule stated that "The requestor further added that CMS could restrict use of complex defibrillators to patients for whom they are medically necessary, that is, in the population at low-moderate risk for sudden cardiac death." We incorrectly associated this suggestion with the requestor, a manufacturer of defibrillators. CMS staff actually made this suggestion as part of the NCD on implantable defibrillators that is currently being reviewed. We regret any incorrect impression that may have been conveyed to the public regarding the manufacturer.
- In the Addendum of the proposed rule, errors in four of the tables containing wage index values resulted from the inadvertent omission of one of the geographic statistical areas that caused a misalignment of the stated wage index values in the tables for a number of areas.

1. On pages 28525 through 28535, in Table 3A—FY 2005 and 3-Year Average Hourly Wage for Urban Areas, the average hourly wages entries in columns 2 and 3 for 42 geographic areas (the entries for Erie, PA through Greensboro-High Point, NC, the entries for Newark-Union, NJ–PA through New York-Wayne-White Plains, NY–NJ, and the entries for Portland-South Portland-Biddeford, ME through Port St. Lucie-Fort Pierce, FL) are misaligned and, therefore, incorrectly stated. We are publishing the corrected Table 3A in its entirety under section III. of this notice.

2. On page 28539 through 28579, in Table 4A—Wage Index and Capital Geographic Adjustment Factor (GAF) for Urban Areas, we inadvertently omitted four geographic areas. The geographic areas that were inadvertently omitted are as follows:

CBSA 21420, Enid, OK
CBSA 27460, Jamestown, NY
CBSA 29940, Lawrence, KS
CBSA 41140, St. Joseph, MO-KS

In CBSAs 21420 and 27460, all hospitals in these areas maintain their assignment to the geographic areas where they are currently located for the 3-year period, FY 2005, FY 2006, and FY 2007.

In CBSA 29940 and 41140, all hospitals geographically located in these areas are classified as rural under section 401 of the Medicare, Medicaid, and SCHIP [State Children's Health Insurance Program] Balanced Budget Refinement Act of 1999, Public Law 106–554. The areas are assigned the statewide rural-wide wage index values.

We are publishing the corrected Table 4A in its entirety under section III. of this notice.

3. On page 28586, in Table 4C—Wage Index and Capital Geographic Adjustment Factor (GAF) for Hospitals that are Reclassified, we incorrectly included two entries for Wilmington, NC. The first of these two entries should have been for Wilmington, DE.

4. On pages 28589 through 28628, in Table 4G—Pre-Reclassified Wage Index for Urban Areas, due to a misalignment of the CBSA code and urban area with the wage index value, we inadvertently published incorrect wage index values for 195 areas between CBSA 21420 and CBSA 41100. We are publishing the corrected Table 4G in its entirety under section III. of this notice.

We note that as soon as we discovered the errors in these four wage index tables after publication of the May 18, 2004 proposed rule, we posted the corrected tables on the CMS Web site: *www.cms.hhs.gov*. We also notified providers, fiscal intermediaries, and health organizations through the Internet.

- On pages 28663 through 28667, in Table 6A—New Diagnosis Codes, in the row entry for codes 521.06, through 528.79, in the "MDC" column, the MDC designations specifying "PRE" and "3" should have appeared on separate lines. For the convenience of the reader, we are publishing a corrected Table 6A in its entirety under section III. of this notice.
- On pages 28671 through 28674, in Table 6B—New Procedure Codes, we inadvertently omitted some of the MDC and DRG assignments entries in columns 4 and 5 for codes 84.59 through 84.69. For the convenience of the reader, we are publishing the corrected Table 6B in its entirety in section III. of this notice.
- On pages 28768 through 28770, in Table 9B—Hospital Reclassifications and Redesignations by Individual Hospital under Section 508 of Public Law 108–173—FY 2004, we incorrectly stated the "Wage index CBSA 508 Reclassification" entries in column 5 and the "Nearest County" designations identified in column 6 for several areas. The errors resulted from a programming error that occurred during the development of the data file. In section III. of this notice, we are publishing a corrected Table 9B in its entirety to reflect the corrected new (section 508) wage index MSA reclassifications and the identification of the nearest county.
- We are also correcting typographical, formatting, or other errors that appeared on various other pages of the FR document, as cited in sections II. and III. of this notice.

The comment period for the proposed rule ends on July 12, 2004 (69 FR 28196). Accordingly, we are correcting these technical errors in the preamble

language and tables to assist interested parties in their review of the proposed rule. These corrections do not alter the substance of any of the proposals that were contained in the proposed rule.

II. Corrections to Errors in Preamble

In FR Doc. 04–10932 (69 FR 28196, May 18, 2004), make the following corrections:

1. On page 28205, third column, line 17, the figure "522" is corrected to read "518".

2. On page 28212, second column, lines 12 and 13, the phrase "principal diagnosis of extensive third degree burns" is corrected to read "principal or secondary diagnosis of extensive third degree burns".

3. On page 28223, third column, lines 57 through 60, the sentence "There have been a total of 42,356 cases in DRG 526, and 33,179 cases in DRG 527, with adjustments made for transfers to other facilities." is corrected to read "There have been a total of approximately 11,084 cases in DRG 526 and 48,097 cases in DRG 527, with adjustments made for transfers to other facilities."

4. On page 28224, second column, lines 13 through 21, the two sentences "The requestor indicated that, as part of CMS' coverage decisions, CMS could expand the population eligible for implantable defibrillators. The requestor further added that CMS could restrict use of complex defibrillators to patients for whom they are medically necessary, that is in the population at low-moderate risk for sudden cardiac death." are deleted, and the sentence "As part of CMS' coverage decision, we are considering whether to restrict the use of complex defibrillators to patients for whom they are medically necessary; that is, the population at low-moderate risk for sudden cardiac death." is added in their place.

5. On page 28269, second column, line 30, the term "FY 2004" is corrected to read "FY 2005".

6. On page 28272, first column, line 62, the word "leans" is corrected to read "learns."

7. On page 28273, first column, lines 12 and 24, the term "tracheostomy" is corrected to read "tracheostomy".

8. On page 28273, first column, lines 59 and 60, the phrase "FY 2003 GROUPER Version 22.0" is corrected to read "FY 2005 GROUPER Version 22.0."

9. On page 28317, second column, line 40, the date "2003" is corrected to read "2002".

10. On page 28333, first column, line 59, the term "reviewer" is corrected to read "institution".

11. On page 28353, second column, line 56, the phrase "rural area, or from a rural area to" is corrected to read "rural area, or from an urban area to".

12. On page 28353, second column, line 66, the phrase "rural area to another urban area for the" is corrected to read "urban area to another urban area for the".

13. On page 28369, third column, line 41, the term "reviewer" is corrected to read "institution".

III. Corrections to Tables in the Addendum

In FR Doc. 04–10932 (69 FR 28196, May 18, 2004), make the following corrections to the specified tables in the Addendum:

1. On pages 28525 through 28535, Table 3A—FY 2005 and 3-Year Average Hourly Wage for Urban Areas is corrected to read as follows:

TABLE 3A.—FY 2005 AND 3-YEAR* AVERAGE HOURLY WAGE FOR URBAN AREAS

[*Based on the sum of the salaries and hours computed for Federal Fiscal Years 2003, 2004, and 2005]

Urban area	FY 2005 average hourly wage	3-Year average hourly wage
Abilene, TX	20.7192	18.9824
Aguadilla-Isabela-San Sebastián, PR	11.2655	10.7453
Akron, OH	23.8325	22.9962
Albany, GA	29.7233	27.0817
Albany-Schenectady-Troy, NY	22.8339	21.1332
Albuquerque, NM	26.7304	23.7887
Alexandria, LA	21.5523	19.8721
Allentown-Bethlehem-Easton, PA-NJ	25.0787	23.9067
Altoona, PA	22.2721	21.8268
Amarillo, TX	24.2098	22.4647
Ames, IA	24.9835	23.3759
Anchorage, AK	32.0618	30.6014
Anderson, IN	23.0539	22.1872
Anderson, SC	22.8431	21.2369
Ann Arbor, MI	29.0908	27.7788
Anniston-Oxford, AL	20.8110	19.8344
Appleton, WI	23.9687	22.3453
Asheville, NC	24.2317	23.1925
Athens-Clarke County, GA	26.3163	24.7864
Atlanta-Sandy Springs-Marietta, GA	26.0968	24.7895
Atlantic City, NJ	28.1913	26.9178
Auburn-Opelika, AL	21.6392	20.7095
Augusta-Richmond County, GA-SC	24.1049	23.7946
Austin-Round Rock, TX	25.2889	23.8238
Bakersfield, CA	26.4694	24.5972
Baltimore-Towson, MD	26.0377	24.5999
Bangor, ME	26.1851	24.5706
Barnstable Town, MA	31.4568	31.4010
Baton Rouge, LA	21.9357	20.6202
Battle Creek, MI	24.0082	23.1843
Bay City, MI	25.2405	24.2291
Beaumont-Port Arthur, TX	22.5157	20.9402
Bellingham, WA	30.7463	29.4910

TABLE 3A.—FY 2005 AND 3-YEAR* AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

[*Based on the sum of the salaries and hours computed for Federal Fiscal Years 2003, 2004, and 2005]

Urban area	FY 2005 average hourly wage	3-Year average hourly wage
Bend, OR	27.9273	26.2021
Bethesda-Frederick-Gaithersburg, MD	28.9018	27.1525
Billings, MT	23.6440	22.3010
Binghamton, NY	22.3058	20.8442
Birmingham-Hoover, AL	23.9518	22.6209
Bismarck, ND	19.7855	19.3431
Blacksburg-Christiansburg-Radford, VA	21.0452	20.0679
Bloomington, IN	22.6815	21.6305
Bloomington-Normal, IL	23.9217	22.3486
Boise City-Nampa, ID	24.6083	23.0621
Boston-Quincy, MA	30.6248	29.0263
Boulder, CO	26.4802	24.7280
Bowling Green, KY	21.4593	20.8100
Bremerton-Silverdale, WA	27.9620	26.5966
Bridgeport-Stamford-Norwalk, CT	33.8515	32.2888
Bristol, VA	20.9298	19.1025
Brownsville-Harlingen, TX	26.7592	24.2502
Brunswick, GA	31.5173	25.9538
Buffalo-Niagara Falls, NY	24.5833	23.3255
Burlington, NC	23.3479	22.3446
Burlington-South Burlington, VT	24.5519	23.9875
Cambridge-Newton-Framingham, MA	29.4435	27.2369
Camden, NJ	28.0847	26.6655
Canton-Massillon, OH	23.4424	22.2411
Cape Coral-Fort Myers, FL	24.6614	23.8158
Carson City, NV	27.2406	25.0243
Casper, WY	24.4534	23.1390
Cedar Rapids, IA	23.6258	22.2100
Champaign-Urbana, IL	25.0781	24.7625
Charleston, WV	23.3325	21.9766
Charleston-North Charleston, SC	24.6576	23.0430
Charlotte-Gastonia-Concord, NC-SC	25.6333	24.3300
Charlottesville, VA	27.1238	25.4502
Chattanooga, TNGA	24.2726	22.6360
Cheyenne, WY	23.7623	21.9411
Chicago-Naperville-Joliet, IL	28.4445	27.1142
Chico, CA	27.8014	25.3690
Cincinnati-Middletown, OH-KY-IN	25.0591	23.3569
Clarksville, TN-KY	21.1036	20.3476
Cleveland, TN	20.7027	19.6847
Cleveland-Elyria-Mentor, OH	25.4150	23.9998
Coeur d'Alene, ID	24.5700	23.4802
College Station-Bryan, TX	22.3591	21.7365
Colorado Springs, CO	25.7626	24.4544
Columbia, MO	21.9565	21.0526
Columbia, SC	23.8491	22.4081
Columbus, GA-AL	22.9004	21.3117
Columbus, IN	24.9031	23.5191
Columbus, OH	25.6517	24.0771
Corpus Christi, TX	22.7808	21.3078
Corvallis, OR	27.7295	27.6296
Cumberland, MD-WV	22.7893	20.3329
Dallas-Plano-Irving, TX	26.5316	24.9176
Dalton, GA	24.5022	23.5790
Danville, IL	22.1298	21.6265
Danville, VA	23.1139	22.0447
Davenport-Moline-Rock Island, IA-IL	23.0728	21.9290
Dayton, OH	24.5023	23.1075
Decatur, AL	23.4374	22.1047
Decatur, IL	21.2982	20.0769
Deltona-Daytona Beach-Ormond Beach, FL	22.7892	22.0973
Denver-Aurora, CO	28.6847	26.7513
Des Moines, IA	24.4196	22.5843
Detroit-Livonia-Dearborn, MI	27.2854	25.8075
Dothan, AL	19.9523	19.1936
Dover, DE	25.1831	23.7712
Dubuque, IA	22.9987	21.7824
Duluth, MN-WI	27.4696	25.6665

TABLE 3A.—FY 2005 AND 3-YEAR* AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

[*Based on the sum of the salaries and hours computed for Federal Fiscal Years 2003, 2004, and 2005]

Urban area	FY 2005 average hourly wage	3-Year average hourly wage
Durham, NC	27.1096	25.6687
Eau Claire, WI	23.9598	22.4824
Edison, NJ	29.3402	27.5086
El Centro, CA	23.4586	22.4957
Elizabethtown, KY	22.9071	20.9570
Elkhart-Goshen, IN	24.4124	23.7579
Elmira, NY	22.3147	20.8650
El Paso, TX	24.2125	22.8475
Erie, PA	22.8929	21.6426
Essex County, MA	28.0402	26.1158
Eugene-Springfield, OR	28.7902	27.8766
Evansville, IN-KY	22.1001	20.6171
Fairbanks, AK	29.3199	28.0993
Fajardo, PR	10.5531	10.3744
Fargo, ND-MN	24.0221	23.5747
Farmington, NM	21.2164	21.8840
Fayetteville, NC	24.6779	22.5084
Fayetteville-Springdale-Rogers, AR-MO	22.8043	20.8321
Flagstaff, AZ	28.4041	27.6198
Flint, MI	29.4095	27.3393
Florence, AL	20.8152	19.3461
Florence, SC	22.4510	21.3335
Fond du Lac, WI	26.0821	24.1790
Fort Collins-Loveland, CO	26.6637	25.0766
Fort Lauderdale-Pompano Beach-Deerfield Beach, FL	26.7632	25.3385
Fort Smith, AR-OK	21.8487	20.2453
Fort Walton Beach-Crestview-Destin, FL	23.1492	22.6355
Fort Wayne, IN	25.8298	23.9115
Fort Worth-Arlington, TX	25.0153	23.3197
Fresno, CA	28.0138	25.8765
Gadsden, AL	21.2676	20.4740
Gainesville, FL	19.8501	21.8864
Gainesville, GA	25.1968	23.1944
Gary, IN	24.5239	23.3155
Glens Falls, NY	22.3680	20.9769
Goldsboro, NC	23.1243	21.6987
Grand Forks, ND-MN	24.1051	21.9885
Grand Junction, CO	26.1549	24.0220
Grand Rapids-Wyoming, MI	24.8623	23.4427
Great Falls, MT	23.3814	21.9663
Greeley, CO	24.9396	23.3099
Green Bay, WI	25.2440	23.6155
Greensboro-High Point, NC	24.2613	22.8768
Greenville, NC	24.1414	22.5921
Greenville, SC	24.4160	23.4426
Guayama, PR	10.5559	9.9125
Gulfport-Biloxi, MS	23.5390	22.4842
Hagerstown-Martinsburg, MD-WV	25.6718	23.1815
Hanford-Corcoran, CA	24.5762	21.7460
Harrisburg-Carlisle, PA	24.6512	23.0614
Harrisonburg, VA	24.4488	22.6337
Hartford-West Hartford-East Hartford, CT	29.2036	28.2830
Hattiesburg, MS	19.4249	18.4478
Hickory-Lenoir-Morganton, NC	24.9978	22.9254
Hinesville-Fort Stewart, GA	20.3855	19.3480
Holland-Grand Haven, MI	24.9271	23.6522
Honolulu, HI	28.9110	27.6426
Hot Springs, AR	24.4130	22.4838
Houma-Bayou Cane-Thibodaux, LA	20.4523	19.7139
Houston-Baytown-Sugar Land, TX	26.2765	24.3806
Huntington-Ashland, WV-KY-OH	25.1999	24.0420
Huntsville, AL	23.2679	22.2981
Idaho Falls, ID	23.8241	22.0793
Indianapolis, IN	26.5576	24.6427
Iowa City, IA	25.4051	23.7752
Ithaca, NY	25.7515	24.3335
Jackson, MI	24.0606	22.7959
Jackson, MS	21.8345	20.7075

TABLE 3A.—FY 2005 AND 3-YEAR* AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

[* Based on the sum of the salaries and hours computed for Federal Fiscal Years 2003, 2004, and 2005]

Urban area	FY 2005 average hourly wage	3-Year average hourly wage
Jackson, TN	23.4297	22.4121
Jacksonville, FL	25.1358	23.5679
Jacksonville, NC	22.1036	20.7500
Janesville, WI	25.2849	23.7717
Jefferson City, MO	21.9580	21.3716
Johnson City, TN	21.0075	19.8585
Johnstown, PA	22.0755	21.0851
Jonesboro, AR	21.0310	19.4623
Joplin, MO	22.9927	21.5121
Kalamazoo-Portage, MI	28.1681	26.8790
Kankakee-Bradley, IL	27.7396	26.1968
Kansas City, MO-KS	25.3052	23.9705
Kennewick-Richland-Pasco, WA	27.6830	26.9371
Killeen-Temple-Fort Hood, TX	24.4525	23.7215
Kingsport-Bristol, TN-VA	21.7068	20.9083
Kingston, NY	23.3310	22.8485
Knoxville, TN	22.5696	21.8145
Kokomo, IN	23.7604	22.5267
La Crosse, WI-MN	24.4486	23.0910
Lafayette, IN	23.8521	22.6294
Lafayette, LA	21.8711	20.8396
Lake Charles, LA	20.8252	19.5207
Lake County-Kenosha County, IL-WI	27.1905	25.6826
Lakeland, FL	23.5669	22.3605
Lancaster, PA	26.0776	23.4410
Lansing-East Lansing, MI	25.4363	24.0043
Laredo, TX	21.8037	20.4902
Las Cruces, NM	23.0910	21.6543
Las Vegas-Paradise, NV	29.9181	29.0021
Lawrence, KS [1].		
Lawton, OK	21.7250	20.5120
Lebanon, PA	22.5879	21.0978
Lewiston, ID-WA	24.5156	23.4734
Lewiston-Auburn, ME	25.2729	23.3141
Lexington-Fayette, KY	23.8558	21.9407
Lima, OH	24.5295	23.5975
Lincoln, NE	26.8321	25.2305
Little Rock-North Little Rock, AR	23.7449	22.2587
Logan, UT-ID	23.9292	23.2359
Longview, TX	23.1966	21.8904
Longview, WA	26.7652	25.5095
Los Angeles-Long Beach-Glendale, CA Metropolitan Div	30.8382	29.3226
Louisville, KY-IN	24.0460	22.8315
Lubbock, TX	23.1292	21.9599
Lynchburg, VA	23.7883	22.5784
Macon, GA	26.1161	23.3172
Madera, CA	22.4666	21.5471
Madison, WI	27.1443	25.4986
Manchester-Nashua, NH	27.7970	26.1531
Mansfield, OH	24.2494	22.8092
Mayagüez, PR	11.7074	11.2316
McAllen-Edinburg-Pharr, TX	22.6720	21.2111
Medford, OR	27.7639	26.3299
Memphis, TN-MS-AR	24.3194	22.4212
Merced, CA	27.1731	24.6543
Miami-Miami Beach-Kendall, FL	26.4073	24.6105
Michigan City-La Porte, IN	24.5851	23.6069
Midland, TX	24.7346	24.4654
Milwaukee-Waukesha-West Allis, WI	26.5679	24.7859
Minneapolis-St. Paul-Bloomington, MN-WI	29.1136	27.2452
Missoula, MT	25.2650	22.6543
Mobile, AL	21.0774	19.9429
Modesto, CA	31.5679	28.1097
Monroe, LA	20.8428	19.7851
Monroe, MI	25.0193	23.6265
Montgomery, AL	21.8534	19.6944
Morgantown, WV	22.9253	21.5156
Morristown, TN	20.4952	19.5595

TABLE 3A.—FY 2005 AND 3-YEAR* AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

[*Based on the sum of the salaries and hours computed for Federal Fiscal Years 2003, 2004, and 2005]

Urban area	FY 2005 average hourly wage	3-Year average hourly wage
Mount Vernon-Anacortes, WA	27.8164	26.4332
Muncie, IN	22.6476	21.9816
Muskegon-Norton Shores, MI	25.6847	24.0160
Myrtle Beach-Conway-North Myrtle Beach, SC	22.5894	22.0416
Napa, CA	32.9951	30.3948
Naples-Marco Island, FL	27.8495	24.9735
Nashville-Davidson-Murfreesboro, TN	26.5923	24.4382
Newark-Union, NJPA	30.7799	28.6257
New Haven-Milford, CT	31.0966	29.3258
New Orleans-Metairie-Kenner, LA	23.9702	22.5635
New York-Wayne-White Plains, NY-NJ	35.0299	33.8042
Niles-Benton Harbor, MI	23.4564	22.1503
Norwich-New London, CT	30.5636	28.9104
Oakland-Fremont-Hayward, CA	40.0963	37.4101
Ocala, FL	24.1700	23.3534
Ocean City, NJ	28.5014	26.7316
Odessa, TX	25.8218	22.7836
Ogden-Clearfield, UT	24.2790	23.6339
Oklahoma City, OK	23.6748	22.2955
Olympia, WA	29.0091	27.1952
Omaha-Council Bluffs, NE-IA	25.6722	24.3668
Orlando, FL	25.7100	24.0572
Oshkosh-Neenah, WI	23.8900	22.4593
Owensboro, KY	22.2688	20.8069
Oxnard-Thousand Oaks-Ventura, CA	29.2604	27.4878
Palm Bay-Melbourne-Titusville, FL	25.3166	24.4546
Panama City-Lynn Haven, FL	21.4149	20.7673
Parkersburg-Marietta, WV-OH	22.0522	20.3637
Pascagoula, MS	21.0129	20.2767
Pensacola-Ferry Pass-Brent, FL	21.9457	21.2533
Peoria, IL	23.1144	21.7408
Philadelphia, PA	28.6035	26.8410
Phoenix-Mesa-Scottsdale, AZ	26.3143	24.7648
Pine Bluff, AR	22.9353	20.2396
Pittsburgh, PA	22.9852	22.2476
Pittsfield, MA	28.2766	25.8438
Pocatello, ID	25.2790	23.0882
Ponce, PR	13.1955	12.2999
Portland-South Portland-Biddeford, ME	26.6238	24.6954
Portland-Vancouver-Beaverton, OR-WA	29.9284	27.5978
Port St. Lucie-Fort Pierce, FL	26.4924	24.6939
Poughkeepsie-Newburgh-Middletown, NY	29.9575	27.8180
Prescott, AZ	26.0843	24.3852
Providence-New Bedford-Fall River, RI-MA	28.7646	26.9631
Provo-Orem, UT	25.2290	24.3330
Pueblo, CO	23.0560	21.7707
Punta Gorda, FL	24.9044	23.3102
Racine, WI	23.8692	22.5330
Raleigh-Cary, NC	26.4490	23.8614
Rapid City, SD	23.5206	22.0026
Reading, PA	24.1151	22.7873
Redding, CA	31.1709	28.5235
Reno-Sparks, NV	27.5368	26.3026
Richmond, VA	24.7694	23.3257
Riverside-San Bernardino-Ontario, CA	28.9108	27.8355
Roanoke, VA	21.9573	21.1792
Rochester, MN	30.2629	29.1844
Rochester, NY	24.4689	23.3450
Rockford, IL	25.3001	23.8777
Rockingham County-Strafford County, NH	26.9005	25.0922
Rocky Mount, NC	23.7044	22.4921
Rome, GA	23.3383	22.1831
Sacramento-Arden-Arcade-Roseville, CA	30.7769	28.6803
Saginaw-Saginaw Township North, MI	25.9729	24.2444
St. Cloud, MN	26.7982	24.3631
St. George, UT	24.9621	24.0247
St. Joseph, MO-KS[1]	.....	.....
St. Louis, MO-IL	23.8362	22.2550

TABLE 3A.—FY 2005 AND 3-YEAR* AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

[*Based on the sum of the salaries and hours computed for Federal Fiscal Years 2003, 2004, and 2005]

Urban area	FY 2005 average hourly wage	3-Year average hourly wage
Salem, OR	27.7944	25.9246
Salinas, CA	36.6654	35.4103
Salisbury, MD	24.0152	22.6054
Salt Lake City, UT	25.2083	24.4086
San Angelo, TX	21.5431	20.6794
San Antonio, TX	23.7158	21.9397
San Diego-Carlsbad-San Marcos, CA	29.6165	27.7504
Sandusky, OH	23.7799	22.2393
San Francisco-San Mateo-Redwood City, CA	37.8648	35.5059
San Germán-Cabo Rojo, PR	13.8117	13.3968
San Jose-Sunnyvale-Santa Clara, CA	38.2329	35.7808
San Juan-Caguas-Guaynabo, PR	12.2140	11.6037
San Luis Obispo-Paso Robles, CA	29.2883	27.9302
Santa Ana-Anaheim-Irvine, CA	30.5694	28.5166
Santa Barbara-Santa Maria-Goleta, CA	28.2108	26.2466
Santa Cruz-Watsonville, CA	38.8735	34.1822
Santa Fe, NM	28.6906	27.0247
Santa Rosa-Petaluma, CA	34.0679	32.4622
Sarasota-Bradenton-Venice, FL	25.3305	23.9836
Savannah, GA	24.8959	23.4451
Scranton-Wilkes-Barre, PA	22.4217	21.1520
Seattle-Bellevue-Everett, WA	30.2247	28.5300
Sheboygan, WI	23.6199	21.7331
Sherman-Denison, TX	25.3558	23.6878
Shreveport-Bossier City, LA	24.0625	22.4763
Sioux City, IA-NE-SD	23.8643	22.3353
Sioux Falls, SD	24.8121	23.2534
South Bend-Mishawaka, IN-MI	24.8646	23.9958
Spartanburg, SC	23.7540	22.2281
Spokane, WA	28.0624	26.7830
Springfield, IL	23.0154	21.7482
Springfield, MA	26.8243	26.0789
Springfield, MO	22.2360	20.9588
Springfield, OH	23.0371	21.8250
State College, PA	22.3097	21.5709
Stockton, CA	27.8806	26.0627
Suffolk County-Nassau County, NY	34.0869	32.5664
Sumter, SC	21.1891	20.2758
Syracuse, NY	24.9860	23.7102
Tacoma, WA	29.1965	27.4453
Tallahassee, FL	22.8474	21.2591
Tampa-St. Petersburg-Clearwater, FL	23.8900	22.4996
Terre Haute, IN	22.4475	20.9616
Texarkana, TX—Texarkana, AR	22.1678	20.3845
Toledo, OH	25.0701	23.6845
Topeka, KS	23.4381	22.4553
Trenton-Ewing, NJ	27.0639	25.7890
Tucson, AZ	23.5858	22.0873
Tulsa, OK	22.8973	21.5543
Tuscaloosa, AL	21.9743	20.2439
Tyler, TX	25.0645	23.6477
Utica-Rome, NY	21.9234	20.8668
Valdosta, GA	21.9663	20.8793
Vallejo-Fairfield, CA	37.5290	35.5583
Vero Beach, FL	25.0096	24.0705
Victoria, TX	22.3222	20.7461
Vineland-Millville-Bridgeton, NJ	27.8777	26.3280
Virginia Beach-Norfolk-Newport News, VA-NC	23.5054	21.6059
Visalia-Porterville, CA	26.4987	24.4049
Waco, TX	21.4724	20.3429
Warner Robins, GA	22.3821	21.5347
Warren-Farmington Hills-Troy, MI	26.6333	24.9325
Washington-Arlington-Alexandria, DC-VA-MD-WV	29.0848	27.2173
Waterloo-Cedar Falls, IA	22.7467	20.6136
Wausau, WI	25.3575	24.1052
Weirton-Steubenville, WV-OH	21.8008	21.0217
Wenatchee, WA	24.7862	25.4005
West Palm Beach-Boca Raton-Boynton Beach, FL	26.4844	24.6697

TABLE 3A.—FY 2005 AND 3-YEAR* AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

[*Based on the sum of the salaries and hours computed for Federal Fiscal Years 2003, 2004, and 2005]

Urban area	FY 2005 average hourly wage	3-Year average hourly wage
Wheeling, WV-OH	19.6453	18.6517
Wichita, KS	24.9131	23.2912
Wichita Falls, TX	22.0290	20.6773
Williamsport, PA	22.1676	20.8109
Wilmington, DE-MD-NJ	29.2092	27.2898
Wilmington, NC	24.3139	23.5805
Winchester, VA-WV	27.6387	25.3807
Winston-Salem, NC	24.7904	22.9844
Worcester, MA	29.0090	27.6763
Yakima, WA	27.1916	25.8563
Yauco, PR	11.8434	11.5358
York-Hanover, PA	23.4402	22.3569
Youngstown-Warren-Boardman, OH-PA	24.3356	22.4714
Yuba City, CA	27.2687	25.5014
Yuma, AZ	23.5066	21.8745

[1] The new MSA is empty for FY 2005. The hospital(s) in the new MSA received rural status under Section 401 of the Balanced Budget Refinement Act of 1999 (Pub. L. 106–113). The new MSA is assigned the statewide rural wage index (see Table 4B).

2. On pages 28536 through 28538, the title and subtitle of Table 3B are corrected to read as follows:

"Table 3B.—FY 2005 and 3-Year* Average Hourly Wage for Rural Areas

[*Based on the sum of the salaries and hours computed for Federal Fiscal Years 2003, 2004, and 2005.]"

In addition, the column heading for the second column is corrected to read "FY 2005 Average Hourly Wage".

