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

Rules and Regulations

Federal Register
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Monday, January 10, 2005

SMALL BUSINESS ADMINISTRATION

13 CFR Part 125

RIN 3245–AF12

Small Business Government Contracting Programs; Subcontracting; Correction

AGENCY: Small Business Administration.

ACTION: Final rule; correction.

SUMMARY: The U.S. Small Business Administration (SBA) is correcting a final rule that appeared in the **Federal Register** of December 20, 2004 (69 FR 75820). Among other things, the document issued a list of factors to consider in evaluating a prime contractor's performance and good faith efforts to achieve the requirements in its subcontracting plan and authorized the use of goals in subcontracting plans, and/or past performance in meeting such goals, as a factor in source selection when placing orders against Federal Supply Schedules, government-wide acquisition contracts, and multi-agency contracts. This document incorrectly stated that the final rule was effective on December 20, 2004. The document did not put the public on notice that the final rule had been designated as a major rule under the Congressional Review Act.

DATES: Effective January 10, 2005, the effective date of the final rule published on December 20, 2004 (69 FR 75820) is corrected to February 18, 2005.

FOR FURTHER INFORMATION CONTACT: Dean Koppel, Assistant Administrator, Office of Policy and Research, (202) 401–8150 or *dean.koppel@sba.gov*.

SUPPLEMENTARY INFORMATION: In 69 FR appearing on page 75820 in the **Federal Register** of Monday, December 20, 2004, the following corrections are made:

1. On page 75820, in the second column, the **DATES** section, "**DATES:** This rule is effective on December 20, 2004" is corrected to read "**DATES:** This rule is effective on February 18, 2005."

2. On page 75824, in the first column, the second paragraph in the "Compliance with Executive Orders 13132, 12988 and 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)" section, "The Office of Management and Budget (OMB) has determined that this rule constitutes a significant regulatory action under Executive Order 12866. The rule revises the SBA regulation governing small business contracting assistance to define good faith effort" is corrected to read "The Office of Management and Budget (OMB) has determined that this rule constitutes an economically significant regulatory action under Executive Order 12866. OMB's determination is based on the expectation that this rule will expand the number of subcontracting awards currently received by small businesses pursuant to Federal prime contracts, which were worth $34.4 billion in FY 2002. In addition, this rule has been designated as a major rule under the Congressional Review Act because even a marginal increase in the number of subcontract awards received by small businesses pursuant to Federal prime contracts as a result of this rule will exceed the $100 million threshold for major rules."

Dated: January 4, 2005.

Allegra F. McCullough,

Associate Deputy Administrator for Government Contracting and Business Development.

[FR Doc. 05–414 Filed 1–7–05; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–166–AD; Amendment 39–13936; AD 2005–01–12]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200, –200PF, and –200CB Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757–200, –200PF, and –200CB series airplanes, that requires an inspection of certain ballscrews of the trailing edge flap system to find their part numbers, and replacement of the ballscrews with new, serviceable, or modified ballscrews if necessary. This action is necessary to prevent a flap skew due to insufficient secondary load path of the ballscrew of the trailing edge flaps in the event that the primary load path fails, which could result in possible loss of a flap and reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective February 14, 2005. The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the **Federal Register** as of February 14, 2005.

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

FOR FURTHER INFORMATION CONTACT: Douglas Tsuji, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6487; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 757–200, –200PF, and –200CB series airplanes was published in the **Federal Register** on April 1, 2004 (69 FR 17105). That action proposed to require an inspection of certain ballscrews of the trailing edge flap system to find their part numbers, and replacement of the ballscrews with new, serviceable, or modified ballscrews if necessary.

Comments

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

Request To Delay Issuance of Final Rule

One commenter requests that the FAA delay the issuance of the final rule until Boeing issues a service bulletin for relocating the rear spar air dam of the trailing edge (TE) from wing station (WS) 399 to WS 357, if we are planning to mandate the modification in another rulemaking action. The commenter states that this modification would move the air dam and the associated hydraulic, flight controls, and electrical systems inboard along the wing TE, which would mitigate collateral system damage in the event of a powered flap skew. The commenter also states that the Boeing service bulletin for this modification is expected to be released in the third quarter of 2004.

We do not agree with the request. We have determined that the modification described by the commenter addresses the result of a powered flap skew (i.e., potential collateral damage). The requirements of this AD address the potential cause of a flap skew (i.e., insufficient secondary load path of the ballscrew of the TE flaps in the event that the primary load path fails). It is this skew, which could adversely affect the controllability of the airplane, that needs to be corrected. In addition, the airplane manufacturer has not issued and we have not reviewed and approved the subject service bulletin. We do not consider it appropriate to delay the issuance of this final rule in light of the identified unsafe condition. When the service bulletin is issued, we will review it and may consider future rulemaking action. Therefore, no change to the final rule is necessary in this regard.

Requests To Revise Compliance Times

One commenter requests that, for operators having an overhaul requirement for a TE flap ballscrew in their maintenance schedule, the 36-month compliance time in the notice of proposed rulemaking (NPRM) for replacing any ballscrew having part number (P/N) S251N401–5 (Thomson Saginaw P/N 7820921) or S251N401–9 (Thomson Saginaw P/N 7821341) be revised to allow operators to either:

- Continue operation until the next unscheduled removal or scheduled overhaul, whichever occurs first; or
- Do the replacement at a later time, allowing them to continue operation until, for example, the next 4C–check.

The commenter states that its approved maintenance schedule requires overhaul of the TE flap ballscrews at 18,200 flight hours.

In line with the previous request, the same commenter also requests that we take into account recent installation of new or overhauled units. The commenter states that airplanes having ballscrews that have been installed recently (in a new or overhauled condition) will require replacement again soon. Also, these airplanes are subject to the same compliance time as airplanes having ballscrews that have been installed for many years.

In addition, three commenters request that the compliance time for the proposed inspection/replacement be extended for different reasons. Two commenters suggest that a compliance time of 48 months would coincide with the existing 24-month (or 6,000-flight hour/3,000 flight cycles, whichever occurs first) heavy maintenance schedule for Model 757 airplanes operated in a freighter configuration. One of the two commenters states that the 36-month compliance time would impose unnecessary economic and operational burdens by requiring airplanes to be routed as a "special visit" to a heavy maintenance facility to comply with the NPRM. This commenter also notes that recorded findings of a time-controlled functional check at 18,000 flight hours are well within the manufacturer's required limits, and that no removal of the ballscrews have occurred due to wear. Instead of a 48-month compliance time, one of the two commenters also suggest either:

- The later of: 36 months or (12,000 flight hours or 6,000 flight cycles, whichever occurs first); or
- 48 months or 12,000 flight hours or 6,000 flight cycles, whichever occurs first.

The third commenter states that the proposed compliance time will require as many as three full-ship sets of modified ballscrew assemblies each month. The increased demand by all operators for modified assemblies will make the ballscrew assembly modification turn-around time a critical factor for compliance. This commenter also notes that industry has not reported any occurrence of a flap skew condition as a result of a failed ballscrew assembly. For these reasons, the commenter suggests that the compliance time should be extended from 36 months to 48 months.

We partially agree with the requests. We do not agree that it is necessary to revise the compliance time for the required replacement to account for recent installation of new or overhauled units. The requirements of this AD address a design deficiency (i.e., insufficient secondary load path of the ballscrew of the TE flaps in the event that the primary load path fails). This deficiency is not dependant upon wear or usage of the ballscrew as suggested by a commenter. Therefore, how recently a ballscrew has been replaced is irrelevant to correcting the subject design deficiency, unless the ballscrew has the improved secondary load path.

We agree that the compliance times for both the inspection and replacement, if necessary, can be extended somewhat to coincide with regularly scheduled maintenance visits. We intended to require those actions at intervals that would coincide with regularly scheduled maintenance visits for the majority of the affected fleet, when the airplanes would be located at a base where special equipment and trained personnel would be readily available, if necessary. However, accomplishing the required actions at the next 4C-check may, for some operators, significantly increase time and affect the probability of a ballscrew failure. Therefore, we have determined that extending the compliance times from the proposed 36 months to 48 months will provide an acceptable level of safety. Paragraph (a) of the final rule has been revised accordingly.

Requests To Revise Service Bulletins

One commenter requests that the wording of Boeing Alert Service Bulletin 757–27A0139, dated June 16, 2003 (cited in the NPRM as the appropriate source of service information for accomplishing the proposed inspection and replacement if necessary) be consistent with the NPRM. The commenter states that in several locations of the Accomplishment Instructions of the service bulletin, including Figure 1, it states to examine the ballscrews for its P/N, and if the P/N is either S251N401–5 or –9 (i.e., a pre-modified ballscrew), the ballscrew must be replaced. The commenter notes that the NPRM requires inspection and replacement, if necessary, within 36 months after the effective date of the AD. The service bulletin recommends the replacement with no allowance for time after the pre-modified unit has been found. The commenter contends that the service bulletin is very restrictive and difficult to adhere to. The commenter sent its request to Boeing too.

Boeing responded to the commenter by stating, "The compliance statement in the bulletin advises, 'Boeing recommends that operators do the inspection and possible replacement given in this service bulletin in three years or less from the date on this service bulletin.' The intent means that as long as both conditions (inspection AND replacement) are satisfied with the three year window, operators are compliant."

Because paragraph 1.E., "Compliance" of Boeing Alert Service Bulletin 757–27A0139 recommends a compliance time of 36 months for accomplishing both the inspection and replacement, if necessary, we infer that the commenter is requesting that we ask Boeing to specifically revise the "Accomplishment Instructions" of that service bulletin to include compliance times. We do not agree. Although the recommended compliance times are not cited in the Accomplishment Instructions of the referenced service bulletin, they are clearly cited in paragraph 1.E, "Compliance," as noted in Boeing's response discussed earlier. The wording of paragraph (a) of this AD is also clear that both the required inspection and the replacement, if necessary, must be done within 36 months after the effective date of this AD. When there are differences between an AD and the referenced service bulletin, the AD prevails. Therefore, we do not find it necessary to require Boeing to include compliance times in the Accomplishment Instructions of the referenced service bulletin.

One commenter requests that Thomson Saginaw Ball Screw Component Maintenance Manual (CMM) 27–51–20, dated November 15, 1998, be revised before issuance of the final rule to reflect the full intent of the part modification driven by Thomson Saginaw Service Bulletin 7900897, Revision C, included by reference in Boeing Alert Service Bulletin 757–27A0139. The commenter notes that, while the NPRM does not provide direct reference to Thomson Saginaw Service Bulletin 7900897, nor the CMM 27–51–20, it would require certain ballscrew assemblies to be replaced with new, serviceable, or modified ballscrews in accordance with Boeing Alert Service Bulletin 757–27A0139. The commenter further notes that Boeing Alert Service Bulletin 757–27A0139 recommends that the identified ballscrews be changed in accordance with the Thomson Saginaw service bulletin, which is written for accomplishment in conjunction with CMM 27–51–20.

The commenter states that, after initial modification, future component maintenance in accordance with CMM 27–51–20 could result in an old ball nut installation, thereby de-modifying the unit from the intent of the Thomson Saginaw service bulletin. The commenter believes that this de-modification could raise a question of compliance with the intent of the NPRM if the CMM is not revised to reflect the intent of the service bulletin changes.

We partially agree with the commenter's request. We agree that it is possible to install an un-modified ball nut having P/N 7820679 into a previously modified ballscrew, because CMM 27–51–20 does not distinguish between a modified and unmodified ball nut. However, we disagree with the commenter that it is necessary to delay issuance of this final rule until CMM 27–51–20 is revised, or that a revision to the CMM is necessary. All ball nuts have a nameplate that has the P/N of the ballscrew on it. The nameplate of older, unmodified ball nuts has either P/N S251N401–5 or –9 on it. As of the effective date of this AD, paragraph (b) of the AD prohibits installation of any ballscrew having P/N S251N401–5 or –9, on any airplane. We have determined that the requirements of this AD adequately address the identified unsafe condition. No change to the final rule is necessary in this regard.

Request To Deviate From Service Bulletin

One commenter requests that paragraph (a) of the NPRM be revised to deviate from the referenced service bulletin (i.e., Boeing Alert Service Bulletin 757–27A0139) by allowing the proposed inspection without removal of the aft fairing from the flap track as is currently specified in the service bulletin. The commenter notes that the service bulletin recommends accomplishing the removal in accordance with Boeing 767 Airplane Maintenance Manual (AMM) 27–51–31/201. The commenter states that the P/N on the subject ballscrews is located on a data plate that is fastened to the ball nut in a predetermined location as part of the component assembly. This location for the part identification is readily visible with the ballscrew assembly installed on the airplane without removal of the aft flap fairing. The commenter believes its suggestion would prevent unnecessary access and subsequent reinstallation and testing in the event the parts are not those that require replacement according to the AD.

We agree with the commenter that paragraph (a) should be clarified. Our intent was that the required inspection determine the P/Ns of the ballscrews, not the manner in which the P/Ns are identified. Therefore, the inspection required by paragraph (a) of this final rule does not have to be done in accordance Boeing Alert Service Bulletin 757–27A0139. We have revised paragraph (a) of the final rule accordingly.

Request To Clarify Terminating Action

To prevent any confusion about the terminating action, one commenter requests that paragraph (a) of the NPRM be clarified to indicate that accomplishing the actions specified in Boeing Alert Service Bulletin 757–27A0139 terminates the NPRM.

We do not agree. The replacement in paragraph (a) of this AD is only required if the P/N of the ballscrew is S251N401–5 (Thomson Saginaw P/N 7820921) or S251N401–9 (Thomson Saginaw P/N 7821341). Because some operators may not have to do the replacement, we find that referring to the replacement as terminating action for this AD is inappropriate. No change to the final rule is necessary in this regard.

Requests To Revise Cost Impact

One commenter requests that we consider reviewing the estimate in the Cost Impact section of the NPRM for accomplishing the proposed modification. The commenter states that the cost estimate does not account for the additional cost associated with the removal of the ball nut from the ballscrew or with new bearings, scraper/seals, inspections, assembly, and testing of the ballscrew. Another commenter states that the time estimated in the Cost Impact section of the NPRM for modifying the subject ballscrew assemblies is underestimated. The commenter believes it will take 8 work hours to modify one unit.

We do not agree that Cost Impact section of the NPRM needs to be revised. The Cost Impact section below describes only the direct costs of the specific actions required by this AD. Based on the best data available, the airplane manufacturer's and ballscrew manufacturer's service information specified the number of work hours (6 hours per ballscrew) necessary to do the removal, modification, and reinstallation of a ballscrew, if required. This number represents the time necessary to perform only the actions actually required by this AD. We recognize that, in doing the actions required by an AD, operators may incur incidental costs in addition to the direct costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs such as the time required to gain access and

close up, time necessary for planning, or time necessitated by other administrative actions. Those incidental costs, which may vary significantly among operators, are almost impossible to calculate. No change to the final rule is necessary in this regard.

Conclusion

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

Cost Impact

There are approximately 979 airplanes of the affected design in the worldwide fleet. The FAA estimates that 644 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required inspection at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $41,860, or $65 per airplane.

Replacement of a ballscrew with a new or serviceable ballscrew, if required, will take about 3 work hours per ballscrew, at an average labor rate of $65 per work hour. Required parts will cost about $8,400 per ballscrew. Based on these figures, we estimate the cost of a repair to be $8,595 per ballscrew (there are two ballscrews per airplane).

Removal, modification, and reinstallation of a ballscrew, if required, will take about 6 work hours per ballscrew, at an average labor rate of $65 per work hour. Required parts will cost about $553 per ballscrew. Based on these figures, we estimate the cost of a repair to be $943 per ballscrew (there are two ballscrews per airplane).

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

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in title 49 of the United States Code. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart III, section 44701, "General requirements." Under that section, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this AD.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–01–12 Boeing: Amendment 39–13936. Docket 2003–NM–166–AD.

Applicability: Model 757–200, –200PF, and –200CB series airplanes, line numbers 1 through 979 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent a flap skew due to insufficient secondary load path of the ballscrew of the trailing edge flaps in the event that the primary load path fails, which could result in possible loss of a flap and reduced controllability of the airplane, accomplish the following:

Inspection and Corrective Action

(a) Within 48 months after the effective date of this AD, do an inspection of the ballscrews of the trailing edge flap system to find their part numbers (P/N). If the P/N of the ballscrew is S251N401–5 (Thomson Saginaw P/N 7820921) or S251N401–9 (Thomson Saginaw P/N 7821341), within 48 months after the effective date of this AD, replace the ballscrew with a new, serviceable, or modified ballscrew, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 757–27A0139, dated June 16, 2003.

Parts Installation

(b) As of the effective date of this AD, no person may install a trailing edge flap ballscrew, P/N S251N401–5 (Thomson Saginaw P/N 7820921) or S251N401–9 (Thomson Saginaw P/N 7821341), on any airplane.

Alternative Methods of Compliance

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

Incorporation by Reference

(d) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 757–27A0139, dated June 16, 2003. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/*

code_of_federal_regulations/ibr_locations.html.

Effective Date

(e) This amendment becomes effective on February 14, 2005.

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

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–281 Filed 1–7–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 570

[BOP Docket No. 1127–F]

RIN 1120–AB27

Community Confinement

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) finalizes new rules regarding its categorical exercise of discretion for designating inmates to community confinement when serving terms of imprisonment.

DATES: This rule is effective on February 14, 2005.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

SUPPLEMENTARY INFORMATION: The Bureau published proposed rules on this subject on August 18, 2004 (69 FR 51213). In the proposed rule document, we explained that these rules would, as a matter of policy, limit the amount of time that inmates may spend in community confinement (including Community Corrections Centers (CCCs) and home confinement) to the last ten percent of the prison sentence being served, not to exceed six months. The only exceptions to this policy are for inmates in specific statutorily-created programs that authorize greater periods of community confinement (for example, the residential substance abuse treatment program (18 U.S.C. 3621(e)(2)(A)) or the shock incarceration program (18 U.S.C. 4046(c))). The Bureau announces these rules as a categorical exercise of discretion under 18 U.S.C. 3621(b).

We received 26 comments on the proposed rule. One commenter wrote in support of the rule as proposed. The remaining commenters raised similar issues, so we respond to each issue individually as follows.

Requests to hold a public hearing. Thirteen commenters requested the Bureau to hold a public hearing on the rule.

The Administrative Procedure Act (5 U.S.C. 551–559) does not require a hearing for rulemaking purposes unless a hearing is required by another statute. 5 U.S.C. 553(c). A hearing as described in 5 U.S.C. 556 is not required for this rulemaking by any other statute. Furthermore, we do not find that a hearing is necessary, as ample opportunity for written comment was given after publication of the proposed rule as required by the Administrative Procedure Act. *See, e.g., United States* v. *Allegheny-Ludlum Steel Corp.,* 406 U.S. 742 (1972) (The Supreme Court held that the Interstate Commerce Commission was not required by statute to hold a hearing before rulemaking); *See also Kelley* v. *Selin,* 42 F.3d 1501 (6th Cir. 1995) (The court held that the Nuclear Regulatory Commission's (NRC) denial of a request for an adjudicatory hearing, was not arbitrary, capricious, or abuse of discretion, in light of the opportunity for public comment).

The rule has an unreasonable economic impact. Several commenters complained, both generally and specifically with regard to their particular community corrections business (CCCs), that the rule had an unfair economic impact. While we acknowledge that there has been an impact on some individual community corrections centers, we have observed no severe nationwide economic impact.

In the preamble to the proposed rule, we described the history of this change in our community confinement procedures as follows:

"Before December 2002, the Bureau operated under the theory that 18 U.S.C. 3621(b) created broad discretion to place inmates in any prison facilities, including CCCs, as the designated places to serve terms of 'imprisonment.' Under that theory, the Bureau generally accommodated judicial recommendations for initial CCC placements of non-violent, low-risk offenders serving short prison sentences. Consequently, before December 2002, it was possible for such inmates to serve their entire terms of 'imprisonment' in CCCs.

"On December 13, 2002, the Department of Justice's Office of Legal Counsel (OLC) issued a memorandum concluding that the Bureau could not, under 18 U.S.C. 3621(b), generally designate inmates to serve terms of imprisonment in CCCs. OLC concluded that, if the Bureau designated an offender to serve a term of imprisonment in a CCC, such designation unlawfully altered the actual sentence imposed by the court, transforming a term of imprisonment into a term of community confinement. OLC concluded that such alteration of a court-imposed sentence exceeds the Bureau's authority to designate a place of imprisonment. OLC further opined that if section 3621(b) were interpreted to authorize unlimited placements in CCCs, that would render meaningless the specific time limitations in 18 U.S.C. 3624(c), which limits the amount of time an offender sentenced to imprisonment may serve in community confinement to the last ten percent of the prison sentence being served, not to exceed six months. By memorandum dated December 16, 2002, the Deputy Attorney General adopted the OLC memorandum's analysis and directed the Bureau to conform its designation policy accordingly.

"Thus, effective December 20, 2002, the Bureau changed its CCC designation procedures by prohibiting Federal offenders sentenced to imprisonment from being initially placed into CCCs rather than prison facilities. The Bureau announced that, as part of its procedures change, it would no longer honor judicial recommendations to place inmates in CCCs for the imprisonment portions of their sentences. Rather, the Bureau would now limit CCC designations to pre-release programming only, during the last ten percent of the prison sentence being served, not to exceed six months, in accordance with 18 U.S.C. 3624(c)."

There has been a net effect of a 4.6 percent decrease in the CCC population since December 2002. In December 2002, when the Bureau changed its community confinement procedures in accordance with the OLC opinion, there was a 12–15 percent drop in CCC population from January-March 2003. The community confinement utilization patterns leveled off, however, and by the late summer of 2003, had begun to maintain only a 4–5 percent decrease in CCC population. The initial adverse impact on the CCC population has steadily improved and should continue to improve in the near future as industry readjustments are made. It is important to note that the finalization of this rule, therefore, will essentially have no further economic impact.

The rule will increase Bureau costs by increasing the number of inmates housed in penal facilities. Although we acknowledge that this change in the Bureau's CCC procedures will increase Bureau costs, we balance that cost against our interest in reaching a

decision that more accurately reflects the Bureau's mission, the text of 18 U.S.C. 3621(b), Congressional objectives reflected in related statutory provisions, and the policy determinations of the U.S. Sentencing Commission as expressed in the U.S. Sentencing Guidelines. We also note that the Bureau will be absorbing its own costs as necessary. As explained above, there will be only limited economic impact on small businesses and virtually no economic impact on any other entity.

The rule will not promote nationwide consistency in community confinement. As we stated in the preamble to the proposed rule, the rule will promote consistency in the Bureau's designation of inmates to places of confinement by eliminating inadvertent disparities that could arise under the previous process.

Congress, in enacting 18 U.S.C. 3621(b), codified its intent that the Bureau not show favoritism in making designation decisions: "In designating the place of imprisonment or making transfers under this subsection, there shall be no favoritism given to prisoners of high social or economic status." 18 U.S.C. 3621(b). Indeed, eliminating unwarranted disparities in sentencing was a primary purpose of the Sentencing Reform Act of 1984. *See* S. Rep. No. 225, 98th Cong., 1st Sess. 52 (1983). However, the Bureau's system before December 2002, which allowed individualized CCC decisions for each inmate upon initial prison designation, created the possibility that it would unintentionally treat similar inmates differently.

These differences in treatment could not only be unfair to the inmates, but they "could invite [charges of intentional] favoritism, disunity, and inconsistency" against the Bureau. *Lopez* v. *Davis*, 531 U.S. 227, 244 (2001). This proposed rule promotes Congress' goal of eliminating unwarranted disparities in the sentencing and handling of inmates and also eliminates any concern that the Bureau might use community confinement to treat specific inmates or categories of inmates more leniently.

Consideration of factors under 18 U.S.C. 3621(b). Several commenters were concerned that the new rule "undermines the Bureau's statutory authority to make prisoner-specific determinations under § 3621(b)."

Section 3621(b) authorizes the Bureau to designate as the place of a prisoner's imprisonment any available facility that meets minimum standards of health and habitability "that the Bureau determines to be appropriate and suitable." 18 U.S.C. 3621(b). Section 3621(b) provides a nonexclusive list of factors that the Bureau is to consider in determining what facilities are "appropriate and suitable," including (1) the resources of the facility; (2) the nature and circumstances of the offense; (3) the history and characteristics of the prisoner; (4) any statement by the sentencing court about the purposes for which the sentence of imprisonment was determined to be warranted or recommending a type of penal or correctional facility as appropriate; and (5) any pertinent policy statement issued by the Sentencing Commission under 28 U.S.C. 994(a)(2). The Bureau will continue to evaluate these factors when making individual designations to appropriate Bureau facilities, and this rule will not adversely affect such individualized determinations.

The rule does not allow the Bureau to consider facility resources in making designation determinations. As we stated in the preamble to the proposed rule, the rules are consistent with 18 U.S.C. 3621(b)'s instruction that the Bureau consider facility resources in making designation determinations. 18 U.S.C. 3621(b)(1). Based on its experience, the Bureau has concluded that the resources of CCCs make them particularly well suited as placement options for the final portion of offenders' prison terms. This rule is based in part on a closer look at the particular characteristics and advantages of CCCs that make them best suited to particular inmates during the last ten percent of the prison sentence being served, not to exceed six months.

As Congress has itself recognized, those characteristics of CCCs mean that they "afford the prisoner a reasonable opportunity to adjust to and prepare for the prisoner's re-entry into the community." 18 U.S.C. 3624(c). By ensuring that offenders sentenced to prison terms not be placed in CCCs except during the last ten percent of their prison sentences (not to exceed six months), the new rule will help ensure that CCCs remain available to serve the purposes for which their resources make them best suited.

The rule is contrary to court precedent, the U.S. Sentencing Commission's Sentencing Guidelines and Congressional intent. This was a common theme among most of the comments. Commenters asserted that this rule is not consistent with the intent of existing law and Congress, and that federal courts have found this interpretation of the statute to be erroneous.

As we stated in the preamble to the proposed rule, some courts upheld the new community confinement practice, *see, e.g., Cohn* v. *Federal Bureau of Prisons*, 2004 WL 240570 (S.D.N.Y., Feb. 10, 2004); *Benton* v. *Ashcroft*, 273 F. Supp.2d 1139 (S.D. Cal. 2003); while others have rejected it, *see, e.g., Monahan* v. *Winn*, 276 F.Supp.2d 196 (D. Mass. 2003); *Iacoboni* v. *United States*, 251 F.Supp. 2d 1015 (D. Mass. 2003); *Byrd* v. *Moore*, 252 F.Supp.2d 293 (W.D.N.C. 2003).

Several courts that disagreed with the re-interpretation concluded that 18 U.S.C. 3621(b) grants the Bureau broad discretion to designate offenders to any facility, including CCCs. *See, e.g., Iacaboni*, 251 F. Supp. 2d at 1025; *Byrd*, 252 F. Supp. 2d at 300–01. *See also Cohn*, 2004 WL 240570 at *3 ("the BOP's interpretation that a CCC is not a place of imprisonment, and therefore not subject [to] Congress' general grant of discretion to the BOP under § 3621(b), is at a minimum a permissible interpretation of the statute").