3. On pages 28539 through 28579, Table 4A—Wage Index and Capital Geographic Adjustment Factor (GAF) for Urban Areas, is corrected to read as follows:

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS

CBSA code	Urban area (constituent counties)	Wage index	GAF
10180	Abilene, TX[2]	0.8011	0.8591
	Callahan County, TX		
	Jones County, TX		
	Taylor County, TX		
10380	Aguadilla-Isabela-San Sebastián, PR	0.4285	0.5597
	Aguada Municipio, PR		
	Aguadilla Municipio, PR		
	Añasco Municipio, PR		
	Isabela Municipio, PR		
	Lares Municipio, PR		
	Moca Municipio, PR		
	Rincón Municipio, PR		
	San Sebastián Municipio, PR		
10420	Akron, OH	0.9065	0.9350
	Portage County, OH		
	Summit County, OH		
10500	Albany, GA	1.1306	1.0877
	Baker County, GA		
	Dougherty County, GA		
	Lee County, GA		
	Terrell County, GA		
	Worth County, GA		
10580	Albany-Schenectady-Troy, NY	0.8685	0.9080
	Albany County, NY		
	Rensselaer County, NY		
	Saratoga County, NY		
	Schenectady County, NY		
	Schoharie County, NY		
10740	Albuquerque, NM	1.0167	1.0114
	Bernalillo County, NM		
	Sandoval County, NM		
	Torrance County, NM		
	Valencia County, NM		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index	GAF
10780	Alexandria, LA	0.8198	0.8728
	Grant Parish, LA		
	Rapides Parish, LA		
10900	Allentown-Bethlehem-Easton, PA-NJ	0.9539	0.9682
	Warren County, NJ		
	Carbon County, PA		
	Lehigh County, PA		
	Northampton County, PA		
11020	Altoona, PA	0.8472	0.8927
	Blair County, PA		
11100	Amarillo, TX	0.9209	0.9451
	Armstrong County, TX		
	Carson County, TX		
	Potter County, TX		
	Randall County, TX		
11180	Ames, IA	0.9503	0.9657
	Story County, IA		
11260	Anchorage, AK	1.2195	1.1456
	Anchorage Municipality, AK		
	Matanuska-Susitna Borough, AK		
11300	Anderson, IN	0.8790	0.9155
	Madison County, IN		
11340	Anderson, SC	0.8689	0.9083
	Anderson County, SC		
11460	Ann Arbor, MI	1.1065	1.0718
	Washtenaw County, MI		
11500	Anniston-Oxford, AL	0.7967	0.8559
	Calhoun County, AL		
11540	Appleton, WI [2]	0.9485	0.9644
	Calumet County, WI		
	Outagamie County, WI		
11700	Asheville, NC	0.9217	0.9457
	Buncombe County, NC		
	Haywood County, NC		
	Henderson County, NC		
	Madison County, NC		
12020	Athens-Clarke County, GA	1.0010	1.0007
	Clarke County, GA		
	Madison County, GA		
	Oconee County, GA		
	Oglethorpe County, GA		
12060	Atlanta-Sandy Springs-Marietta, GA [1]	0.9926	0.9949
	Barrow County, GA		
	Bartow County, GA		
	Butts County, GA		
	Carroll County, GA		
	Cherokee County, GA		
	Clayton County, GA		
	Cobb County, GA		
	Coweta County, GA		
	Dawson County, GA		
	DeKalb County, GA		
	Douglas County, GA		
	Fayette County, GA		
	Forsyth County, GA		
	Fulton County, GA		
	Gwinnett County, GA		
	Haralson County, GA		
	Heard County, GA		
	Henry County, GA		
	Jasper County, GA		
	Lamar County, GA		
	Meriwether County, GA		
	Newton County, GA		
	Paulding County, GA		
	Pickens County, GA		
	Pike County, GA		
	Rockdale County, GA		
	Spalding County, GA		
	Walton County, GA		
12100	Atlantic City, NJ	1.0723	1.0490

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index	GAF
	Atlantic County, NJ		
12220	Auburn-Opelika, AL	0.8231	0.8752
	Lee County, AL		
12260	Augusta-Richmond County, GA-SC	0.9169	0.9423
	Burke County, GA		
	Columbia County, GA		
	McDuffie County, GA		
	Richmond County, GA		
	Aiken County, SC		
	Edgefield County, SC		
12420	Austin-Round Rock, TX [1]	0.9619	0.9737
	Bastrop County, TX		
	Caldwell County, TX		
	Hays County, TX		
	Travis County, TX		
	Williamson County, TX		
12540	Bakersfield, CA [2]	1.0440	1.0299
	Kern County, CA		
12580	Baltimore-Towson, MD [1]	0.9904	0.9934
	Anne Arundel County, MD		
	Baltimore County, MD		
	Carroll County, MD		
	Harford County, MD		
	Howard County, MD		
	Queen Anne's County, MD		
	Baltimore City, MD		
12620	Bangor, ME	0.9960	0.9973
	Penobscot County, ME		
12700	Barnstable Town, MA	1.1965	1.1307
	Barnstable County, MA		
12940	Baton Rouge, LA	0.8344	0.8834
	Ascension Parish, LA		
	East Baton Rouge Parish, LA		
	East Feliciana Parish, LA		
	Iberville Parish, LA		
	Livingston Parish, LA		
	Pointe Coupee Parish, LA		
	St. Helena Parish, LA		
	West Baton Rouge Parish, LA		
	West Feliciana Parish, LA		
12980	Battle Creek, MI	0.9132	0.9397
	Calhoun County, MI		
13020	Bay City, MI	0.9601	0.9725
	Bay County, MI		
13140	Beaumont-Port Arthur, TX	0.8564	0.8993
	Hardin County, TX		
	Jefferson County, TX		
	Orange County, TX		
13380	Bellingham, WA	1.1695	1.1132
	Whatcom County, WA		
13460	Bend, OR	1.0623	1.0423
	Deschutes County, OR		
13644	Bethesda-Frederick-Gaithersburg, MD [1]	1.0993	1.0670
	Frederick County, MD		
	Montgomery County, MD		
13740	Billings, MT	0.8993	0.9299
	Carbon County, MT		
	Yellowstone County, MT		
13780	Binghamton, NY	0.8484	0.8935
	Broome County, NY		
	Tioga County, NY		
13820	BirminghamHoover, AL [1]	0.9111	0.9382
	Bibb County, AL		
	Blount County, AL		
	Chilton County, AL		
	Jefferson County, AL		
	St. Clair County, AL		
	Shelby County, AL		
	Walker County, AL		
13900	Bismarck, ND [2]	0.7741	0.8392
	Burleigh County, ND		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index	GAF
	Morton County, ND		
13980	Blacksburg-Christiansburg-Radford, VA [2]	0.8065	0.8631
	Giles County, VA		
	Montgomery County, VA		
	Pulaski County, VA		
	Radford City, VA		
14020	Bloomington, IN [2]	0.8675	0.9072
	Greene County, IN		
	Monroe County, IN		
	Owen County, IN		
14060	Bloomington-Normal, IL	0.9099	0.9374
	McLean County, IL		
14260	Boise City-Nampa, ID	0.9360	0.9557
	Ada County, ID		
	Boise County, ID		
	Canyon County, ID		
	Gem County, ID		
	Owyhee County, ID		
14484	Boston-Quincy, MA [1]	1.1649	1.1102
	Norfolk County, MA		
	Plymouth County, MA		
	Suffolk County, MA		
14500	Boulder, CO	1.0072	1.0049
	Boulder County, CO		
14540	Bowling Green, KY	0.8162	0.8702
	Edmonson County, KY		
	Warren County, KY		
14740	Bremerton-Silverdale, WA	1.0636	1.0431
	Kitsap County, WA		
14860	Bridgeport-Stamford-Norwalk, CT	1.2876	1.1890
	Fairfield County, CT		
14980	Bristol, VA [2]	0.8065	0.8631
	Washington County, VA		
	Bristol City, VA		
15180	Brownsville-Harlingen, TX	1.0178	1.0122
	Cameron County, TX		
15260	Brunswick, GA	1.1988	1.1322
	Brantley County, GA		
	Glynn County, GA		
	McIntosh County, GA		
15380	Buffalo-Niagara Falls, NY [1]	0.9351	0.9551
	Erie County, NY		
	Niagara County, NY		
15500	Burlington, NC	0.8881	0.9219
	Alamance County, NC		
15540	Burlington-South Burlington, VT [2]	0.9469	0.9633
	Chittenden County, VT		
	Franklin County, VT		
	Grand Isle County, VT		
15764	Cambridge-Newton-Framingham, MA [1]	1.1199	1.0806
	Middlesex County, MA		
15804	Camden, NJ [1]	1.0683	1.0463
	Burlington County, NJ		
	Camden County, NJ		
	Gloucester County, NJ		
15940	Canton-Massillon, OH	0.8917	0.9245
	Carroll County, OH		
	Stark County, OH		
15980	Cape Coral-Fort Myers, FL	0.9380	0.9571
	Lee County, FL		
16180	Carson City, NV	1.0362	1.0247
	Carson City, NV		
16220	Casper, WY	0.9367	0.9562
	Natrona County, WY		
16300	Cedar Rapids, IA	0.8987	0.9295
	Benton County, IA		
	Jones County, IA		
	Linn County, IA		
16580	Champaign-Urbana, IL	0.9597	0.9722
	Champaign County, IL		
	Ford County, IL		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index	GAF
	Piatt County, IL		
16620	Charleston, WV	0.8875	0.9215
	Boone County, WV		
	Clay County, WV		
	Kanawha County, WV		
	Lincoln County, WV		
	Putnam County, WV		
16700	Charleston-North Charleston, SC	0.9379	0.9570
	Berkeley County, SC		
	Charleston County, SC		
	Dorchester County, SC		
16740	Charlotte-Gastonia-Concord, NC-SC [1]	0.9750	0.9828
	Anson County, NC		
	Cabarrus County, NC		
	Gaston County, NC		
	Mecklenburg County, NC		
	Union County, NC		
	York County, SC		
16820	Charlottesville, VA	1.0317	1.0216
	Albemarle County, VA		
	Fluvanna County, VA		
	Greene County, VA		
	Nelson County, VA		
	Charlottesville City, VA		
16860	Chattanooga, TN-GA	0.9233	0.9468
	Catoosa County, GA		
	Dade County, GA		
	Walker County, GA		
	Hamilton County, TN		
	Marion County, TN		
	Sequatchie County, TN		
16940	Cheyenne, WY [2]	0.9190	0.9438
	Laramie County, WY		
16974	Chicago-Naperville-Joliet, IL [1]	1.0819	1.0554
	Cook County, IL		
	DeKalb County, IL		
	DuPage County, IL		
	Grundy County, IL		
	Kane County, IL		
	Kendall County, IL		
	McHenry County, IL		
	Will County, IL		
17020	Chico, CA	1.0575	1.0390
	Butte County, CA		
17140	Cincinnati-Middletown, OH-KY-IN [1]	0.9533	0.9678
	Dearborn County, IN		
	Franklin County, IN		
	Ohio County, IN		
	Boone County, KY		
	Bracken County, KY		
	Campbell County, KY		
	Gallatin County, KY		
	Grant County, KY		
	Kenton County, KY		
	Pendleton County, KY		
	Brown County, OH		
	Butler County, OH		
	Clermont County, OH		
	Hamilton County, OH		
	Warren County, OH		
17300	Clarksville, TN-KY	0.8131	0.8679
	Christian County, KY		
	Trigg County, KY		
	Montgomery County, TN		
	Stewart County, TN		
17420	Cleveland, TN [2]	0.7911	0.8517
	Bradley County, TN		
	Polk County, TN		
17460	Cleveland-Elyria-Mentor, OH [1]	0.9667	0.9771
	Cuyahoga County, OH		
	Geauga County, OH		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index	GAF
	Lake County, OH		
	Lorain County, OH		
	Medina County, OH		
17660	Coeur d'Alene, ID	0.9346	0.9547
	Kootenai County, ID		
17780	College Station-Bryan, TX	0.8505	0.8950
	Brazos County, TX		
	Burleson County, TX		
	Robertson County, TX		
17820	Colorado Springs, CO	0.9799	0.9862
	El Paso County, CO		
	Teller County, CO		
17860	Columbia, MO	0.8352	0.8840
	Boone County, MO		
	Howard County, MO		
17900	Columbia, SC	0.9071	0.9354
	Calhoun County, SC		
	Fairfield County, SC		
	Kershaw County, SC		
	Lexington County, SC		
	Richland County, SC		
	Saluda County, SC		
17980	Columbus, GA-AL	0.8711	0.9098
	Russell County, AL		
	Chattahoochee County, GA		
	Harris County, GA		
	Marion County, GA		
	Muscogee County, GA		
18020	Columbus, IN	0.9472	0.9635
	Bartholomew County, IN		
18140	Columbus, OH [1]	0.9757	0.9833
	Delaware County, OH		
	Fairfield County, OH		
	Franklin County, OH		
	Licking County, OH		
	Madison County, OH		
	Morrow County, OH		
	Pickaway County, OH		
	Union County, OH		
18580	Corpus Christi, TX	0.8665	0.9065
	Aransas County, TX		
	Nueces County, TX		
	San Patricio County, TX		
18700	Corvallis, OR	1.0547	1.0371
	Benton County, OR		
19060	Cumberland, MD-WV (MD Hospitals) [2]	0.9248	0.9479
	Allegany County, MD		
	Mineral County, WV		
19060	Cumberland, MD-WV (WV Hospitals)	0.8668	0.9067
	Allegany County, MD		
	Mineral County, WV		
19124	Dallas-Plano-Irving, TX	1.0092	1.0063
	Collin County, TX		
	Dallas County, TX		
	Delta County, TX		
	Denton County, TX		
	Ellis County, TX		
	Hunt County, TX		
	Kaufman County, TX		
	Rockwall County, TX		
19140	Dalton, GA	0.9320	0.9529
	Murray County, GA		
	Whitfield County, GA		
19180	Danville, IL	0.8418	0.8888
	Vermilion County, IL		
19260	Danville, VA	0.8792	0.9156
	Pittsylvania County, VA		
	Danville City, VA		
19340	Davenport-Moline-Rock Island, IA-IL	0.8776	0.9145
	Henry County, IL		
	Mercer County, IL		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index	GAF
	Rock Island County, IL		
	Scott County, IA		
19380	Dayton, OH	0.9322	0.9531
	Greene County, OH		
	Miami County, OH		
	Montgomery County, OH		
	Preble County, OH		
19460	Decatur, AL	0.8915	0.9244
	Lawrence County, AL		
	Morgan County, AL		
19500	Decatur, IL [2]	0.8364	0.8848
	Macon County, IL		
19660	Deltona-Daytona Beach-Ormond Beach, FL	0.8685	0.9080
	Volusia County, FL		
19740	Denver-Aurora, CO [1]	1.0911	1.0615
	Adams County, CO		
	Arapahoe County, CO		
	Broomfield County, CO		
	Clear Creek County, CO		
	Denver County, CO		
	Douglas County, CO		
	Elbert County, CO		
	Gilpin County, CO		
	Jefferson County, CO		
	Park County, CO		
19780	Des Moines, IA	0.9288	0.9507
	Dallas County, IA		
	Guthrie County, IA		
	Madison County, IA		
	Polk County, IA		
	Warren County, IA		
19804	Detroit-Livonia-Dearborn, MI [1]	1.0379	1.0258
	Wayne County, MI		
20020	Dothan, AL [2]	0.7675	0.8343
	Geneva County, AL		
	Henry County, AL		
	Houston County, AL		
20100	Dover, DE [2]	0.9651	0.9760
	Kent County, DE		
20220	Dubuque, IA	0.8748	0.9125
	Dubuque County, IA		
20260	Duluth, MN–WI	1.0449	1.0305
	Carlton County, MN		
	St. Louis County, MN		
	Douglas County, WI		
20500	Durham, NC	1.0312	1.0213
	Chatham County, NC		
	Durham County, NC		
	Orange County, NC		
	Person County, NC		
20740	Eau Claire, WI [2]	0.9485	0.9644
	Chippewa County, WI		
	Eau Claire County, WI		
20764	Edison, NJ [1]	1.1160	1.0781
	Middlesex County, NJ		
	Monmouth County, NJ		
	Ocean County, NJ		
	Somerset County, NJ		
20940	El Centro, CA [2]	1.0440	1.0299
	Imperial County, CA		
21060	Elizabethtown, KY	0.8713	0.9100
	Hardin County, KY		
	Larue County, KY		
21140	Elkhart-Goshen, IN	0.9286	0.9505
	Elkhart County, IN		
21300	Elmira, NY	0.8488	0.8938
	Chemung County, NY		
21340	El Paso, TX	0.9210	0.9452
	El Paso County, TX		
21420	Enid, OK	0.9034	0.9328
	Garfield County, OK		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index	GAF
21500	Erie, PA Erie County, PA	0.8708	0.9096
21604	Essex County, MA Essex County, MA	1.0666	1.0451
21660	Eugene-Springfield, OR Lane County, OR	1.0951	1.0642
21780	Evansville, IN-KY (IN Hospitals) [2] Gibson County, IN Posey County, IN Vanderburgh County, IN Warrick County, IN Henderson County, KY Webster County, KY	0.8675	0.9072
21780	Evansville, IN-KY (KY Hospitals) Gibson County, IN Posey County, IN Vanderburgh County, IN Warrick County, IN Henderson County, KY Webster County, KY	0.8406	0.8879
21820	Fairbanks, AK [2] Fairbanks North Star Borough, AK	1.1761	1.1175
21940	Fajardo, PR Ceiba Municipio, PR Fajardo Municipio, PR Luquillo Municipio, PR	0.4014	0.5352
22020	Fargo, ND-MN [2] Clay County, MN Cass County, ND	0.9340	0.9543
22140	Farmington, NM [2] San Juan County, NM	0.8592	0.9013
22180	Fayetteville, NC Cumberland County, NC Hoke County, NC	0.9387	0.9576
22220	Fayetteville-Springdale-Rogers, AR-MO Benton County, AR Madison County, AR Washington County, AR McDonald County, MO	0.8687	0.9081
22380	Flagstaff, AZ Coconino County, AZ	1.0804	1.0544
22420	Flint, MI Genesee County, MI	1.1187	1.0798
22460	Florence-Muscle Shoals, AL Colbert County, AL Lauderdale County, AL	0.7917	0.8522
22500	Florence, SC Darlington County, SC Florence County, SC	0.8540	0.8976
22540	Fond du Lac, WI Fond du Lac County, WI	0.9921	0.9946
22660	Fort Collins-Loveland, CO Larimer County, CO	1.0214	1.0146
22744	Fort Lauderdale-Pompano Beach [1] Deerfield Beach, FL Broward County, FL	1.0408	1.0278
22900	Fort Smith, AR-OK Crawford County, AR Franklin County, AR Sebastian County, AR Le Flore County, OK Sequoyah County, OK	0.8311	0.8810
23020	Fort Walton Beach-Crestview-Destin, FL Okaloosa County, FL	0.8805	0.9165
23060	Fort Wayne, IN Allen County, IN Wells County, IN Whitley County, IN	0.9825	0.9880
23104	Fort WorthArlington, TX [1] Johnson County, TX	0.9515	0.9665

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index	GAF
	Parker County, TX Tarrant County, TX Wise County, TX		
23420	Fresno, CA Fresno County, CA	1.0656	1.0445
23460	Gadsden, AL Etowah County, AL	0.8182	0.8716
23540	Gainesville, FL[2] Alachua County, FL Gilchrist County, FL	0.8581	0.9005
23580	Gainesville, GA Hall County, GA	0.9584	0.9713
23844	Gary, IN Jasper County, IN Lake County, IN Newton County, IN Porter County, IN	0.9328	0.9535
24020	Glens Falls, NY Warren County, NY Washington County, NY	0.8508	0.8953
24140	Goldsboro, NC Wayne County, NC	0.8796	0.9159
24220	Grand Forks, ND-MN (MN Hospitals)[2] Polk County, MN Grand Forks County, ND	0.9340	0.9543
24220	Grand Forks, ND-MN (ND Hospitals) Polk County, MN Grand Forks County, ND	0.9169	0.9423
24300	Grand Junction, CO Mesa County, CO	0.9949	0.9965
24340	Grand Rapids-Wyoming, MI Barry County, MI Ionia County, MI Kent County, MI Newaygo County, MI	0.9457	0.9625
24500	Great Falls, MT Cascade County, MT	0.8908	0.9239
24540	Greeley, CO Weld County, CO	0.9758	0.9834
24580	Green Bay, WI Brown County, WI Kewaunee County, WI Oconto County, WI	0.9602	0.9726
24660	Greensboro-High Point, NC Guilford County, NC Randolph County, NC Rockingham County, NC	0.9228	0.9465
24780	Greenville, NC Greene County, NC Pitt County, NC	0.9200	0.9445
24860	Greenville, SC Greenville County, SC Laurens County, SC Pickens County, SC	0.9287	0.9506
25020	Guayama, PR Arroyo Municipio, PR Guayama Municipio, PR Patillas Municipio, PR	0.4015	0.5353
25060	Gulfport-Biloxi, MS Hancock County, MS Harrison County, MS Stone County, MS	0.8954	0.9271
25180	Hagerstown-Martinsburg, MD-WV Washington County, MD Berkeley County, WV Morgan County, WV	0.9765	0.9838
25260	Hanford-Corcoran, CA[2] Kings County, CA	1.0440	1.0299
25420	Harrisburg-Carlisle, PA Cumberland County, PA Dauphin County, PA	0.9377	0.9569

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index	GAF
	Perry County, PA		
25500	Harrisonburg, VA	0.9300	0.9515
	Rockingham County, VA		
	Harrisonburg City, VA		
25620	Hattiesburg, MS[2]	0.7665	0.8335
	Forrest County, MS		
	Lamar County, MS		
	Perry County, MS		
25860	Hickory-Lenoir-Morganton, NC	0.9508	0.9660
	Alexander County, NC		
	Burke County, NC		
	Caldwell County, NC		
	Catawba County, NC		
25980	Hinesville-Fort Stewart, GA[2]	0.7774	0.8416
	Liberty County, GA		
	Long County, GA		
26100	Holland-Grand Haven, MI	0.9482	0.9642
	Ottawa County, MI		
26180	Honolulu, HI	1.1018	1.0686
	Honolulu County, HI		
26300	Hot Springs, AR	0.9286	0.9505
	Garland County, AR		
26380	Houma-Bayou Cane-Thibodaux, LA	0.7779	0.8420
	Lafourche Parish, LA		
	Terrebonne Parish, LA		
26420	Houston-Baytown-Sugar Land, TX≤[1]	0.9995	0.9997
	Austin County, TX		
	Brazoria County, TX		
	Chambers County, TX		
	Fort Bend County, TX		
	Galveston County, TX		
	Harris County, TX		
	Liberty County, TX		
	Montgomery County, TX		
	San Jacinto County, TX		
	Waller County, TX		
26580	Huntington-Ashland, WV-KY-OH	0.9585	0.9714
	Boyd County, KY		
	Greenup County, KY		
	Lawrence County, OH		
	Cabell County, WV		
	Wayne County, WV		
26620	Huntsville, AL	0.8861	0.9205
	Limestone County, AL		
	Madison County, AL		
26820	Idaho Falls, ID	0.9062	0.9348
	Bonneville County, ID		
	Jefferson County, ID		
26900	Indianapolis, IN[1]	1.0102	1.0070
	Boone County, IN		
	Brown County, IN		
	Hamilton County, IN		
	Hancock County, IN		
	Hendricks County, IN		
	Johnson County, IN		
	Marion County, IN		
	Morgan County, IN		
	Putnam County, IN		
	Shelby County, IN		
26980	Iowa City, IA	0.9663	0.9768
	Johnson County, IA		
	Washington County, IA		
27060	Ithaca, NY	0.9795	0.9859
	Tompkins County, NY		
27100	Jackson, MI	0.9152	0.9411
	Jackson County, MI		
27140	Jackson, MS	0.8305	0.8806
	Copiah County, MS		
	Hinds County, MS		
	Madison County, MS		
	Rankin County, MS		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index	GAF
	Simpson County, MS		
27180	Jackson, TN	0.8912	0.9242
	Chester County, TN		
	Madison County, TN		
27260	Jacksonville, FL [1]	0.9574	0.9706
	Baker County, FL		
	Clay County, FL		
	Duval County, FL		
	Nassau County, FL		
	St. Johns County, FL		
27340	Jacksonville, NC [2]	0.8587	0.9009
	Onslow County, NC		
27460	Jamestown, NY	0.8180	0.8715
	Chautauqua County, NY		
27500	Janesville, WI	0.9618	0.9737
	Rock County, WI		
27620	Jefferson City, MO	0.8352	0.8840
	Callaway County, MO		
	Cole County, MO		
	Moniteau County, MO		
	Osage County, MO		
27740	Johnson City, TN	0.7991	0.8576
	Carter County, TN		
	Unicoi County, TN		
	Washington County, TN		
27780	Johnstown, PA	0.8397	0.8872
	Cambria County, PA		
27860	Jonesboro, AR	0.8078	0.8640
	Craighead County, AR		
	Poinsett County, AR		
27900	Joplin, MO	0.8746	0.9123
	Jasper County, MO		
	Newton County, MO		
28020	Kalamazoo-Portage, MI	1.0714	1.0484
	Kalamazoo County, MI		
	Van Buren County, MI		
28100	Kankakee-Bradley, IL	1.0551	1.0374
	Kankakee County, IL		
28140	Kansas City, MO–KS [1]	0.9625	0.9742
	Franklin County, KS		
	Johnson County, KS		
	Leavenworth County, KS		
	Linn County, KS		
	Miami County, KS		
	Wyandotte County, KS		
	Bates County, MO		
	Caldwell County, MO		
	Cass County, MO		
	Clay County, MO		
	Clinton County, MO		
	Jackson County, MO		
	Lafayette County, MO		
	Platte County, MO		
	Ray County, MO		
28420	Kennewick-Richland-Pasco, WA	1.0530	1.0360
	Benton County, WA		
	Franklin County, WA		
28660	Killeen-Temple-Fort Hood, TX	0.9301	0.9516
	Bell County, TX		
	Coryell County, TX		
	Lampasas County, TX		
28700	Kingsport-Bristol-Bristol, TN-VA	0.8257	0.8771
	Hawkins County, TN		
	Sullivan County, TN		
	Scott County, VA		
28740	Kingston, NY	0.8874	0.9215
	Ulster County, NY		
28940	Knoxville, TN	0.8585	0.9008
	Anderson County, TN		
	Blount County, TN		
	Knox County, TN		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index	GAF
	Loudon County, TN		
	Union County, TN		
29020	Kokomo, IN	0.9038	0.9331
	Howard County, IN		
	Tipton County, IN		
29100	La Crosse, WI–MN (MN Hospitals) [2]	0.9340	0.9543
	Houston County, MN		
	La Crosse County, WI		
29100	La Crosse, WI–MN (WI Hospitals) [2]	0.9485	0.9644
	Houston County, MN		
	La Crosse County, WI		
29140	Lafayette, IN	0.9073	0.9356
	Benton County, IN		
	Carroll County, IN		
	Tippecanoe County, IN		
29180	Lafayette, LA	0.8319	0.8816
	Lafayette Parish, LA		
	St. Martin Parish, LA		
29340	Lake Charles, LA	0.7921	0.8525
	Calcasieu Parish, LA		
	Cameron Parish, LA		
29404	Lake County-Kenosha County, IL–WI	1.0342	1.0233
	Lake County, IL		
	Kenosha County, WI		
29460	Lakeland, FL.		
	Polk County, FL	0.8964	0.9278
29540	Lancaster, PA	0.9919	0.9944
	Lancaster County, PA		
29620	Lansing-East Lansing, MI	0.9675	0.9776
	Clinton County, MI		
	Eaton County, MI		
	Ingham County, MI		
29700	Laredo, TX	0.8293	0.8797
	Webb County, TX		
29740	Las Cruces, NM	0.8783	0.9150
	Dona Ana County, NM		
29820	Las Vegas-Paradise, NV [1]	1.1380	1.0926
	Clark County, NV		
29940	Lawrence, KS [2]	0.8132	0.8680
	Douglas County, KS		
30020	Lawton, OK	0.8264	0.8776
	Comanche County, OK		
30140	Lebanon, PA	0.8592	0.9013
	Lebanon County, PA		
30300	Lewiston, ID-WA (ID Hospitals) [2]	0.9325	0.9533
	Nez Perce County, ID		
	Asotin County, WA		
30300	Lewiston, ID-WA (WA Hospitals)	1.0340	1.0232
	Nez Perce County, ID		
	Asotin County, WA		
30340	Lewiston-Auburn, ME	0.9613	0.9733
	Androscoggin County, ME		
30460	Lexington-Fayette, KY	0.9074	0.9356
	Bourbon County, KY		
	Clark County, KY		
	Fayette County, KY		
	Jessamine County, KY		
	Scott County, KY		
	Woodford County, KY		
30620	Lima, OH	0.9330	0.9536
	Allen County, OH		
30700	Lincoln, NE	1.0206	1.0141
	Lancaster County, NE		
	Seward County, NE		
30780	Little Rock-North Little Rock, AR	0.9032	0.9327
	Faulkner County, AR		
	Grant County, AR		
	Lonoke County, AR		
	Perry County, AR		
	Pulaski County, AR		
	Saline County, AR		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index	GAF
30860	Logan, UT-ID	0.9102	0.9376
	Franklin County, ID		
	Cache County, UT		
30980	Longview, TX	0.8823	0.9178
	Gregg County, TX		
	Rusk County, TX		
	Upshur County, TX		
31020	Longview, WA [2]	1.0340	1.0232
	Cowlitz County, WA		
31084	Los Angeles-Long Beach-Glendale, CA [1]	1.1730	1.1155
	Los Angeles County, CA		
31140	Louisville, KY-IN [1]	0.9146	0.9407
	Clark County, IN		
	Floyd County, IN		
	Harrison County, IN		
	Washington County, IN		
	Bullitt County, KY		
	Henry County, KY		
	Jefferson County, KY		
	Meade County, KY		
	Nelson County, KY		
	Oldham County, KY		
	Shelby County, KY		
	Spencer County, KY		
	Trimble County, KY		
31180	Lubbock, TX	0.8798	0.9160
	Crosby County, TX		
	Lubbock County, TX		
31340	Lynchburg, VA	0.9048	0.9338
	Amherst County, VA		
	Appomattox County, VA		
	Bedford County, VA		
	Campbell County, VA		
	Bedford City, VA		
	Lynchburg City, VA		
31420	Macon, GA	0.9934	0.9955
	Bibb County, GA		
	Crawford County, GA		
	Jones County, GA		
	Monroe County, GA		
	Twiggs County, GA		
31460	Madera, CA [2]	1.0440	1.0299
	Madera County, CA		
31540	Madison, WI	1.0325	1.0221
	Columbia County, WI		
	Dane County, WI		
	Iowa County, WI		
31700	Manchester-Nashua, NH	1.0573	1.0389
	Hillsborough County, NH		
31900	Mansfield, OH	0.9224	0.9462
	Richland County, OH		
32420	Mayagüez, PR	0.4453	0.5746
	Hormigueros Municipio, PR		
	Mayagüez Municipio, PR		
32580	McAllen-Edinburg-Pharr, TX	0.8624	0.9036
	Hidalgo County, TX		
32780	Medford, OR	1.0561	1.0381
	Jackson County, OR		
32820	Memphis, TN-MS-AR [1]	0.9250	0.9480
	Crittenden County, AR		
	DeSoto County, MS		
	Marshall County, MS		
	Tate County, MS		
	Tunica County, MS		
	Fayette County, TN		
	Shelby County, TN		
	Tipton County, TN		
32900	Merced, CA [2]	1.0440	1.0299
	Merced County, CA		
33124	Miami-Miami Beach-Kendall, FL [1]	1.0045	1.0031
	Miami-Dade County, FL		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index	GAF
33140	Michigan City-La Porte, IN	0.9351	0.9551
	LaPorte County, IN		
33260	Midland, TX	0.9408	0.9591
	Midland County, TX		
33340	Milwaukee-Waukesha-West Allis, WI [1]	1.0106	1.0072
	Milwaukee County, WI		
	Ozaukee County, WI		
	Washington County, WI		
	Waukesha County, WI		
33460	Minneapolis-St. Paul-Bloomington, MN-WI [1]	1.1074	1.0724
	Anoka County, MN		
	Carver County, MN		
	Chisago County, MN		
	Dakota County, MN		
	Hennepin County, MN		
	Isanti County, MN		
	Ramsey County, MN		
	Scott County, MN		
	Sherburne County, MN		
	Washington County, MN		
	Wright County, MN		
	Pierce County, WI		
	St. Croix County, WI		
33540	Missoula, MT	0.9657	0.9764
	Missoula County, MT		
33660	Mobile, AL	0.8017	0.8595
	Mobile County, AL		
33700	Modesto, CA	1.2007	1.1334
	Stanislaus County, CA		
33740	Monroe, LA	0.7928	0.8530
	Ouachita Parish, LA		
	Union Parish, LA		
33780	Monroe, MI	0.9517	0.9667
	Monroe County, MI		
33860	Montgomery, AL	0.8312	0.8811
	Autauga County, AL		
	Elmore County, AL		
	Lowndes County, AL		
	Montgomery County, AL		
34060	Morgantown, WV	0.8720	0.9105
	Monongalia County WV		
	Preston County, WV		
34100	Morristown, TN [2]	0.7911	0.8517
	Grainger County, TN		
	Hamblen County, TN		
	Jefferson County, TN		
34580	Mount Vernon-Anacortes, WA	1.0581	1.0394
	Skagit County, WA		
34620	Muncie, IN [2]	0.8675	0.9072
	Delaware County, IN		
34740	Muskegon-Norton Shores, MI	0.9770	0.9842
	Muskegon County, MI		
34820	Myrtle Beach-Conway-North Myrtle Beach, SC	0.8592	0.9013
	Horry County, SC		
34900	Napa, CA	1.3537	1.2305
	Napa County, CA		
34940	Naples-Marco Island, FL	1.0593	1.0402
	Collier County, FL		
34980	Nashville-Davidson-Murfreesboro, TN	1.0115	1.0079
	Cannon County, TN		
	Cheatham County, TN		
	Davidson County, TN		
	Dickson County, TN		
	Hickman County, TN		
	Macon County, TN		
	Robertson County, TN		
	Rutherford County, TN		
	Smith County, TN		
	Sumner County, TN		
	Trousdale County, TN		
	Williamson County, TN		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index	GAF
	Wilson County, TN		
35084	Newark-Union, NJ-PA [1]	1.1708	1.1140
	Essex County, NJ		
	Hunterdon County, NJ		
	Morris County, NJ		
	Sussex County, NJ		
	Union County, NJ		
	Pike County, PA		
35300	New Haven-Milford, CT	1.1828	1.1218
	New Haven County, CT		
35380	New Orleans-Metairie-Kenner, LA [1]	0.9118	0.9387
	Jefferson Parish, LA		
	Orleans Parish, LA		
	Plaquemines Parish, LA		
	St. Bernard Parish, LA		
	St. Charles Paris, LA		
	St. John the Baptist Parish, LA		
	St. Tammany Parish, LA		
35644	New York-Wayne-White Plains, NY-NJ [1]	1.3324	1.2172
	Bergen County, NJ		
	Hudson County, NJ		
	Passaic County, NJ		
	Bronx County, NY		
	Kings County, NY		
	New York County, NY		
	Putnam County, NY		
	Queens County, NY		
	Richmond County, NY		
	Rockland County, NY		
	Westchester County, NY		
35660	Niles-Benton Harbor, MI	0.8922	0.9249
	Berrien County, MI		
35980	Norwich-New London, CT	1.1625	1.1086
	New London County, CT		
36084	Oakland-Fremont-Hayward, CA [1]	1.5387	1.3433
	Alameda County, CA		
	Contra Costa County, CA		
36100	Ocala, FL	0.9194	0.9441
	Marion County, FL		
36140	Ocean City, NJ	1.0841	1.0569
	Cape May County, NJ		
36220	Odessa, TX	0.9822	0.9878
	Ector County, TX		
36260	Ogden-Clearfield, UT	0.9303	0.9517
	Davis County, UT		
	Morgan County, UT		
	Weber County, UT		
36420	Oklahoma City, OK [1]	0.9005	0.9307
	Canadian County, OK		
	Cleveland County, OK		
	Grady County, OK		
	Lincoln County, OK		
	Logan County, OK		
	McClain County, OK		
	Oklahoma County, OK		
36500	Olympia, WA	1.1034	1.0697
	Thurston County, WA		
36540	Omaha-Council Bluffs, NE-IA	0.9765	0.9838
	Harrison County, IA		
	Mills County, IA		
	Pottawattamie County, IA		
	Cass County, NE		
	Douglas County, NE		
	Sarpy County, NE		
	Saunders County, NE		
	Washington County, NE		
36740	Orlando, FL [1]	0.9779	0.9848
	Lake County, FL		
	Orange County, FL		
	Osceola County, FL		
	Seminole County, FL		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index	GAF
36780	Oshkosh-Neenah, WI [2]	0.9485	0.9644
	Winnebago County, WI		
36980	Owensboro, KY	0.8470	0.8925
	Daviess County, KY		
	Hancock County, KY		
	McLean County, KY		
37100	Oxnard-Thousand Oaks-Ventura, CA	1.1130	1.0761
	Ventura County, CA		
37340	Palm Bay-Melbourne-Titusville, FL	0.9630	0.9745
	Brevard County, FL		
37460	Panama City-Lynn Haven, FL [2]	0.8581	0.9005
	Bay County, FL		
37620	Parkersburg-Marietta, WV-OH (OH Hospitals) [2]	0.8708	0.9096
	Washington County, OH		
	Pleasants County, WV		
	Wirt County, WV		
	Wood County, W		
37620	Parkersburg-Marietta, WV-OH (WV Hospitals)	0.8388	0.8866
	Washington County, OH		
	Pleasants County, WV		
	Wirt County, WV		
	Wood County, WV		
37700	Pascagoula, MS	0.7993	0.8578
	George County, MS		
	Jackson County, MS		
37860	Pensacola-Ferry Pass-Brent, FL [2]	0.8581	0.9005
	Escambia County, FL		
	Santa Rosa County, FL		
37900	Peoria, IL	0.8853	0.9200
	Marshall County, IL		
	Peoria County, IL		
	Stark County, IL		
	Tazewell County, IL		
	Woodford County, IL		
37964	Philadelphia, PA [1]	1.0880	1.0595
	Bucks County, PA		
	Chester County, PA		
	Delaware County, PA		
	Montgomery County, PA		
	Philadelphia County, PA		
38060	Phoenix-Mesa-Scottsdale, AZ [1]	1.0009	1.0006
	Maricopa County, AZ		
	Pinal County, AZ		
38220	Pine Bluff, AR	0.8724	0.9108
	Cleveland County, AR		
	Jefferson County, AR		
	Lincoln County, AR		
38300	Pittsburgh, PA [1]	0.8743	0.9121
	Allegheny County, PA		
	Armstrong County, PA		
	Beaver County, PA		
	Butler County, PA		
	Fayette County, PA		
	Washington County, PA		
	Westmoreland County, PA		
38340	Pittsfield, MA	1.0756	1.0512
	Berkshire County, MA		
38540	Pocatello, ID	0.9615	0.9735
	Bannock County, ID		
	Power County, ID		
38660	Ponce, PR	0.5019	0.6237
	Juana Díaz Municipio, PR		
	Ponce Municipio, PR		
	Villalba Municipio, PR		
38860	Portland-South Portland-Biddeford, ME	1.0127	1.0087
	Cumberland County, ME		
	Sagadahoc County, ME		
	York County, ME		
38900	Portland-Vancouver-Beaverton, OR-WA [1]	1.1384	1.0928
	Clackamas County, OR		
	Columbia County, OR		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index	GAF
	Multnomah County, OR		
	Washington County, OR		
	Yamhill County, OR		
	Clark County, WA		
	Skamania County, WA		
38940	Port St. Lucie-Fort Pierce, FL	1.0117	1.0080
	Martin County, FL		
	St. Lucie County, FL		
39100	Poughkeepsie-Newburgh-Middletown, NY	1.1395	1.0935
	Dutchess County, NY		
	Orange County, NY		
39140	Prescott, AZ	0.9922	0.9947
	Yavapai County, AZ		
39300	Providence-New Bedford-Fall River, RI-MA [1]	1.0941	1.0635
	Bristol County, MA		
	Bristol County, RI		
	Kent County, RI		
	Newport County, RI		
	Providence County, RI		
	Washington County, RI		
39340	ProvoOrem, UT	0.9762	0.9836
	Juab County, UT		
	Utah County, UT		
39380	Pueblo, CO [2]	0.9374	0.9567
	Pueblo County, CO		
39460	Punta Gorda, FL	0.9473	0.9636
	Charlotte County, FL		
39540	Racine, WI [2]	0.9485	0.9644
	Racine County, WI		
39580	RaleighCary, NC	1.0060	1.0041
	Franklin County, NC		
	Johnston County, NC		
	Wake County, NC		
39660	Rapid City, SD	0.8947	0.9266
	Meade County, SD		
	Pennington County, SD		
39740	Reading, PA	0.9173	0.9426
	Berks County, PA		
39820	Redding, CA	1.1856	1.1237
	Shasta County, CA		
39900	Reno-Sparks, NV	1.0474	1.0322
	Storey County, NV		
	Washoe County, NV		
40060	Richmond, VA [1]	0.9422	0.9600
	Amelia County, VA		
	Caroline County, VA		
	Charles City County, VA		
	Chesterfield County, VA		
	Cumberland County, VA		
	Dinwiddie County, VA		
	Goochland County, VA		
	Hanover County, VA		
	Henrico County, VA		
	King and Queen County, VA		
	King William County, VA		
	Louisa County, VA		
	New Kent County, VA		
	Powhatan County, VA		
	Prince George County, VA		
	Sussex County, VA		
	Colonial Heights City, VA		
	Hopewell City, VA		
	Petersburg City, VA		
	Richmond City, VA		
40140	Riverside-San Bernardino-Ontario, CA [1]	1.0997	1.0672
	Riverside County, CA		
	San Bernardino County, CA		
40220	Roanoke, VA	0.8390	0.8867
	Botetourt County, VA		
	Craig County, VA		
	Franklin County, VA		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index	GAF
	Roanoke County, VA		
	Roanoke City, VA		
	Salem City, VA		
40340	Rochester, MN	1.1511	1.1012
	Dodge County, MN		
	Olmsted County, MN		
	Wabasha County, MN		
40380	Rochester, NY [1]	0.9307	0.9520
	Livingston County, NY		
	Monroe County, NY		
	Ontario County, NY		
	Orleans County, NY		
	Wayne County, NY		
40420	Rockford, IL	0.9623	0.9740
	Boone County, IL		
	Winnebago County, IL		
40484	Rockingham County-Strafford County, NH	1.0232	1.0158
	Rockingham County, NH		
	Strafford County, NH		
40580	Rocky Mount, NC	0.9016	0.9315
	Edgecombe County, NC		
	Nash County, NC		
40660	Rome, GA	0.8877	0.9217
	Floyd County, GA		
40900	Sacramento-Arden-Arcade-Roseville, CA [1]	1.1709	1.1141
	El Dorado County, CA		
	Placer County, CA		
	Sacramento County, CA		
	Yolo County, CA		
40980	Saginaw-Saginaw Township North, MI	0.9879	0.9917
	Saginaw County, MI		
41060	St. Cloud, MN	1.0193	1.0132
	Benton County, MN		
	Stearns County, MN		
41100	St. George, UT	0.9495	0.9651
	Washington County, UT		
41140	St. Joseph, MO-KS (MO Hospitals) [2]	0.8011	0.8591
	Doniphan County, KS		
	Andrew County, MO		
	Buchanan County, MO		
	DeKalb County, MO		
41140	St. Joseph, MO–KS (KS Hospitals) [2]	0.8132	0.8680
	Doniphan County, KS		
	Andrew County, MO		
	Buchanan County, MO		
	DeKalb County, MO		
41180	St. Louis, MO-IL	0.9067	0.9351
	Bond County, IL		
	Calhoun County, IL		
	Clinton County, IL		
	Jersey County, IL		
	Macoupin County, IL		
	Madison County, IL		
	Monroe County, IL		
	St. Clair County, IL		
	Crawford County, MO		
	Franklin County, MO		
	Jefferson County, MO		
	Lincoln County, MO		
	St. Charles County, MO		
	St. Louis County, MO		
	Warren County, MO		
	Washington County, MO		
	St. Louis City, MO		
41420	Salem, OR	1.0572	1.0388
	Marion County, OR		
	Polk County, OR		
41500	Salinas, CA	1.3946	1.2558
	Monterey County, CA		
41540	Salisbury, MD [2]	0.9248	0.9479
	Somerset County, MD		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index	GAF
	Wicomico County, MD		
41620	Salt Lake City, UT	0.9588	0.9716
	Salt Lake County, UT		
	Summit County, UT		
	Tooele County, UT		
41660	San Angelo, TX	0.8194	0.8725
	Irion County, TX		
	Tom Green County, TX		
41700	San Antonio, TX [1]	0.9021	0.9319
	Atascosa County, TX		
	Bandera County, TX		
	Bexar County, TX		
	Comal County, TX		
	Guadalupe County, TX		
	Kendall County, TX		
	Medina County, TX		
	Wilson County, TX		
41740	San Diego-Carlsbad-San Marcos, CA [1]	1.1265	1.0850
	San Diego County, CA		
41780	Sandusky, OH	0.9045	0.9336
	Erie County, OH		
41884	San Francisco-San Mateo-Redwood City, CA [1]	1.4403	1.2838
	Marin County, CA		
	San Francisco County, CA		
	San Mateo County, CA		
41900	San Germán-Cabo Rojo, PR	0.5254	0.6436
	Cabo Rojo Municipio, PR		
	Lajas Municipio, PR		
	Sabana Grande Municipio, PR		
	San Germán Municipio, PR		
41940	San Jose-Sunnyvale-Santa Clara, CA [1]	1.4543	1.2924
	San Benito County, CA		
	Santa Clara County, CA		
41980	San Juan-Caguas-Guaynabo, PR [1]	0.4646	0.5916
	Aguas Buenas Municipio, PR		
	Aibonito Municipio, PR		
	Arecibo Municipio, PR		
	Barceloneta Municipio, PR		
	Barranquitas Municipio, PR		
	Bayamón Municipio, PR		
	Caguas Municipio, PR		
	Camuy Municipio, PR		
	Canóvanas Municipio, PR		
	Carolina Municipio, PR		
	Cataño Municipio, PR		
	Cayey Municipio, PR		
	Ciales Municipio, PR		
	Cidra Municipio, PR		
	Comerío Municipio, PR		
	Corozal Municipio, PR		
	Dorado Municipio, PR		
	Florida Municipio, PR		
	Guaynabo Municipio, PR		
	Gurabo Municipio, PR		
	Hatillo Municipio, PR		
	Humacao Municipio, PR		
	Juncos Municipio, PR		
	Las Piedras Municipio, PR		
	Loíza Municipio, PR		
	Manatí Municipio, PR		
	Maunabo Municipio, PR		
	Morovis Municipio, PR		
	Naguabo Municipio, PR		
	Naranjito Municipio, PR		
	Orocovis Municipio, PR		
	Quebradillas Municipio, PR		
	Río Grande Municipio, PR		
	San Juan Municipio, PR		
	San Lorenzo Municipio, PR		
	Toa Alta Municipio, PR		
	Toa Baja Municipio, PR		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index	GAF
	Trujillo Alto Municipio, PR Vega Alta Municipio, PR Vega Baja Municipio, PR Yabucoa Municipio, PR		
42020	San Luis Obispo-Paso Robles, CA San Luis Obispo County, CA	1.1140	1.0767
42044	Santa Ana-Anaheim-Irvine, CA [1] Orange County, CA	1.1728	1.1153
42060	Santa Barbara-Santa Maria-Goleta, CA Santa Barbara County, CA	1.0731	1.0495
42100	Santa Cruz-Watsonville, CA Santa Cruz County, CA	1.4786	1.3071
42140	Santa Fe, NM Santa Fe County, NM	1.0913	1.0617
42220	Santa Rosa-Petaluma, CA Sonoma County, CA	1.2958	1.1942
42260	Sarasota-Bradenton-Venice, FL Manatee County, FL Sarasota County, FL	0.9635	0.9749
42340	Savannah, GA Bryan County, GA Chatham County, GA Effingham County, GA	0.9470	0.9634
42540	Scranton-Wilkes-Barre, PA Lackawanna County, PA Luzerne County, PA Wyoming County, PA	0.8529	0.8968
42644	Seattle-Bellevue-Everett, WA [1] King County, WA Snohomish County, WA	1.1497	1.1002
43100	Sheboygan, WI [2] Sheboygan County, WI	0.9485	0.9644
43300	Sherman-Denison, TX Grayson County, TX	0.9645	0.9756
43340	Shreveport-Bossier City, LA Bossier Parish, LA Caddo Parish, LA De Soto Parish, LA	0.9153	0.9412
43580	Sioux City, IA-NE-SD Woodbury County, IA Dakota County, NE Dixon County, NE Union County, SD	0.9077	0.9358
43620	Sioux Falls, SD Lincoln County, SD McCook County, SD Minnehaha County, SD Turner County, SD	0.9438	0.9612
43780	South Bend-Mishawaka, IN-MI St. Joseph County, IN Cass County, MI	0.9458	0.9626
43900	Spartanburg, SC Spartanburg County, SC	0.9035	0.9329
44060	Spokane, WA Spokane County, WA	1.0674	1.0457
44100	Springfield, IL Menard County, IL Sangamon County, IL	0.8754	0.9129
44140	Springfield, MA [2] Franklin County, MA Hampden County, MA Hampshire County, MA	1.0432	1.0294
44180	Springfield, MO Christian County, MO Dallas County, MO Greene County, MO Polk County, MO Webster County, MO	0.8458	0.8916
44220	Springfield, OH Clark County, OH	0.8763	0.9135
44300	State College, PA	0.8486	0.8937

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index	GAF
	Centre County, PA		
44700	Stockton, CA	1.0605	1.0410
	San Joaquin County, CA		
44844	Suffolk-Nassau, NY [1]	1.2966	1.1947
	Nassau County, NY		
	Suffolk County, NY		
44940	Sumter, SC [2]	0.8449	0.8910
	Sumter County, SC		
45060	Syracuse, NY	0.9504	0.9658
	Madison County, NY		
	Onondaga County, NY		
	Oswego County, NY		
45104	Tacoma, WA	1.1105	1.0744
	Pierce County, WA		
45220	Tallahassee, FL	0.8690	0.9083
	Gadsden County, FL		
	Jefferson County, FL		
	Leon County, FL		
	Wakulla County, FL		
45300	Tampa-St. Petersburg-Clearwater, FL [1]	0.9087	0.9365
	Hernando County, FL		
	Hillsborough County, FL		
	Pasco County, FL		
	Pinellas County, FL		
45460	Terre Haute, IN [2]	0.8675	0.9072
	Clay County, IN		
	Sullivan County, IN		
	Vermillion County, IN		
	Vigo County, IN		
45500	Texarkana, TX-Texarkana, AR	0.8457	0.8916
	Miller County, AR		
	Bowie County, TX		
45780	Toledo, OH	0.9536	0.9680
	Fulton County, OH		
	Lucas County, OH		
	Ottawa County, OH		
	Wood County, OH		
45820	Topeka, KS	0.8915	0.9244
	Jackson County, KS		
	Jefferson County, KS		
	Osage County, KS		
	Shawnee County, KS		
	Wabaunsee County, KS		
45940	Trenton-Ewing, NJ	1.0294	1.0200
	Mercer County, NJ		
46060	Tucson, AZ	0.8971	0.9283
	Pima County, AZ		
46140	Tulsa, OK	0.8709	0.9097
	Creek County, OK		
	Okmulgee County, OK		
	Osage County, OK		
	Pawnee County, OK		
	Rogers County, OK		
	Tulsa County, OK		
	Wagoner County, OK		
46220	Tuscaloosa, AL	0.8358	0.8844
	Greene County, AL		
	Hale County, AL		
	Tuscaloosa County, AL		
46340	Tyler, TX	0.9534	0.9678
	Smith County, TX		
46540	Utica-Rome, NY	0.8339	0.8830
	Herkimer County, NY		
	Oneida County, NY		
46660	Valdosta, GA	0.8355	0.8842
	Brooks County, GA		
	Echols County, GA		
	Lanier County, GA		
	Lowndes County, GA		
46700	Vallejo-Fairfield, CA	1.4275	1.2760
	Solano County, CA		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index	GAF
46940	Vero Beach, FL	0.9513	0.9664
	Indian River County, FL		
47020	Victoria, TX	0.8491	0.8940
	Calhoun County, TX		
	Goliad County, TX		
	Victoria County, TX		
47220	Vineland-Millville-Bridgeton, NJ	1.0604	1.0410
	Cumberland County, NJ		
47260	Virginia Beach-Norfolk-Newport News, VA-NC [1]	0.8941	0.9262
	Currituck County, NC		
	Gloucester County, VA		
	Isle of Wight County, VA		
	James City County, VA		
	Mathews County, VA		
	Surry County, VA		
	York County, VA		
	Chesapeake City, VA		
	Hampton City, VA		
	Newport News City, VA		
	Norfolk City, VA		
	Poquoson City, VA		
	Portsmouth City, VA		
	Suffolk City, VA		
	Virginia Beach City, VA		
	Williamsburg City, VA		
47300	Visalia-Porterville, CA [2]	1.0440	1.0299
	Tulare County, CA		
47380	Waco, TX	0.8167	0.8705
	McLennan County, TX		
47580	Warner Robins, GA	0.8513	0.8956
	Houston County, GA		
47644	Warren-Farmington Hills-Troy, MI [1]	1.0131	1.0090
	Lapeer County, MI		
	Livingston County, MI		
	Macomb County, MI		
	Oakland County, MI		
	St. Clair County, MI		
47894	Washington-Arlington-Alexandria, DC-VA-MD-WV [1]	1.1063	1.0716
	District of Columbia, DC		
	Calvert County, MD		
	Charles County, MD		
	Prince George's County, MD		
	Arlington County, VA		
	Clarke County, VA		
	Fairfax County, VA		
	Fauquier County, VA		
	Loudoun County, VA		
	Prince William County, VA		
	Spotsylvania County, VA		
	Stafford County, VA		
	Warren County, VA		
	Alexandria City, VA		
	Fairfax City, VA		
	Falls Church City, VA		
	Fredericksburg City, VA		
	Manassas City, VA		
	Manassas Park City, VA		
	Jefferson County, WV		
47940	Waterloo-Cedar Falls, IA	0.8652	0.9056
	Black Hawk County, IA		
	Bremer County, IA		
	Grundy County, IA		
48140	Wausau, WI	1.0121	1.0083
	Marathon County, WI		
48260	Weirton-Steubenville, WV-OH (OH Hospitals) [2]	0.8708	0.9096
	Jefferson County, OH		
	Brooke County, WV		
	Hancock County, WV		
48260	Weirton-Steubenville, WV-OH (WV Hospitals)	0.8292	0.8796
	Jefferson County, OH		
	Brooke County, WV		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index	GAF
	Hancock County, WV		
48300	Wenatchee, WA [2]	1.0340	1.0232
	Chelan County, WA		
	Douglas County, WA		
48424	West Palm Beach-Boca Raton-Boynton Beach, FL [1]	1.0074	1.0051
	Palm Beach County, FL		
48540	Wheeling, WV-OH (OH Hospitals) [2]	0.8708	0.9096
	Belmont County, OH		
	Marshall County, WV		
	Ohio County, WV		
48540	Wheeling, WV-OH (WV Hospitals) [2]	0.7903	0.8512
	Belmont County, OH		
	Marshall County, WV		
	Ohio County, WV		
48620	Wichita, KS	0.9476	0.9638
	Butler County, KS		
	Harvey County, KS		
	Sedgwick County, KS		
	Sumner County, KS		
48660	Wichita Falls, TX	0.8379	0.8859
	Archer County, TX		
	Clay County, TX		
	Wichita County, TX		
48700	Williamsport, PA	0.8432	0.8898
	Lycoming County, PA		
48864	Wilmington, DE-MD-NJ	1.1110	1.0747
	New Castle County, DE		
	Cecil County, MD		
	Salem County, NJ		
48900	Wilmington, NC	0.9248	0.9479
	Brunswick County, NC		
	New Hanover County, NC		
	Pender County, NC		
49020	Winchester, VA-WV	1.0513	1.0349
	Frederick County, VA		
	Winchester City, VA		
	Hampshire County, WV		
49180	Winston-Salem, NC	0.9430	0.9606
	Davie County, NC		
	Forsyth County, NC		
	Stokes County, NC		
	Yadkin County, NC		
49340	Worcester, MA	1.1034	1.0697
	Worcester County, MA		
49420	Yakima, WA	1.0343	1.0234
	Yakima County, WA		
49500	Yauco, PR	0.4505	0.5792
	Guánica Municipio, PR		
	Guayanilla Municipio, PR		
	Peñuelas Municipio, PR		
	Yauco Municipio, PR		
49620	York-Hanover, PA	0.8916	0.9244
	York County, PA		
49660	Youngstown-Warren-Boardman, OH-PA	0.9257	0.9485
	Mahoning County, OH		
	Trumbull County, OH		
	Mercer County, PA		
49700	Yuba City, CA [2]	1.0440	1.0299
	Sutter County, CA		
	Yuba County, CA		
49740	Yuma, AZ [2]	0.8967	0.9281
	Yuma County, AZ		

[1] Large urban area.
[2] Hospitals geographically located in the area are assigned the statewide rural wage index for FY 2005.

5. On page 28586, in Table 4C—Wage Index and Capital Geographic Adjustment Factor (GAF) for Hospitals that are Reclassified, we incorrectly included two entries for Wilmington, N.C., the two entries for Wilmington, NC are deleted and the following two entries are added in their place:

Area	Wage index	GAF	Area	Wage index	GAF
Wilmington, DE	1.0817	1.0553	Wilmington, NC	0.9092	0.9369

6. On pages 28589 through 28628, Table 4G—Pre-Reclassified Wage Index for Urban Areas, is corrected to read as follows:

TABLE 4G—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS

CBSA code	Urban area (constituent counties)	Wage index
10180	Abilene, TX	0.8011
	Callahan County, TX	
	Jones County, TX	
	Taylor County, TX	
10380	Aguadilla-Isabela-San Sebastián, PR	0.4285
	Aguada Municipio, PR	
	Aguadilla Municipio, PR	
	Añasco Municipio, PR	
	Isabela Municipio, PR	
	Lares Municipio, PR	
	Moca Municipio, PR	
	Rincón Municipio, PR	
	San Sebastián Municipio, PR	
10420	Akron, OH	0.9065
	Portage County, OH	
	Summit County, OH	
10500	Albany, GA	1.1306
	Baker County, GA	
	Dougherty County, GA	
	Lee County, GA	
	Terrell County, GA	
	Worth County, GA	
10580	Albany-Schenectady-Troy, NY	0.8685
	Albany County, NY	
	Rensselaer County, NY	
	Saratoga County, NY	
	Schenectady County, NY	
	Schoharie County, NY	
10740	Albuquerque, NM	1.0167
	Bernalillo County, NM	
	Sandoval County, NM	
	Torrance County, NM	
	Valencia County, NM	
10780	Alexandria, LA	0.8198
	Grant Parish, LA	
	Rapides Parish, LA	
10900	Allentown-Bethlehem-Easton, PA-NJ	0.9539
	Warren County, NJ	
	Carbon County, PA	
	Lehigh County, PA	
	Northampton County, PA	
11020	Altoona, PA	0.8472
	Blair County, PA	
11100	Amarillo, TX	0.9209
	Armstrong County, TX	
	Carson County, TX	
	Potter County, TX	
	Randall County, TX	
11180	Ames, IA	0.9503
	Story County, IA	
11260	Anchorage, AK	1.2195
	Anchorage Municipality, AK	
	Matanuska-Susitna Borough, AK	
11300	Anderson, IN	0.8769
	Madison County, IN	
11340	Anderson, SC	0.8689
	Anderson County, SC	
11460	Ann Arbor, MI	1.1065
	Washtenaw County, MI	
11500	Anniston-Oxford, AL	0.7916
	Calhoun County, AL	
11540	Appleton, WI	0.9485
	Calumet County, WI	
	Outagamie County, WI	
11700	Asheville, NC	0.9217
	Buncombe County, NC	

TABLE 4G—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Haywood County, NC	
	Henderson County, NC	
	Madison County, NC	
12020	Athens-Clarke County, GA	1.0010
	Clarke County, GA	
	Madison County, GA	
	Oconee County, GA	
	Oglethorpe County, GA	
12060	Atlanta-Sandy Springs-Marietta, GA	0.9926
	Barrow County, GA	
	Bartow County, GA	
	Butts County, GA	
	Carroll County, GA	
	Cherokee County, GA	
	Clayton County, GA	
	Cobb County, GA	
	Coweta County, GA	
	Dawson County, GA	
	DeKalb County, GA	
	Douglas County, GA	
	Fayette County, GA	
	Forsyth County, GA	
	Fulton County, GA	
	Gwinnett County, GA	
	Haralson County, GA	
	Heard County, GA	
	Henry County, GA	
	Jasper County, GA	
	Lamar County, GA	
	Meriwether County, GA	
	Newton County, GA	
	Paulding County, GA	
	Pickens County, GA	
	Pike County, GA	
	Rockdale County, GA	
	Spalding County, GA	
	Walton County, GA	
12100	Atlantic City, NJ	1.0723
	Atlantic County, NJ	
12220	Auburn-Opelika, AL	0.8231
	Lee County, AL	
12260	Augusta-Richmond County, GA-SC	0.9169
	Burke County, GA	
	Columbia County, GA	
	McDuffie County, GA	
	Richmond County, GA	
	Aiken County, SC	
	Edgefield County, SC	
12420	Austin-Round Rock, TX	0.9619
	Bastrop County, TX	
	Caldwell County, TX	
	Hays County, TX	
	Travis County, TX	
	Williamson County, TX	
12540	Bakersfield, CA	1.0440
	Kern County, CA	
12580	Baltimore-Towson, MD	0.9904
	Anne Arundel County, MD	
	Baltimore County, MD	
	Carroll County, MD	
	Harford County, MD	
	Howard County, MD	
	Queen Anne's County, MD	
	Baltimore City, MD	
12620	Bangor, ME	0.9960
	Penobscot County, ME	
12700	Barnstable Town, MA	1.1965
	Barnstable County, MA	
12940	Baton Rouge, LA	0.8344
	Ascension Parish, LA	
	East Baton Rouge Parish, LA	