Further, we acknowledge two cases decided subsequent to the publication of the proposed rule which disagreed with BOP's interpretation of 18 U.S.C. 3621(b) and 3624(c). *Goldings* v. *Winn*, 383 F.3d 17, 2004 WL 2005625 (1st Cir., Sept. 3, 2004) and *Elwood* v. *Jeter*, 386 F.3d 842, 2004 WL 2331643 (8th Cir., Oct. 18, 2004). The courts in both cases found that section 3621(b) authorizes the Bureau to place inmates in CCCs at anytime during service of the prison sentence, and that this authority is not limited by section 3624(c) to the last ten percent of the sentence being served, not to exceed six months. Both courts also found that CCCs are a place of imprisonment.

Nevertheless, both the *Goldings* and the *Elwood* courts held that section 3624(c) does not require placement in a CCC. It only obligates BOP to facilitate the prisoner's transition from the prison system. According to *Elwood*, 2004 WL 2331643 at *4, "this plan *may include* CCC placement, home confinement, drug or alcohol treatment, or any other plan that meets the obligation of a plan that addresses the prisoner's re-entry into the community." [Emphasis added.]

Section 3624(c) provides that, to the extent practicable, BOP shall assure a prisoner serving a term of imprisonment "*spends a reasonable part*, not to exceed six months, of the last ten percent of the term under conditions that will afford the prisoner a *reasonable opportunity* to adjust to and to prepare for the prisoner's re-entry into the community." [Emphasis added.]

Various courts have held that the Bureau has discretion under 18 U.S.C. 3621(b) to place offenders sentenced to a term of imprisonment in CCCs. Also,

courts have acknowledged that the Bureau has discretion with regard to how it implements its mandatory pre-release custody obligation under § 3624(c). Courts have favorably acknowledged this rulemaking as an appropriate means of exercising the Bureau's authority under the governing statutes. *See Richmond* v. *Scibana*, 387 F.3rd 602, 605 (7th Cir. 2004).

Therefore, the Bureau considers it prudent to determine how to exercise such discretion to minimize the potential for disparity of treatment. Accordingly, the Bureau has considered how to exercise that discretion in a manner consistent with the text of Section 3621(b), Congressional objectives reflected in related statutory provisions, and the policy determinations of the U.S. Sentencing Commission expressed in the U.S. Sentencing Guidelines. Based on those considerations, the Bureau has determined to exercise its discretion categorically to limit inmates' community confinement to the last ten percent of the prison sentence being served, not to exceed six months.

This rule is a proper means for the Bureau to exercise its available discretion through rulemaking. The determination to limit the amount of time that inmates may spend in community confinement (including Community Corrections Centers) and home confinement to the last ten percent of the prison sentence being served, not to exceed six months, is a rational and justifiable exercise of the Attorney General's discretion (as delegated to the Director, Bureau of Prisons). The Supreme Court has recognized that an agency head "has the authority to rely on rulemaking to resolve certain issues of general applicability unless Congress clearly expresses an intent to withhold that authority." *Lopez*, 531 U.S. 230, 244, *quoting American Hospital Assn.* v. *NLRB*, 499 U.S. 606, 612 (1991) (agency may resolve disputes by industry-wide rule); *see also*, *Yang* v. *INS*, 79 F.3d 932, 936 (9th Cir. 1996).

The Supreme Court in *Lopez*, 531 U.S. at 231–32, upheld a Bureau rule that "categorically denies early release to prisoners whose current offense is a felony attended by "the carrying, possession, or use of a firearm."'" The Bureau adopted that rule as an exercise of its discretionary authority, not as an interpretation of the statutory provisions. The Supreme Court held that the rule was a valid means for exercising discretion, and rejected plaintiffs' contention that the Bureau was required to adjudicate denials of early release on a case-by-case basis for each individual.[1] The present rule, like the Bureau rule in Lopez, makes a categorical exercise of the discretion available to the Attorney General by law. Congress has not "clearly express[ed] an intent to withhold" authority from the Attorney General to use rulemaking as a means of exercising that discretion.

The Bureau is not bound by U.S. Sentencing Commission Guidelines. Several commenters stated that the Bureau is not bound to make this rule by the U.S. Sentencing Commission's Sentencing Guidelines. While we acknowledge that we are not bound by the Guidelines, in our discretion, we consider it appropriate to analyze the Guidelines as one of many factors we considered in making this rule. The legislative history makes clear that, although the listed factors in 18 U.S.C. 3621(b) are "appropriate" for the Bureau to consider, Congress did not intend, by listing some considerations, "to restrict or limit the Bureau in the exercise of its existing discretion." S. Rep. 225, 98th Cong., 1st Sess. 142 (1983).

Therefore, in addition to the listed factors, the Bureau has determined that it is appropriate to consider the policies of the Sentencing Commission reflected in Sentencing Guidelines (as well as policy statements promulgated under 28 U.S.C. 994(a)(2)) and congressional policies reflected in related statutory provisions.

The Bureau has no empirical support for several of its assertions. Several commenters complained that the Bureau offered no data in support of two of its assertions:

1. In the preamble to the proposed rule, the Bureau stated that the system before December 2002, which allowed individualized CCC decisions for each inmate upon initial prison designation, created the possibility that it would unintentionally treat similar inmates differently, which "could invite [charges of intentional] favoritism, disunity, and inconsistency" against the Bureau. *Lopez*, 531 U.S. 227, 244.

2. In the preamble to the proposed rule, the Bureau stated that "a potential offender might reasonably perceive community confinement as a more lenient punishment than designation to a prison facility."

With regard to the first statement, we made no assertion that the Bureau had, in fact, treated inmates differently or shown favoritism. Rather, we stated that the previous procedures created the possibility that we would unintentionally treat similar inmates differently or, at least, the perception that such a possibility existed. We do not believe that a statement analyzing the previous situation requires empirical support. Further, 18 U.S.C. 3621(b) expressly states that "there shall be no favoritism given to prisoners of high social or economic status" in Bureau designation decisions. In making this rule, we mean to avoid both the possibility of violating the statute's mandate against favoritism and the appearance of such possible favoritism.

With regard to the second statement, we note that we do not routinely engage in gathering data regarding prisoners' perception. We do not believe that empirical data for this statement is necessary. The Bureau's experience with inmates and their families and victims has led us to the conclusion that placement in a CCC for reasons other than facilitating pre-release preparation may be perceived by the public and victims as diminishing the seriousness of the offense. If placement in a CCC diminishes the seriousness of the offense, the public and victims may perceive such placement as favoritism, which is expressly prohibited by statute.

The Bureau is exercising its discretion incorrectly or should exercise it differently to allow for greater opportunity for community confinement. Several commenters raised this issue. This rule is intended to inform inmates and the public of how the Bureau intends to exercise its discretion. Contrary to the commenters views, the Bureau is, through this rulemaking, choosing to exercise its discretion in a manner that is consistent with the statutes cited in the rule, as described above.

[1] The history of the *Lopez* litigation is also instructive. In 1995, the Bureau of Prisons published a rule to implement early release incentives, and that rule included a provision that all inmates who were incarcerated for "crime[s] of violence" were ineligible for early release. 60 FR 27692. The courts of appeals divided over the validity of the Bureau's definition of crimes of violence, specifically whether it would include drug offenses that involved possession of a firearm. This litigation prompted the Bureau to publish a revised version of the rule in 1997, and it was this revised rule that was actually before the Supreme Court in *Lopez*. See 62 FR 53690. The 1997 rule, like its predecessor, was designed to achieve consistent administration of the incentive program, and it provided that offenders were excluded from early release eligibility if they had possessed a firearm in connection with their offenses. However, the 1997 rule, unlike its predecessor, did not implement the exclusion by defining statutory terms; instead, the 1997 rule relied upon "the discretion allotted to the Director of the Bureau of Prisons in granting a sentence reduction to exclude [enumerated categories of] inmates." 62 FR 53690. The courts of appeals again split over the validity of the new rule, and the Supreme Court granted certiorari to resolve that circuit split. In its decision, the Supreme Court upheld the validity of the Bureau's new approach to limit the eligibility for early release by means of an exercise of discretion implemented by regulation.

The Bureau should put detailed guidelines in the rule describing how the rule will be applied. One commenter requests the Bureau to state in rule text "detailed guidelines" on how the rule will be effected. Such detail pertaining to the rule text will be set forth as part of a Bureau policy statement, which is a more appropriate vehicle through which to provide added guidance to staff as to how inmates should be considered for pre-release programming.

The proposed rule is unfair to federal inmates. One commenter complained that the rule is unfair to federal inmates because they "are required to do over 75 percent of their sentencing, while State inmates do less than half. State inmates are also allowed pardon and clemency while we have taken parole from the federal inmates."

This rule is not meant to reach aspects of State systems of incarceration. The Bureau does not control State inmates and how much of their sentences they are required to serve. The Bureau may only exercise its discretion in the context of the federal system of incarceration, and chooses to do so as manifested in the language of this rule. Requiring federal inmates to serve their sentences in Bureau institutions more closely adheres to the spirit and intent of Federal criminal law. The Bureau simply enforces the laws enacted by Congress and implemented through the courts.

The rule does not allow for inmates to have enough time to reintegrate into the community before release. Several commenters raised this concern. The Bureau strives to prepare inmates adequately and appropriately for release into the community on expiration of their sentence. When inmates near the end of their term of imprisonment, the Bureau engages its release preparation program to help assist them in re-establishing and/or maintaining community ties and otherwise re-integrating as a productive and law-abiding member of the community. The rule is consistent with congressional judgments as to the appropriate and reasonable amount of time to be spent in pre-release custody. 18 U.S.C. 3624(c).

The Bureau incorrectly published the proposed rule without consulting Congress or attempting to revise the law. In making this rule, the Bureau has complied with all the rulemaking requirements in the Administrative Procedure Act (5 U.S.C. 551 *et seq.* Because no change to the statute was necessary, there was no need to address Congress and request a change to the United States Code.

The Bureau failed to follow current law governing the rulemaking process. One commenter contends that the rule is procedurally defective for failure to follow requirements set forth in a number of Executive Orders. Our general response is that the rule is not procedurally defective in this regard because we complied with the requirements in these Executive Orders. However, we address each of the Executive Orders and other law that the commenter raised:

Executive Order 12866, Regulatory Planning and Review, requires that agencies provide to the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB) an "assessment of the potential costs and benefits of the regulatory action, including an explanation of the manner in which the regulatory action is consistent with a statutory mandate and, to the extent permitted by law, promotes the President's priorities and avoids undue interference with State, local, and tribal governments in the exercise of their governmental functions." E.O. 12866, Section 6(3)(B)(ii).

We provided such an assessment to OIRA, and in doing so have complied with the Executive Order. The preamble of the proposed rule provides sufficient statutory basis and contains no indication of undue influence on local governments. The rule is not procedurally defective for this reason.

Likewise, with regard to Executive Order 13132, we certified in the proposed rule that this regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, we determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. This rule is not procedurally defective for failure to so certify under E.O. 13132.

In the proposed rule, we certified that, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), this regulation will not have a significant economic impact upon a substantial number of small entities. In the proposed rule, we stated that the economic impact of this rule is limited to Bureau appropriated funds. While we recognize that community confinement centers are sometimes small businesses, and that these small businesses will be impacted by this rule, the impact does not rise to the level of a "significant economic impact."

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

As we explained above, the 4.6 percentage decrease in the number of inmates in community confinement since the date of the change in the Bureau's community confinement procedures does not rise to an economic impact of $100,000,000 or more. Rather, the change in the Bureau's community confinement procedures had an economic impact resulting in a loss of $8 million annually (calculated based on a loss of revenue resulting from a 4.6 percent decrease in CCC population).

E.O. 13198, issued on January 29, 2001, describes responsibilities of a number of departments and offices within the Federal government with regard to a "national effort to expand opportunities for faith-based and other community organizations," but none of these are specific to rulemaking. Section 6 of this E.O. only requires that "All Executive Departments and Agencies" must designate an agency liaison to the White House Office of Faith-Based and Community Initiatives (OFBCI) and cooperate with the OFBCI as needed. These requirements do not otherwise impact rulemaking. The Bureau has, therefore, not failed to follow any rulemaking requirement under this E.O.

Likewise, E.O. 13272, entitled "Proper Consideration of Small Entities in Agency Rulemaking" heightens the need for compliance with the Regulatory Flexibility Act, but does not appear to impose further rulemaking procedural requirements. Again, the Bureau has not failed to follow any rulemaking requirement under this E.O.

Finally, another commenter claimed a violation of the Paperwork Reduction Act, which requires all federal agencies to "minimize the paperwork burden for individuals, small businesses, * * * resulting from the collection of information by or for the Federal Government." 44 U.S.C. 3501(1). This rule does not include anything that could be construed as a collection of information by or for the Federal Government. The Bureau requires no paperwork or additional forms, etc., from small businesses or any other non-federal entity as a result of this

rulemaking. The Paperwork Reduction Act, therefore, was not violated by the proposed rule.

Accordingly, we adopt the proposed rule as final, with only the following change: We delete the word "pre-release" from § 570.21(b) to allow for the possibility that Congress, in the future, may statutorily identify programs which require CCC placement for other than pre-release purposes. This minor deletion will allow the Bureau to avoid unnecessarily limiting the rule's application.

Executive Order 12866

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined to constitute "significant regulatory actions" under section 3(f) of Executive Order 12866 and, accordingly, it was reviewed by OMB.

BOP has assessed the costs and benefits of this rule as required by Executive Order 12866 Section 1(b)(6) and has made a reasoned determination that the benefits of this rule justify its costs. This rule will have the benefit of eliminating confusion in the courts that has been caused by the change in the Bureau's statutory interpretation, while allowing us to continue to operate under revised statutory interpretation. There will be no new costs associated with this rulemaking.

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 distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, we determine that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation and by approving it certifies that it will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

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.

Small Business Regulatory Enforcement Fairness Act of 1996

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

List of Subjects in 28 CFR Part 570

Prisoners.