TABLE 4G—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	East Feliciana Parish, LA	
	Iberville Parish, LA	
	Livingston Parish, LA	
	Pointe Coupee Parish, LA	
	St. Helena Parish, LA	
	West Baton Rouge Parish, LA	
	West Feliciana Parish, LA	
12980	Battle Creek, MI	0.9132
	Calhoun County, MI	
13020	Bay City, MI	0.9601
	Bay County, MI	
13140	Beaumont-Port Arthur, TX	0.8564
	Hardin County, TX	
	Jefferson County, TX	
	Orange County, TX	
13380	Bellingham, WA	1.1695
	Whatcom County, WA	
13460	Bend, OR	1.0623
	Deschutes County, OR	
13644	Bethesda-Frederick-Gaithersburg, MD	1.0993
	Frederick County, MD	
	Montgomery County, MD	
13740	Billings, MT	0.8993
	Carbon County, MT	
	Yellowstone County, MT	
13780	Binghamton, NY	0.8484
	Broome County, NY	
	Tioga County, NY	
13820	Birmingham-Hoover, AL	0.9111
	Bibb County, AL	
	Blount County, AL	
	Chilton County, AL	
	Jefferson County, AL	
	St. Clair County, AL	
	Shelby County, AL	
	Walker County, AL	
13900	Bismarck, ND	0.7741
	Burleigh County, ND	
	Morton County, ND	
13980	Blacksburg-Christiansburg-Radford, VA	0.8065
	Giles County, VA	
	Montgomery County, VA	
	Pulaski County, VA	
	Radford City, VA	
14020	Bloomington, IN	0.8675
	Greene County, IN	
	Monroe County, IN	
	Owen County, IN	
14060	Bloomington-Normal, IL	0.9099
	McLean County, IL	
14260	Boise City-Nampa, ID	0.9360
	Ada County, ID	
	Boise County, ID	
	Canyon County, ID	
	Gem County, ID	
	Owyhee County, ID	
14484	Boston-Quincy, MA	1.1649
	Norfolk County, MA	
	Plymouth County, MA	
	Suffolk County, MA	
14500	Boulder, CO	1.0072
	Boulder County, CO	
14540	Bowling Green, KY	0.8162
	Edmonson County, KY	
	Warren County, KY	
14740	Bremerton-Silverdale, WA	1.0636
	Kitsap County, WA	
14860	Bridgeport-Stamford-Norwalk, CT	1.2876
	Fairfield County, CT	
14980	Bristol, VA	0.8065
	Washington County, VA	

TABLE 4G—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Bristol City, VA	
15180	Brownsville-Harlingen, TX	1.0178
	Cameron County, TX	
15260	Brunswick, GA	1.1988
	Brantley County, GA	
	Glynn County, GA	
	McIntosh County, GA	
15380	Buffalo-Niagara Falls, NY	0.9351
	Erie County, NY	
	Niagara County, NY	
15500	Burlington, NC	0.8881
	Alamance County, NC	
15540	Burlington-South Burlington, VT	0.9378
	Chittenden County, VT	
	Franklin County, VT	
	Grand Isle County, VT	
15764	Cambridge-Newton-Framingham, MA	1.1199
	Middlesex County, MA	
15804	Camden, NJ	1.0683
	Burlington County, NJ	
	Camden County, NJ	
	Gloucester County, NJ	
15940	Canton-Massillon, OH	0.8917
	Carroll County, OH	
	Stark County, OH	
15980	Cape Coral-Fort Myers, FL	0.9380
	Lee County, FL	
16180	Carson City, NV	1.0362
	Carson City, NV	
16220	Casper, WY	0.9301
	Natrona County, WY	
16300	Cedar Rapids, IA	0.8987
	Benton County, IA	
	Jones County, IA	
	Linn County, IA	
16580	Champaign-Urbana, IL	0.9539
	Champaign County, IL	
	Ford County, IL	
	Piatt County, IL	
16620	Charleston, WV	0.8875
	Boone County, WV	
	Clay County, WV	
	Kanawha County, WV	
	Lincoln County, WV	
	Putnam County, WV	
16700	Charleston-North Charleston, SC	0.9379
	Berkeley County, SC	
	Charleston County, SC	
	Dorchester County, SC	
16740	Charlotte-Gastonia-Concord, NC-SC	0.9750
	Anson County, NC	
	Cabarrus County, NC	
	Gaston County, NC	
	Mecklenburg County, NC	
	Union County, NC	
	York County, SC	
16820	Charlottesville, VA	1.0317
	Albemarle County, VA	
	Fluvanna County, VA	
	Greene County, VA	
	Nelson County, VA	
	Charlottesville City, VA	
16860	Chattanooga, TN-GA	0.9233
	Catoosa County, GA	
	Dade County, GA	
	Walker County, GA	
	Hamilton County, TN	
	Marion County, TN	
	Sequatchie County, TN	
16940	Cheyenne, WY	0.9190
	Laramie County, WY	

TABLE 4G—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
16974	Chicago-Naperville Joliet, IL	1.0819
	Cook County, IL	
	DeKalb County, IL	
	DuPage County, IL	
	Grundy County, IL	
	Kane County, IL	
	Kendall County, IL	
	McHenry County, IL	
	Will County, IL	
17020	Chico, CA	1.0575
	Butte County, CA	
17140	Cincinnati-Middletown, OH-KY-IN	0.9532
	Dearborn County, IN	
	Franklin County, IN	
	Ohio County, IN	
	Boone County, KY	
	Bracken County, KY	
	Campbell County, KY	
	Gallatin County, KY	
	Grant County, KY	
	Kenton County, KY	
	Pendleton County, KY	
	Brown County, OH	
	Butler County, OH	
	Clermont County, OH	
	Hamilton County, OH	
	Warren County, OH	
17300	Clarksville, TN-KY	0.8027
	Christian County, KY	
	Trigg County, KY	
	Montgomery County, TN	
	Stewart County, TN	
17420	Cleveland, TN	0.7911
	Bradley County, TN	
	Polk County, TN	
17460	Cleveland-Elyria-Mentor, OH	0.9667
	Cuyahoga County, OH	
	Geauga County, OH	
	Lake County, OH	
	Lorain County, OH	
	Medina County, OH	
17660	Coeur d'Alene, ID	0.9346
	Kootenai County, ID	
17780	College Station-Bryan, TX	0.8505
	Brazos County, TX	
	Burleson County, TX	
	Robertson County, TX	
17820	Colorado Springs, CO	0.9799
	El Paso County, CO	
	Teller County, CO	
17860	Columbia, MO	0.8352
	Boone County, MO	
	Howard County, MO	
17900	Columbia, SC	0.9071
	Calhoun County, SC	
	Fairfield County, SC	
	Kershaw County, SC	
	Lexington County, SC	
	Richland County, SC	
	Saluda County, SC	
17980	Columbus, GA-AL	0.8711
	Russell County, AL	
	Chattahoochee County, GA	
	Harris County, GA	
	Marion County, GA	
	Muscogee County, GA	
18020	Columbus, IN	0.9472
	Bartholomew County, IN	
18140	Columbus, OH	0.9757
	Delaware County, OH	
	Fairfield County, OH	

TABLE 4G—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Franklin County, OH	
	Licking County, OH	
	Madison County, OH	
	Morrow County, OH	
	Pickaway County, OH	
	Union County, OH	
18580	Corpus Christi, TX	0.8665
	Aransas County, TX	
	Nueces County, TX	
	San Patricio County, TX	
18700	Corvallis, OR	1.0547
	Benton County, OR	
19060	Cumberland, MD-WV	0.9248
	Allegany County, MD	
	Mineral County, WV	
19124	Dallas-Plano-Irving, TX	1.0092
	Collin County, TX	
	Dallas County, TX	
	Delta County, TX	
	Denton County, TX	
	Ellis County, TX	
	Hunt County, TX	
	Kaufman County, TX	
	Rockwall County, TX	
19140	Dalton, GA	0.9320
	Murray County, GA	
	Whitfield County, GA	
19180	Danville, IL	0.8418
	Vermilion County, IL	
19260	Danville, VA	0.8792
	Pittsylvania County, VA	
	Danville City, VA	
19340	Davenport-Moline-Rock Island, IA-IL	0.8776
	Henry County, IL	
	Mercer County, IL	
	Rock Island County, IL	
	Scott County, IA	
19380	Dayton, OH	0.9320
	Greene County, OH	
	Miami County, OH	
	Montgomery County, OH	
	Preble County, OH	
19460	Decatur, AL	0.8915
	Lawrence County, AL	
	Morgan County, AL	
19500	Decatur, IL	0.8364
	Macon County, IL	
19660	Deltona-Daytona Beach-Ormond Beach, FL	0.8668
	Volusia County, FL	
19740	Denver-Aurora, CO	1.0911
	Adams County, CO	
	Arapahoe County, CO	
	Broomfield County, CO	
	Clear Creek County, CO	
	Denver County, CO	
	Douglas County, CO	
	Elbert County, CO	
	Gilpin County, CO	
	Jefferson County, CO	
	Park County, CO	
19780	Des Moines, IA	0.9288
	Dallas County, IA	
	Guthrie County, IA	
	Madison County, IA	
	Polk County, IA	
	Warren County, IA	
19804	Detroit-Livonia-Dearborn, MI	1.0379
	Wayne County, MI	
20020	Dothan, AL	0.7675
	Geneva County, AL	
	Henry County, AL	

TABLE 4G—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Houston County, AL	
20100	Dover, DE	0.9579
	Kent County, DE	
20220	Dubuque, IA	0.8748
	Dubuque County, IA	
20260	Duluth, MN-WI	1.0449
	Carlton County, MN	
	St. Louis County, MN	
	Douglas County, WI	
20500	Durham, NC	1.0312
	Chatham County, NC	
	Durham County, NC	
	Orange County, NC	
	Person County, NC	
20740	Eau Claire, WI	0.9485
	Chippewa County, WI	
	Eau Claire County, WI	
20764	Edison, NJ	1.1160
	Middlesex County, NJ	
	Monmouth County, NJ	
	Ocean County, NJ	
	Somerset County, NJ	
20940	El Centro, CA	1.0440
	Imperial County, CA	
21060	Elizabethtown, KY	0.8713
	Hardin County, KY	
	Larue County, KY	
21140	Elkhart Goshen, IN	0.9286
	Elkhart County, IN	
21300	Elmira, NY	0.8488
	Chemung County, NY	
21340	El Paso, TX	0.9210
	El Paso County, TX	
21420	Enid, OK	0.9034
	Garfield County, OK	
21500	Erie, PA	0.8708
	Erie County, PA	
21604	Essex County, MA	1.0666
	Essex County, MA	
21660	Eugene-Springfield, OR	1.0951
	Lane County, OR	
21780	Evansville, IN-KY	0.8675
	Gibson County, IN	
	Posey County, IN	
	Vanderburgh County, IN	
	Warrick County, IN	
	Henderson County, KY	
	Webster County, KY	
21820	Fairbanks, AK	1.1761
	Fairbanks North Star Borough, AK	
21940	Fajardo, PR	0.4014
	Ceiba Municipio, PR	
	Fajardo Municipio, PR	
	Luquillo Municipio, PR	
22020	Fargo, ND-MN	0.9340
	Clay County, MN	
	Cass County, ND	
22140	Farmington, NM	0.8592
	San Juan County, NM	
22180	Fayetteville, NC	0.9387
	Cumberland County, NC	
	Hoke County, NC	
22220	Fayetteville-Springdale-Rogers, AR-MO	0.8674
	Benton County, AR	
	Madison County, AR	
	Washington County, AR	
	McDonald County, MO	
22380	Flagstaff, AZ	1.0804
	Coconino County, AZ	
22420	Flint, MI	1.1187
	Genesee County, MI	

TABLE 4G—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
22460	Florence-Muscle Shoals, AL	0.7917
	Colbert County, AL	
	Lauderdale County, AL	
22500	Florence, SC	0.8540
	Darlington County, SC	
	Florence County, SC	
22540	Fond du Lac, WI	0.9921
	Fond du Lac County, WI	
22660	Fort Collins-Loveland, CO	1.0142
	Larimer County, CO	
22744	Fort Lauderdale-Pompano Beach-Deerfield Beach, FL	1.0180
	Broward County, FL	
22900	Fort Smith, AR-OK	0.8311
	Crawford County, AR	
	Franklin County, AR	
	Sebastian County, AR	
	Le Flore County, OK	
	Sequoyah County, OK	
23020	Fort Walton Beach-Crestview-Destin, FL	0.8805
	Okaloosa County, FL	
23060	Fort Wayne, IN	0.9825
	Allen County, IN	
	Wells County, IN	
	Whitley County, IN	
23104	Fort Worth-Arlington, TX	0.9515
	Johnson County, TX	
	Parker County, TX	
	Tarrant County, TX	
	Wise County, TX	
23420	Fresno, CA	1.0656
	Fresno County, CA	
23460	Gadsden, AL	0.8090
	Etowah County, AL	
23540	Gainesville, FL	0.8581
	Alachua County, FL	
	Gilchrist County, FL	
23580	Gainesville, GA	0.9584
	Hall County, GA	
23844	Gary, IN	0.9328
	Jasper County, IN	
	Lake County, IN	
	Newton County, IN	
	Porter County, IN	
24020	Glens Falls, NY	0.8508
	Warren County, NY	
	Washington County, NY	
24140	Goldsboro, NC	0.8796
	Wayne County, NC	
24220	Grand Forks, ND-MN	0.9340
	Polk County, MN	
	Grand Forks County, ND	
24300	Grand Junction, CO	0.9949
	Mesa County, CO	
24340	Grand Rapids-Wyoming, MI	0.9457
	Barry County, MI	
	Ionia County, MI	
	Kent County, MI	
	Newaygo County, MI	
24500	Great Falls, MT	0.8894
	Cascade County, MT	
24540	Greeley, CO	0.9486
	Weld County, CO	
24580	Green Bay, WI	0.9602
	Brown County, WI	
	Kewaunee County, WI	
	Oconto County, WI	
24660	Greensboro-High Point, NC	0.9228
	Guilford County, NC	
	Randolph County, NC	
	Rockingham County, NC	
24780	Greenville, NC	0.9183

TABLE 4G—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Greene County, NC	
	Pitt County, NC	
24860	Greenville, SC	0.9287
	Greenville County, SC	
	Laurens County, SC	
	Pickens County, SC	
25020	Guayama, PR	0.4015
	Arroyo Municipio, PR	
	Guayama Municipio, PR	
	Patillas Municipio, PR	
25060	Gulfport-Biloxi, MS	0.8954
	Hancock County, MS	
	Harrison County, MS	
	Stone County, MS	
25180	Hagerstown-Martinsburg, MD-WV	0.9765
	Washington County, MD	
	Berkeley County, WV	
	Morgan County, WV	
25260	Hanford-Corcoran, CA	1.0440
	Kings County, CA	
25420	Harrisburg-Carlisle, PA	0.9377
	Cumberland County, PA	
	Dauphin County, PA	
	Perry County, PA	
25500	Harrisonburg, VA	0.9300
	Rockingham County, VA	
	Harrisonburg City, VA	
25540	Hartford-West Hartford-East Hartford, CT	1.1312
	Hartford County, CT	
	Middlesex County, CT	
	Tolland County, CT	
25620	Hattiesburg, MS	0.7665
	Forrest County, MS	
	Lamar County, MS	
	Perry County, MS	
25860	Hickory-Lenoir-Morganton, NC	0.9508
	Alexander County, NC	
	Burke County, NC	
	Caldwell County, NC	
	Catawba County, NC	
25980	Hinesville-Fort Stewart, GA	0.7774
	Liberty County, GA	
	Long County, GA	
26100	Holland-Grand Haven, MI	0.9482
	Ottawa County, MI	
26180	Honolulu, HI	1.0997
	Honolulu County, HI	
26300	Hot Springs, AR	0.9286
	Garland County, AR	
26380	Houma-Bayou Cane-Thibodaux, LA	0.7779
	Lafourche Parish, LA	
	Terrebonne Parish, LA	
26420	Houston-Baytown-Sugar Land, TX	0.9995
	Austin County, TX	
	Brazoria County, TX	
	Chambers County, TX	
	Fort Bend County, TX	
	Galveston County, TX	
	Harris County, TX	
	Liberty County, TX	
	Montgomery County, TX	
	San Jacinto County, TX	
	Waller County, TX	
26580	Huntington-Ashland, WV-KY-OH	0.9585
	Boyd County, KY	
	Greenup County, KY	
	Lawrence County, OH	
	Cabell County, WV	
	Wayne County, WV	
26620	Huntsville, AL	0.8850
	Limestone County, AL	

TABLE 4G—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Madison County, AL	
26820	Idaho Falls, ID	0.9062
	Bonneville County, ID	
	Jefferson County, ID	
26900	Indianapolis, IN	1.0102
	Boone County, IN	
	Brown County, IN	
	Hamilton County, IN	
	Hancock County, IN	
	Hendricks County, IN	
	Johnson County, IN	
	Marion County, IN	
	Morgan County, IN	
	Putnam County, IN	
	Shelby County, IN	
26980	Iowa City, IA	0.9663
	Johnson County, IA	
	Washington County, IA	
27060	Ithaca, NY	0.9795
	Tompkins County, NY	
27100	Jackson, MI	0.9152
	Jackson County, MI	
27140	Jackson, MS	0.8305
	Copiah County, MS	
	Hinds County, MS	
	Madison County, MS	
	Rankin County, MS	
	Simpson County, MS	
27180	Jackson, TN	0.8912
	Chester County, TN	
	Madison County, TN	
27260	Jacksonville, FL	0.9561
	Baker County, FL	
	Clay County, FL	
	Duval County, FL	
	Nassau County, FL	
	St. Johns County, FL	
27340	Jacksonville, NC	0.8587
	Onslow County, NC	
27460	Jamestown-Dunkirk-Fredonia, NY	0.8180
	Chautauqua County, NY	
27500	Janesville, WI	0.9618
	Rock County, WI	
27620	Jefferson City, MO	0.8352
	Callaway County, MO	
	Cole County, MO	
	Moniteau County, MO	
	Osage County, MO	
27740	Johnson City, TN	0.7991
	Carter County, TN	
	Unicoi County, TN	
	Washington County, TN	
27780	Johnstown, PA	0.8397
	Cambria County, PA	
27860	Jonesboro, AR	0.8000
	Craighead County, AR	
	Poinsett County, AR	
27900	Joplin, MO	0.8746
	Jasper County, MO	
	Newton County, MO	
28020	Kalamazoo-Portage, MI	1.0714
	Kalamazoo County, MI	
	Van Buren County, MI	
28100	Kankakee-Bradley, IL	1.0551
	Kankakee County, IL	
28140	Kansas City, MO-KS	0.9625
	Franklin County, KS	
	Johnson County, KS	
	Leavenworth County, KS	
	Linn County, KS	
	Miami County, KS	

TABLE 4G—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Wyandotte County, KS	
	Bates County, MO	
	Caldwell County, MO	
	Cass County, MO	
	Clay County, MO	
	Clinton County, MO	
	Jackson County, MO	
	Lafayette County, MO	
	Platte County, MO	
	Ray County, MO	
28420	Kennewick-Richland-Pasco, WA	1.0530
	Benton County, WA	
	Franklin County, WA	
28660	Killeen-Temple-Fort Hood, TX	0.9301
	Bell County, TX	
	Coryell County, TX	
	Lampasas County, TX	
28700	Kingsport-Bristol-Bristol, TN-VA	0.8257
	Hawkins County, TN	
	Sullivan County, TN	
	Scott County, VA	
28740	Kingston, NY	0.8874
	Ulster County, NY	
28940	Knoxville, TN	0.8585
	Anderson County, TN	
	Blount County, TN	
	Knox County, TN	
	Loudon County, TN	
	Union County, TN	
29020	Kokomo, IN	0.9038
	Howard County, IN	
	Tipton County, IN	
29100	La Crosse, WI-MN	0.9340
	Houston County, MN	
	La Crosse County, WI	
29140	Lafayette, IN	0.9073
	Benton County, IN	
	Carroll County, IN	
	Tippecanoe County, IN	
29180	Lafayette, LA	0.8319
	Lafayette Parish, LA	
	St. Martin Parish, LA	
29340	Lake Charles, LA	0.7921
	Calcasieu Parish, LA	
	Cameron Parish, LA	
29404	Lake County-Kenosha County, IL-WI	1.0342
	Lake County, IL	
	Kenosha County, WI	
29460	Lakeland, FL	0.8964
	Polk County, FL	
29540	Lancaster, PA	0.9919
	Lancaster County, PA	
29620	Lansing-East Lansing, MI	0.9675
	Clinton County, MI	
	Eaton County, MI	
	Ingham County, MI	
29700	Laredo, TX	0.8293
	Webb County, TX	
29740	Las Cruces, NM	0.8783
	Dona Ana County, NM	
29820	Las Vegas-Paradise, NV	1.1380
	Clark County, NV	
29940	Lawrence, KS	0.8132
	Douglas County, KS	
30020	Lawton, OK	0.8264
	Comanche County, OK	
30140	Lebanon, PA	0.8592
	Lebanon County, PA	
30300	Lewiston, ID-WA	0.9325
	Nez Perce County, ID	
	Asotin County, WA	

TABLE 4G—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
30340	Lewiston-Auburn, ME	0.9613
	Androscoggin County, ME	
30460	Lexington-Fayette, KY	0.9074
	Bourbon County, KY	
	Clark County, KY	
	Fayette County, KY	
	Jessamine County, KY	
	Scott County, KY	
	Woodford County, KY	
30620	Lima, OH	0.9330
	Allen County, OH	
30700	Lincoln, NE	1.0206
	Lancaster County, NE	
	Seward County, NE	
30780	Little Rock-North Little Rock, AR	0.9032
	Faulkner County, AR	
	Grant County, AR	
	Lonoke County, AR	
	Perry County, AR	
	Pulaski County, AR	
	Saline County, AR	
30860	Logan, UT-ID	0.9102
	Franklin County, ID	
	Cache County, UT	
30980	Longview, TX	0.8823
	Gregg County, TX	
	Rusk County, TX	
	Upshur County, TX	
31020	Longview, WA	1.0340
	Cowlitz County, WA	
31084	Los Angeles-Long Beach-Glendale, CA	1.1730
	Los Angeles County, CA	
31140	Louisville, KY-IN	0.9146
	Clark County, IN	
	Floyd County, IN	
	Harrison County, IN	
	Washington County, IN	
	Bullitt County, KY	
	Henry County, KY	
	Jefferson County, KY	
	Meade County, KY	
	Nelson County, KY	
	Oldham County, KY	
	Shelby County, KY	
	Spencer County, KY	
	Trimble County, KY	
31180	Lubbock, TX	0.8798
	Crosby County, TX	
	Lubbock County, TX	
31340	Lynchburg, VA	0.9048
	Amherst County, VA	
	Appomattox County, VA	
	Bedford County, VA	
	Campbell County, VA	
	Bedford City, VA	
	Lynchburg City, VA	
31420	Macon, GA	0.9934
	Bibb County, GA	
	Crawford County, GA	
	Jones County, GA	
	Monroe County, GA	
	Twiggs County, GA	
31460	Madera, CA	1.0440
	Madera County, CA	
31540	Madison, WI	1.0325
	Columbia County, WI	
	Dane County, WI	
	Iowa County, WI	
31700	Manchester-Nashua, NH	1.0573
	Hillsborough County, NH	
31900	Mansfield, OH	0.9224

TABLE 4G—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Richland County, OH	
32420	Mayagüez, PR	0.4453
	Hormigueros Municipio, PR	
	Mayagüez Municipio, PR	
32580	McAllen-Edinburg-Pharr, TX	0.8624
	Hidalgo County, TX	
32780	Medford, OR	1.0561
	Jackson County, OR	
32820	Memphis, TN-MS-AR	0.9250
	Crittenden County, AR	
	DeSoto County, MS	
	Marshall County, MS	
	Tate County, MS	
	Tunica County, MS	
	Fayette County, TN	
	Shelby County, TN	
	Tipton County, TN	
32900	Merced, CA	1.0440
	Merced County, CA	
33124	Miami-Miami Beach-Kendall, FL	1.0045
	Miami-Dade County, FL	
33140	Michigan City-La Porte, IN	0.9351
	LaPorte County, IN	
33260	Midland, TX	0.9408
	Midland County, TX	
33340	Milwaukee-Waukesha-West Allis, WI	1.0106
	Milwaukee County, WI	
	Ozaukee County, WI	
	Washington County, WI	
	Waukesha County, WI	
33460	Minneapolis-St. Paul-Bloomington, MN-WI	1.1074
	Anoka County, MN	
	Carver County, MN	
	Chisago County, MN	
	Dakota County, MN	
	Hennepin County, MN	
	Isanti County, MN	
	Ramsey County, MN	
	Scott County, MN	
	Sherburne County, MN	
	Washington County, MN	
	Wright County, MN	
	Pierce County, WI	
	St. Croix County, WI	
33540	Missoula, MT	0.9610
	Missoula County, MT	
33660	Mobile, AL	0.8017
	Mobile County, AL	
33700	Modesto, CA	1.2007
	Stanislaus County, CA	
33740	Monroe, LA	0.7928
	Ouachita Parish, LA	
	Union Parish, LA	
33780	Monroe, MI	0.9517
	Monroe County, MI	
33860	Montgomery, AL	0.8312
	Autauga County, AL	
	Elmore County, AL	
	Lowndes County, AL	
	Montgomery County, AL	
34060	Morgantown, WV	0.8720
	Monongalia County, WV	
	Preston County, WV	
34100	Morristown, TN	0.7911
	Grainger County, TN	
	Hamblen County, TN	
	Jefferson County, TN	
34580	Mount Vernon-Anacortes, WA	1.0581
	Skagit County, WA	
34620	Muncie, IN	0.8675
	Delaware County, IN	

TABLE 4G—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
34740	Muskegon-Norton Shores, MI	0.9770
	Muskegon County, MI	
34820	Myrtle Beach-Conway-North Myrtle Beach, SC	0.8592
	Horry County, SC	
34900	Napa, CA	1.2550
	Napa County, CA	
34940	Naples-Marco Island, FL	1.0593
	Collier County, FL	
34980	Nashville-Davidson-Murfreesboro, TN	1.0115
	Cannon County, TN	
	Cheatham County, TN	
	Davidson County, TN	
	Dickson County, TN	
	Hickman County, TN	
	Macon County, TN	
	Robertson County, TN	
	Rutherford County, TN	
	Smith County, TN	
	Sumner County, TN	
	Trousdale County, TN	
	Williamson County, TN	
	Wilson County, TN	
35084	Newark-Union, NJ-PA	1.1708
	Essex County, NJ	
	Hunterdon County, NJ	
	Morris County, NJ	
	Sussex County, NJ	
	Union County, NJ	
	Pike County, PA	
35300	New Haven-Milford, CT	1.1828
	New Haven County, CT	
35380	New Orleans-Metairie-Kenner, LA	0.9118
	Jefferson Parish, LA	
	Orleans Parish, LA	
	Plaquemines Parish, LA	
	St. Bernard Parish, LA	
	St. Charles Parish, LA	
	St. John the Baptist Parish, LA	
	St. Tammany Parish, LA	
35644	New York-Wayne-White Plains, NY-NJ	1.3324
	Bergen County, NJ	
	Hudson County, NJ	
	Passaic County, NJ	
	Bronx County, NY	
	Kings County, NY	
	New York County, NY	
	Putnam County, NY	
	Queens County, NY	
	Richmond County, NY	
	Rockland County, NY	
	Westchester County, NY	
35660	Niles-Benton Harbor, MI	0.8922
	Berrien County, MI	
35980	Norwich-New London, CT	1.1625
	New London County, CT	
36084	Oakland-Fremont-Hayward, CA	1.5251
	Alameda County, CA	
	Contra Costa County, CA	
36100	Ocala, FL	0.9194
	Marion County, FL	
36140	Ocean City, NJ	1.0841
	Cape May County, NJ	
36220	Odessa, TX	0.9822
	Ector County, TX	
36260	Ogden-Clearfield, UT	0.9235
	Davis County, UT	
	Morgan County, UT	
	Weber County, UT	
36420	Oklahoma City, OK	0.9005
	Canadian County, OK	
	Cleveland County, OK	

TABLE 4G—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Grady County, OK	
	Lincoln County, OK	
	Logan County, OK	
	McClain County, OK	
	Oklahoma County, OK	
36500	Olympia, WA	1.1034
	Thurston County, WA	
36540	Omaha-Council Bluffs, NE-IA	0.9765
	Harrison County, IA	
	Mills County, IA	
	Pottawattamie County, IA	
	Cass County, NE	
	Douglas County, NE	
	Sarpy County, NE	
	Saunders County, NE	
	Washington County, NE	
36740	Orlando, FL	0.9779
	Lake County, FL	
	Orange County, FL	
	Osceola County, FL	
	Seminole County, FL	
36780	Oshkosh-Neenah, WI	0.9485
	Winnebago County, WI	
36980	Owensboro, KY	0.8470
	Daviess County, KY	
	Hancock County, KY	
	McLean County, KY	
37100	Oxnard-Thousand Oaks-Ventura, CA	1.1130
	Ventura County, CA	
37340	Palm Bay-Melbourne-Titusville, FL	0.9630
	Brevard County, FL	
37460	Panama City-Lynn Haven, FL	0.8581
	Bay County, FL	
37620	Parkersburg-Marietta, WV-OH	0.8708
	Washington County, OH	
	Pleasants County, WV	
	Wirt County, WV	
	Wood County, WV	
37700	Pascagoula, MS	0.7993
	George County, MS	
	Jackson County, MS	
37860	Pensacola-Ferry Pass-Brent, FL	0.8581
	Escambia County, FL	
	Santa Rosa County, FL	
37900	Peoria, IL	0.8792
	Marshall County, IL	
	Peoria County, IL	
	Stark County, IL	
	Tazewell County, IL	
	Woodford County, IL	
37964	Philadelphia, PA	1.0880
	Bucks County, PA	
	Chester County, PA	
	Delaware County, PA	
	Montgomery County, PA	
	Philadelphia County, PA	
38060	Phoenix-Mesa-Scottsdale, AZ	1.0009
	Maricopa County, AZ	
	Pinal County, AZ	
38220	Pine Bluff, AR	0.8724
	Cleveland County, AR	
	Jefferson County, AR	
	Lincoln County, AR	
38300	Pittsburgh, PA	0.8743
	Allegheny County, PA	
	Armstrong County, PA	
	Beaver County, PA	
	Butler County, PA	
	Fayette County, PA	
	Washington County, PA	
	Westmoreland County, PA	

TABLE 4G—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
38340	Pittsfield, MA	1.0756
	Berkshire County, MA	
38540	Pocatello, ID	0.9615
	Bannock County, ID	
	Power County, ID	
38660	Ponce, PR	0.5019
	Juana Díaz Municipio, PR	
	Ponce Municipio, PR	
	Villalba Municipio, PR	
38860	Portland-South Portland-Biddeford, ME	1.0127
	Cumberland County, ME	
	Sagadahoc County, ME	
	York County, ME	
38900	Portland-Vancouver-Beaverton, OR-WA	1.1384
	Clackamas County, OR	
	Columbia County, OR	
	Multnomah County, OR	
	Washington County, OR	
	Yamhill County, OR	
	Clark County, WA	
	Skamania County, WA	
38940	Port St. Lucie-Fort Pierce, FL	1.0077
	Martin County, FL	
	St. Lucie County, FL	
39100	Poughkeepsie-Newburgh-Middletown, NY	1.1395
	Dutchess County, NY	
	Orange County, NY	
39140	Prescott, AZ	0.9922
	Yavapai County, AZ	
39300	Providence-New Bedford-Fall River, RI-MA	1.0941
	Bristol County, MA	
	Bristol County, RI	
	Kent County, RI	
	Newport County, RI	
	Providence County, RI	
	Washington County, RI	
39340	Provo-Orem, UT	0.9596
	Juab County, UT	
	Utah County, UT	
39380	Pueblo, CO	0.9374
	Pueblo County, CO	
39460	Punta Gorda, FL	0.9473
	Charlotte County, FL	
39540	Racine, WI	0.9485
	Racine County, WI	
39580	Raleigh-Cary, NC	1.0060
	Franklin County, NC	
	Johnston County, NC	
	Wake County, NC	
39660	Rapid City, SD	0.8947
	Meade County, SD	
	Pennington County, SD	
39740	Reading, PA	0.9173
	Berks County, PA	
39820	Redding, CA	1.1856
	Shasta County, CA	
39900	Reno-Sparks, NV	1.0474
	Storey County, NV	
	Washoe County, NV	
40060	Richmond, VA	0.9422
	Amelia County, VA	
	Caroline County, VA	
	Charles City County, VA	
	Chesterfield County, VA	
	Cumberland County, VA	
	Dinwiddie County, VA	
	Goochland County, VA	
	Hanover County, VA	
	Henrico County, VA	
	King and Queen County, VA	
	King William County, VA	

TABLE 4G—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Louisa County, VA	
	New Kent County, VA	
	Powhatan County, VA	
	Prince George County, VA	
	Sussex County, VA	
	Colonial Heights City, VA	
	Hopewell City, VA	
	Petersburg City, VA	
	Richmond City, VA	
40140	Riverside-San Bernardino-Ontario, CA	1.0997
	Riverside County, CA	
	San Bernardino County, CA	
40220	Roanoke, VA	0.8352
	Botetourt County, VA	
	Craig County, VA	
	Franklin County, VA	
	Roanoke County, VA	
	Roanoke City, VA	
	Salem City, VA	
40340	Rochester, MN	1.1511
	Dodge County, MN	
	Olmsted County, MN	
	Wabasha County, MN	
40380	Rochester, NY	0.9307
	Livingston County, NY	
	Monroe County, NY	
	Ontario County, NY	
	Orleans County, NY	
	Wayne County, NY	
40420	Rockford, IL	0.9623
	Boone County, IL	
	Winnebago County, IL	
40484	Rockingham County-Strafford County, NH	1.0232
	Rockingham County, NH	
	Strafford County, NH	
40580	Rocky Mount, NC	0.9016
	Edgecombe County, NC	
	Nash County, NC	
40660	Rome, GA	0.8877
	Floyd County, GA	
40900	Sacramento-Arden-Arcade-Roseville, CA	1.1707
	El Dorado County, CA	
	Placer County, CA	
	Sacramento County, CA	
	Yolo County, CA	
40980	Saginaw-Saginaw Township North, MI	0.9879
	Saginaw County, MI	
41060	St. Cloud, MN	1.0193
	Benton County, MN	
	Stearns County, MN	
41100	St. George, UT	0.9495
	Washington County, UT	
41140	St. Joseph, MO-KS.	
	Doniphan County, KS	0.8010
	Andrew County, MO	0.8132
	Buchanan County, MO	
	DeKalb County, MO	
	Hospitals located in Missouri	
	Hospitals located in Kansas	
41180	St. Louis, MO-IL	0.9067
	Bond County, IL	
	Calhoun County, IL	
	Clinton County, IL	
	Jersey County, IL	
	Macoupin County, IL	
	Madison County, IL	
	Monroe County, IL	
	St. Clair County, IL	
	Crawford County, MO	
	Franklin County, MO	
	Jefferson County, MO	

TABLE 4G—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Lincoln County, MO	
	St. Charles County, MO	
	St. Louis County, MO	
	Warren County, MO	
	Washington County, MO	
	St. Louis City, MO	
41420	Salem, OR	1.0572
	Marion County, OR	
	Polk County, OR	
41500	Salinas, CA	1.3946
	Monterey County, CA	
41540	Salisbury, MD	0.9248
	Somerset County, MD	
	Wicomico County, MD	
41620	Salt Lake City, UT	0.9588
	Salt Lake County, UT	
	Summit County, UT	
	Tooele County, UT	
41660	San Angelo, TX	0.8194
	Irion County, TX	
	Tom Green County, TX	
41700	San Antonio, TX	0.9021
	Atascosa County, TX	
	Bandera County, TX	
	Bexar County, TX	
	Comal County, TX	
	Guadalupe County, TX	
	Kendall County, TX	
	Medina County, TX	
	Wilson County, TX	
41740	San Diego-Carlsbad-San Marcos, CA	1.1265
	San Diego County, CA	
41780	Sandusky, OH	0.9045
	Erie County, OH	
41884	San Francisco-San Mateo-Redwood City, CA	1.4403
	Marin County, CA	
	San Francisco County, CA	
	San Mateo County, CA	
41900	San Germán-Cabo Rojo, PR	0.5254
	Cabo Rojo Municipio, PR	
	Lajas Municipio, PR	
	Sabana Grande Municipio, PR	
	San German Municipio, PR	
41940	San Jose-Sunnyvale-Santa Clara, CA	1.4543
	San Benito County, CA	
	Santa Clara County, CA	
41980	San Juan-Caguas-Guaynabo, PR	0.4646
	Aguas Buenas Municipio, PR	
	Aibonito Municipio, PR	
	Arecibo Municipio, PR	
	Barceloneta Municipio, PR	
	Barranquitas Municipio, PR	
	Bayamon Municipio, PR	
	Caguas Municipio, PR	
	Camuy Municipio, PR	
	Canovanas Municipio, PR	
	Carolina Municipio, PR	
	Catano Municipio, PR	
	Cayey Municipio, PR	
	Ciales Municipio, PR	
	Cidra Municipio, PR	
	Comerio Municipio, PR	
	Corozal Municipio, PR	
	Dorado Municipio, PR	
	Florida Municipio, PR	
	Guaynabo Municipio, PR	
	Gurabo Municipio, PR	
	Hatillo Municipio, PR	
	Humacao Municipio, PR	
	Juncos Municipio, PR	
	Las Piedras Municipio, PR	

TABLE 4G—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Loiza Municipio, PR Manati Municipio, PR Maunabo Municipio, PR Morovis Municipio, PR Naguabo Municipio, PR Naranjito Municipio, PR Orocovis Municipio, PR Quebradillas Municipio, PR Rio Grande Municipio, PR San Juan Municipio, PR San Lorenzo Municipio, PR Toa Alta Municipio, PR Toa Baja Municipio, PR Trujillo Alto Municipio, PR Vega Alta Municipio, PR Vega Baja Municipio, PR Yabucoa Municipio, PR	
42020	San Luis Obispo-Paso Robles, CA San Luis Obispo County, CA	1.1140
42044	Santa Ana-Anaheim-Irvine, CA Orange County, CA	1.1628
42060	Santa Barbara-Santa Maria-Goleta, CA Santa Barbara County, CA	1.0731
42100	Santa Cruz-Watsonville, CA Santa Cruz County, CA	1.4786
42140	Santa Fe, NM Santa Fe County, NM	1.0913
42220	Santa Rosa-Petaluma, CA Sonoma County, CA	1.2958
42260	Sarasota-Bradenton-Venice, FL Manatee County, FL Sarasota County, FL	0.9635
42340	Savannah, GA Bryan County, GA Chatham County, GA Effingham County, GA	0.9470
42540	Scranton-Wilkes-Barre, PA Lackawanna County, PA Luzerne County, PA Wyoming County, PA	0.8529
42644	Seattle-Bellevue-Everett, WA King County, WA Snohomish County, WA	1.1497
43100	Sheboygan, WI Sheboygan County, WI	0.9485
43300	Sherman-Denison, TX Grayson County, TX	0.9645
43340	Shreveport-Bossier City, LA Bossier Parish, LA Caddo Parish, LA De Soto Parish, LA	0.9153
43580	Sioux City, IA-NE-SD Woodbury County, IA Dakota County, NE Dixon County, NE Union County, SD	0.9077
43620	Sioux Falls, SD Lincoln County, SD McCook County, SD Minnehaha County, SD Turner County, SD	0.9438
43780	South Bend-Mishawaka, IN-MI St. Joseph County, IN Cass County, MI	0.9458
43900	Spartanburg, SC Spartanburg County, SC	0.9035
44060	Spokane, WA Spokane County, WA	1.0674
44100	Springfield, IL Menard County, IL Sangamon County, IL	0.8754

TABLE 4G—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
44140	Springfield, MA	1.0432
	Franklin County, MA	
	Hampden County, MA	
	Hampshire County, MA	
44180	Springfield, MO	0.8458
	Christian County, MO	
	Dallas County, MO	
	Greene County, MO	
	Polk County, MO	
	Webster County, MO	
44220	Springfield, OH	0.8763
	Clark County, OH	
44300	State College, PA	0.8486
	Centre County, PA	
44700	Stockton, CA	1.0605
	San Joaquin County, CA	
44844	Suffolk-Nassau, NY	1.2966
	Nassau County, NY	
	Suffolk County, NY	
44940	Sumter, SC	0.8449
	Sumter County, SC	
45060	Syracuse, NY	0.9504
	Madison County, NY	
	Onondaga County, NY	
	Oswego County, NY	
45104	Tacoma, WA	1.1105
	Pierce County, WA	
45220	Tallahassee, FL	0.8690
	Gadsden County, FL	
	Jefferson County, FL	
	Leon County, FL	
	Wakulla County, FL	
45300	Tampa-St. Petersburg-Clearwater, FL	0.9087
	Hernando County, FL	
	Hillsborough County, FL	
	Pasco County, FL	
	Pinellas County, FL	
45460	Terre Haute, IN	0.8675
	Clay County, IN	
	Sullivan County, IN	
	Vermillion County, IN	
	Vigo County, IN	
45500	Texarkana, TX-Texarkana, AR	0.8432
	Miller County, AR	
	Bowie County, TX	
45780	Toledo, OH	0.9536
	Fulton County, OH	
	Lucas County, OH	
	Ottawa County, OH	
	Wood County, OH	
45820	Topeka, KS	0.8915
	Jackson County, KS	
	Jefferson County, KS	
	Osage County, KS	
	Shawnee County, KS	
	Wabaunsee County, KS	
45940	Trenton-Ewing, NJ	1.0294
	Mercer County, NJ	
46060	Tucson, AZ	0.8971
	Pima County, AZ	
46140	Tulsa, OK	0.8709
	Creek County, OK	
	Okmulgee County, OK	
	Osage County, OK	
	Pawnee County, OK	
	Rogers County, OK	
	Tulsa County, OK	
	Wagoner County, OK	
46220	Tuscaloosa, AL	0.8358
	Greene County, AL	
	Hale County, AL	

TABLE 4G—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Tuscaloosa County, AL	
46340	Tyler, TX	0.9534
	Smith County, TX	
46540	Utica-Rome, NY	0.8339
	Herkimer County, NY	
	Oneida County, NY	
46660	Valdosta, GA	0.8355
	Brooks County, GA	
	Echols County, GA	
	Lanier County, GA	
	Lowndes County, GA	
46700	Vallejo-Fairfield, CA	1.4275
	Solano County, CA	
46940	Vero Beach, FL	0.9513
	Indian River County, FL	
47020	Victoria, TX	0.8491
	Calhoun County, TX	
	Goliad County, TX	
	Victoria County, TX	
47220	Vineland-Millville-Bridgeton, NJ	1.0604
	Cumberland County, NJ	
47260	Virginia Beach-Norfolk-Newport News, VA-NC	0.8941
	Currituck County, NC	
	Gloucester County, VA	
	Isle of Wight County, VA	
	James City County, VA	
	Mathews County, VA	
	Surry County, VA	
	York County, VA	
	Chesapeake City, VA	
	Hampton City, VA	
	Newport News City, VA	
	Norfolk City, VA	
	Poquoson City, VA	
	Portsmouth City, VA	
	Suffolk City, VA	
	Virginia Beach City, VA	
	Williamsburg City, VA	
47300	Visalia-Porterville, CA	1.0440
	Tulare County, CA	
47380	Waco, TX	0.8167
	McLennan County, TX	
47580	Warner Robins, GA	0.8513
	Houston County, GA	
47644	Warren-Farmington Hills-Troy, MI	1.0131
	Lapeer County, MI	
	Livingston County, MI	
	Macomb County, MI	
	Oakland County, MI	
	St. Clair County, MI	
47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	1.1063
	District of Columbia, DC	
	Calvert County, MD	
	Charles County, MD	
	Prince George's County, MD	
	Arlington County, VA	
	Clarke County, VA	
	Fairfax County, VA	
	Fauquier County, VA	
	Loudoun County, VA	
	Prince William County, VA	
	Spotsylvania County, VA	
	Stafford County, VA	
	Warren County, VA	
	Alexandria City, VA	
	Fairfax City, VA	
	Falls Church City, VA	
	Fredericksburg City, VA	
	Manassas City, VA	
	Manassas Park City, VA	
	Jefferson County, WV	

TABLE 4G—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
47940	Waterloo-Cedar Falls, IA	0.8652
	Black Hawk County, IA	
	Bremer County, IA	
	Grundy County, IA	
48140	Wausau, WI	0.9645
	Marathon County, WI	
48260	Weirton-Steubenville, WV-OH	0.8708
	Jefferson County, OH	
	Brooke County, WV	
	Hancock County, WV	
48300	Wenatchee, WA	1.0340
	Chelan County, WA	
	Douglas County, WA	
48424	West Palm Beach-Boca Raton-Boynton Beach, FL	1.0074
	Palm Beach County, FL	
48540	Wheeling, WV-OH	0.8708
	Belmont County, OH	
	Marshall County, WV	
	Ohio County, WV	
48620	Wichita, KS	0.9476
	Butler County, KS	
	Harvey County, KS	
	Sedgwick County, KS	
	Sumner County, KS	
48660	Wichita Falls, TX	0.8379
	Archer County, TX	
	Clay County, TX	
	Wichita County, TX	
48700	Williamsport, PA	0.8432
	Lycoming County, PA	
48864	Wilmington, DE-MD-NJ	1.1110
	New Castle County, DE	
	Cecil County, MD	
	Salem County, NJ	
48900	Wilmington, NC	0.9248
	Brunswick County, NC	
	New Hanover County, NC	
	Pender County, NC	
49020	Winchester, VA-WV	1.0513
	Frederick County, VA	
	Winchester City, VA	
	Hampshire County, WV	
49180	Winston-Salem, NC	0.9430
	Davie County, NC	
	Forsyth County, NC	
	Stokes County, NC	
	Yadkin County, NC	
49340	Worcester, MA	1.1034
	Worcester County, MA	
49420	Yakima, WA	1.0343
	Yakima County, WA	
49500	Yauco, PR	0.4505
	Guánica Municipio, PR	
	Guayanilla Municipio, PR	
	Peñuelas Municipio, PR	
	Yauco Municipio, PR	
49620	York-Hanover, PA	0.8916
	York County, PA	
49660	Youngstown-Warren-Boardman, OH-PA	0.9257
	Mahoning County, OH	
	Trumbull County, OH	
	Mercer County, PA	
49700	Yuba City, CA	1.0440
	Sutter County, CA	
	Yuba County, CA	
49740	Yuma, AZ	0.8967
	Yuma County, AZ	

7. On page 28658, in Table 5—List of Relative Weighting Factors, Geometric and Arithmetic Mean Length of Stay (LOS), correct the entry for DRG 483 to read as follows:

DRG	MDC	Type	DRG title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
483	PRE	SURG	No longer valid	0.0000	0.0	0.0

8. On page 28660, in Table 5—List of Relative Weighting Factors, Geometric and Arithmetic Mean Length of Stay (LOS), correct the entry for DRG 541 to read as follows:

DRG	MDC	Type	DRG Title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
541	PRE	SURG	TRACH W MV 96+ HRS OR PDX EXC FACE, MTH, & NECK DX W/MAJOR OR.	19.3416	37.7	44.9

9. On page 28662 through 28667, Table 6A.—New Diagnosis Codes is corrected to read as follows:

TABLE 6A.—NEW DIAGNOSIS CODES

Diagnosis Code	Description	CC	MDC	DRG
066.40	West Nile Fever, unspecified	N	18	421, 422
066.41	West Nile Fever with encephalitis	N	18	421, 422
066.42	West Nile Fever with other neurologic manifestation	N	18	421, 422
066.49	West Nile Fever with other complications	N	18	421, 422
070.70	Unspecified viral hepatitis C without hepatic coma	Y	7	205, 206
070.71	Unspecified viral hepatitis C with hepatic coma	Y	7	205, 206
252.00	Hyperparathyroidism, unspecified	N	10	300, 301
252.01	Primary hyperparathyroidism	N	10	300, 301
252.02	Secondary hyperparathyroidism, non-renal	N	10	300, 301
252.08	Other hyperparathyroidism	N	10	300, 301
273.4	Alpha-1-antitrypsin deficiency	N	10	299
277.85	Disorders of fatty acid oxidation	N	10	299
277.86	Peroxisomal disorders	N	10	299
277.87	Disorders of mitochondrial metabolism	N	10	299
347.00	Narcolepsy, without cataplexy	N	1	34, 35
347.01	Narcolepsy, with cataplexy	N	1	34, 35
347.10	Narcolepsy in conditions classified elsewhere, without cataplexy	N	1	34, 35
347.11	Narcolepsy in conditions classified elsewhere, with cataplexy	N	1	34, 35
380.03	Chondritis of pinna	N	8	256
453.40	Venous embolism and thrombosis of unspecified deep vessels of lower extremity	Y	5	130, 131
453.41	Venous embolism and thrombosis of deep vessels of proximal lower extremity	Y	5	130, 131
453.42	Venous embolism and thrombosis of deep vessels of distal lower extremity	Y	5	130, 131
477.2	Allergic rhinitis, due to animal (cat) (dog) hair and dander	N	3	68, 69, 70
491.22	Obstructive chronic bronchitis with acute bronchitis	Y	4	88
521.06	Dental caries pit and fissure	N	PRE	482
			3	185, 186, 187
521.07	Dental caries of smooth surface	N	PRE	482
			3	185, 186, 187
521.08	Dental caries of root surface	N	PRE	482
			3	185, 186, 187
521.10	Excessive attrition, unspecified	N	PRE	482
			3	185, 186, 187
521.11	Excessive attrition, limited to enamel	N	PRE	482
			3	185, 186, 187
521.12	Excessive attrition, extending into dentine	N	PRE	482
			3	185, 186, 187
521.13	Excessive attrition, extending into pulp	N	PRE	482
			3	185, 186, 187
521.14	Excessive attrition, localized	N	PRE	482
			3	185, 186, 187
521.15	Excessive attrition, generalized	N	PRE	482
			3	185, 186, 187
521.20	Abrasion, unspecified	N	PRE	482
			3	185, 186, 187

TABLE 6A.—NEW DIAGNOSIS CODES—Continued

Diagnosis Code	Description	CC	MDC	DRG
521.21	Abrasion, limited to enamel	N	PRE	482
			3	185, 186, 187
521.22	Abrasion, extending into dentine	N	PRE	482
			3	185, 186, 187
521.23	Abrasion, extending into pulp	N	PRE	482
			3	185, 186, 187
521.24	Abrasion, localized	N	PRE	482
			3	185, 186, 187
521.25	Abrasion, generalized	N	PRE	482
			3	185, 186, 187
521.30	Erosion, unspecified	N	PRE	482
			3	185, 186, 187
521.31	Erosion, limited to enamel	N	PRE	482
			3	185, 186, 187
521.32	Erosion, extending into dentine	N	PRE	482
			3	185, 186, 187
521.33	Erosion, extending into pulp	N	PRE	482
			3	185, 186, 187
521.34	Erosion, localized	N	PRE	482
			3	185, 186, 187
521.35	Erosion, generalized	N	PRE	482
			3	185, 186, 187
521.40	Pathological resorption, unspecified	N	PRE	482
			3	185, 186, 187
521.41	Pathological resorption, internal	N	PRE	482
			3	185, 186, 187
521.42	Pathological resorption, external	N	PRE	482
			3	185, 186, 187
521.49	Other pathological resorption	N	PRE	482
			3	185, 186, 187
523.20	Gingival recession, unspecified	N	PRE	482
			3	185, 186, 187
523.21	Gingival recession, minimal	N	PRE	482
			3	185, 186, 187
523.22	Gingival recession, moderate	N	PRE	482
			3	185, 186, 187
523.23	Gingival recession, severe	N	PRE	482
			3	185, 186, 187
523.24	Gingival recession, localized	N	PRE	482
			3	185, 186, 187
523.25	Gingival recession, generalized	N	PRE	482
			3	185, 186, 187
524.07	Excessive tuberosity of jaw	N	PRE	482
			3	185, 186, 187
524.20	Unspecified anomaly of dental arch relationship	N	PRE	482
			3	185, 186, 187
524.21	Angle's class I	N	PRE	482
			3	185, 186, 187
524.22	Angle's class II	N	PRE	482
			3	185, 186, 187
524.23	Angle's class III	N	PRE	482
			3	185, 186, 187
524.24	Open anterior occlusal relationship	N	PRE	482
			3	185, 186, 187
524.25	Open posterior occlusal relationship	N	PRE	482
			3	185, 186, 187
524.26	Excessive horizontal overlap	N	PRE	482
			3	185, 186, 187
524.27	Reverse articulation	N	PRE	482
			3	185, 186, 187
524.28	Anomalies of interarch distance	N	PRE	482
			3	185, 186, 187
524.29	Other anomalies of dental arch relationship	N	PRE	482
			3	185, 186, 187
524.30	Unspecified anomaly of tooth position	N	PRE	482
			3	185, 186, 187
524.31	Crowding of teeth	N	PRE	482
			3	185, 186, 187
524.32	Excessive spacing of teeth	N	PRE	482
			3	185, 186, 187

TABLE 6A.—NEW DIAGNOSIS CODES—Continued

Diagnosis Code	Description	CC	MDC	DRG
524.33	Horizontal displacement of teeth	N	PRE	482
			3	185, 186, 187
524.34	Vertical displacement of teeth	N	PRE	482
			3	185, 186, 187
524.35	Rotation of teeth	N	PRE	482
			3	185, 186, 187
524.36	Insufficient interocclusal distance of teeth (ridge)	N	PRE	482
			3	185, 186, 187
524.37	Excessive interocclusal distance of teeth	N	PRE	482
			3	185, 186, 187
524.39	Other anomalies of tooth position	N	PRE	482
			3	185, 186, 187
524.50	Dentofacial functional abnormality, unspecified	N	PRE	482
			3	185, 186, 187
524.51	Abnormal jaw closure	N	PRE	482
			3	185, 186, 187
524.52	Limited mandibular range of motion	N	PRE	482
			3	185, 186, 187
524.53	Deviation in opening and closing of the mandible	N	PRE	482
			3	185, 186, 187
524.54	Insufficient anterior guidance	N	PRE	482
			3	185, 186, 187
524.55	Centric occlusion maximum intercuspation discrepancy	N	PRE	482
			3	185, 186, 187
524.56	Nonworking side interference	N	PRE	482
			3	185, 186, 187
524.57	Lack of posterior occlusal support	N	PRE	482
			3	185, 186, 187
524.59	Other dentofacial functional abnormalities	N	PRE	482
			3	185, 186, 187
524.64	Temporomandibular joint sounds on opening and/or closing the jaw	N	PRE	482
			3	185, 186, 187
524.75	Vertical displacement of alveolus and teeth	N	PRE	482
			3	185, 186, 187
524.76	Occlusal plane deviation	N	PRE	482
			3	185, 186, 187
524.81	Anterior soft tissue impingement	N	PRE	482
			3	185, 186, 187
524.82	Posterior soft tissue impingement	N	PRE	482
			3	185, 186, 187
524.89	Other specified dentofacial anomalies	N	PRE	482
			3	185, 186, 187
525.20	Unspecified atrophy of edentulous alveolar ridge	N	PRE	482
			3	185, 186, 187
525.21	Minimal atrophy of the mandible	N	PRE	482
			3	185, 186, 187
525.22	Moderate atrophy of the mandible	N	PRE	482
			3	185, 186, 187
525.23	Severe atrophy of the mandible	N	PRE	482
			3	185, 186, 187
525.24	Minimal atrophy of the maxilla	N	PRE	482
			3	185, 186, 187
525.25	Moderate atrophy of the maxilla	N	PRE	482
			3	185, 186, 187
525.26	Severe atrophy of the maxilla	N	PRE	482
			3	185, 186, 187
528.71	Minimal keratinized residual ridge mucosa	N	PRE	482
			3	185, 186, 187
528.72	Excessive keratinized residual ridge mucosa	N	PRE	482
			3	185, 186, 187
528.79	Other disturbances of oral epithelium, including tongue	N	PRE	482
			3	185, 186, 187
530.86	Infection of esophagostomy	Y	6	188, 189, 190
530.87	Mechanical complication of esophagostomy	Y	6	188, 189, 190
588.81	Secondary hyperparathyroidism (of renal origin)	N	11	331, 332, 333
588.89	Other specified disorders resulting from impaired renal function	N	11	331, 332, 333
618.00	Unspecified prolapse of vaginal walls	N	13	358, 359, 369
618.01	Cystocele, midline	N	13	358, 359, 369
618.02	Cystocele, lateral	N	13	358, 359, 369
618.03	Urethrocele	N	13	358, 359, 369
618.04	Rectocele	N	13	358, 359, 369

TABLE 6A.—NEW DIAGNOSIS CODES—Continued

Diagnosis Code	Description	CC	MDC	DRG
618.05	Perineocele	N	13	358, 359, 369
618.09	Other prolapse of vaginal walls without mention of uterine prolapse	N	13	358, 359, 369
618.81	Incompetence or weakening of pubocervical tissue	N	13	358, 359, 369
618.82	Incompetence or weakening of rectovaginal tissue	N	13	358, 359, 369
618.83	Pelvic muscle wasting	N	13	358, 359, 369
618.89	Other specified genital prolapse	N	13	358, 359, 369
621.30	Endometrial hyperplasia, unspecified	N	13	358, 359, 369
621.31	Simple endometrial hyperplasia without atypia	N	13	358, 359, 369
621.32	Complex endometrial hyperplasia without atypia	N	13	358, 359, 369
621.33	Endometrial hyperplasia with atypia	N	13	358, 359, 369
622.10	Dysplasia of cervix, unspecified	N	13	358, 359, 369
622.11	Mild dysplasia of cervix	N	13	358, 359, 369
622.12	Moderate dysplasia of cervix	N	13	358, 359, 369
629.20	Female genital mutilation status, unspecified	N	13	358, 359, 369
629.21	Female genital mutilation Type I status	N	13	358, 359, 369
629.22	Female genital mutilation Type II status	N	13	358, 359, 369
629.23	Female genital mutilation Type III status	N	13	358, 359, 369
692.84	Contact dermatitis and other eczema due to animal (cat) (dog) dander	N	9	283, 284
705.21	Primary focal hyperhidrosis	N	9	283, 284
705.22	Secondary focal hyperhidrosis	N	9	283, 284
707.00	Decubitus ulcer, unspecified site	Y	5	121[1]
			9	263, 264, 271
707.01	Decubitus ulcer, elbow	Y	5	121[1]
			9	263, 264, 271
707.02	Decubitus ulcer, upper back	Y	5	121[1]
			9	263, 264, 271
707.03	Decubitus ulcer, lower back	Y	5	121[1]
			9	263, 264, 271
707.04	Decubitus ulcer, hip	Y	5	121[1]
			9	263, 264, 271
707.05	Decubitus ulcer, buttock	Y	5	121[1]
			9	263, 264, 271
707.06	Decubitus ulcer, ankle	Y	5	121[1]
			9	263, 264, 271
707.07	Decubitus ulcer, heel	Y	5	121[1]
			9	263, 264, 271
707.09	Decubitus ulcer, other site	Y	5	121[1]
			9	263, 264, 271
758.31	Cri-du-chat syndrome	N	19	429
758.32	Velo-cardio-facial syndrome	N	19	429
758.33	Other microdeletions	N	19	429
758.39	Other autosomal deletions	N	19	429
780.58	Sleep related movement disorder	N	19	432
788.38	Overflow incontinence	N	11	325, 326, 327
790.95	Elevated C-reactive protein (CRP)	N	23	463, 464
795.03	Papanicolaou smear of cervix with low grade squamous intraepithelial lesion (LGSIL).	N	13	358, 359, 369
795.04	Papanicolaou smear of cervix with high grade squamous intraepithelial lesion (HGSIL).	N	13	358, 359, 369
795.05	Cervical high risk human papillomavirus (HPV) DNA test positive	N	13	358, 359, 369
795.08	Nonspecific abnormal papanicolaou smear of cervix, unsatisfactory smear	N	13	358, 359, 369
796.6	Nonspecific abnormal findings on neonatal screening	N	23	463, 464
V01.71	Contact or exposure to varicella	N	23	467
V01.79	Contact or exposure to other viral diseases	N	23	467
V01.83	Contact or exposure to escherichia coli (E. coli)	N	23	467
V01.84	Contact or exposure to meningococcus	N	23	467
V46.11	Dependence on respirator, status	Y	23	467
V46.12	Encounter for respirator dependence during power failure	Y	23	467
V49.83	Awaiting organ transplant status	Y	23	467
V58.44	Aftercare following organ transplant	N	23	465–466
V58.66	Longterm (current) use of aspirin	N	23	465–466
V58.67	Longterm (current) use of insulin	N	23	465–466
V69.4	Lack of adequate sleep	N	23	467
V72.31	Routine gynecological examination	N	23	467
V72.32	Encounter for Papanicolaou cervical smear to confirm findings of recent normal smear following initial abnormal smear.	N	23	467
V72.40	Pregnancy examination or test, pregnancy unconfirmed	N	23	467
V72.41	Pregnancy examination or test, negative result	N	23	467
V84.01	Genetic susceptibility to malignant neoplasm of breast	N	23	467
V84.02	Genetic susceptibility to malignant neoplasm of ovary	N	23	467
V84.03	Genetic susceptibility to malignant neoplasm of prostate	N	23	467

TABLE 6A.—NEW DIAGNOSIS CODES—Continued

Diagnosis Code	Description	CC	MDC	DRG
V84.04	Genetic susceptibility to malignant neoplasm of endometrium	N	23	467
V84.09	Genetic susceptibility to other malignant neoplasm	N	23	467
V84.8	Genetic susceptibility to other disease	N	23	467

[1] Assigned to the secondary diagnosis list that defines a major complication.