Harley G. Lappin,

Director, Bureau of Prisons.

■ Under rulemaking authority vested in the Attorney General in 5 U.S.C 301; 28 U.S.C. 509, 510 and delegated to the Director, Bureau of Prisons in 28 CFR 0.96, we revise 28 CFR part 570 as set forth below.

Subchapter D—Community Programs and Release

PART 570—COMMUNITY PROGRAMS

■ 1. Revise the authority citation for 28 CFR part 570 to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 751, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166, 5006–5024 (Repealed October 12, 1984, as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

■ 2. Amend part 570 by adding subpart B consisting of §§ 570.20 and 570.21 to read as follows:

Subpart B—Community Confinement

Sec.

§ 570.20 What is the purpose of this subpart?

(a) This subpart provides the Bureau of Prisons' (Bureau) categorical exercise of discretion for designating inmates to community confinement. The Bureau designates inmates to community confinement only as part of pre-release custody and programming which will afford the prisoner a reasonable opportunity to adjust to and prepare for re-entry into the community.

(b) As discussed in this subpart, the term "community confinement" includes Community Corrections Centers (CCC) (also known as "halfway houses") and home confinement.

§ 570.21 When will the Bureau designate inmates to community confinement?

(a) The Bureau will designate inmates to community confinement only as part of pre-release custody and programming, during the last ten percent of the prison sentence being served, not to exceed six months.

(b) We may exceed these time-frames only when specific Bureau programs allow greater periods of community confinement, as provided by separate statutory authority (for example, residential substance abuse treatment program (18 U.S.C. 3621(e)(2)(A)), or shock incarceration program (18 U.S.C. 4046(c)).

[FR Doc. 05–398 Filed 1–7–05; 8:45 am]
BILLING CODE 4410–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R05–OAR–2004–WI–0001; FRL–7858–9]

Approval and Promulgation of Air Quality Implementation Plans; Wisconsin; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to the receipt of an adverse comment, the EPA is withdrawing the November 10, 2004 (69 FR 65069), direct final rule approving revisions to Wisconsin's State Implementation Plan regarding the control of nitrogen oxide emissions. In the direct final rule, EPA stated that if adverse comments were submitted by December 10, 2004, the rule would be withdrawn and not take effect. On December 10, 2004, EPA received a comment. EPA believes this comment is adverse and, therefore, EPA is withdrawing the direct final rule. EPA will address the comment in a subsequent final action based upon the proposed action also published on November 10, 2004 (69 FR 65117). EPA will not institute a second comment period on this action.

DATES: The direct final rule published at 69 FR 65069 on November 10, 2004 is withdrawn as of January 10, 2005.

FOR FURTHER INFORMATION CONTACT: Randolph Cano, Environmental Protection Specialist, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone: (312) 886–6036. E-Mail Address: *cano.randolph@epa.gov.*

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxide, Reporting and recordkeeping requirements.

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

Dated: December 30, 2004.

Norman Niedergang,

Acting Regional Administrator, Region 5.

■ Accordingly, the amendment to 40 CFR 52.2570 published in the **Federal Register** on November 10, 2004 (69 FR 65069) on pages 65069–65073 are withdrawn as of January 10, 2005.

[FR Doc. 05–427 Filed 1–7–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[R03–OAR–2004–WV–0002; FRL–7852–8a]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Redesignation of the City of Weirton Including the Clay and Butler Magisterial Districts SO_2 Nonattainment Area and Approval of the Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a request by the State of West Virginia to redesignate the sulfur dioxide (SO_2) nonattainment area of the City of Weirton, including the Clay and Butler Magisterial Districts in Hancock County, from nonattainment to attainment of the national ambient air quality standards (NAAQS) for SO_2. EPA is also approving the maintenance plan for this area submitted by the State of West Virginia as a revision to the West Virginia State Implementation Plan (SIP). This plan provides for the maintenance of the NAAQS for SO_2 for the next ten years. These actions are being taken in accordance with the Clean Air Act (CAA or the Act).

DATES: This rule is effective on March 11, 2005, without further notice, unless EPA receives adverse written comment by February 9, 2005. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in Edocket (RME) ID Number R03–OAR–2004–WV–0002 by one of the following methods:

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

B. Agency Web site: *http://www.docket.epa.gov/rmepub/.* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

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

D. Mail: R03–OAR–2004–WV–0002, Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

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

Instructions: Direct your comments to RME ID No. R03–OAR–2004–WV–0002. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.docket.epa.gov/rmepub/,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov or e-mail. The EPA RME and the Federal regulations.gov Web sites are an "anonymous access" system which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the RME index at *http://www.docket.epa.gov/rmepub/.* Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of material to be incorporated by reference are available at the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE., Charleston, West Virginia 25304–2943.

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

SUPPLEMENTARY INFORMATION:

I. Background

Under the CAA, EPA may redesignate areas to attainment if sufficient data are available to warrant such changes and the area meets the criteria contained in section 107(d)(3) of the Act. This includes full approval of a maintenance plan for the area. The requirements for a maintenance plan are found in section 175A of the CAA.

On December 21, 1993 (58 FR 67334), EPA designated the City of Weirton, including the Clay and Butler Magisterial Districts of Hancock County, West Virginia (the Weirton area), to nonattainment for SO_2 based upon monitored values at the Oak Street monitoring site in the Weirton, West Virginia area. This action required the State to submit a SIP revision for the Weirton area by July 1995. On July 21, 1995, EPA received a SIP revision submittal for the Weirton area.

However, models available at the time for air quality planning purposes had limited applicability due to the intricate topography of the area. An additional issue to that of complex terrain was the lack of comprehensive local meteorological data that was representative of the specific area. EPA commented on the SIP submittal and encouraged the West Virginia Department of Environmental Protection (WVDEP) to consider siting and installing a new meteorological tower so that representative local meteorological data could be generated for use in refined air quality modeling analyses for attainment planning purposes. A 60-meter meteorological tower and acoustical Sound Detection and Ranging (SODAR) equipment were installed in Weirton, West Virginia. Additional air quality monitors were added to the area surrounding Weirton Steel based on "hot spot" modeling locations identified by EPA. Modeling results indicated the major contributors of ambient SO_2 levels in the local area to be sources located within the Weirton Steel Corporation and the Wheeling-Pittsburgh Steel Corporation. Modeled attainment of the NAAQS required a Consent Order (CO) be entered into between Weirton Steel Corporation and the WVDEP, and the modification of a permit for Wheeling-Pittsburgh Steel Corporation issued by WVDEP. These documents serve as the enforceable mechanisms which establish and impose the allowable emission limits on specific units within each of the facilities sufficient to attain the NAAQS for SO_2 in the Weirton area.

On December 29, 2003, West Virginia submitted a formal SIP revision for the Weirton area. The SIP revision consisted of the revised enforceable operating permit for the Wheeling-Pittsburgh Steel Corporation, and the CO entered into by and between the WVDEP and the Weirton Steel Corporation in Hancock County, West Virginia. These documents establish and impose allowable SO_2 emission limits for numerous emission points at both facilities. The SIP submittal also included an air quality modeling demonstration that indicated that the allowable emission limits would provide for the attainment of the NAAQS for SO_2 in the Weirton area. On May 5, 2004 (69 FR 24986), EPA fully approved West Virginia's December 29, 2003, SIP revision for the Weirton area.

II. Summary of the Redesignation Request and Maintenance Plan SIP Revision

On July 27, 2004, the State of West Virginia submitted a request to redesignate the Weirton area to attainment for SO_2. The July 27, 2004, submittal also includes a SIP revision consisting of a SO_2 maintenance plan for the Weirton area. Under the CAA, EPA may redesignate nonattainment areas to attainment if sufficient data are available to warrant such changes and the area meets the criteria contained in section 107(d)(3)(E). This includes full approval of a maintenance plan for the area. EPA may approve a maintenance plan which meets the requirements of section 175A of the Act.

III. Redesignation Criteria

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

1. The area must meet the applicable NAAQS.
2. The area must have a fully approved SIP under section 110(k).
3. The area must show improvement in air quality due to permanent and enforceable reductions in emissions.
4. The area must meet all relevant requirements under section 110 and part D of the Act.
5. The area must have a fully approved maintenance plan pursuant to section 175A.

The EPA has reviewed the redesignation request submitted by the State of West Virginia for the Weirton area, and finds that the request meets the five requirements of section 107(d)(3)(E).

A. The Data Shows Attainment of the NAAQS for SO_2 in the City of Weirton, Including the Clay and Butler Magisterial Districts SO_2 Nonattainment Area

The Weirton area's nonattainment designation was based upon monitored values recorded in the area in the 1980's and early 1990's. No violations of the SO_2 standards have occurred in the Weirton area since1994 due to the implementation of enforceable measures to reduce ambient SO_2 levels. The redesignation request for the Weirton area is based upon air quality data for the most recent three whole calendar years (2001–2003). A review of the ambient air quality data demonstrates that the NAAQS have been achieved in the Weirton area. The data was collected and quality assured in accordance with 40 CFR part 58, and entered into the Air Quality Subsystem (AQS) of the Aerometric Information Retrieval System (AIRS). This data indicates that the ambient air quality attains the annual and 24-hour health-based primary standards, and the 3-hour secondary standard. The primary standards are an annual mean of 0.030 parts per million (ppm), not to be exceeded in a calendar year, and a 24-hour average of 0.14 ppm, not to be exceeded more than once per calendar year. The secondary standard is a 3-hour average of 0.5 ppm, not to be exceeded more than once per calendar year. Therefore, West Virginia has quality-assured SO_2 ambient air monitoring data showing that the Weirton area has attained the NAAQS for SO_2.

West Virginia's July 27, 2004, submittal includes a table summarizing the monitoring data that has been collected in the Weirton area by West Virginia since 1992. The State's submittal is included and available for review in both the hard copy and E-Docket for this rulemaking. There are currently six monitors operating within the Weirton area: Oak Street, Summit Circle, Marland Heights, Williams Country Club, McKim Ridge, and Skyview. All of the monitors meet the requirements of 40 CFR parts 53 and 58, and are representative of the highest ambient concentrations.

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

EPA fully approved the modeled attainment demonstration for the Weirton area and the enforceable documents imposing the allowable SO_2 emission limits for the contributing sources as a SIP revision on May 5, 2004 (69 FR 24986), effective July 6, 2004. As stated previously, this dispersion modeling was based upon enforceable SO_2 emission limits imposed in enforceable documents, in addition to a representative background, and demonstrated that the maximum SO_2 impacts do not violate the NAAQS for SO_2. The maintenance plan submitted as a SIP revision, and the fully approved attainment demonstration (69 FR 24986) show that the ambient air quality in the Weirton SO_2 nonattainment area meets the national standards for SO_2.

The Federal requirements for new source review (NSR) in nonattainment areas are contained in section 172(c)(5) of the CAA. EPA guidance indicates the requirements of the part D new NSR program will be replaced by the Prevention of Significant Deterioration (PSD) program when an area has reached attainment and been redesignated, provided there are assurances that PSD will become fully effective upon redesignation. West Virginia's PSD program was approved into the West Virginia SIP on April 11, 1986 (51 FR 12518). The PSD program will become fully effective in the Weirton area immediately upon redesignation.

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

As stated previously, the improvement in air quality in the Weirton area is due to permanent and enforceable emission reductions. The primary sources of SO_2 in the Weirton area are the steel manufacturing and coke processing facilities located in or adjacent to the area. Within these specified industries, SO_2 is emitted from various point and area sources. A decline in the steel industry along with the downsizing of the production workforce has contributed to lower emissions from sources in the area. A number of facilities within, or adjacent to the nonattainment area have permanently ceased operations, and a number of sources have switched to cleaner burning fuels that reduce the overall production of criteria pollutants, including SO_2. West Virginia has submitted and EPA has SIP-approved documents which make these SO_2 reductions permanent and enforceable.

If a new source is constructed or an existing source modified after EPA redesignates the area to attainment, the air quality analyses required under West Virginia's SIP-approved NSR and/or PSD programs, will ensure that such sources are permitted with emissions limits at or below those needed to assure attainment and maintenance of the NAAQS for SO_2 and protection of all applicable PSD increments.

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

The Weirton area has met all applicable and necessary requirements of section 110 and subchapter 1, of part D of the CAA. As mentioned previously, the modeled attainment demonstration for the Weirton area as well as the emission inventory and the enforceable emission limitations reflected in that demonstration were fully approved by EPA as a SIP revision on May 5, 2004 (69 FR 24986), effective July 6, 2004. The West Virginia SIP has approved minor and major source NSR requirements including an approved PSD program.

EPA approval of a transportation conformity SIP revision for the area is not required for redesignation because the nature of the area's previous SO_2 nonattainment problem has been determined to be overwhelmingly attributable to stationary sources. The attainment demonstration SIP revision which EPA approved on May 5, 2004, contained a detailed emissions inventory of the allowable emissions for all of the sources of SO_2 in the area. Sulfur dioxide emissions from area and mobile sources are insignificant in comparison to the emissions from stationary sources and estimated background concentrations used in the modeled attainment demonstration approved by EPA.

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

Section 175A of the CAA sets forth the necessary elements of a maintenance plan needed for areas seeking redesignation from nonattainment to attainment. The maintenance plan is required to be approved as a SIP revision under section 110 of the CAA. Under section 175A(a) of the CAA, the maintenance plan must show that the NAAQS for SO_2 will be maintained for at least 10 years after EPA approves a redesignation to attainment. The maintenance plan must also include contingency measures to address any violation of the NAAQS. Eight years after the redesignation, West Virginia must submit a revised maintenance plan which demonstrates attainment for the 10 years following the initial 10-year period.

The State of West Virginia submitted an SO_2 Maintenance Plan for the City of Weirton, including the Clay and Butler Magisterial Districts, on July 27, 2004. The maintenance plan and associated contingency measures are being approved in the SIP with this rulemaking. The major elements of this maintenance plan are described in the following paragraphs.

Maintenance Plan Requirements

1. Emissions Inventory

The maintenance plan indicates that the attainment inventory is the emissions inventory used to perform the SIP-approved modeled attainment demonstration and provides updates to that inventory for 2001 for sources in the City of Weirton nonattainment area. Any future increases in emissions and/or significant changes to the stack configuration parameters from those modeled in the attainment demonstration due to new or modifying stationary sources, would be subject to the West Virginia's SIP's minor source NSR and/or PSD requirements including a demonstration that the NAAQS and applicable PSD increments are protected.

2. Maintenance Demonstration

The modeled attainment demonstration submitted by West Virginia, which was fully approved by EPA on May 5, 2004 (69 FR 24986), showed attainment of the SO_2 NAAQS. Modeling results submitted indicate future NAAQS maintenance of the area. Steel manufacturing and coke production are the primary sources of SO_2 in the Weirton area. The major source changes in the area consist of permanent, enforceable shutdowns, which will reinforce the continued attainment of the area. A shift in employment from manufacturing to commercial business and the declining steel industry and ancillary industries in the area indicate a continued decrease in SO_2 emissions from stationary sources. The requirement for minor source NSR and PSD review/permitting for any future major source construction or modification, and the permanent and enforceable control measures were provided in the maintenance plan. As stated previously, subsequent to redesignation, any future increases in emissions and/or significant changes to the stack configuration parameters from those modeled in the attainment demonstration due to new or modifying stationary sources, would be subject to the West Virginia's SIP's minor source NSR and/or PSD requirements including a demonstration that the NAAQS and applicable PSD increments are protected. A projected decrease in population along with a decrease in occupied households for the years 1990–2025 indicates that no new growth is anticipated to impact emissions in the area.

3. Continuation of the Monitoring Network

West Virginia has indicated in the submitted maintenance plan that it will continue to monitor SO_2 in the Weirton area in accordance with 40 CFR parts 53 and 58 to verify continued attainment with the NAAQS for SO_2. The data will continue to be entered into the Air Quality Subsystem (AQS) of the Aerometric Information Retrieval System (AIRS).

4. Verification of Continued Attainment

The WVDEP has committed in the maintenance plan to review the monitored data annually, and to review the local monitored meteorological data. WVDEP will also assess compliance of local targeted facilities to verify continued attainment of the area. The state will review and update the annual emissions inventory for the Weirton area at a minimum of once every three years.

5. Contingency Plan

WVDEP has indicated in its submitted maintenance plan that it will rely on

ambient air monitoring data in the Weirton area to track compliance with the NAAQS for SO_2 and to determine the need to implement contingency measures. In the event that an exceedance of the NAAQS for SO_2 occurs, the State will expeditiously investigate and determine the source(s) that caused the exceedance and/or violation, and enforce any SIP or permit limit that is violated. In the event that all sources are found to be in compliance with applicable SIP and permit emission limits, the State shall perform the necessary analysis to determine the cause(s) of the exceedance, and determine what additional control measures are necessary to impose on the area's stationary sources to continue to maintain attainment of the NAAQS for SO_2. The State shall inform any affected stationary source(s) of SO_2 of the potential need for additional control measures. If there is a violation of the NAAQS for SO_2, the State will notify the stationary source(s) that the potential exists for a NAAQS violation. Within six months, the source(s) must submit a detailed plan of action specifying additional control measures to be implemented no later than 18 months after the notification. The additional control measures will be submitted to EPA for approval and incorporation into the SIP.

IV. Final Action

EPA is approving West Virginia's request to redesignate the City of Weirton, including the Clay and Butler Magisterial Districts, SO_2 nonattainment area to attainment because the State has complied with the requirements of section 107(d)(3)(E) of the CAA. In addition, EPA is approving West Virginia's maintenance plan for the Weirton area as a SIP revision because it meets the requirements of section 175A.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on March 11, 2005, without further notice unless EPA receives adverse comment by February 9, 2005. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

V. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 11, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action to redesignate the City of Weirton, including the Clay and Butler Magisterial Districts, in Hancock County, West Virginia, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: December 14, 2004.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR parts 52 and 81 are amended as follows:

PART 52—[AMENDED]

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

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

Subpart XX—West Virginia

■ 2. Section 52.2520 is amended by adding paragraph (c)(62) to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(c) * * *

(62) The SO_2 Redesignation Request and Maintenance Plan for the City of Weirton, including the Clay and Butler Magisterial Districts in West Virginia, submitted by the West Virginia Department of Environmental Protection on July 27, 2004:

(i) Incorporation by reference.

(A) Letter of July 27, 2004 from the West Virginia Department of Environmental Protection, transmitting the redesignation request and maintenance plan for the City of Weirton, including the Clay and Butler Magisterial Districts in Hancock County, West Virginia.

(B) The City of Weirton, including the Clay and Butler Magisterial Districts, Sulfur Dioxide Maintenance Plan, dated July 27, 2004.

(ii) Additional Material. Remainder of the State submittal pertaining to the revision listed in paragraph (c)(62)(i) of this section.

PART 81—[AMENDED]

Subpart C—Section 107 Attainment Status Designations

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

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

■ 2. Section 81.349, the table for "West Virginia—SO_2" is amended by revising the entry for Hancock County to read as follows:

§ 81.349 West Virginia.

* * * * *

WEST VIRGINIA—SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Hancock County (part):				
The city of Weirton, including Butler and Clay magisterial districts				X

* * * * *

[FR Doc. 05–418 Filed 1–7–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[R06–OAR–2004–NM–0001; FRL–7858–5]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Bernalillo County, NM; Negative Declaration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a negative declaration submitted by the City of Albuquerque (Bernalillo County), New Mexico, which certifies that there are no existing commercial and industrial solid waste incineration units in Bernalillo County subject to the requirements of sections 111(d) and 129 of the Clean Air Act (CAA). This is a direct final rule action without prior notice and comment because this action is deemed noncontroversial.

DATES: This rule is effective on March 11, 2005 unless adverse comments are received by February 9, 2005.

ADDRESSES: EPA has established a docket for this action under Regional Material in EDocket (RME) Docket ID No. R06–OAR–2004–NM–0001. All documents in the docket are listed in the Regional Material in EDocket (RME) index at *http://docket.epa.gov/rmepub/*, once in the system, select "quick search," then key in the appropriate RME Docket identification number. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 am and 4:30 pm weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at (214) 665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Albuquerque Environmental Health Department, Air Pollution Control Division, One Civic Plaza, Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth W. Boyce, Air Planning Section (6PD–L), Multimedia Planning and Permitting Division, U.S. EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, (214) 665–7259, e-mail address *boyce.kenneth@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" are used we mean the EPA.

I. What Is the Background for This Action?

Section 129 of the CAA requires us to develop new source performance standards (NSPS) and emission guidelines (EG) for each category of solid waste incineration units which includes these categories addressed in today's notice: existing commercial and industrial solid waste incinerator units. Such standards shall include emissions limitations and other requirements applicable to new units and guidelines required by section 111(d) of the CAA.

Section 111(d) of the CAA requires states to submit plans to control certain pollutants (designated pollutants) at existing facilities (designated facilities) whenever standards of performance have been established under section 111(b) for new sources of the same type, and EPA has established emission guidelines for such existing sources. A designated pollutant is "any air pollutant, emissions of which are subject to a standard of performance for new stationary sources but for which air quality criteria have not been issued, and which is not included on a list published under section 108(a) or section 112(b)(1)(A) of the CAA." 40 CFR 60.21(a).

Section 129(b) of the CAA also requires us to develop an EG for each category of existing solid waste incineration units. Under section 129 of the CAA, the EG is not federally enforceable. Section 129(b)(2) requires states to submit State Plans to EPA for approval. State Plans must be at least as protective as the EG, and they become Federally enforceable upon EPA approval.

The emission guidelines and compliance times for existing commercial and industrial solid waste incineration units that commenced construction on or before November 30, 1999, were promulgated December 1, 2000 (65 FR 75338) at 40 CFR part 60, subparts CCCC and DDDD.

The status of our approvals of State plans for designated facilities (often referred to as "111(d) plans" or "111(d)/129 plans") is given in separate subparts in 40 CFR part 62, "Approval and Promulgation of State Plans for Designated Facilities and Pollutants." The Federal plan requirements for existing solid waste incineration units are also codified in separate subparts at the end of part 62.

Procedures and requirements for development and submission of state plans for controlling designated pollutants are given in 40 CFR part 60, "Standards of Performance for New Stationary Sources," subpart B, "Adoption and Submittal of State Plans for Designated Facilities" and in 40 CFR part 62, subpart A, "General Provisions." If a State does not have any existing sources of a designated pollutant located within its boundaries, 40 CFR 62.06 provides that the State may submit a letter of certification to that effect, or negative declaration, in lieu of a plan. The negative declaration exempts the State from the requirements of 40 CFR Part 60, subpart B, for that designated facility. In the event that a designated facility is located in a State after a negative declaration has been approved by EPA, 40 CFR 62.13 requires that the Federal plan for the designated facility, as required by section 129 of the CAA and 40 CFR 62.02(g), will automatically apply to the facility.

This **Federal Register** action approves a negative declaration for the following: existing commercial and industrial solid waste incineration units.

II. State Submittal

The Albuquerque Environmental Health Department submitted a letter dated September 10, 2002, certifying that there are no existing commercial and industrial solid waste incinerators subject to 40 CFR part 62, subparts CCCC and DDDD, under its jurisdiction in the City of Albuquerque and Bernalillo County, New Mexico (excluding Tribal lands). This negative declaration meets the requirements of 40 CFR 62.06.

III. Final Action

We are approving a negative declaration submitted by the City of Albuquerque Environmental Health Department certifying that there are no existing applicable commercial and industrial solid waste incineration units subject to 40 CFR part 60, subparts CCCC and DDDD, under its jurisdiction in the City of Albuquerque/Bernalillo County (excluding tribal lands).

If a designated facility is later found within any noted jurisdiction after publication of this **Federal Register** action, then the overlooked facility will become subject to the requirements of the Federal plan for that designated facility, including the compliance schedule. The Federal plan will no longer apply if we subsequently receive and approve the 111(d)/129 plan from the jurisdiction with the overlooked facility.

Since the City of Albuquerque has not submitted a demonstration of authority over "Indian Country," (as defined in 18 U.S.C. 1151) we are limiting our approval to those areas that do not constitute Indian Country. Under this definition, EPA treats as reservations, trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation. Any existing designated facility that may exist on "Indian Country" is subject to the Federal plan for the designated facility. See 40 CFR 62.13.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in the "Proposed Rules" section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve these rules should relevant adverse comments be filed. This action will be effective March 11, 2005 unless EPA receives adverse written comments by February 9, 2005.

If EPA receives such comments, then it will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. All public comments received will then be addressed in a subsequent direct final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on March 11, 2005 and no further action will be taken on the proposed rule.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state and local declarations that rules implementing certain federal standards are unnecessary. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves state and local declarations that rules implementing certain federal standards are unnecessary, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more

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

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 11, 2005. Filing a petition for reconsideration by the Administrator of this direct 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* 42 U.S.C. 7607(b)(2)).

List of Subjects in 40 CFR Part 62

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

Dated: December 21, 2004.

Richard E. Greene,

Regional Administrator, Region 6.

■ Part 62, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

■ 1. The authority citation for part 62 continues to read as follows:

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

Subpart GG—New Mexico

■ 2. Subpart GG is amended by adding a new undesignated center heading and a new § 62.7881 to read as follows:

Emissions From Existing Commercial and Industrial Solid Waste Incineration (CISWI) Units

§ 62.7881 Identification of sources—negative declaration.

Letter from the City of Albuquerque Air Pollution Control Division dated September 10, 2002, certifying that there are no existing commercial and industrial solid waste incinerators subject to 40 CFR part 60, subparts CCCC and DDDD under its jurisdiction in Bernalillo County on lands under the jurisdiction of the Albuquerque/Bernalillo County Air Quality Control Board.

[FR Doc. 05–342 Filed 1–7–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OGC–2004–0004; FRL–7859–8]

RIN 2060–AM83

National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial withdrawal of direct final rule.

SUMMARY: On October 13, 2004, the EPA issued direct final amendments to the national emission standards for hazardous air pollutants (NESHAP) for pushing, quenching, and battery stacks at new and existing coke oven batteries. The amendments were issued as a direct final rule, along with a parallel proposal to be used as the basis for final action in the event EPA received any significant adverse comments on the direct final amendments. Because a significant adverse comment was received on one provision, EPA is withdrawing the corresponding parts of the direct final rule. We will address the adverse comment in a subsequent final rule based on the parallel proposal published on October 13, 2004.

DATES: As of January 10, 2005, the EPA withdraws the direct final amendments to 40 CFR 63.7300(c)(1) published on October 13, 2004 (69 FR 60813). The remaining provisions published on October 13, 2004, will be effective on January 11, 2005.

ADDRESSES: *Docket:* The EPA has established a docket for this action under Docket ID No. OGC–2004–0004. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, confidential business information or other information whose disclosure is restricted by statute. Certain other information, such as copyrighted materials, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy form at Docket ID No. OGC–2004–0004, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202)

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

FOR FURTHER INFORMATION CONTACT: Mr. Steve Fruh, Emission Standards Division (C439–02), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number (919) 541–2837, fax number (919) 541–3207, e-mail address: *fruh.steve@epa.gov*.

SUPPLEMENTARY INFORMATION: On October 13, 2004, we published a direct final rule (69 FR 60813) and a parallel proposal (69 FR 60837) amending the NESHAP for pushing, quenching, and battery stacks at new and existing coke oven batteries (40 CFR part 63, subpart CCCCC). The direct final rule amendments added provisions for a control system not covered by the existing rule, adjusted the parametric operating limits and associated compliance requirements for capture systems used to control pushing emissions, and adjusted the operation and maintenance requirements for capture systems in 40 CFR 63.7300(c)(1).