10. On page 28671 through 28674, Table 6B—New Procedure Codes is corrected to read as follows:

TABLE 6B.—NEW PROCEDURES CODES

Procedure code	Description	OR	MDC	DRG
00.16	Pressurized treatment of venous bypass graft [conduit] with pharmaceutical substance.	N		
00.17	Infusion of vasopressor agent	N		
00.21	Intravascular imaging of extracranial cerebral vessels	N		
00.22	Intravascular imaging of intrathoracic vessels	N		
00.23	Intravascular imaging of peripheral vessels	N		
00.24	Intravascular imaging of coronary vessels	N		
00.25	Intravascular imaging of renal vessels	N		
00.28	Intravascular imaging, other specified vessels(s)	N		
00.29	Intravascular imaging, unspecified vessels(s)	N		
00.31	Computer assisted surgery with CT/CTA	N		
00.32	Computer assisted surgery with MR/MRA	N		
00.33	Computer assisted surgery with fluoroscopy	N		
00.34	Imageless computer assisted surgery	N		
00.35	Computer assisted surgery with multiple datasets	N		
00.39	Other computer assisted surgery	N		
00.61	Percutaneous angioplasty or atherectomy precerebral (extracranial) vessel(s)	Y	1	533, 534
			5	478, 479
			21	442, 443
			24	486
00.62	Percutaneous angioplasty or atherectomy of intracranial vessel(s)	Y	1	533, 534
			5	478, 479
			21	442, 443
			24	486
00.63	Percutaneous insertion of carotid artery stent(s)	N		
00.64	Percutaneous insertion of other precerebral (extracranial) artery stent(s)	N		
00.65	Percutaneous insertion of intracranial vascular stent(s)	N		
00.91	Transplant from live related donor	N		
00.92	Transplant from live nonrelated donor	N		
00.93	Transplant from cadaver	N		
27.64	Insertion of palatal implant	N		
37.68	Insertion of percutaneous external heart assist device	Y	5	104, 105
37.90	Insertion of left atrial appendage	N*	5	518
44.38	Laparoscopic gastroenterostomy	Y	5	120
			6	154, 155, 156
			7	201
			10	288
			17	406, 407, 539, 540
44.67	Laparoscopic procedures for creation of esophagogastric sphincteric competene	Y	6	154, 155, 156
			21	442, 443
			24	486
44.68	Laparoscopic gastroplasty	Y	6	154, 155, 156
			10	288
			21	442, 443
			24	486
44.95	Laparoscopic gastric restrictive procedure	Y	10	288
44.96	Laparoscopic revision of gastric	Y	10	288
44.97	Laparoscopic removal of gastric restrictive device(s)	Y	10	288
44.98	(Laparoscopic) adjustment of size of adjustable gastric restrictive device	Y	10	288
81.65	Vertebroplasty	Y	8	233, 234
			21	442, 443
			24	486

TABLE 6B.—NEW PROCEDURES CODES—Continued

Procedure code	Description	OR	MDC	DRG
81.66	Kyphoplasty	Y	8	233, 234
			21	442, 443
			24	486
84.53	Implantation of internal limb lenthening device with kinetic distraction	N		
84.54	Implantation of other internal limb lengthening device	N		
84.55	Insertion of bone void filler	N		
84.59	Insertion of other spinal devices	Y	1	531, 532
			8	499, 500
			21	442, 443
			24	486
84.60	Insertion of spinal disc prosthesis, not ohterwise specified	Y	1	531, 532
			* 8	499, 500
			21	442, 443
			24	486
84.61	Insertion of partial spinal disc prosthesis, cervical	Y	1	531, 532
			8	499, 500
			21	442, 443
			24	486
84.62	Insertion of total spinal disc prosthesis, cervical	Y	1	531, 532
			8	499, 500
			21	442, 443
			24	486
84.63	Insertion of spinal disc prosthesis, thoracic	Y	1	531, 532
			8	499, 500
			21	442, 443
			24	486
84.64	Insertion of partial spinal disc prosthesis, lumbosacral	Y	1	531, 532
			8	499, 500
			21	442, 443
			24	4861
84.65	Insertion of total spinal disc prosthesis, lumbosacral	Y	1	531, 532
			8	499, 500
			21	442, 443
			24	486
84.66	Revision or replacement of artificial spinal disc prosthesis, cervical	Y	1	531, 532
			8	499, 500
			21	442, 443
			24	486
84.67	Revision or replacement of artificial spinal disc prosthesis, thoracic	Y	1	531, 532
			8	499, 500
			21	442, 443
			24	486
84.68	Revision or replacement of artifical spinal disc prosthesis, lumbosacral	Y	1	531, 532
			8	499, 500
			21	442, 443
			24	486
84.69	Revision or replacement of artificial spinal disc prosthesis, not otherwise specified	Y	1	531, 532
			8	499, 500
			21	442, 443
			24	486
86.94	Insertion or replacement of single array neurostimulator pulse generator	Y	1	7, 8
86.95	Insertion or replacement of dual array neurostimulator pulse generator	Y	1	7, 8
86.96	Insertion or replacement of other neurostimulator pulse generator	Y	1	7, 8
89.49	Automatic implantable cardioverter/defibrillator (AICD) check	N		
99.78	Aquapheresis	N		

* Non-operating room procedure, but affects DRG assignment.

11. On page 28680, in the Table 6E.—Revised Diagnosis Code Titles, in the fourth row, the entry codes for diagnosis code 250.63 should read:

Diagnosis code	Description	CC	MDC	DRG
250.63	Diabetes with neurological manifestations, type I [juvenile type],uncontrolled	Y	PRE 1	512, 513 18, 19

12. On pages 28768 through 28770, Table 9B.—Hospital Reclassifications and Redesignations by Individual Hospital under Section 508 of Pub. L. 108–173—FY 2004, is Corrected to read as follows:

TABLE 9B.—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL UNDER SECTION 508 OF PUBLIC LAW 108–173—FY 2004

Provider No.	Actual MSA or rural area	Wage index MSA 508 reclassification	Actual CBSA or rural area	Wage index CBSA 508 reclassification	Nearest county	Own wage index
020008			02			1.3157
060075			06			1.1681
070036			25540			1.2954
160064			16			1.0504
330106			44844			1.5152
380090			38			1.2808
410010			39300			1.1702
530015			53			1.0064
010150	01	1800	01	17980		
050494	05	7500	05	42220		
050549	8735	7500	37100	42220		
060057	06	2080	06	19740		
070001	5483	5380	35300	44844		
070005	5483	5380	35300	44844		
070010	5483	5600	14860	35644		
070016	5483	5380	35300	44844		
070017	5483	5380	35300	44844		
070019	5483	5360	35300	44844		
070022	5483	5380	35300	44844		
070028	5483	5600	14860	35644		
070031	5483	5380	35300	44844		
070039	5483	5380	35300	44844		
120025	12	3320	12	26180		
150034	2960	1600	23844	16974	Cook.	
160040	8920	1360	47940	16300		
160067	8920	1360	47940	16300		
160110	8920	1360	47940	16300		
190218	19	7680	19	43340	Caddo.	
220046	6323	1123	38340	49340	Worcester.	
230003	3000	3720	26100	28020	Van Buren.	
230004	3000	3720	34740	28020	Van Buren.	
230013	2160	2640	47644	22420		
230019	2160	2640	47644	22420		
230020	2160	0440	19804	11460	Washtenaw.	
230024	2160	0440	19804	11460	Washtenaw.	
230029	2160	2640	47644	22420		
230036	23	2640	23	22420		
230038	3000	3720	24340	28020	Kalamazoo.	
230053	2160	0440	19804	11460	Washtenaw.	
230059	3000	3720	24340	28020	Kalamazoo.	
230066	3000	3720	34740	28020	Van Buren.	
230071	2160	2640	47644	22420		
230072	3000	3720	26100	28020	Van Buren.	
230089	2160	0440	19804	11460	Washtenaw.	
230092	3520	3000	27100	24340	Kent.	
230097	23	3720	23	28020	Kalamazoo.	
230104	2160	0440	19804	11460	Washtenaw.	
230106	23	3720	24340	28020	Van Buren.	
230119	2160	0440	19804	11460	Washtenaw.	
230130	2160	2640	47644	22420		
230135	2160	0440	19804	11460	Washtenaw.	
230146	2160	0440	19804	11460	Washtenaw.	
230151	2160	2640	47644	22420		
230165	2160	0440	19804	11460	Washtenaw.	
230174	3000	3720	26100	28020	Van Buren.	
230176	2160	0440	19804	11460	Washtenaw.	
230207	2160	2640	47644	22420		
230223	2160	2640	47644	22420		
230236	3000	3720	24340	28020	Kalamazoo.	
230254	2160	2640	47644	22420		
230269	2160	2640	47644	22420		
230270	2160	0440	19804	11460	Washtenaw.	
230273	2160	0440	19804	11460	Washtenaw.	
230277	2160	2640	47644	22420		
250002	25	0920	25	37700	Jackson.	
250122	25	0920	25	25060	Hancock.	

TABLE 9B.—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL UNDER SECTION 508 OF PUBLIC LAW 108–173—FY 2004—Continued

Provider No.	Actual MSA or rural area	Wage index MSA 508 reclassification	Actual CBSA or rural area	Wage index CBSA 508 reclassification	Nearest county	Own wage index
270014	27	0880	33540	13740		
270021	27	0880	27	13740		
270023	5140	0880	33540	13740		
270032	27	0880	27	13740		
270050	27	0880	27	13740		
270057	27	0880	27	13740		
310021	8480	0875	45940	35644		
310028	5640	5600	35084	35644		
310050	5640	5600	35084	35644		
310051	5640	5600	35084	35644		
310060	5640	5600	10900	35644		
310115	5640	5600	10900	35644		
310120	5640	5600	35084	35644		
330049	2281	5600	39100	35644		
330067	2281	5600	39100	35644		
330126	5660	5600	39100	35644		
330135	5660	5600	39100	35644		
330205	5660	5600	39100	35644		
330264	5660	5380	39100	44844		
340002	0480	1520	11700	16740	Gaston.	
350002	1010	2520	13900	22020		
350003	1010	2520	35	22020		
350006	1010	2520	35	22020		
350010	1010	2520	35	22020		
350014	1010	2520	35	22020		
350015	1010	2520	13900	22020		
350017	1010	2520	35	22020		
350030	1010	2520	35	22020		
350061	1010	2520	35	22020		
390001	7560	0240	42540	10900		
390003	7560	0240	39	10900		
390054	7560	4000	42540	29540		
390072	7560	0240	39	10900		
390095	7560	0240	42540	10900		
390109	7560	0240	42540	10900		
390119	7560	0240	42540	10900		
390137	7560	0240	42540	10900		
390169	7560	0240	42540	10900		
390185	7560	0240	42540	10900		
390192	7560	0240	42540	10900		
390237	7560	0240	42540	10900		
390270	7560	4000	42540	29540		
430003	43	6660	.....	39660		
430015	43	7760	43	43620		
430048	43	7760	43	43620		
430060	43	7760	43	43620		
430064	43	7760	43	43620		
430077	6660	7760	39660	43620		
430091	6660	7760	39660	43620		
450010	9080	4880	48660	32580		
450072	1145	3360	26420	26420		
450591	1145	3360	26420	26420		
470003	1303	1123	15540	40484	Strafford.	
490001	49	4640	49	31340		
490024	6800	1950	40220	19260		

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; Program No. 93.774, Medicare—Supplementary Medical Insurance Program; and Program No. 93.778, Medical Assistance Program)

Dated: June 8,2004.

Ann C. Agnew,

Executive Secretary to the Department.

[FR Doc. 04–14346 Filed 6–24–04;8:45 am]

BILLING CODE 4120–03–P

Federal Register

Friday,
June 25, 2004

Part VI

Securities and Exchange Commission

17 CFR Parts 228, 229, and 240
Ownership Reports and Trading by Officers, Directors and Principal Security Holders; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229 and 240

[Release Nos 34–49895; 35–27861; IC–26471; File No. S7–27–04]

RIN 3235–AJ27

Ownership Reports and Trading by Officers, Directors and Principal Security Holders

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Securities and Exchange Commission is proposing amendments to two rules that exempt certain transactions from the private right of action to recover short-swing profit provided by Section 16(b) of the Securities Exchange Act of 1934. The amendments are intended to clarify the exemptive scope of these rules, consistent with statements in previous Commission releases. We also propose to amend Item 405 of Regulations S–K and S–B to harmonize this item with the two-business day Form 4 due date and mandated electronic filing and Web site posting of Section 16 reports.

DATES: Comments should be received on or before August 9, 2004.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an E-mail to *rule-comments@sec.gov*. Please include File Number S7–27–04 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

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 S7–27–04. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Anne Krauskopf, Senior Special Counsel, at (202) 942–2900, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0402.

SUPPLEMENTARY INFORMATION: We are proposing amendments to Rules 16b–3 [1] and 16b–7 [2] under the Securities Exchange Act of 1934 ("Exchange Act"),[3] and Item 405 of Regulations S–K and S–B.[4]

I. Executive Summary and Background

Section 16 [5] of the Exchange Act applies to every person who is the beneficial owner of more than 10% of any class of equity security registered under Section 12 of the Exchange Act,[6] and each officer and director (collectively, "insiders") of the issuer of such security. Upon becoming an insider, or upon the Section 12 registration of that security, Section 16(a) [7] requires an insider to file an initial report with the Commission disclosing his or her beneficial ownership of all equity securities of the issuer. To keep this information current, Section 16(a) also requires insiders to report changes in such ownership, or the purchase or sale of a security-based swap agreement [8] involving such equity security.[9]

Section 16(b) [10] provides the issuer (or shareholders suing on behalf of the issuer) a private right of action to recover from an insider any profit realized by the insider from any purchase and sale (or sale and purchase) of any equity security of the issuer within any period of less than six months. This statute is designed to curb abuses of inside information by insiders. Unlike insider trading prohibitions under general antifraud provisions,[11] which are violated if a trader knew or was reckless in not knowing of material non-public information, Section 16(b) operates without consideration of whether an insider actually was aware of material non-public information. Section 16(b) operates strictly, providing a private right of action to recover short-swing profits by insiders, on the theory that short-swing transactions (a purchase and sale within six months) present a sufficient likelihood of involving abuse of inside information that a strict liability prophylactic approach is appropriate.

Section 16(b) grants the Commission authority to exempt, by rules and regulations, "any transaction or transactions * * * not comprehended within the purpose of this subsection." [12] Pursuant to this authority, we have adopted various exemptive rules, including Rule 16b–3—"Transactions between an issuer and its officers or directors," [13] and Rule 16b–7—"Mergers, reclassifications, and consolidations." [14] These exemptive rules provide that transactions that satisfy their conditions will not be subject to Section 16(b) short-swing profit recovery.

The recent opinion of the U.S. Court of Appeals for the Third Circuit (the "Third Circuit") in *Levy* v. *Sterling Holding Company, LLC.* ("*Levy* v. *Sterling*"),[15] casts doubt as to the nature and scope of transactions exempted from Section 16(b) short-swing profit recovery by Rules 16b–3 and 16b–7. The Third Circuit held that neither rule exempted directors' acquisitions of issuer securities in a reclassification undertaken by the issuer preparatory to its initial public offering, matching those acquisitions for Section 16(b) profit recovery with the directors' sales within six months in the initial public offering.

In particular, the *Levy* v. *Sterling* opinion reads Rules 16b–3 and 16b–7 to require satisfaction of conditions that are neither contained in the text of the rules nor intended by the Commission. The resulting uncertainty regarding the exemptive scope of these rules has made it difficult for issuers and insiders to plan legitimate transactions. We seek to resolve any doubt as to the meaning and interpretation of these rules by reaffirming the views we have expressed

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[1] 17 CFR 240.16b–3.

[2] 17 CFR 240.16b–7. The proposed amendments would not revise paragraph (b) of this rule.

[3] 15 U.S.C. 78a *et seq.*

[4] 17 CFR 229.405 and 17 CFR 228.405.

[5] 15 U.S.C. 78p.

[6] 15 U.S.C. 78*l*.

[7] 15 U.S.C. 78p(a).

[8] As defined in Section 206B of the Gramm-Leach-Bliley Financial Modernization Act of 1999, as amended by H.R. 4577, Pub. L. No. 106–554, 114 Stat. 2763.

[9] Insiders file transaction reports on Form 4 [17 CFR 249.104] and Form 5 [17 CFR 249.105].

[10] 15 U.S.C. 78p(b).

[11] Exchange Act Section 10(b) [15 U.S.C. 78j(b)] and Exchange Act Rule 10b–5 [17 CFR 240.10b–5].

[12] 15 U.S.C. 78p(b).

[13] The current version of Rule 16b–3 was adopted in Exchange Act Release No. 37260 (May 31, 1996) [61 FR 30376].

[14] As amended in Exchange Act Release No. 28869 (Feb. 8, 1991) [56 FR 7242].

[15] 314 F.3d 106 (3d. Cir. 2002), *cert. denied, Sterling Holding Co.* v. *Levy*, 124 S. Ct. 389 (U.S., Oct. 14, 2003).

previously regarding their appropriate construction.[16] The amendments to the text of the rules we propose in this release will clarify the regulatory conditions that apply to these exemptions, consistent with our previously expressed views.

Item 405 of Regulations S–K and S–B requires issuer disclosure of Section 16 reporting delinquencies. This disclosure is required in the issuer's proxy or information statement[17] for the annual meeting at which directors are elected, and its Form 10–K,[18] 10–KSB[19] or N–SAR.[20] Item 405(b)(1) permits an issuer to presume that a form it receives within three calendar days of the required filing date was filed with the Commission by the required filing date. In light of the two-business day due date generally applicable to Form 4 and the requirements of mandatory EDGAR filing and Web site posting of Section 16 reports, this presumption no longer is appropriate and we propose to amend Item 405 to delete it.

II. Rule 16b–3

Rule 16b–3 exempts from Section 16(b) certain transactions between issuers of securities and their officers and directors. In its *Levy* v. *Sterling* opinion, the Third Circuit construed Rule 16b–3(d), which applies to "grants, awards, or other acquisitions" to limit this exemption to transactions that have some compensation-related aspect. Specifically, since "grants" and "awards" are compensation-related, the Third Circuit reasoned that "other acquisitions" also must be compensation-related in order to be exempted by Rule 16b–3(d). This construction of Rule 16b–3(d) is not in accord with our clearly expressed intent in adopting the rule.

The current version of Rule 16b–3 was adopted in 1996, and implemented substantial revisions designed to simplify the conditions that must be satisfied for the exemption to apply. In contrast to prior versions of Rule 16b–3, which had exempted only employee benefit plan transactions, the 1996 revisions broadened the Rule 16b–3 exemption and extended it to other transactions between issuers and their officers and directors. The revisions focused on the distinction between market transactions by officers and directors, which present opportunities for profit based on non-public information that Section 16(b) is intended to discourage, and transactions between an issuer and its officers and directors, which are subject to fiduciary duties under State law.[21] In adopting the revised rule, we explicitly stated that "a transaction need not be pursuant to an employee benefit plan or any compensatory program to be exempt, nor need it specifically have a compensatory element."[22]

Rule 16b–3(a) provides that "A transaction between the issuer (including an employee benefit plan sponsored by the issuer) and an officer or director of the issuer that involves issuer equity securities shall be exempt from section 16(b) of the Act if the transaction satisfies the applicable conditions set forth in this section." As this makes clear, the only limitations on the exemption for transactions between the issuer and its officer or director are the objective conditions set forth in later subsections of the rule, each of which applies to a different category of transactions.

Rule 16b–3(d), entitled "Grants, awards and other acquisitions from the issuer," exempts from Section 16(b) liability "Any transaction involving a grant, award or other acquisition from the issuer (other than a Discretionary Transaction)"[23] if any one of three alternative conditions is satisfied. These conditions require:

- Approval of the transaction by the issuer's board of directors, or board committee composed solely of two or more Non-Employee Directors;[24]
- Approval or ratification of the transaction, in compliance with Exchange Act Section 14,[25] by the issuer's shareholders;[26] or
- The officer or director to hold the acquired securities for a period of six months following the date of acquisition.[27]

Consistent with the statements in the Adopting and Proposing Releases regarding the scope of the rule, the Commission staff has interpreted Rule 16b–3(d) to exempt a number of transactions outside of the compensatory context, such as:

- The acquisition of acquiror equity securities (including derivative securities) by acquiror officers and directors through the conversion of target equity securities in connection with a corporate merger;[28] and
- An officer's or director's indirect pecuniary interest in transactions between the issuer and certain other persons or entities.[29]

The application of Rule 16b–3(d) to extraordinary transactions also has been recognized in Section 16(b) litigation. In its 2002 opinion in *Gryl* v. *Shire Pharmaceuticals Group PLC*,[30] the U.S. Court of Appeals for the Second Circuit construed Rule 16b–3(d) to exempt acquiror directors' acquisition of acquiror options upon conversion of their target options in a corporate merger.

To eliminate the uncertainty generated by the *Levy* v. *Sterling* opinion, the Commission proposes to amend Rule 16b–3(d). As amended, this paragraph would be entitled "Acquisitions from the issuer," and would provide that any transaction involving an acquisition from the issuer (other than a Discretionary Transaction), including without limitation a grant or award, will be exempt if any one of the Rule's three existing alternative conditions is satisfied.

Rule 16b–3(e) exempts an officer's or director's disposition to the issuer of issuer equity securities that is approved in advance in the manner prescribed by Rule 16b–3(d)(1) (by the issuer's board of directors, or board committee composed solely of two or more Non-Employee Directors) or Rule 16b–3(d)(2) (by the issuer's shareholders in

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[16] See the discussion of previous Commission releases in Sections II and III, below. See also Memorandum of the Securities and Exchange Commission, *Amicus Curiae*, in Support of Appellees' Petition for Rehearing or Rehearing *En Banc* (Feb. 27, 2003). This brief is posted at *http://www.sec.gov/litigation/briefs/levy-sterling022703.htm*.

[17] 17 CFR 240.14a–101, Item 7.

[18] 17 CFR 249.310.

[19] 17 CFR 249.310b.

[20] 17 CFR 249.330; 17 CFR 274.101.

[21] Exchange Act Release No. 36356 (Oct. 11, 1995) [60 FR 53832] ("Proposing Release").

[22] Exchange Act Release No. 37260 (May 31, 1996) [61 FR 30376] ("Adopting Release").

[23] "Discretionary Transaction" is defined in Rule 16b–3(b)(1). A Discretionary Transaction is exempted by Rule 16b–3 only if it satisfies the conditions of Rule 16b–3(f).

[24] Rule 16b–3(d)(1). "Non-Employee Director" is defined in Rule 16b–3(b)(3).

[25] 15 U.S.C. 78n.

[26] Rule 16b–3(d)(2). With respect to shareholder, board and Non-Employee Director committee approval, Rule 16b–3(d) requires approval in advance of the transaction. Shareholder approval must be by either: the affirmative votes of the holders of a majority of the securities of the issuer present, or represented, and entitled to vote at a meeting duly held in accordance with the applicable laws of the state or other jurisdiction in which the issuer is incorporated; or the written consent of the holders of the majority of the securities of the issuer entitled to vote. Shareholder ratification, consistent with the same procedural conditions, may confer the exemption only if such ratification occurs no later than the date of the next annual meeting of shareholders following the transaction.

[27] Rule 16b–3(d)(3).

[28] Division of Corporation Finance interpretive letter to Skadden, Arps, Slate, Meagher & Flom LLP (Jan. 12, 1999).

[29] Division of Corporation Finance interpretive letter to American Bar Association (Feb. 10, 1999). The other persons or entities are immediate family members, partnerships, corporations and trusts, in each case where rules under Section 16(a) require the officer or director to report an indirect pecuniary interest in the transaction.

[30] 298 F.3d 136 (2d Cir. 2002).

compliance with Exchange Act Section 14). Because these exemptive conditions of Rules 16b–3(d) and 16b–3(e) are identical[31] and were intended to operate the same way, we believe that clarification should apply to both Rules 16b–3(d) and 16b–3(e). We propose to further amend Rule 16b–3 by adding Note 4, to state:

> The exemptions provided by paragraphs (d) and (e) of this section apply to any securities transaction by the issuer with an officer or director of the issuer that satisfies the specified conditions of paragraph (d) or (e) of this section, as applicable. These exemptions are not conditioned on the transaction being intended for a compensatory or other particular purpose.

We request comment on the proposed amendments to Rule 16b–3. Specifically, would the proposed amendments accomplish the goal of clarifying the exemptive scope of Rule 16b–3 as we originally intended the rule to apply? If not, what other language would accomplish this goal more effectively? Would the proposed amendment to Rule 16b–3(d) preclude the restrictive construction applied in the *Levy* v. *Sterling* opinion?

As described above, proposed Note 4 reflects the fact that certain exemptive conditions of Rules 16b–3(d) and 16b–3(e) are identical and were not intended to be construed differently. On a prospective basis, however, does this identical treatment remain appropriate? Specifically, should a compensatory or other specified purpose ordinarily be necessary to exempt an officer's or director's disposition of issuer equity securities to the issuer, so that proposed Note 4 should apply only to Rule 16b–3(d) acquisitions?

Alternatively, should proposed Note 4 be tailored more narrowly to clarify that Rules 16b–3(d) and 16b–3(e) are available to exempt officers' and directors' participation in transactions similar to the transaction at issue in *Levy* v. *Sterling?* For example, should proposed Note 4 instead state that an officer's or director's participation in an extraordinary securities transaction with the issuer (such as a merger, reclassification, or exchange offer) that satisfies the exemptive conditions of Rule 16b–3(d) or Rule 16b–3(e) is exempt?

III. Rule 16b–7

Rule 16b–7, entitled "Mergers, reclassifications, and consolidations," exempts from Section 16(b) certain transactions that do not involve a significant change in the issuer's business or assets. The rule is typically relied upon in situations where a company reincorporates in a different state or reorganizes its corporate structure. Rule 16b–7(a)(1) provides that the acquisition of a security pursuant to a merger or consolidation is not subject to Section 16(b) if the security relinquished in exchange is of a company that, before the merger or consolidation, owned:

- 85% or more of the equity securities of all other companies party to the merger or consolidation, or
- 85% or more of the combined assets of all companies undergoing merger or consolidation.

Rule 16b–7(a)(2) exempts the corresponding disposition, pursuant to a merger or consolidation, of a security of an issuer that before the merger or consolidation satisfied either of these 85% ownership tests.

While the *Levy* v. *Sterling* opinion acknowledged that Rule 16b–7 could exempt a reclassification, it construed Rule 16b–7 not to exempt an acquisition pursuant to a reclassification that:

- Resulted in the insiders owning equity securities (common stock) with different risk characteristics from the securities (preferred stock) extinguished in the transaction, where the preferred stock previously had not been convertible into common stock; and
- Thus involved an increase in the percentage of insiders' common stock ownership, based on the fact that the insiders owned some common stock before the reclassification extinguished their preferred stock in exchange for common stock.

The opinion thus imposed upon reclassifications exemptive conditions that are not found in the language of Rule 16b–7 and would not apply to a merger or consolidation relying upon the rule. Moreover, these conditions significantly restrict the exemption's availability for reclassifications by narrowing it to the less frequent situation where the original security and the security for which it is exchanged have the same characteristics. Imposing these conditions is inconsistent with the text of Rule 16b–7, the rule's interpretive history and the Commission's intent.

Although Rule 16b–7 as originally adopted in 1952 only applied to "mergers" and "consolidations,"[32] the Commission staff construed it as also applying to reclassifications.

In a 1981 interpretive release, the staff stated that "Rule 16b–7 does not require that the security received in exchange be similar to that surrendered, and the rule can apply to transactions involving reclassifications."[33] In 1991, the Commission amended the title of Rule 16b–7 to include "reclassifications," explaining that this amendment was not intended to effect any "substantive" changes to the rule, and reaffirmed the staff statement in the 1981 release that Rule 16b–7 applies to reclassifications.[34]

Although the rule does not contain specific standards for exempting reclassifications, the staff has applied to reclassifications the same standards as for mergers and consolidations. In relevant respects a reclassification is little different from a merger exempted by Rule 16b–7. In a merger exempted by the rule, the transaction satisfies either 85% ownership standard, so that the merger effects no major change in the issuer's business or assets. Similarly, in a reclassification the issuer owns all assets involved in the transaction and remains the same, with no change in its business or assets. The similarities are readily illustrated by the fact that an issuer also could effect a reclassification by forming a wholly-owned "shell" subsidiary, merging the issuer into the subsidiary, and exchanging subsidiary securities for the issuer's securities.

Consistent with the 1981 and 1991 Releases, we propose to eliminate uncertainty regarding Rule 16b–7 generated by the *Levy* v. *Sterling* opinion by amending Rule 16b–7 so that, consistent with the rule's title, the text would state "merger, reclassification or consolidation" each place it currently states "merger or consolidation." In addition, a proposed new paragraph would specify that the exemption specified by Rule 16b–7 applies to any securities transaction that satisfies the conditions of the rule and is not conditioned on the transaction satisfying any other conditions.[35]

We request comment on the proposed amendments to Rule 16b–7. Specifically, would the proposed amendments accomplish the goal of clarifying the exemptive scope of Rules 16b–7 consistent with the statements of the 1981 and 1991 Releases and our amicus brief in *Levy* v. *Sterling?* If not,

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[31] Although shareholder ratification after the transaction exempts an acquisition under Rule 16b–3(d), it does *not* exempt a disposition under Rule 16b–3(e).

[32] Exchange Act Release No. 4696, 1952 SEC LEXIS 63 (Apr. 1952).

[33] Exchange Act Release No. 18114 (Sept. 24, 1981) [46 FR 48147] ("1981 Release"), at Q. 142.

[34] Exchange Act Release No. 28869 (Feb. 8, 1991) [56 FR 7242] ("1991 Release"). More recently, in a 2002 proposing release we expressly described reclassifications as among the transactions exempted by Rule 16b-7. Exchange Act Release No. 45742 (Apr. 12, 2002) [67 FR 19914], at n. 56.

[35] Proposed Rule 16b–7(c). Current Rule 16b–7(c) would be redesignated as Rule 16b–7(d).

what other language or regulatory action would better accomplish this goal?

For example, Rule 16b–7(b) currently states that "merger" within the meaning of the rule includes "the sale or purchase of substantially all the assets of one company by another in exchange for equity securities which are then distributed to the security holders of the company that sold its assets." Should we instead amend Rule 16b–7(b) to clarify that "merger" within the meaning of the rule also includes a reclassification? Should the proposed paragraph stating that the Rule 16b–7 exemption is not conditioned on the transaction satisfying any other conditions specify that the particular conditions applied in the *Levy* v. *Sterling* opinion do not apply?

Is any further amendment or regulatory action necessary to clarify that other transactions that do not involve a merger, but could be effected by merger, also are exempted by Rule 16b–7? For example, such transactions include a statutory exchange,[36] conversion to a different form of entity,[37] and redomicile or continuance in a different jurisdiction.[38] Should we amend Rule 16b–7(b) to clarify that any of these transactions also is included as a "merger" within the meaning of the rule?

IV. Item 405 of Regulations S–K and S–B

As noted above, issuers must disclose their insiders' Section 16 reporting delinquencies as required by Item 405 of Regulations S–K and S–B. Item 405(b)(1) currently provides that "a form received by the registrant within three calendar days of the required filing date may be presumed to have been filed with the Commission by the required filing date." When Item 405 was adopted in 1991,[39] Form 4 was due within ten days after the close of the calendar month in which the reported transaction took place. Further, all Section 16 reports were filed on paper, since we did not permit insiders to file Section 16 reports electronically on EDGAR on a voluntary basis until 1995.[40]

However, the Sarbanes-Oxley Act of 2002[41] amended Section 16(a) to require two-business day reporting of changes in beneficial ownership, effective August 29, 2002.[42] The Sarbanes-Oxley Act also amended Section 16(a) to require insiders to file these reports electronically, and the Commission and issuers with corporate Web sites to post these reports on their Web sites not later than the end of the business day following filing.[43] We adopted rules to implement these requirements effective June 30, 2003.[44]

In adopting the Web site posting requirement, we noted that Rule 16a-3(e)[45] requires an insider, not later than the time a Section 16 report is transmitted for filing with the Commission, to send or deliver a duplicate to the person designated by the issuer to receive such statements, or absent such designation, to the issuer's corporate secretary or person performing equivalent functions. We stated that we would expect an issuer, in making this designation, also to designate an electronic transmission medium compatible with the issuer's own systems, so that a form sent by that medium at the time specified by Rule 16a–3(e) would be received by the issuer in time to satisfy the Web site posting deadline.[46]

In light of the Section 16(a) amendments enacted by the Sarbanes-Oxley Act, the Item 405(b)(1) presumption of timeliness for a Section 16(a) report received by the issuer within three calendar days of the required filing date no longer is appropriate. By reviewing Section 16 reports posted on EDGAR, an issuer is readily able to evaluate their timeliness. Moreover, a report that is not received by the issuer in time for the issuer to post that report on its Web site by the end of the business day following filing should not be presumed to have been timely filed. Accordingly, we propose to amend Item 405 of Regulations S–K and S–B to delete the Item 405(b)(1) presumption, without substituting a different presumption or otherwise modifying the substance of Item 405.