We stated in the preamble to the direct final rule and parallel proposal that if we received significant adverse comments by November 12, 2004 (or by November 29, 2004 if a public hearing was requested), on one or more distinct provisions of the direct final rule, we would publish a timely notice in the **Federal Register** specifying which provisions will become effective and which provisions will be withdrawn due to adverse comment. We subsequently received adverse comments from one commenter on the amendments to the operation and maintenance requirements for capture systems in 40 CFR 63.7300(c)(1). The direct final amendments to 40 CFR 63.7300(c)(1) included:

- 40 CFR 63.7300(c)(1), which required completion of repairs within 30 days except as allowed in paragraphs (c)(1)(i) and (ii);
- 40 CFR 63.7300(c)(1)(i), which required the facility to notify the permitting authority if the repair could be completed within 60 days; and
- 40 CFR 63.7300(c)(1)(ii), which required the facility to request an extension if the repair could not be completed within 60 days.

Accordingly, we are withdrawing all amendments to 40 CFR 63.7300(c)(1). The amendments are withdrawn as of January 10, 2005. We will take final action on the proposed rule after considering the comment received. We will not institute a second comment period on this action. The provisions for which we did not receive adverse comment will become effective on January 11, 2005, as provided in the preamble to the direct final rule.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: January 4, 2005.

Jeffrey R. Holmstead,

Assistant Administrator for Air and Radiation.

■ Accordingly, the Amendment to 40 CFR 63.7300 (c) (1), published in the **Federal Register** on October 13, 2004 (69 FR 60813) which was to become effective January 11, 2005 is withdrawn.

[FR Doc. 05–423 Filed 1–7–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

Department of the Navy

RIN 0703–ZA00

Policies and Responsibilities for Implementation of SECNAVINST 7220.85, Notice of Back Pay for Members of the Navy and Marine Corps Selected for Promotion While Interned as Prisoners of War (POW) During World War II

AGENCY: Department of the Navy, DoD.

ACTION: Policy statement.

SUMMARY: The Department of the Navy (DON) hereby gives notice of implementing its instruction (SECNAVINST 7220.85), an internal regulation that establishes the responsibilities and procedures within DON regarding the payment of back pay to any person who, by reason of being interned as a POW while serving as a member of the Navy or Marine Corps during World War II (WW II), was not available to accept a promotion for which the person had been selected.

DATES: This rule is effective until January 10, 2007.

ADDRESSES: The WW II Prisoner of War Promotion Back Pay Application and all pertinent information should be mailed to Headquarters, U.S. Marine Corps, 2 Navy Annex, RFF–F10, Washington, DC 20380–1775 or Commander, Navy Personnel Command (PERS 62), 5720 Integrity Drive, Millington, TN 38055.

FOR FURTHER INFORMATION CONTACT: Deputy Commandant of the Marine Corps for Programs & Resources, [Headquarters, U.S. Marine Corps, 2 Navy Annex, RFF–F10, Washington, DC 20380–1775 / 1–866–472–7139] or Commander, Navy Personnel (PERS 62) [Retired Activities Branch-62, 5720 Integrity Drive, Millington, Tennessee 38055 / (901) 874–4396].

SUPPLEMENTARY INFORMATION: Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, sec. 667 (Pub. L. 106–398), directed the DON to pay, from currently available appropriations, back pay to persons interned during World War II, who were selected for promotion but not available to accept the promotion. The Act authorizes payment to the former member or a surviving spouse of the deceased former member. If there is no surviving spouse of the deceased former member, no claim may be paid.

The amount of back pay payable is the amount equal to the difference between:

(1) The total amount of basic pay that would have been paid if the person had been promoted to the grade to which selected; and

(2) The total amount of basic pay that was actually paid.

The back pay computation period is the period:

(1) Beginning on the date as of when that person's promotion would have been effective for pay purposes but for the person's internment as a POW; and

(2) Ending on the earliest of:

(a) The date of the person's discharge or release from active duty;

(b) The date on which the person's promotion to that grade in fact became effective for pay purposes; or

(c) The end of World War II.

To be eligible for payment, claims must be postmarked within 2 years of publication in the **Federal Register**.

Definitions

a. World War II. The period of time beginning on December 7, 1941, and ending on December 31, 1946, as defined in 38 U.S.C. 101(8).

b. Surviving spouse. A husband or wife by lawful marriage who out lives the other spouse.

Policy

a. DON will take action to ensure that the benefits and eligibility for benefits are widely publicized and that all persons eligible for payment are afforded an opportunity to apply. Notification will be made through all appropriate means such as organizational newsletters, Internet websites, published media, and retiree correspondence.

b. While there is no requirement to submit a POW Promotion Back Pay Application, eligible veterans or surviving spouses must provide the information requested on the POW

Promotion Back Pay Application to the appropriate service point of contact.

c. Notwithstanding any power of attorney, assignment of interest, contract, or other agreement, actual disbursement of a payment under this instruction shall be made only to a person who is eligible as described in the first paragraph of the **SUPPLEMENTARY INFORMATION.**

d. Notwithstanding any contract, the representative of any eligible person may not receive, for services rendered in connection with the claim of, or with respect to, a person under this instruction, more than 10 percent of the amount of a payment on that claim.

Responsibilities

The Under Secretary of the Navy establishes program policy. To support the Under Secretary, the following responsibilities are assigned to the Deputy Commandant of the Marine Corps for Programs and Resources (RFF) and Commander, Navy Personnel Command (PERS 62) who shall, for their respective Services:

a. Develop program policy and procedures to ensure payment of back pay is made within 18 months of receiving a valid claim;

b. Provide oversight of program implementation;

c. Serve as the focal point inside and outside of their Service for all matters pertaining to the payment of back pay for persons eligible under this regulation;

d. Coordinate service-wide efforts to notify eligible persons;

e. Track and perform follow-up on all applications under this regulation.

Action

Deputy Commandant of the Marine Corps for Programs & Resources (RFF), and Commander, Navy Personnel Command (PERS 62) will publicize this entitlement through various media resources, compile requests, verify eligibility, compute entitlement, and coordinate with Defense Finance Accounting Service (DFAS) to disburse payments for Marine Corps and Navy claims, respectively, for all claims for POW back pay resulting from SECNAVINST 7220.85.

The Department of the Navy has determined that this regulation is not a significant rule as defined by Executive Order 12866 and is not subject to the relevant provisions of the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)).

Dated: December 28, 2004.

J.H. Wagshul,

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

[FR Doc. 05–411 Filed 1–7–05; 8:45 am]

BILLING CODE 3810–FF–P

Proposed Rules

Federal Register
Vol. 70, No. 6
Monday, January 10, 2005

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

DEPARTMENT OF EDUCATION

34 CFR Parts 300 and 303

Office of Special Education and Rehabilitative Services; Notice of Request for Comments and Recommendations on Regulatory Issues Under the Individuals With Disabilities Education Act (IDEA), as Amended by the Individuals With Disabilities Education Improvement Act of 2004

AGENCY: Department of Education.

ACTION: Correction.

SUMMARY: On December 29, 2004, the Secretary of Education solicited comments and recommendations from the public prior to developing and publishing proposed regulations under 34 CFR parts 300 and 303 to implement programs under the recently amended IDEA (69 FR 77968). The Secretary also announced plans to hold informal public meetings to seek further input about those regulations in light of the statutory amendments. Under **SUPPLEMENTARY INFORMATION** on page 77969, in the *Announcement of Public Meetings* section, the second location listed for one of the informal public meetings is incorrect. The document lists the second location as "Newark, NJ". This document corrects the location to read: "Newark, DE".

FOR FURTHER INFORMATION CONTACT: Troy R. Justesen, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5138, Potomac Center Plaza, Washington, DC 20202. Telephone: (202) 245–7468 or by e-mail: *troy.justesen@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

SUPPLEMENTARY 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 Abobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Correction

In FR Doc. 04–28503 which published in the Proposed Rules section, beginning on page 77968 in the issue of December 29, 2004, make the following correction in the **SUPPLEMENTARY INFORMATION** section. On page 77969, in the second column, under "Announcement of Public Meetings" correct the second location "Newark, NJ" to read "Newark, DE".

Dated: January 5, 2005.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 05–446 Filed 1–7–05; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[R03–OAR–2004–WV–0002; FRL–7852–9]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Redesignation of the City of Weirton, Including the Clay and Butler Magisterial Districts, SO_2 Nonattainment Area and Approval of the Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a request from the State of West Virginia to redesignate the City of Weirton, including the Clay and Butler Magisterial Districts, from nonattainment to attainment of the national ambient air quality standards (NAAQS) for sulfur dioxide (SO_2). EPA is also proposing to approve a maintenance plan for the area as a SIP revision which would put in place a plan for maintaining the NAAQS for SO_2 for the next ten years. In the Final Rules section of this **Federal Register,** EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by February 9, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03–OAR–2004–WV–0002, by one of the following methods:

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

B. Agency Web site: *http://www.docket.epa.gov/rmepub/* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

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

D. Mail: R03–OAR–2004–WV–0002, Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency,

Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

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

Instructions: Direct your comments to RME ID No. R03–OAR–2004–WV–0002. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov or e-mail. The EPA RME and the Federal regulations.gov websites are an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the RME index at *http://www.docket.epa.gov/rmepub/*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE., Charleston, WV 25304–2943.

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

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, approving the redesignation request and maintenance plan for the City of Weirton, including the Clay and Butler Magisterial Districts, SO_2 nonattainment area, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: December 14, 2004.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 05–417 Filed 1–7–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[R06–OAR–2004–NM–0001; FRL–7858–6]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Bernalillo County, NM; Negative Declarations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a negative declaration submitted by the City of Albuquerque (Bernalillo County), New Mexico, certifying that there are no existing commercial and industrial solid waste incineration units in Bernalillo County subject to the requirements of sections 111(d) and 129 of the CAA.

DATES: Written comments must be received by February 9, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, by facsimile, or through hand delivery/courier by following the detailed instructions provided under the "Public Participation" heading in the **SUPPLEMENTARY INFORMATION** section of direct final rule located in the "Rules and Regulations" section of this **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth W. Boyce, Air Planning Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2833, at (214) 665–7259 or *boyce.kenneth@epa.gov*.

SUPPLEMENTARY INFORMATION: In the "Rules and Regulations" section of this **Federal Register**, EPA is approving a negative declaration submitted by the City of Albuquerque Environmental Health Department certifying that there are no existing applicable commercial and industrial solid waste incineration units subject to 40 CFR part 60, subparts CCCC and DDDD, under its jurisdiction in the City of Albuquerque, Bernalillo County (excluding tribal lands), within the jurisdictions of the respective State and local agencies. EPA is approving sections 111(d)/129 State Plans as a direct final rule without prior proposal because EPA views this as a noncontroversial submittal and anticipates no adverse comments. The EPA has explained its reasons for this approval in the preamble to the direct final rule. If EPA receives no relevant adverse comments, EPA will not take further action on this proposed rule. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent direct final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule located in the "Rules and Regulations" section of this **Federal Register**.

Dated: December 21, 2004.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. 05–341 Filed 1–7–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[TRI–2004–0001; FRL–7532–3]

RIN 2025–AA15

Toxics Release Inventory Reporting Forms Modification Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA), the Environmental Protection Agency (EPA) proposes to revise certain requirements

for the Toxic Chemical Release Inventory. The purpose of these revisions is to reduce reporting burden associated with the Toxic Chemical Release Inventory Reporting requirements without compromising the usefulness of the information to the public. This proposal is one of several efforts being undertaken by EPA to reduce the reporting burden associated with the Agency's Toxics Release Inventory (TRI) program. It is not anticipated to impact any protections for human health and the environment. The Agency will continue to provide valuable information to the public pursuant to EPCRA section 313 and the Pollution Prevention Act regarding toxic chemical releases and other waste management activities.

If adopted, today's proposed action would simplify a number of TRI reporting requirements; remove some data elements from the Form R and Form A Certification Statement (hereafter referred to as Form A) that can be obtained from other EPA information collection databases, or are rarely used, and update the regulations to provide corrected contact information and descriptions of the Forms R and A data elements. EPA expects these proposed changes to improve TRI reporting efficiency and effectiveness, as well as reduce reporting burden.

DATES: Comments, identified by the Docket ID No. TRI–2004–0001, must be received on or before March 11, 2005.

ADDRESSES: Submit your comments, identified by Docket ID No. TRI–2004–0001, by one of the following methods:

1. *Agency Web Site: http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

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

3. *E-mail: oei.docket@epa.gov.*

4. *Fax Number:* 202–566–0741.

5. *Mail:* Office of Environmental Information (OEI) Docket, Environmental Protection Agency, Mail Code: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Attention Docket ID No. TRI–2004–0001.

6. *Hand Delivery:* EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC 20004, telephone: 202–566–1744, Attention Docket ID No. TRI–2004–0001. Such deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. TRI–2004–0001. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information for which disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the federal regulations.gov Web sites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: EPA has established an official public docket for this action under Docket ID No. TRI–2004–0001. The public docket contains information considered by EPA in developing this proposed rule, including the documents listed below, which are electronically or physically located in the docket. In addition, interested parties should consult documents that are referenced in the documents that EPA has placed in the docket, regardless of whether these referenced documents are electronically or physically located in the docket. For assistance in locating documents that are referenced in documents that EPA has placed in the docket, but that are not electronically or physically located in the docket, please consult the person listed in the following **FOR FURTHER INFORMATION CONTACT** section. All documents in the docket are listed in the EDOCKET index at: *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information for which disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET, or in hard copy at the OEI Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744, and the telephone number for the OEI Docket is 202–566–1752.

FOR FURTHER INFORMATION CONTACT: Shelley Fudge, Toxics Release Inventory Program Division, Office of Information Analysis and Access (2844T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–566–0674; fax number: 202–566–0741; e-mail: *fudge.shelley@epa.gov,* for specific information on this proposed rule, or for more information on EPCRA section 313, the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Toll free: 1–800–424–9346, in Virginia and Alaska: 703–412–9810 or Toll free TDD: 1–800–553–7672.

SUPPLEMENTARY INFORMATION:

General Information

A. Does This Document Apply to Me?

This document applies to facilities that submit annual reports under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA). It specifically applies to those who submit the TRI Form R or Form A Certification Statement. (See *http://epa.gov/tri/report/index.htm#forms* for detailed information about EPA's TRI reporting forms.) To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in part 372 subpart B of Title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

This document also is relevant to those who utilize EPA's TRI information, including State agencies, local governments, communities, environmental groups and other non-

governmental organizations, as well as members of the general public.

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

1. *Tips for Preparing Your Comments.* When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

2. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

4. Describe any assumptions and provide any technical information and/or data that you used.

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

6. Provide specific examples to illustrate your concerns, and suggest alternatives.

7. Explain your views as clearly as possible.

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

2. *Submitting CBI.* Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address only, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: OEI Document Control Officer, Mail Code: 2822T, U.S. EPA, 1200 Pennsylvania Ave. NW., Washington, DC, 20460. 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). EPA will disclose information claimed as CBI only to the extent allowed by the 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 identified in the **FOR FURTHER INFORMATION CONTACT** section.

Index

I. What Is EPA's Statutory Authority for Taking These Actions?

This proposed rule is being issued under sections 313(g)(1) and 328 of EPCRA, 42 U.S.C. 11023(g)(1) and 11048; and section 6607(b) of the Pollution Prevention Act (PPA), 42 U.S.C. 13106. In general, section 313 of EPCRA and section 6607 of PPA require owners and operators of facilities in specified SIC codes that manufacture, process, or otherwise use a listed toxic chemical in amounts above specified threshold levels to report certain facility-specific information about such chemicals, including the annual releases and other waste management quantities. Section 313(g)(1) of EPCRA requires EPA to publish a uniform toxic chemical release form for these reporting purposes, and it also prescribes, in general terms, the types of information that must be submitted on the form. In addition, Congress granted EPA broad rulemaking authority to allow the Agency to fully implement the statute. EPCRA section 328 authorizes the "Administrator [to] prescribe such regulations as may be necessary to carry out this chapter." 42 U.S.C. 11048.

II. What Is the Background and Purpose of Today's Proposed Rulemaking?

A. What Are the Toxics Release Inventory Reporting Requirements and Who Do They Affect?

Pursuant to section 313(a) of the Emergency Planning and Community Right-to-Know Act (EPCRA), certain facilities that manufacture, process, or otherwise use specified toxic chemicals in amounts above reporting threshold levels must submit annually to EPA and to designated State officials toxic chemical release forms containing information specified by EPA. 42 U.S.C. 11023(a). These reports must be filed by July 1 of each year for the previous calendar year. In addition, pursuant to section 6607 of the Pollution Prevention Act (PPA), facilities reporting under section 313 of EPCRA must also report pollution prevention and waste management data, including recycling information, for such chemicals. 42 U.S.C. 13106. These reports are compiled and stored in EPA's database known as the Toxics Release Inventory (TRI).

Regulations at 40 CFR part 372, subpart B, require facilities that meet all of the following criteria to report:

- The facility has 10 or more full-time employee equivalents (*i.e.*, a total of 20,000 hours worked per year or greater; see 40 CFR 372.3); and
- The facility is included in Standard Industrial Classification (SIC) Codes 10 (except 1011, 1081, and 1094), 12 (except 1241), 20–39, 4911 (limited to facilities that combust coal and/or oil

for the purpose of generating electricity for distribution in commerce), 4931 (limited to facilities that combust coal and/or oil for the purpose of generating electricity for distribution in commerce), 4939 (limited to facilities that combust coal and/or oil for the purpose of generating electricity for distribution in commerce), 4953 (limited to facilities regulated under RCRA Subtitle C, 42 U.S.C. section 6921 *et seq.*), 5169, 5171, and 7389 (limited to facilities primarily engaged in solvents recovery services on a contract or fee basis), (or, under Executive Order 13148, federal facilities regardless of their SIC code); and

• The facility manufactures (defined to include importing), processes, or otherwise uses any EPCRA section 313 (TRI) chemical in quantities greater than the established threshold for the specific chemical in the course of a calendar year.

Facilities that meet the criteria must file a Form R report or in some cases, may submit a Form A Certification Statement for each listed toxic chemical for which the criteria are met. As specified in EPCRA section 313(a), the report for any calendar year must be submitted on or before July 1 of the following year. For example, reporting year 2003 data should have been postmarked on or before July 1, 2004.

The list of toxic chemicals subject to TRI can be found at 40 CFR 372.65. This list is also published every year as Table II in the current version of the Toxic Chemical Release Inventory Reporting Forms and Instructions. The current TRI chemical list contains 582 individually listed chemicals and 30 chemical categories.

B. Why Are We Proposing To Reduce Burden Associated With TRI Reporting Requirements?

"Burden" is the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. That 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.

EPA has made considerable progress in reducing burden associated with its various information collections through streamlining, consolidating and harmonizing regulations, guidance and compliance assistance, and implementing technology-based processes (i.e., electronic reporting, cross program data utilization, using geospatial information to pre-populate data fields). These measures have reduced the time, cost, and complexity of existing environmental reporting requirements, while enhancing reporting effectiveness and efficiency.

The purpose of today's action is to propose options for reducing burden on facilities that submit annual TRI reports without compromising the data quality of toxic chemical release and other waste management information. The options described in this proposal provide several relatively simple options for reducing the time, cost and complexity of the reporting requirements imposed on facilities. They are thus expected to result in a modest, but important, amount of cost and burden savings. Another broader and more complex set of regulatory burden reduction alternatives is currently being examined by EPA. That effort, described in more detail below, is expected to provide additional regulatory relief for TRI reporters.

C. What Led to the Development of This Proposed Rule?

Throughout the history of the TRI Program the Agency has implemented measures to reduce the TRI reporting burden on the regulated community. Through a range of compliance assistance activities, such as the Toxic Chemical Release Inventory Reporting Forms & Instructions (which is published and mailed every year), industry training workshops, chemical-specific and industry-specific guidance documents, and the EPCRA Call Center (a call hotline), the Agency has shown a commitment to enhancing the quality and consistency of reporting and assisting those facilities that must comply with EPCRA section 313.

EPA has also done extensive work to make reporting easier for the TRI reporting community through the development and use of technology such as EPA's Toxics Release Inventory—Made Easy software, otherwise known as "TRI–ME" (*http://www.epa.gov/tri/report/trime/*). *TRI–ME* is an interactive, intelligent, user-friendly software tool that guides facilities through the TRI reporting process. By leading prospective reporters through a series of logically ordered questions, *TRI–ME* facilitates the analysis needed to determine if a facility must complete a Form A or R report for a particular chemical. For those facilities required to report, the software provides guidance for each data element on Forms A and R. *TRI–ME* also has a one-stop guidance feature, the TRI Assistance Library, that allows keyword searches on the statutes, regulations, and many EPCRA section 313 guidance documents. It also offers a "load feature" that enables the user to upload almost all of their prior year data into the current year's report. Finally, *TRI–ME* checks the data for common errors and then prepares the forms to be sent electronically over the Internet via EPA's Central Data Exchange (CDX). *TRI–ME* generated reporting forms may also be submitted offline via magnetic media or on paper. In the spring of 2003, EPA distributed approximately 25,000 copies of *TRI–ME* in preparation for the 2002 reporting year deadline of July 1, 2003. Approximately 90% of the roughly 84,000 Form Rs filed in 2003 were prepared using the *TRI–ME* software.

In 1994, partially in response to petitions received from the U.S. Small Business Administration Office of Advocacy and the American Feed Industry Association, an EPA rulemaking established the Form A Certification Statement as an alternative to Form R. This burden-reducing measure was based on an alternate threshold for quantities manufactured, processed, or otherwise used by those facilities with relatively low annual reportable amounts of TRI chemicals. A facility may use the Form A for toxic chemicals manufactured, processed and otherwise used below the alternate threshold of one million pounds per year, if the facility has annual reportable amounts of these toxic chemicals not exceeding 500 pounds. The annual reportable amount is the total of the quantity released at the facility, the quantity treated at the facility, the quantity recovered at the facility as a result of recycle operations, the quantity combusted for the purpose of energy recovery at the facility, and the quantity transferred off-site for recycling, energy recovery, treatment, and/or disposal. This combined total corresponds to the quantity of the toxic chemicals in production-related waste (i.e., the sum of sections 8.1 through and including section 8.7 on the Form R).

In an effort to further explore burden reduction opportunities, EPA conducted a TRI Stakeholder Dialogue between November 2002 and February 2004. The dialogue process focused on identifying improvements to the TRI reporting process and exploring a number of

burden reduction options associated with TRI reporting. In total, EPA received approximately 770 documents as part of this stakeholder dialogue. Of that, approximately 730 were public comments and the remaining documents were either duplicates or correspondence transmitting public comments to the online docket system. The public comments expressed a range of views, with some supporting burden reduction and others opposing it. You may view and obtain copies of all documents submitted to EPA by accessing TRI docket TRI–2003–0001 online at *http://www.epa.gov/edocket* or by visiting the EPA docket reading room in Washington, DC.

As a result of the Stakeholder Dialogue, the Agency believes that it has identified a number of potential burden reducing options which will continue to support existing data uses and statutory and regulatory obligations. These changes fall into two broad categories: (1) Changes or modifications to the reporting forms and processes (including modifications to the forms and improvements in the *TRI–ME* software) which will streamline reporting without significantly affecting the information collected; and (2) more substantial changes that may affect which facilities are required to report and at what level of detail.

EPA has decided to address the two categories of changes through separate rulemakings, one of which is today's proposed action. This proposal focuses on options for streamlining reporting associated with TRI's Forms A and R. The proposed changes would eliminate some redundant or seldom-used data elements from these forms, and modify others that can be shortened, simplified or otherwise improved to reduce the time and costs required to complete and submit annual TRI reports. The proposal also contemplates the elimination of reporting for data elements available through other EPA data sources. EPA is confident these changes will enhance the efficiency and effectiveness of the TRI program by reducing reporting requirements, while continuing to provide communities and other data users with the same level of chemical release and other waste management information. EPA currently expects to complete this rulemaking in time for the 2006 reporting year.

This second rulemaking, to be proposed later in 2005, will examine the potential for more significant reporting modifications with greater potential impact on reducing reporting burden. The options which may be considered in that rulemaking include increasing reporting thresholds for small businesses, or for classes of chemicals or facilities, expanding eligibility for Form A, introducing a "no significant change" option for chemical reports that have not changed significantly relative to a baseline reporting year, and expanding the use of range codes in section 8 of Form R. Because of the greater complexity and larger impacts potentially associated with this latter group of changes, additional analysis is needed to more thoroughly characterize its impact on TRI reporters and data users.

III. What Reporting Requirement Changes Are Being Proposed?

A. Replacement of Certain Facility Data Reporting Requirements With Existing EPA Data From the EPA Facility Data Registry (Sections 4.6 and 4.8 Through 4.10 of Forms A and R)

1. *Overview.* Over the last several years, the entire federal community has been working to establish a common federal-wide enterprise architecture with one goal: to become a more citizen-centric government. A broad objective of this effort is to eliminate duplicate investment in information systems by identifying common business needs and satisfying these common needs through the implementation of common, reusable information systems, data, and technology. In the spirit of this effort, EPA has been working to identify like business needs to institute a common Environmental and Health Protection Target Architecture (EHPTA) and develop standard reusable information systems, data and technology.

Through the EHPTA, EPA determined that there is a recurring need across EPA's programs and external customers for high quality information about the location, name and environmental attributes of each specific facility subject to EPA regulatory or reporting requirements. EPA established a centrally managed Facility Registry System (FRS) as a component of the EHPTA. The FRS will become the authoritative source of all facility information used by EPA in its public access transactions. EPA proposes to remove the reporting requirement for facility data (latitude/longitude coordinates, permit and environmental program identification numbers other than the TRI facility identification number) from the TRI forms. Instead, the EPA database, FRS, would be used to populate the TRI data base with this information. EPA believes this change will improve the management of environmental information and increase the quality of the data. It will also reduce burden on EPA and its partners through the elimination of redundant data collection and duplicate maintenance of facility level information across EPA systems.

2. *What is the FRS?* The FRS is a centrally managed database developed by EPA's Office of Environmental Information (OEI) that provides Internet access to a single source of comprehensive information about facilities that are subject to environmental regulations and/or have attributes that are of environmental interest to EPA.

The FRS database currently contains over 1.5 million unique facility records, and new facilities are continuously being added to the system, either through information supplied by EPA programs or through our State partners on the Exchange Network. At this time facility data are exchanged with over three dozen States through the National Environmental Information Exchange Network. FRS also receives correction and verification information from the reporting community through Web-based access, and through EPA database systems maintained by over a dozen EPA media programs. These EPA databases include, but are not limited to:

- Toxics Release Inventory (TRI)—years 1988–2003,
- Resource Conservation and Recovery Act (RCRA) Information System,
- Risk Management Plans (RMPs),
- Permit Compliance System (PCS) majors and minors,
- Aerometric Information Retrieval System/AIRS Facility Subsystem (AIRS/AFS), and
- Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS).