We request comment on the proposed amendment to Item 405. Specifically, would the proposed amendment harmonize the Item 405 delinquency disclosure requirement with the accelerated filing, electronic filing and Web site posting requirements adopted by the Sarbanes-Oxley Act amendments to Section 16(a) and our rules implementing those statutory amendments? Will issuers have any difficulty monitoring and reporting if we remove the presumption?

V. General Request for Comment

We invite any interested person wishing to submit written comments on the proposed amendments to Rule 16b–3, Rule 16b–7, Item 405 of Regulations S–K and S–B and any other matters that might have an impact on the proposed amendments, to do so. We specifically request comment from persons who are subject to Section 16, and from issuers, investors, attorneys and others who use Section 16 information or are interested in the application of Section 16(b).

We will consider all comments responsive to this inquiry in complying with our responsibilities under Section 23(a) of the Exchange Act.[47]

VI. Paperwork Reduction Act

Forms 3 (OMB Control No. 3235–0104), 4 (OMB Control No. 3235–0287) and 5 (OMB Control No. 3235–0362) prescribe transaction and beneficial ownership information that an insider must report under Section 16(a). Preparing and filing a report on any of these forms is a collection of information.

Adoption of the Rule 16b–3 and Rule 16b–7 amendments proposed today would not change the transaction and beneficial ownership information that insiders currently are required to report on these forms. We therefore believe

[36] The staff has stated that "the acquisition and disposition of stock in a statutory exchange would be exempt under Rule 16b–7, assuming all of the conditions of the rule are satisfied." 1981 Release, at Q. 142.

[37] Some state statutes allow a corporation to convert to a different form of organization, such as a partnership, limited liability company or business trust, and vice versa, without merging into a newly-formed entity. *See e.g.*, Del. Code Ann. Title 8 §§ 265 and 266.

[38] Some state statutes allow a corporation incorporated a different jurisdiction to register within the state and become a domestic corporation within the state, or continue as if incorporated in the state, without merging into a newly-formed entity. *See e.g.*, Wyoming Statutes §§ 17–16–1701, 17–16–1702 and 17–16–1710.

[39] Item 405 was adopted in the 1991 Release.

[40] Securities Act Release No. 7241 (Nov. 13, 1995) [60 FR 57682].

[41] Pub. L. No. 107–204, 116 Stat. 745.

[42] Section 16(a)(2)(C), as amended by Section 403 of the Sarbanes-Oxley Act. Effective on the same date, the Commission adopted rule amendments to implement the accelerated Form 4 due date. Exchange Act Release 46421 (Aug. 27, 2002) [67 FR 56462].

[43] Section 16(a)(4), as amended by Section 403 of the Sarbanes-Oxley Act.

[44] Securities Act Release No. 8230 (May 7, 2003) [68 FR 25788, with corrections at 68 FR 37044] ("Mandated EDGAR Release"). Recognizing that insiders may experience temporary difficulties in transitioning to mandated electronic filing, Section II.E of the Mandated EDGAR Release provided temporary Item 405 disclosure for a Form 4 that is (i) filed not later than one business day following the regular due date, and (ii) filed during the first 12 months following the effective date of mandated electronic filing. This temporary relief applies only to Forms 4 filed between June 30, 2003 and June 30, 2004.

[45] 16 CFR 240.16a–3(e).

[46] Mandated EDGAR Release at Section II.B. To assure that insiders are aware of the designated person and electronic transmission medium, we encouraged issuers to post this information on their Web sites together with the Section 16 filings. We also noted that the concern about timely obtaining an electronic copy of a filing would not arise for issuers that rely on a hyperlink (for example, to EDGAR) to satisfy their Web site posting requirement.

[47] 15 U.S.C. 78w(a).

that the overall information collection burden would remain the same because the same information will remain reportable.

The proposed deletion of the Item 405 presumption of timeliness for a Section 16 report received by the issuer within three calendar days of the required filing date may result in some companies reporting more Section 16 reports as delinquent in their Forms 10–K (OMB Control No. 3235–0063), 10–KSB (OMB Control No. 3235–0420) or N–SAR (OMB Control No. 3235–0330), and proxy (OMB Control No. 3235–0059) or information statements (OMB Control No. 3235–0057) for the annual meeting at which directors are elected. However, we believe that any such increased collection burden associated with those filings would be so minimal that it cannot be quantified.

VII. Cost-Benefit Analysis

The amendments proposed today primarily would clarify existing rules. The *Levy* v. *Sterling* opinion has created uncertainty whether Rules 16b–3 and 16b–7 exempt transactions that they previously were commonly understood to exempt, making it difficult for issuers to plan legitimate transactions in reliance on these rules. The proposed amendments are intended to clarify the exemptive scope of Rules 16b–3 and 16b–7, consistent with statements in our previous releases and our amicus brief in *Levy* v. *Sterling*. Without such clarification, insiders may be exposed unnecessarily to significant potential costs to the extent that a private action under Section 16(b) recovers short-swing profits with respect to a transaction that either of these rules was intended to exempt. For example, *Levy* v. *Sterling* involved alleged short-swing insider trading profits of more than $72 million. These costs also include potential litigation costs, and costs incurred to postpone a non-exempt transaction, such as the initial public offering involved in that case, more than six months following a transaction that properly is exempted by Rule 16b–3 or Rule 16b–7.

Because the proposed amendments would clarify that the exemptive scope of Rules 16b–3 and 16b–7 is consistent with our previous statements, issuers and insiders would not incur additional costs to effect legitimate transactions in reliance on the rules as proposed to be amended. Issuers and shareholders also would not incur additional costs because the proposed amendments would not deprive issuers and shareholders of short-swing profit recovery to which they were intended to be entitled. Likewise, clarification of the rules should reduce litigation risk, and therefore costs, of some actions seeking short-swing profits.

Conversely, the proposed amendments should improve the ability to plan legitimate transactions with a clear understanding whether they will be exempt under Rule 16b–3 or Rule 16b–7, thereby providing significant benefits. These benefits, like the costs, are difficult to quantify.

The proposed amendment to Item 405 of Regulations S–K and S–B to delete the presumption of timeliness for a Section 16 report received by the issuer within three calendar days of the required filing date may result in some issuers reporting more Section 16 reports as delinquent in their Forms 10–K, 10–KSB or N–SAR, and their proxy or information statements for the annual meeting at which directors are elected. However, Section 16 reports are posted on EDGAR, and thus are readily available to issuers to evaluate their timeliness. Further, because Section 16 requires an issuer to post a Section 16 report on its Web site by the end of the business day following filing, issuers are able to evaluate filing timeliness on an on-going basis. Consequently, deletion of the Item 405 timeliness presumption would not impose significant additional costs on issuers. The benefit of the proposal would be to provide investors with Item 405 disclosure that is fully consistent with accelerated reporting, mandatory electronic filing and Web site posting amendments to Section 16(a) effected by the Sarbanes-Oxley Act.

To assist in a full evaluation of the costs and benefits of the proposals, we seek the views of and other data from the public.

VIII. Effect on Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act[48] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Furthermore, Section 2(b) of the Securities Act,[49] Section 3(f) of the Exchange Act[50] and Section 2(c) of the Investment Company Act of 1940[51] require us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation.

The *Levy* v. *Sterling* opinion has created uncertainty whether Rules 16b–3 and 16b–7 exempt transactions that the Commission intended to exempt, making it difficult for issuers to plan legitimate transactions in reliance on these rules. This uncertainty has generated economic inefficiency by introducing potential litigation costs, and costs incurred to postpone a non-exempt transaction more than six months following a transaction that properly is exempted by Rule 16b–3 or Rule 16b–7.

The proposed amendments are intended to clarify the exemptive scope of Rules 16b–3 and 16b–7, consistent with statements in our previous releases and our amicus brief in *Levy* v. *Sterling*. This should improve issuers' and insiders' ability to plan transactions with a clear understanding whether either rule will provide an exemption. Informed transactional decisions generally promote market efficiency and capital formation. We believe the proposed amendments to Rules 16b–3 and 16b–7 would not impose a burden on competition. The proposed amendment to Item 405 of Regulations S–K and S–B to delete the timeliness presumption also should not impose a burden, since issuers are readily able to evaluate the timeliness of Section 16 reports by examining the reports as filed on EDGAR.

We request comment on whether the proposed amendments, if adopted, would impose a burden on competition. We also request comment on whether the proposed amendments, if adopted, would promote efficiency, competition and capital formation. Finally, we request commenters to provide empirical data and other factual support for their views if possible.

IX. Initial Regulatory Flexibility Act Analysis

We have prepared an Initial Regulatory Flexibility Analysis, in accordance with 5 U.S.C. 603, concerning the amendments proposed today.

A. Reasons for and Objectives of the Proposed Amendments

The purpose of the proposed amendments is to clarify the exemptive scope of Rules 16b–3 and 16b–7. and, consistent with the Sarbanes-Oxley Act amendments to Section 16(a), to delete the timeliness presumption in Item 405 of Regulations S–K and S–B.

[48] 15 U.S.C. 78w(a)(2).
[49] 15 U.S.C. 77b(b).
[50] 15 U.S.C. 78c(f).
[51] 15 U.S.C. 80a–2(c).

B. Legal Basis

The proposed amendments to Item 405 of Regulations S–K and S–B and Exchange Act Rules 16b–3 and 16b–7 would be adopted pursuant to Sections 3(a)(11),[52] 3(a)(12),[53] 3(b), [54] 10(a), [55] 12(h),[56] 13(a),[57] 14,[58] 16 and 23(a)[59] of the Exchange Act, Sections 17[60] and 20[61] of the Public Utility Holding Company Act of 1934, Sections 2(c), 30[62] and 38[63] of the Investment Company Act of 1940, and Section 3(a)[64] of the Sarbanes-Oxley Act of 2002.

C. Small Entities Subject to the Proposed Amendments

The proposed amendments would affect companies that are small entities. Exchange Act Rule 0–10(a)[65] defines an issuer, other than an investment company, to be a "small business" or "small organization" if it had total assets of $5 million or less on the last day of its most recent fiscal year. As of March 30, 2003, we estimated that there were approximately 8840 insiders[66] that may be considered small entities. The proposed Rule 16b–7 amendment would apply to all of these insiders. The proposed Rule 16b–3 amendments would apply only to such insiders who are directors or officers.

We estimate that there are approximately 2,500 issuers, other than investment companies, that may be considered small entities. For purposes of the Regulatory Flexibility Act, an investment company is a small entity if it, together with other investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year. As of June 2002, we estimate that there were 36 closed-end investment companies, and 29 business development companies that are small entities. The proposed Item 405 amendments will apply to all of these small entities.

D. Reporting, Recordkeeping and Other Compliance Requirements

The proposed amendments to Item 405 may impose additional disclosure requirements to the extent that issuers may be required to disclose additional untimely Section 16 filings by their insiders. However, see assume that this burden is very small, if it exists at all, because the changes effected by the Sarbanes-Oxley Act likely made the presumption irrelevant. No other new reporting, recordkeeping or compliance requirements would be imposed. Other than the potential additional Item 405 disclosure, the primary impact of these proposals relates to clarifying the exemptive scope of Rules 16b–3 and 16b–7.

E. Overlapping or Conflicting Federal Rules

We do not believe that any current Federal rules duplicate, overlap or conflict with the proposed amendments.

F. Significant Alternatives

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant adverse impact on small businesses. We considered the following types of alternatives:

1. The establishment of different 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 small entities.

Regarding Alternative 1, we believe that differing compliance or reporting requirements for small entities would be inconsistent with Section 16, the Commission's intent when it adopted these rules, and the Commission's purpose of making the application of these rules more uniform. Regarding Alternative 2, the proposed amendments are concise and would clarify the Rule 16b–3 and Rule 16b–7 exemptive conditions and the Item 405 reporting requirement for all entities, including small entities. Regarding Alternative 3, we believe that design rather than performance standards are appropriate because use of performance standards for small entities would not be consistent with the statutory purpose of Section 16. Finally, an exemption for small entities is not appropriate because these amendments are designed to harmonize the application of the exemptive rules.

G. Solicitation of Comments

We encourage the submission of written comments with respect to any aspect of this initial regulatory flexibility analysis, especially empirical data on the impact on small businesses. In particular we request comment on: (1) The number of small entities that would be affected by the proposed amendments; and (2) whether these amendments would increase the reporting, recordkeeping and other compliance requirements for small businesses. Such written comments will be considered in the preparation of the final regulatory flexibility analysis, if the proposed amendments are adopted.

X. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996[67] ("SBREFA") a rule is "major" if it has resulted, or is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

We request comment on whether our proposals would be a "major rule" for purposes of SBREFA. We solicit comment and empirical data on (1) the potential effect on the U.S. economy on an annual basis; (2) any potential increase in costs or prices for consumers or individual industries; and (3) any potential effect on competition, investment or innovation.

XI. Statutory Basis

The amendments contained in this release are proposed under the authority set forth in Sections 3(a)(11), 3(a)(12), 3(b), 10(a), 12(h), 13, 14, 16 and 23(a) of the Exchange Act, Sections 17 and 20 of the Public Utility Holding Company Act of 1934, Sections 2(c), 30 and 38 of the Investment Company Act of 1940, and Section 3(a) of the Sarbanes-Oxley Act of 2002.

Text of Proposed Rule Amendments

List of Subjects in 17 CFR Parts 228, 229 and 240

Reporting and recordkeeping requirements, Securities.

For the reasons set forth above, we propose to amend title 17, chapter II of

[52] 15 U.S.C. 78c(a)(11).
[53] 15 U.S.C. 78c(a)(12).
[54] 15 U.S.C. 78c(b).
[55] 15 U.S.C. 78j(a).
[56] 15 U.S.C. 78l(h).
[57] 15 U.S.C. 78m(a).
[58] 15 U.S.C. 78n.
[59] 15 U.S.C. 78w(a).
[60] 15 U.S.C. 79q.
[61] 15 U.S.C. 79t.
[62] 15 U.S.C. 80a–29.
[63] 15 U.S.C. 80a–37.
[64] 15 U.S.C. 7202(a).
[65] 17 CFR 240.0–10(a).
[66] We estimated the number of small entity non-investment company insiders based on our estimates of the total number of insiders; the percentage of these insiders that are greater than ten percent holders; the percentage of these greater than ten percent holders that are non-natural persons; and the percentage of these non-natural persons that are small entities.
[67] Pub. L. No. 104–121 tit. II, 110 Stat. 857 (1996).

the Code of Federal Regulations as follows.

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

1. The authority citation for part 228 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78l, 78m, 78n, 78o, 78u–5, 78w, 78ll, 78mm, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350.

* * * * *

2. Amend § 228.405 by revising the introductory text to paragraph (a), paragraph (a)(2) and paragraph (b) to read as follows:

§ 228.405 (item 405) Compliance With Section 16(a) of the Exchange Act.

* * * * *

(a) Based solely upon a review of Forms 3 and 4 (17 CFR 249.103 and 249.104) and amendments thereto furnished to the registrant under 17 CFR 240.16a-3(e) during its most recent fiscal year and Forms 5 and amendments thereto (§ 249.105 of this chapter) furnished to the registrant with respect to its most recent fiscal year, and any written representation referred to in paragraph (b)(1) of this section:

* * * * *

(2) For each such person, set forth the number of late reports, the number of transactions that were not reported on a timely basis, and any known failure to file a required Form. A known failure to file would include, but not be limited to, a failure to file a Form 3, which is required of all reporting persons, and a failure to file a Form 5 in the absence of the written representation referred to in paragraph (b)(1) of this section, unless the registrant otherwise knows that no Form 5 is required.

* * * * *

(b) With respect to the disclosure required by paragraph (a) of this Item, if the registrant:

(1) Receives a written representation from the reporting person that no Form 5 is required; and

(2) Maintains the representation for two years, making a copy available to the Commission or its staff upon request, the registrant need not identify such reporting person pursuant to paragraph (a) of this Item as having failed to file a Form 5 with respect to that fiscal year.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

3. The authority citation for part 229 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 79e, 79j, 79n, 79t, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

4. Amend § 229.405 by revising the introductory text to paragraph (a), paragraph (a)(2) and paragraph (b) to read as follows:

§ 229.405 (Item 405) Compliance with section 16(a) of the Exchange Act.

* * * * *

(a) Based solely upon a review of Forms 3 and 4 (17 CFR 249.103 and 249.104) and amendments thereto furnished to the registrant under 17 CFR 240.16a–3(e) during its most recent fiscal year and Forms 5 and amendments thereto (§ 249.105 of this chapter) furnished to the registrant with respect to its most recent fiscal year, and any written representation referred to in paragraph (b)(1) of this section.

* * * * *

(2) For each such person, set forth the number of late reports, the number of transactions that were not reported on a timely basis, and any known failure to file a required Form. A known failure to file would include, but not be limited to, a failure to file a Form 3, which is required of all reporting persons, and a failure to file a Form 5 in the absence of the written representation referred to in paragraph (b)(1) of this section, unless the registrant otherwise knows that no Form 5 is required.

* * * * *

(b) With respect to the disclosure required by paragraph (a) of this Item, if the registrant:

(1) Receives a written representation from the reporting person that no Form 5 is required; and

(2) Maintains the representation for two years, making a copy available to the Commission or its staff upon request, the registrant need not identify such reporting person pursuant to paragraph (a) of this Item as having failed to file a Form 5 with respect to that fiscal year.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

5. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

6. Amend § 240.16b–3 by revising paragraph (d) and adding Note (4) to Notes to § 240.16b–3, to read as follows:

§ 240.16b–3 Transactions between an issuer and its officers or directors.

* * * * *

(d) *Acquisitions from the issuer.* Any transaction involving an acquisition from the issuer (other than a Discretionary Transaction), including without limitation a grant or award, shall be exempt if:

* * * * *

Notes to § 240.16b–3:

* * * * *

Note (4): The exemptions provided by paragraphs (d) and (e) of this section apply to any securities transaction by the issuer with an officer or director of the issuer that satisfies the specified conditions of paragraph (d) or (e) of this section, as applicable. These exemptions are not conditioned on the transaction being intended for a compensatory or other particular purpose.

7. Section 240.16b–7 is revised to read as follows:

§ 240.16b–7 Mergers, reclassifications, and consolidations.

(a) The following transactions shall be exempt from the provisions of Section 16(b) of the Act:

(1) The acquisition of a security of a company, pursuant to a merger, reclassification or consolidation, in exchange for a security of a company that before the merger, reclassification or consolidation, owned 85 percent or more of either:

(i) The equity securities of all other companies involved in the merger, reclassification or consolidation, or in the case of a consolidation, the resulting company; or

(ii) The combined assets of all the companies involved in the merger, reclassification or consolidation, computed according to their book values before the merger, reclassification or consolidation as determined by reference to their most recent available financial statements for a 12 month period before the merger,

reclassification or consolidation, or such shorter time as the company has been in existence.

(2) The disposition of a security, pursuant to a merger, reclassification or consolidation, of a company that before the merger, reclassification or consolidation, owned 85 percent or more of either:

(i) The equity securities of all other companies involved in the merger, reclassification or consolidation or, in the case of a consolidation, the resulting company; or

(ii) The combined assets of all the companies undergoing merger, reclassification or consolidation, computed according to their book values before the merger, reclassification or consolidation as determined by reference to their most recent available financial statements for a 12 month period before the merger, reclassification or consolidation.

(b) A merger within the meaning of this section shall include the sale or purchase of substantially all the assets of one company by another in exchange for equity securities which are then distributed to the security holders of the company that sold its assets.

(c) The exemption provided by this section applies to any securities transaction that satisfies the conditions specified in this section and is not conditioned on the transaction satisfying any other conditions.

(d) Notwithstanding the foregoing, if a person subject to Section 16 of the Act makes any non-exempt purchase of a security in any company involved in the merger, reclassification or consolidation and any non-exempt sale of a security in any company involved in the merger, reclassification or consolidation within any period of less than six months during which the merger, reclassification or consolidation took place, the exemption provided by this Rule shall be unavailable to the extent of such purchase and sale.

By the Commission.

Dated: June 21, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–14406 Filed 6–24–04; 8:45 am]

BILLING CODE 8010–01–P

Federal Register

Friday,
June 25, 2004

Part VII

Department of Labor

Mine Safety and Health Administration

30 CFR Part 75
Low- and Medium-Voltage Diesel-Powered Electrical Generators; Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219–AA98

Low- and Medium-Voltage Diesel-Powered Electrical Generators

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule.

SUMMARY: We propose to amend the existing regulations concerning protection of low- and medium-voltage three-phase circuits used underground to allow the use of low- and medium-voltage diesel-powered electrical generators as an alternative means of powering electrical equipment. The generators are portable and are used to power electrical equipment when moving the equipment in, out, and around the mine and when performing work in areas where permissible equipment is not required. The rule would eliminate the need for mine operators to file petitions for modification to use these generators to power electrical equipment while maintaining the existing level of protection for miners.

DATES: Comments on this proposed rule and on the information collection requirements must be received on or before August 24, 2004.

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

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E-mail: *Comments@MSHA.gov*. Include RIN 1219–AA98 in the subject line of the message.
- Fax: (202) 693–9441.
- Mail/Hand Delivery/Courier: MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2313, Arlington, Virginia 22201–3939.

Instructions: All submissions must reference MSHA and RIN 1219–AA98, (the Regulatory Information Number for this rulemaking).

Docket: To access comments received, go to *http://www.MSHA.gov* or MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2350, Arlington, Virginia. All comments received will be posted without change to *http://msha.gov,* including any personal information provided.

Information Collection Requirements: Comments concerning the information collection requirements must be clearly identified as such and sent to both the Office of Management and Budget (OMB) and MSHA as follows:

(1) To OMB: All comments may be sent by mail addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for MSHA; and

(2) To MSHA: Comments must be clearly identified by RIN 1219–AA98 as comments on the information collection requirements and transmitted either electronically to *comments@msha.gov*, by facsimile to (202) 693–9441, or by regular mail or hand delivery to MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2350, Arlington, Virginia 22209–3939.

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Jr., Director, Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939. Mr. Nichols can be reached at *nichols.marvin@dol.gov* (Internet E-mail), (202) 693–9440 (voice), or (202) 693–9441 (facsimile). You may obtain copies of the proposed rule in a large print format by calling 202–693–9440. The documents also are available on the Internet at *http://www.msha.gov/REGSINFO.HTM.*

SUPPLEMENTARY INFORMATION:

I. Background Information

Currently, in mandatory safety standards § 75.701 (Grounding metallic frames, casings, and other enclosures of electric equipment) and § 75.901 (Protection of low- and medium-voltage three-phase circuits used underground), we specify the grounding requirements for electrical equipment and low- and medium-voltage three-phase circuits. These standards were introduced in 1970 (35 FR 17890) and have not been changed.

Power centers are the main means of supplying electricity underground. Power centers are placed underground to provide power to permanent or stationary electrical equipment such as belt conveyor drives and to provide power to working sections mining equipment. These power centers are often not located where they can be reached by the trailing cables used to supply power to mobile equipment being moved at the mine. Mine operators use various means to move electrical equipment and to perform work in areas where permissible equipment is not required. In these situations, they are unable to use power centers to energize the machines for the move because of the distances involved. If longer trailing cables are installed in order to reach remote power centers, proper electrical protection for these low- and medium-voltage three-phase circuits may not be provided and overheating of, or damage to, the cables may occur.

Over the last 13 years, through MSHA's petition for modification process, mine operators have been using low- and medium-voltage diesel-powered electrical generators as an efficient means for providing a portable source of power to move electrical equipment. These portable diesel-powered electrical generators are easily taken to areas where power centers or other sources of electrical power are not available to move mobile equipment or to supply power to other electric equipment needed to do work in outby areas. Proper electrical protection for these low- and medium-voltage three-phase circuits can be provided by portable diesel-powered electrical generators since the source of power is within reach of the proper length trailing cables. However, when using these generators, the mine operators are unable to comply with the electrical protection requirements of existing § 75.901. Currently, § 75.901 requires a grounding circuit to originate from the grounded side of a grounding resistor located at a power center and does not address the use of a generator frame for the purpose of grounding.

To address their inability to comply with § 75.901, mine operators file petitions for modification (PFM) under Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act). During the time period January 1990 through October 2003, there were 63 PFMs filed and granted under § 101(c) requesting modification to §§ 75.701 and 75.901 affecting 56 mines. The first petition granted for a modification of § 75.901 was submitted to MSHA in 1990, requesting the use of a diesel-powered electrical generator. In 1996 we determined that it was necessary for a mine operator to petition both § 75.701 and § 75.901 to allow the use of a diesel-powered electrical generator in underground coal mines. Petitioning both standards resulted in additional expense and paper burden for mine operators. In an effort to reduce the expense and paper burden for mine operators; we conducted a review of both standards in 2003. We determined that only a PFM of § 75.901 was necessary since the conditions for grounding contained in the petition would satisfy the requirement of § 75.701 as an approved method of grounding.

By issuing this proposed rule, we are responding to the requirements of the

Regulatory Flexibility Act and Executive Order 12866 that agencies review their regulations to determine their effectiveness and to implement any changes indicated by the review that will make the regulation more flexible and efficient for stakeholders and small businesses while maintaining needed protection for workers. This proposed rule would maintain the protection afforded by the existing standard.

II. Discussion of Diesel-Powered Electrical Generators

Existing 30 CFR 75.901, *Protection of low- and medium-voltage three-phase circuits used underground,* does not allow mines to use diesel-powered electrical generators to move electrical equipment in, out, and around the mine and to perform work in areas where permissible equipment is not required. To allow mines to use diesel-powered electrical generators, we have granted PFMs to mine operators.

We grant PFMs after making one of two determinations: (1) That a mine operator has an alternative method that provides the same measure of safety protection at all times as the existing standard, or (2) that the existing standard would result in diminished safety protection for miners. After evaluating the use of diesel-powered electrical generators, we have concluded that they can be safely used, if certain conditions are met. Specifically, we have found that previous safety concerns such as explosion, fire, and shock hazards initially associated with their use have been sufficiently addressed by advances in new technology. In fact, we now recognize that diesel-powered electrical generator equipment and circuit design improvements in combination with sensitive electrical circuit protections actually reduce fire, explosion, and shock hazards.

Accordingly, we are proposing to revise existing § 75.901 to permit the mining industry to use diesel-powered electrical generators to move electrical equipment. This rule would eliminate the need to file PFMs to use diesel-powered electrical generators and would eliminate the costs and time associated with the petition process.

The PFM process allows a variance to an existing safety standard that results in safety procedures that are applicable only to an individual mine. Petitions granted to date contain conditions for the proper installation, electrical and mechanical protection, handling, and disconnecting of circuits and equipment. Since the proposed rule would include all the necessary requirements contained in granted petitions, the revision of existing § 75.901 would not reduce the protection currently afforded to miners.

On the effective date of the final rule, all existing petitions for modification to permit the mining industry to use diesel-powered electric generators to move electrical equipment in, out, around the mine, and to perform work in areas where permissible equipment is not required would be superseded.

III. Discussion of Proposed Rule

Section 75.901 Protection of Low- and Medium-Voltage Three-Phase Circuits Used Underground

Proposed section 75.901(b)(1) through (b)(12) of this part are electrical safety standards applicable to low- and medium-voltage diesel-powered electrical generators and circuits.

Paragraph (b) would be added to § 75.901 to permit the usage of diesel-powered electrical generators as an alternative to power centers for the purpose of moving equipment in, out, around the mine, and to perform work in areas where permissible equipment is not required. When used, diesel-powered electrical generators would be required to comply with the following:

Paragraph (b)(1) would require the diesel engine powering the electrical generator to satisfy the requirements of 30 CFR Part 7, Subpart E. The regulations in part 7 set out the requirements for diesel engines intended for use in underground coal mines.

Paragraph (b)(2) would require a grounding resistor which is rated for the phase-to-phase voltage of the system to be provided to limit the ground-fault current to not more than 0.5 amperes. The grounding resistor required by (b)(2)(i) must be located between the wye connected generator neutral and the generator frame; or the grounding resistor required by (b)(2)(ii) must be located between the wye connected transformer secondary and the transformer frame, when an isolation transformer is used; or the grounding resistor required by (b)(2)(iii) must be located between the wye connected generator neutral and the generator frame when an auto-transformer is used.

Requiring a grounding resistor rated for the phase-to-phase voltage of the system would ensure that adequate insulating properties are provided for the grounding resistor. This is especially important when using autotransformers. When using an autotransformer, the grounding resistor would be required to be located between the neutral of the wye connected generator and the generator frame, and it must be rated for the highest output voltage of the autotransformer. A wye connection provides a neutral grounding point in the system for the purpose of inserting a predetermined value resistor that would limit the current and voltage under a phase-to-ground fault condition. A phase-to-ground fault occurring on the secondary side of the autotransformer would subject the grounding resistor to the output voltage of the autotransformer. This is because autotransformers have only one winding-per-phase and do not provide the electrical isolation characteristics necessary to re-establish a different or new system voltage. A resistor that is subjected to a voltage higher than its rating can potentially explode, causing serious injury or death to persons nearby, or it can open from overcurrent, leaving the system ungrounded. Limiting the ground-fault current to not more than 0.5 amperes, and providing the sensitive ground-fault protection set forth in paragraphs (b)(3) and (b)(4) (discussed below), provides increased protection against explosion, fire, and electrical shock. Because the voltage from a diesel-powered electrical generator may need to be increased or decreased by an external transformer, an additional grounding resistor limiting the ground-fault current to 0.5 amperes would be required. The additional resistor is needed to re-establish the grounding circuit for the new power circuit derived by the isolation characteristics of the transformer.

Paragraph (b)(3) would require each three-phase output circuit of the generator to be equipped with a sensitive ground fault relay set to cause the circuit interrupting device that supplies power to the primary windings of each transformer to trip and shut down the diesel engine when a phase-to-frame fault of not more than 90 milliamperes occurs. When a transformer is used to increase or decrease the voltage provided by the diesel-powered generator, the circuit between the generator and the transformer would be required to be provided with grounded-phase protection. When used in conjunction with the grounding resistor address in paragraph (b)(2), the increased protection against electrical shock assists in providing a grounding system that satisfies the requirements of § 75.701. This maximum voltage of 90 milliamperes reduces the amount of current that an individual is exposed to under a ground fault condition because the individual is in parallel with the grounding circuit conductors. If we limit ground fault current to a lesser

value, the charging currents at start up in a resistance grounded system would cause false tripping.

The proposed rule would require a single window-type current transformer to encircle the three-phase conductors for ground-fault protection. The equipment safety grounding conductors would be prohibited from being passed through or connected in series with ground-fault current transformers. This configuration could defeat ground-fault protection and result in hazardous voltage on equipment frames which could cause potentially fatal electrical shocks.

Paragraph (b)(4) would require each three-phase output circuit that supplies power to equipment to be equipped with an instantaneous sensitive ground-fault relay that will cause its respective circuit interrupting device(s) to trip and cause shutdown of the diesel engine when a phase-to-frame fault occurs. The proposed rule would require the grounded-phase protection to be set at not more than 90 milliamperes. This protection would be provided for all three-phase equipment circuits. This applies to equipment receiving power directly from the diesel-powered electrical generator and from transformers used to change the generator voltage. When used in conjunction with the grounding resistor(s) addressed in paragraph (b)(2), the increased protection against electrical shock provides a grounding system that satisfies the requirements of § 75.701. Paragraph (b)(4) requires a single window-type current transformer to encircle the three-phase conductors for ground-fault protection. The equipment safety grounding conductors would be prohibited from being passed through or connected in series with ground-fault current transformers. This prohibition ensures that ground-fault protection is not defeated, which could result in hazardous voltage on equipment frames.

Paragraph (b)(5) would require each three-phase output circuit interrupting device to have a means to provide short-circuit, overcurrent, grounded-phase, undervoltage, and ground wire monitoring protection. When connected to a piece of equipment, the instantaneous trip unit for the circuit interrupting device in use must be adjusted to trip at not more than 75 percent of the minimum available short circuit current at the point where the cable enters the equipment or the maximum allowable instantaneous settings specified in § 75.601–1, whichever is less. To determine the available short circuit current, calculations would be required which take into account all circuit parameters, including the size and length of the equipment cable. The minimum available short circuit current would be at the end of the cable where it enters the equipment. Small capacity generators may cause the available short circuit current at the end of the cable to be lower than the maximum allowable settings specified in § 75.601–1. The requirements of this paragraph will ensure that proper protection is provided for all three-phase output circuits, whether at the generator, distribution box, or at a separate power center that receives its primary power from a diesel-powered electrical generator.

Paragraph (b)(6) would require that the equipment portable cable length(s) not exceed the length(s) specified in 30 CFR Part 18, Appendix I, Table 9, *Specifications for Portable Cables Longer than 500 Feet*. The purpose of this requirement is to limit the cable length, which ensures that the short circuit capacity of the generator is great enough to cause the circuit interrupting device to open, thereby preventing damage to the cables.

Paragraph (b)(7) would require that a permanent label(s) listing the maximum circuit interrupting device setting(s) and maximum portable cable length(s) be installed on each instantaneous trip unit or be maintained near each three-phase circuit interrupting device. The proposed rule requires that the permanent label(s) be maintained legibly. Because the maximum short circuit current is calculated using the maximum length of cable allowed, the label would ensure that adequate short circuit protection for each circuit is provided.

Paragraph (b)(8) would require that only one circuit at a time be used when equipment is being moved in, out, and around a mine. This does not prevent the use of more than one circuit when equipment is used to perform work in areas where permissible equipment is not required. When multiple pieces of equipment are used, care must be taken to ensure that the circuit interrupting device settings are properly adjusted to protect both the generator and the equipment being operated.

Paragraph (b)(9) refers to existing 30 CFR 75.902 (Low- and medium-voltage ground check monitor circuits). Section 75.902 requires the grounding system to include an MSHA accepted ground wire monitor system, or other no less effective device approved by the District Manager, to assure ground continuity between the frame of the generator and the equipment being moved or used; or have a No. 1/0 or larger external grounding conductor to bond and ground the frames of all equipment to the frame of the generator. This would require bonding the frame of transformers and metallic cable coupler shells back to the frame of the generator. Grounding equipment in this manner limits the amount of voltage and current that an individual would be exposed to under an electrical fault condition and also provides a good path for current flow to activate protective devices.

Paragraph (b)(10) would require all trailing cables extending from the generator to equipment to comply with § 75.907 (Design of trailing cables for medium-voltage circuits). Section 75.907 specifies the trailing cable design requirements for medium voltage circuits and also specifies that on equipment employing cable reels, cables without shields may be used if the insulation is rated 2000 volts or more. Both type cables have been used in the coal mining industry for over 30 years and have been proven to provide the required protection when properly maintained.

Paragraph (b)(11) would require a strain relief device on each end of the trailing cable(s) that extends between the generator and the piece of equipment being powered. Although requirements for strain relief or clamping of cables are covered by other regulations, they are specifically required here since there is a reasonable likelihood that cables may be pulled to the extent of their length during movement of equipment. This also applies to the cable(s) between the diesel-powered generator and a distribution box or separately mounted transformer. Some mobile equipment may be capable of pulling the distribution box or transformer when the limit of the cable has been reached and further pulling would strain connections of the generator cable. This could result in electrical arcs and faults which may result in flash burns.

Paragraph (b)(12) would require that, prior to moving each piece of equipment or performing work, a functional test of each ground fault and ground wire monitor system be performed by a qualified electrician who meets the requirements of § 75.153 (Electrical work; qualified person). The ground-fault circuit would be required to be tested without subjecting the circuit to an actual grounded phase condition. The proposed rule requires a record of each test, maintained by the mine operator, and made available to authorized representatives of the Secretary and to the miners in the mine. This paragraph would require that functional tests be performed before the

equipment begins its move from the surface to underground, or from underground to the surface, or movement from one part of a mine to another, or before work is performed by equipment in other areas of the mine where permissible equipment is not required. It would not require a functional test after momentary or incidental stoppage during the moving process, or repositioning of equipment while performing work. Manufacturers of ground fault relay devices already provide circuitry and test methods for their devices that allow testing to be conducted without subjecting the power system to an actual ground fault condition. This method of testing enhances safety by preventing individuals from being exposed to energized circuits while performing the test. The functional tests required by this paragraph do not relieve the operator of responsibility for performing examinations and tests required by other sections of 30 CFR Part 75.

IV. Executive Order 12866 (Regulatory Planning and Review and Regulatory Flexibility Act)

This proposed rule amends 30 CFR 75.901, concerning the use of low- and medium-voltage diesel-powered electrical generators as an alternative for moving electrical equipment in, out, around a mine, and to perform work in areas where permissible equipment is not required. This proposed rule would allow the use of diesel-powered electrical generators and eliminate the need for the mine operator to file petitions for modification to use diesel-powered electrical generators.

Executive Order (E.O.) 12866 as amended by E.O. 13258 requires that regulatory agencies assess both the costs and benefits of intended regulations. We have fulfilled this requirement for the proposed rule, and have determined that the proposed rule would not have an annual effect of $100 million or more on the economy. Therefore, it is not an economically significant regulatory action pursuant to section 3(f)(1) of E.O. 12866.

The proposed rule would eliminate the need for underground coal mine operators who choose to use diesel-powered electrical generators to file PFMs and thereby would generate cost savings.

From January 1990 to October 2003, 63 petitions were filed to modify §§ 75.701 and 75.901 (Grounding requirements and protection of low- and medium-voltage three-phase circuits used underground). On average, approximately 5 petitions were filed during each of these years.

Mining Sectors Affected

This proposed rule applies to all underground coal mines. However, based on already filed PFMs under § 75.901 and § 75.701, MSHA estimates that an average of five underground coal mines per year would choose to use diesel powered electrical generators in their mines.

Benefits

Using diesel-powered electrical generators provides an efficient portable source of power to move electrical equipment. These diesel-powered electrical generators are easily taken to areas where power centers or other sources of electrical power are not available to move mobile equipment or to supply power to other electric equipment needed to do work in outby areas. The likelihood of electrical accidents will be decreased by (1) the more stringent criteria and design features associated with the diesel-powered electrical generator protective devices, such as requiring the grounding resistor to limit ground fault current to 0.5 ampere under a ground fault condition; (2) requiring the sensitive grounded phase protection device to cause the circuit interrupting device protecting the electrical circuits to open and shut down the diesel-powered generator when not more than 90 milliamperes of fault current is detected by the system; and (3) equipment testing devices and procedures that are designed to facilitate safe testing of the diesel-powered electrical circuit. Miner safety is increased with the protective systems and testing procedures required by the rule because they limit the amount of voltage and current that miners can be exposed to under a ground fault condition and also because they reduce the possibility of a fire, shock, or burn hazard. Finally, the rule contains all the necessary electrical safety requirements developed in the petitions for modification to use diesel-powered electrical generators.

Compliance Cost Savings

Annual cost savings from the proposed rule would accrue to underground coal mines that choose to use diesel-powered electrical generators because they would no longer have to file a PFM. Annual cost savings from this rule are estimated to be $2,377. The annual cost savings are based upon the elimination of the filing of an average of five petitions per year. We project that all five mines would employ 20 to 500 workers.

The annual cost savings of $2,377 for mines that employ 20 to 500 workers was derived in the following manner. On average, a mine supervisor earning $58.96 per hour would take 8 hours to prepare a petition (5 petitions × 8 hours × $58.96 per hour = $2,358). In addition, a clerical worker earning $20.39 per hour would take 0.1 hours to copy and mail a petition (5 petitions × 0.1 hours × $20.39 per hour = $10). Furthermore, we estimate that, on average, each petition is five pages long, photocopying costs are $0.15 per page, and postage is $1 [5 petitions × ((5 pages × $0.15 per page) + $1) = $9].

Although this rule applies to any underground coal mine, there are no substantial changes in the proposed rule that apply to mines that choose not to use diesel-powered electrical generators. Thus, such mines would not incur costs nor generate cost savings as a result of the proposed rule.

V. Regulatory Flexibility Act Certification

Pursuant to the Regulatory Flexibility Act (RFA) of 1980 as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), we have analyzed the impact of the proposed rule on small businesses. Further, we have made a determination with respect to whether or not we can certify that the proposed rule would not have a significant economic impact on a substantial number of small entities that are covered by this rulemaking. Under the SBREFA amendments to the RFA, we must include in the rule a factual basis for this certification. If the proposed rule would have a significant economic impact on a substantial number of small entities, we must develop a regulatory flexibility analysis.

Definition of a Small Mine

Under the RFA, in analyzing the impact of a rule on small entities, we must use the SBA definition for a small entity or, after consultation with the SBA Office of Advocacy, establish an alternative definition for the mining industry by publishing that definition in the **Federal Register** for notice and comment. MSHA has not taken such an action and hence is required to use the SBA definition.

The SBA defines a small entity in the mining industry as an establishment with 500 or fewer employees. All mines affected by this rulemaking fall into this category and hence can be viewed as sharing the special regulatory concerns which the RFA was designed to address.

We have looked at the impacts of our rules on a subset of mines with 500 or fewer employees—those with fewer than 20 employees, which we and the mining community have traditionally

referred to as "small mines." These small mines differ from larger mines not only in the number of employees, but also in economies of scale in material produced, in the type and amount of production equipment, and in supply inventory. Therefore, their costs of complying with MSHA rules and the impact of MSHA rules on them would also tend to be different. It is for this reason that "small mines," as traditionally defined MSHA, are of special concern to us.

This analysis complies with the legal requirements of the RFA for an analysis of the impacts on "small entities" while continuing our traditional definition of "small mines." We conclude that we can certify that the proposed rule would not have a significant economic impact on a substantial number of small entities that are covered by this rulemaking. We have determined that this is the case both for mines affected by this rulemaking with fewer than 20 employees and for mines affected by this rulemaking with 500 or fewer employees.

Factual Basis for Certification

Our analysis of impacts on "small entities" begins with a "screening" analysis. The screening compares the estimated compliance costs of a rule for small entities in the sector affected by the rule to the estimated revenues for those small entities. When estimated compliance costs or savings are less than one percent of the estimated revenues, we believe it is generally appropriate to conclude that there is no significant economic impact on a substantial number of small entities. When estimated compliance costs exceed one percent of revenues, it tends to indicate that further analysis may be warranted. Using either MSHA's or SBA's definition of a small mine, the proposed rule results in yearly cost savings to affected mines equal to less than once percent of their yearly revenues.

The average estimated 2002 production for underground coal mines operating within the last five years with a petition to use diesel-powered electrical generators was approximately 3,387,871 tons per mine. Using a 2002 price of underground coal of $25.97, the average 2002 revenues for such mines was approximately $87,983,000.[1] Based on five underground coal mines per year using diesel-powered electrical generators, the annual estimated revenues of mines affected by this rule would be $449,915,000. The proposed rule cost savings are substantially less than 1 percent of estimated revenues ($2,377/$449,915,000 or 0.0005 percent).

[1] The 2001 underground coal price of $25.37 found in Table 29 of the Department of Energy/Energy Information Agency, *Annual Coal Report 2001* is multiplied by 2002 and 2001 December Consumer Price Indexes found at *ftp://ftp.bls.gov/pub/special.requests/cpi/cpiai.txt* [$25.97 = ($25.37 × (180.9/176.7)].

VI. Paperwork Reduction Act of 1995

The amendments to § 75.901 do not introduce new paperwork requirements on the mine operator; however, the existing information collection requirements are still subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3502(13)(A). As a result of this rule, all petitions for modification for § 75.901 will be superceded and the information collection request for petitions for modification approved by OMB under 1219–0065 will be reduced. MSHA will submit a new information collection request for this rule and transfer the recordkeeping paperwork burden hours and costs.

Burden Reduction

Due to this rulemaking, mine operators would no longer have to petition for modification of existing 30 CFR § 75.901 in order to use diesel-powered electrical generators. Existing OMB paperwork package 1219–0065 includes annual burden hours and costs related to the time it takes mine operators to prepare and file petitions with MSHA, including petitions for modifications to use diesel-powered generators. As a result of this rulemaking, the burden hours and costs in OMB paperwork package 1219–0065 that relate to the time it takes operators to prepare and file petitions would need to be reduced to reflect the fact that petitions for modifications to use diesel-powered electrical generators would no longer be needed. Therefore, the burden hours and costs in OMB paperwork package 1219–0065 should be reduced by 40.5 hours and $2,377 annually. This reduction was derived in the following manner.

On average, five underground coal mines are estimated to begin to use diesel-powered electrical generators annually. A mine supervisor, earning $58.96 per hour, is estimated to take 8 hours to prepare a petition. On average, a clerical worker, earning $20.39 per hour, is estimated to take 0.1 hours to copy and mail a petition. Each petition is estimated to be five pages in length, photocopy costs are $0.15 per page, and postage is $1 for each petition. The annual burden hour reduction and cost savings related to preparing and filing petitions are:

Burden Hours:		
5 petitions × 8 hrs. per petition.	=	40 hours
5 petitions × 0.1 hrs. per petition.	=	0.5 hours
		40.5 hours
Burden Costs:		
40 hours × $58.96 wage per hr.	=	$2,358
0.5 hrs. × $20.39 wage per hr.	=	10
5 petitions × ((5 pgs. × $0.15 per page) + $1 postage)).	=	9
		2,377

Burden Transfer

Also included in existing petitions for modification of 30 CFR § 75.901 to use diesel-powered electrical generators are operators' recordkeeping requirements related to performing ground fault and ground wire monitor system tests and making a record of such tests. Such tests must be conducted and records made prior to moving each piece of equipment or performing work. The burden hours and costs related to such tests and records are also included in OMB paperwork package 1219–0065. There are 38 burden hours and $1,130 of burden costs in the first year, 42 burden hours and $1,249 of burden costs in the second year, and 46 burden hours and $1,367 of burden costs in the third year that would be related to these tests and records which would need to be removed from OMB paperwork package 1219–0065 and transferred to the paperwork package related to this rule. The burden hours and costs were derived as follows.

There are 16 mines operating in 2003 that have petitions to use diesel-powered electrical generators. MSHA assumes that although five mines annually are estimated to begin using diesel-powered generators, there would, on average, be three existing mines using such equipment that would close. Thus, each year there would be a net of two more mines using diesel power electrical generators. A mine electrician earning $29.73 per hour, is estimated to take 0.25 hours to perform the ground fault and ground wire monitor system tests. Such tests are estimated to be conducted six times annually. On average, it is estimated to take the mine electrician 0.1 hours to make a record each time tests are conducted.

The first year burden hours and costs related to performing ground fault and ground wire monitor system tests and making a record are:

18 mines × (0.25 hrs. + 0.1 hrs. for tests and record) × 6 times per year.	=	38 hours
38 hours × $29.73 wage per hr.	=	$1,130

The second year burden hours and costs related to performing ground fault and ground wire monitor system tests and making a record are:

20 mines × (0.25 hrs. + 0.1 hrs. for tests and record) × 6 times per year.	=	42 hours
42 hours × $29.73 wage per hr.	=	$1,249

The third year burden hours and costs related to performing ground fault and ground wire monitor system tests and making a record are:

22 mines × (0.25 hrs. + 0.1 hrs. for tests and record) × 6 times per year.	=	46 hours
46 hours × $29.73 wage per hr.	=	$1,367

VI. Other Regulatory Considerations

A. The Unfunded Mandates Reform Act

This proposed rule does not include any Federal mandate that may result in increased expenditures by State, local, or tribal governments, nor would it increase private sector expenditures by more than $100 million annually, nor would it significantly or uniquely affect small governments. Accordingly, the Unfunded Mandates Reform Act of 1995 requires no further agency action or analysis.

B. National Environmental Policy Act

MSHA has reviewed this proposed rule in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 U.S.C. part 1500), and the Department of Labor's NEPA procedures (29 CFR part 11). Since this proposed rule would impact safety, not health, the rule is categorically excluded from NEPA requirements because it would have no significant impact on the quality of the human environment (29 CFR 11.10(a)(1)). Accordingly, MSHA has not conducted an environmental assessment nor provided an environmental impact statement.

C. Assessment of Federal Regulations and Policies on Families

This proposed rule would have no affect on family well-being or stability, marital commitment, parental rights or authority, or income or poverty of families and children. Accordingly, Section 654 of the Treasury and General Government Appropriations Act of 1999 requires no further agency action, analysis, or assessment.

D. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights

This proposed rule would not implement a policy with takings implications. Accordingly, Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, requires no further agency action or analysis.

E. Executive Order 12988: Civil Justice Reform

This proposed rule was drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform. This proposed rule was written to provide a clear legal standard for affected conduct and was carefully reviewed to eliminate drafting errors and ambiguities, so as to minimize litigation and undue burden on the Federal court system. MSHA has determined that this proposed rule would meet the applicable standards provided in Section 3 of Executive Order 12988.

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

This proposed rule would have no adverse impact on children. Accordingly, Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks, requires no further agency action or analysis.

G. Executive Order 13132: Federalism

This proposed rule would not have "federalism implications," because it would not "have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Accordingly, Executive Order 13132, Federalism, requires no further agency action or analysis.

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

This proposed rule would not have "tribal implications," because it would not "have substantial direct effects 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." Accordingly, Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, requires no further agency action or analysis.

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

In accordance with Executive Order 13211, MSHA has reviewed this proposed rule for its impact on the supply, distribution, and use of energy. Because this proposed rule would result in yearly cost savings to the coal mining industry, this proposed rule would neither reduce the supply of coal nor increase its price.

This proposed rule is not a "significant energy action," because it would not be "likely to have a significant adverse effect on the supply, distribution, or use of energy" "(including a shortfall in supply, price increases, and increased use of foreign supplies)." Accordingly, Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, requires no further agency action or analysis.

J. Executive Order 13272: Proper Consideration of Small Entities In Agency Rulemaking

In accordance with Executive Order 13272, MSHA has thoroughly reviewed this proposed rule to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. MSHA has determined and certified that this proposed rule would not have a significant economic impact on a substantial number of small entities.

VIII. Petitions for Modification

On the effective date of the final rule, all existing petitions for modification for diesel-powered electrical generators will be superseded.

List of Subjects in 30 CFR Part 75

Mine safety and health, Underground coal mining.

Dated: June 18, 2004.

Dave D. Lauriski,

Assistant Secretary for Mine Safety and Health.

For the reasons set out in the preamble, and under the authority of the Federal Mine Safety and Health Act of 1977, we are proposing to amend chapter I, subchapter O, part 75 of title 30 of the Code of Federal Regulations as follows:

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

1. The authority citation for part 75 continues to read as follows:

Authority: 30 U.S.C. 811.

SUBCHAPTER O—[AMENDED]

2. Section 75.901 is amended by adding paragraph (b) to read as follows:

§ 75.901 Protection of low- and medium-voltage three-phase circuits used underground.

* * * * *

(b) Diesel-powered electrical generators used as an alternative to power centers for the purpose of moving equipment in, out, around the mine, and to perform work in areas where permissible equipment is not required, must comply with the following:

(1) The diesel engine powering the electrical generator must be approved under 30 CFR part 7, subpart E.

(2) A grounding resistor rated for the phase-to-phase voltage of the system must be provided to limit the ground-fault current to not more than 0.5 amperes. The grounding resistor(s) must be located:

(i) Between the wye connected generator neutral and the generator frame; (*see* figure I in appendix A to subpart J of this part) and

(ii) Between the wye connected transformer secondary and the transformer frame when an isolation transformer(s) is used; (*see* figure II in appendix A to subpart J of this part) or

(iii) Between the wye connected generator neutral and the generator frame when an auto-transformer is used. (*see* figure III in appendix A to subpart J of this part).

(3) Each three-phase output circuit of the generator must be equipped with a sensitive ground fault relay. The protective relay must be set to cause the circuit interrupting device that supplies power to the primary windings of each transformer to trip and shut down the diesel engine when a phase-to-frame fault of not more than 90 milliamperes occurs.

(4) Each three-phase output circuit that supplies power to equipment must be equipped with an instantaneous sensitive ground-fault relay that will cause its respective circuit interrupting device(s) to trip and cause shutdown of the diesel engine when a phase-to-frame fault occurs. The grounded-phase protection must be set at not more than 90 milliamperes. Current transformers used for the ground-fault protection must be single window-type and must be installed to encircle all three phase conductors. Equipment safety grounding conductors must not pass through or be connected in series with ground-fault current transformers.

(5) Each three-phase circuit interrupting device must be provided with a means to provide short-circuit, overcurrent, grounded-phase, undervoltage, and ground wire monitoring protection. The instantaneous only trip unit for the circuit interrupting device(s) in use must be adjusted to trip at not more than 75 percent of the minimum available short circuit current at the point where the portable cable enters the equipment or the maximum allowable instantaneous settings specified in § 75.601–1, whichever is less.

(6) The equipment portable cable length(s) must not exceed the length(s) specified in 30 CFR part 18, appendix I, table 9, *Specifications for Cables Longer than 500 Feet.*

(7) Permanent label(s) listing the maximum circuit interrupting device setting(s) and maximum portable cable length(s) must be installed on each instantaneous trip unit or be maintained near each three-phase circuit interrupting device. The permanent label(s) must be maintained legibly.

(8) The circuit interrupting device that supplies three-phase power circuit(s) to the equipment being powered must be limited to the use of only one circuit interrupting at a time when equipment is being moved in, out, and around the mine.

(9) The grounding system must include an MSHA accepted ground wire monitor system that satisfies the requirements of § 75.902; or have a No. 1/0 or larger external grounding conductor to bond and ground the frames of all equipment to the frame of the generator.

(10) All trailing cables extending from the generator to equipment must comply with § 75.907.

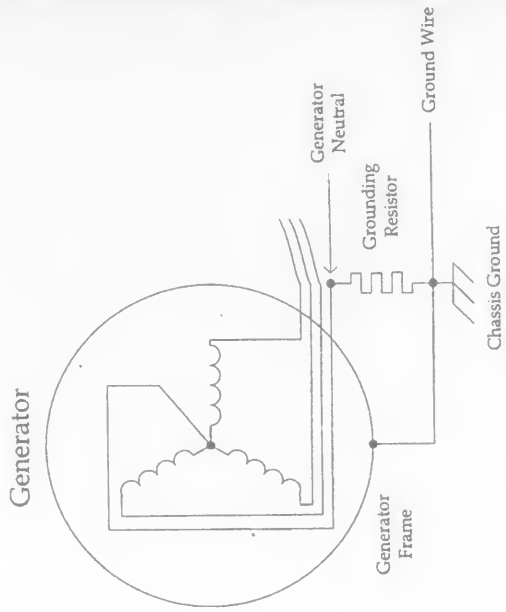
(11) A strain relief device must be provided on each end of the trailing cables that extend between the generator and the piece of equipment being powered.

(12) Prior to moving each piece of equipment or performing work, a functional test of each ground fault and ground wire monitor system must be performed by a qualified electrician who meets the requirements of § 75.153. The ground-fault circuit must be tested without subjecting the circuit to an actual grounded phase condition. A record of each test must be maintained and made available to authorized representatives of the Secretary and to the miners in such mine.

3. Appendix A to subpart J is added to read as follows:

Appendix A to Subpart J

BILLING CODE 4510–43–P



Note that grounding resistor must be mounted on the same frame with the generator.

Figure 1

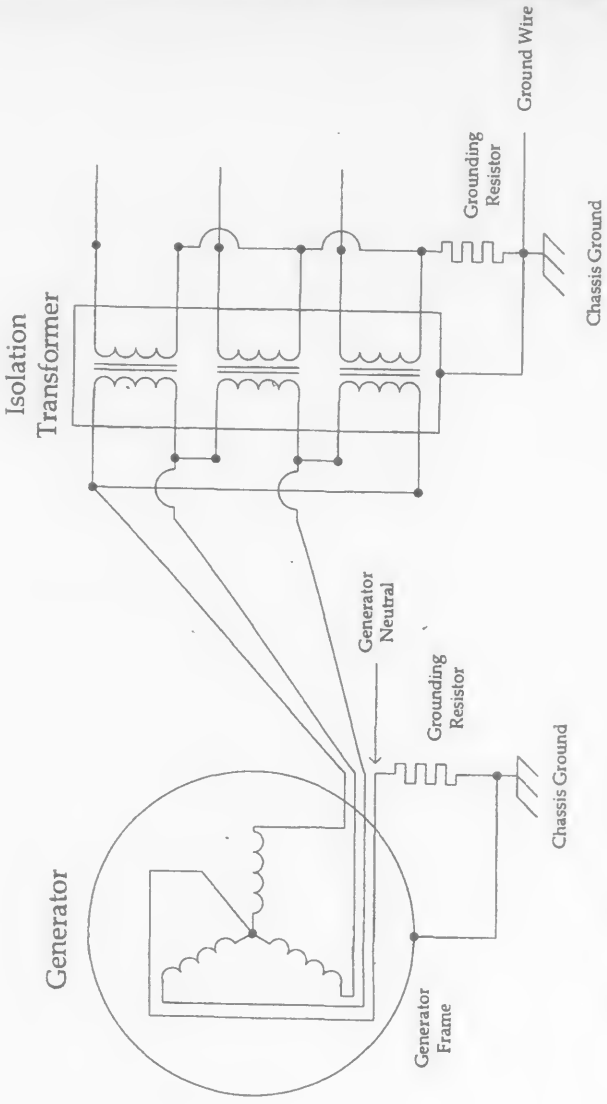


Figure II

Note that the grounding resistor must be mounted on the same frame with the generator.

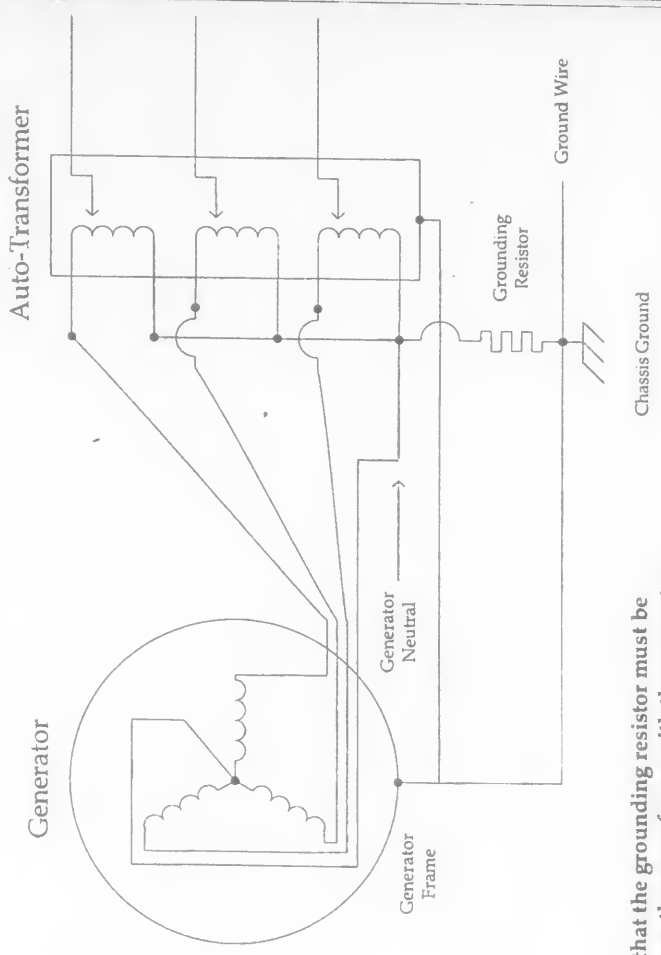


Figure III

Note that the grounding resistor must be mounted on the same frame with the generator.

[FR Doc. 04–14400 Filed 6–24–04; 8:45 am]
BILLING CODE 4510–43–C

Federal Register

Friday,
June 25, 2004

Part VIII

The President

Notice of June 24, 2004—Continuation of the National Emergency With Respect to the Western Balkans

Federal Register
Vol. 69, No. 122
Friday, June 25, 2004

Presidential Documents

Title 3—

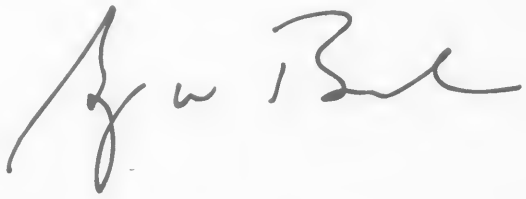
The President

Notice of June 24, 2004

Continuation of the National Emergency With Respect to the Western Balkans

On June 26, 2001, by Executive Order 13219, I declared a national emergency with respect to the Western Balkans pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions of persons engaged in, or assisting, sponsoring, or supporting (i) extremist violence in the former Yugoslav Republic of Macedonia, and elsewhere in the Western Balkans region, or (ii) acts obstructing implementation of the Dayton Accords in Bosnia or United Nations Security Council Resolution 1244 of June 10, 1999, in Kosovo. Subsequent to the declaration of the national emergency, the actions of persons obstructing implementation of the Ohrid Framework Agreement of 2001 in the former Yugoslav Republic of Macedonia also became a pressing concern. I amended Executive Order 13219 on May 28, 2003, in Executive Order 13304 to address this concern and to take additional steps with respect to the national emergency. Because the actions of persons threatening the peace and international stabilization efforts in the Western Balkans continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States, the national emergency declared on June 26, 2001, and the measures adopted on that date and thereafter to deal with that emergency, must continue in effect beyond June 26, 2004. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to the Western Balkans.

This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
June 24, 2004.

[FR Doc. 04–14727
Filed 6–24–04; 2:40 pm]
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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html.*

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H.R. 1086/P.L. 108–237

To encourage the development and promulgation

of voluntary consensus standards by providing relief under the antitrust laws to standards development organizations with respect to conduct engaged in for the purpose of developing voluntary consensus standards, and for other purposes. (June 22, 2004; 118 Stat. 661)

S. 1233/P.L. 108–238

National Great Black Americans Commemoration Act of 2004 (June 22, 2004; 118 Stat. 670)

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