The FRS responds to the increasing demand for access to high quality information and the public need for one source of comprehensive environmental information about a given place. Agency databases, such as Envirofacts, the Window to My Environment EnviroMapper and Environmental Compliance History Online (ECHO) rely on the FRS for comprehensive and up-to-date facility information through web services.

3. *Removal of Latitude/Longitude Reporting Requirement (Section 4.6 of Forms A and R).* Geospatial data in the form of address information, latitude and longitude values, geospatial metadata and other coordinate information provide EPA with the capacity to spatially locate, identify and assess aspects of the environment critical to program operations and regulatory oversight. Locational data are

more important than ever and directly support Agency program initiatives, environmental reports and many public access tools such as Envirofacts and ECHO. To promote and increase the quality of the geospatial information, the Agency promotes the approach of "collect once—use many." As a result, the EPA is proposing to populate the TRI database with latitude and longitude information from the FRS as an alternative to continuing to request the information from the reporter. Under this proposal, locational information from FRS would be made readily available for all TRI reports and applications such as the publicly accessible TRI Explorer and all Form A or R retrievals from Envirofacts.

There are several reasons for this proposal. First, the latitude/longitude coordinates and program identification numbers are reported through other EPA program systems; therefore, the data provided to TRI are generally redundant. Second, the accuracy of any latitude/longitude data are highly dependent on the method used to collect the coordinates, and understanding the accuracy limitations are important to data users in determining whether or not an information source can be used for a particular type of analysis or application. Since there are no fields for reporting the method used to determine accuracy on the current TRI forms, the accuracy of the latitude/longitude data collected through TRI is not known. Consequently, even in those cases where data in the TRI data base may be of higher quality than those in FRS, it is impossible to verify this fact.

FRS, on the other hand, maintains locational data in its Locational Reference Tables (LRT) in the database. These tables serve as a repository for locational information collected from the program system databases and Regional Data Stewards databases, as well as from locational data values supplied by States. The information in these locational tables include geographic attributes (e.g., state, county, ZIP, etc.), coordinate data (latitude and longitude values), and the method, accuracy and description (MAD) qualifiers (Source Map Scale Number, Horizontal Accuracy Measure, Horizontal Collection Method Text, Vertical Measure, Reference Point, Horizontal Reference Datum Name, and Geometric Type Name) for the latitude and longitude values collected or derived when possible. This is a much more comprehensive documentation of the latitude and longitude data for a facility location than what is currently collected from the TRI reporters.

Because FRS collects data from a number of Agency systems and these systems may reference different points within a given facility due to different statutory obligations that govern EPA programs (e.g., a stack versus a water treatment discharge point), there sometimes are more than one locational set of latitude and longitude values for a given facility. In these cases, EPA uses an algorithm that picks the best documented locational value for a facility, site or place. This selected locational value is termed the best point location for a facility and the algorithm is called the Best Pick Process. It is described more thoroughly on the Agency Web site: (*http://www.epa.gov/enviro/html/locational/lrt/pick_best.html*). EPA is continually examining the collection, database modeling and Best Pick Process to enhance the accuracy of the location values selected for use by geospatial applications used by the Agency and offered to the public and other stakeholders. Locational information will be readily available for all TRI reports and applications including: TRI Explorer or Form A or R retrievals from Envirofacts.

Another advantage of utilizing information in the FRS is that TRI reporters can take advantage of EPA's Public Internet site that enables the public to submit corrections to EPA's data on regulated facilities through one central access point. The submission process is known as the Integrated Error Correction Process (IECP) because it unifies the process by which EPA regulatory programs manage corrections to the data in their systems. IECP is part of an ongoing EPA effort to improve the quality of EPA's publicly available data. Through the IECP, the public can directly notify EPA of a data error they've identified in EPA's publicly available data. They may notify EPA through a variety of venues that include: Selecting the "Contact Us" hotlink from the EPA Home Page and accessing the link "report data errors"; by calling the IECP desk; sending a fax; or by e-mailing a detailed description of the error. Once the error report is generated, it is routed within EPA to the appropriate program official, who may be either within the federal EPA or a state environmental agency that has been authorized to manage an EPA program. The official has the authority to make appropriate corrections to the program database. The error routing process usually takes place in two to four business days, and depending on the error, corrections are usually reflected in a few weeks. Last year the IECP handled over 8,000 error notifications and continues to operate as a simple, effective way of resolving errors in EPA's databases.

In addition to the IECP's continuous process of improving locational information in the FRS, EPA has recently launched a long term strategic effort to enhance the quality of the locational data. The Locational Data Improvement Strategy consists of four major goals: (1) Improve the quality of data in FRS, (2) improve the locational data that is being sent to EPA, (3) improve the technical infrastructure for managing locational data, and (4) develop and maintain locational data policies, plans and procedures. To meet these goals, EPA is launching a series of discrete projects that both leverage existing EPA capabilities and adopt new approaches. Work under each of the four goals began in 2004 and it is anticipated that many of the significant technical, policy, and data enhancements to FRS will begin to be phased in during the latter part of calendar year 2005. It is believed that these changes will further enhance the quality and completeness of FRS information relative to that which could be separately collected under the TRI forms.

Three potential concerns were raised in the public comments with respect to the use of FRS for locational references under the TRI program. The first is how to address existing facilities which do not have locational information other than that obtained through TRI. In this case EPA proposes to continue to use existing historical TRI data until such time as data are available in FRS.

The second potential issue is how to address new facilities. In these cases, one of the first steps for the new reporter is to call the TRI Call Center to obtain a TRI ID number to report on their Form A or R. At this time, the Call Center would obtain the facility address and send this information to the FRS management group at EPA. This group would use the FRS locational reference tools to create latitude and longitude data for the facility. The previously discussed IECP would provide a mechanism for validation of this value.

The third potential concern relates to the fact that locational information on a facility is currently only accessible from FRS through EPA's publically accessible Envirofacts Web site: *http://www.epa.gov/enviro/frs*. This poses a concern for many data users who rely on TRI Explorer for reviewing release information on sources. This problem will eventually be addressed by a TRI Explorer re-engineering effort presently underway. If the re-engineering is not

completed prior to the removal of latitude and longitude information from the TRI forms, EPA will implement an interim provision to ensure uninterrupted access to locational information for TRI facilities.

Under the proposed approach, facility locational data would still be made available for all reporters and data users, but instead of requiring facilities to determine their geographic coordinates, EPA would extract the data from information that is already collected, stored and maintained in its centrally managed database, the FRS. Comment is specifically sought on barriers or concerns with the removal of latitude and longitude fields from the Forms A and R, and the Agency's plan for implementing this change.

4. *Removal of Reporting Requirements for EPA Permit and Program Identification Numbers (Sections 4.8, 4.9 and 4.10 of Forms A and R).* The EPA is proposing to automatically populate the TRI database with EPA program identification numbers from FRS as an alternative to requesting the information from TRI reporters. The identification numbers include the numbers assigned to facilities under the Resource Conservation and Recovery Act (RCRA), the permit identification numbers under the National Pollutant Discharge Elimination System (NPDES), and permit numbers issued by EPA or a state to facilities with underground injection wells. The 1988 rule in which the original Form R was published stated that "EPA requires the listing of specific permit numbers in the facility identification part of the form. EPA believes that these permit numbers provide a useful link between the release information and any relevant permit data." 53 FR 4513 (Feb. 16, 1988).

Instead, the FRS would be used to supply the information removed from the TRI Form R to stakeholders who need this information. FRS provides the integration of all environmental program activities at a given place by linking all program identification numbers to the FRS record. The FRS contains accurate and authoritative facility identification records which are subjected to rigorous verification and data management quality assurance procedures. FRS records are continuously reviewed and enhanced by a Regional Data Steward network and active State partners. The facility records are based on information from EPA's national program systems and State master facility records and enhanced by other Web information sources. For all of these reasons, leveraging FRS as the authoritative source for facility information presents a better alternative for collecting program identification numbers and providing them to the public.

As with latitude and longitude information, one potential concern is that there be no lapse in information availability with respect to facility identification under various programs. This concern is an especially important one since major data uses include cross comparisons with other program reports. The Agency is fully aware and sensitive to this concern and will work to ensure that there is no lapse in public availability of facility identification records. Cross comparisons between TRI and FRS records will be made to validate coverage before these sections are removed from Forms A and R. Comment is specifically requested on the elimination of individual EPA program identification number reporting requirements from the TRI forms, as well as the timing of implementation.

B. Removal of Reporting Requirement for Determining the Percentage of the Total Quantity of Toxic Chemicals Contributed by Stormwater (Part II, Section 5.3 Column C)

EPA is proposing to remove part II, section 5.3 column C from reporting Form R. This data element applies to discharges to receiving streams and water bodies. It requires facilities that have monitoring data regarding the amount of EPCRA section 313 chemicals that are released in stormwater runoff to indicate the percentage of the total quantity of the EPCRA section 313 chemicals that are discharged in stormwater. The rest of section 5.3 is unaffected by this proposal.

When Form R was first created, the Agency had issued few NPDES permits that regulated stormwater and those were generally only for very significant contributors of contaminated stormwater. Significant industrial stormwater dischargers typically had one NPDES permit that regulated both storm and process waters. The Form R provided valuable information on the stormwater system. Now, approximately 100,000 industrial facilities have stormwater permits, with half or so required to monitor and report pollutant-specific data. As such, EPA and authorized states (*i.e.*, authorized to issue NPDES permits) now gather stormwater specific monitoring data that was not being collected in 1987.

EPA's stormwater permitting requirements will not be affected by removing section 5.3 column C from Form R. While the Agency's industrial stormwater permits originally included special considerations for any chemicals that were "water priority chemicals" and were also reported on Form R, the "water priority chemicals" language is no longer used. There is no longer any connection between the EPA stormwater permit program and the TRI reporting requirements. Rather, the Agency's industrial stormwater permits require that all pollutants be considered.

EPA believes any current uses of these data may be supported by data derivable from other sources. Therefore, EPA is proposing to no longer collect the information. We are seeking comment on the potential deletion of this element and specifically on whether anyone uses the information in section 5.3 column C.

C. Modifications to the Reporting Requirement for On-Site Waste Treatment Methods and Efficiency (Part II, Section 7)

The Agency is proposing to make five modifications to part II, section 7 of the Form R. As part of the TRI Stakeholder Dialogue, EPA received several comments regarding potential changes to this section. Comments ranged from clarifying the reporting requirements of part II, section 7 to eliminating the section all together. One commenter stated that EPA should eliminate all data elements in section 7A that, according to the commenter, are not required by statute. This commenter believes that the data collected in section 7A is not being used in any meaningful way by the TRI community and therefore this section imposes an unnecessary burden on reporting facilities. Another commenter suggested that EPA modify the Form R, including part II, section 7, to reflect the operation of the electric utility industry as this would reduce burden for that industry. Specifically, it proposed that the Agency simplify or eliminate section 7A and eliminate sections 7B and 7C.

Section 313(g)(1)(C)(iii) of EPCRA states that facilities must report "for each wastestream, the waste treatment or disposal methods employed, and an estimate of the treatment efficiency typically achieved." 42 U.S.C. 11023(g)(1)(C)(iii). Data elements collecting waste treatment information and related details, such as whether the efficiency estimate was based on operating data, were implemented through a 1988 rule. 53 FR 4516–18 (Feb. 16, 1988). Section 6607(b)(2) of the PPA states facilities must report "the amount of the chemical * * * which is recycled * * * and the process of recycling used." 42 U.S.C. 13106(b)(2). Facilities fulfill these obligations, in part, by reporting qualitative information regarding their on-site waste treatment and recycling of EPCRA

section 313 chemicals in part II, section 7 of the Form R.

The Agency has not been able to verify that all of the information in section 7 is routinely used and, therefore, is proposing to modify or eliminate some parts of section 7. The Agency believes that simplifying this section will result in reduced reporting burden for those facilities required to complete this portion of the form.

1. *Part II, Section 7A—On-Site Waste Treatment Methods and Efficiency (Column B—Waste Treatment Method(s) Sequence).* The Agency proposes to simplify column B of section 7A—*Waste Treatment Method(s) Sequence,* by reducing the number of codes available for reporting. Currently there are 64 codes that can be reported in column B to describe the various waste treatment methods applied to EPCRA section 313 chemicals treated on-site. The Agency is proposing to replace these codes with the newly-revised list of 18 hazardous waste treatment codes (H040–129) currently used in EPA's biennial Hazardous Waste Report, also known as the EPA Resource Conservation Recovery Act (RCRA) Biennial Report. See page 63 of the 2003 Hazardous Waste Report Instructions and Forms (booklet) [EPA Form 8700–13 A/B; 11/2000] available at *http://www.epa.gov/epaoswer/hazwaste/data/br03/03report.pdf.*

EPA believes that decreasing the number of codes in section 7A, column B will reduce reporting burden and improve EPA's data collection and dissemination. First, facilities will have fewer codes to consider when reporting in this section. Second, under this proposed option, the same codes will be used for both the RCRA hazardous waste and TRI reporting programs, providing consistency between two EPA reporting systems regarding waste treatment methods data. Eighty percent of TRI reporters report a RCRA identification number on Form R, part I, section 4.8. The majority of facilities with an assigned RCRA identification number also file a RCRA Biennial Report. These facilities should already be familiar with the RCRA Biennial Report codes.

The RCRA hazardous waste treatment codes represent a minimal set of meaningful codes at a sufficient level of technological differentiation to support EPA's current and future hazardous waste rulemakings, regulatory monitoring and enforcement activities, thus fulfilling one of the purposes of data collection under EPCRA, "to aid in the development of appropriate regulations, guidelines, and standards." 42 U.S.C. 11023(h). During a previous burden reduction effort, EPA reduced the original set of RCRA Biennial Report waste treatment codes used over prior data years (before 2001), from 65 codes to the current 18 codes.

The current waste treatment codes are listed in section 7A, column B of Form R:

Air Emissions Treatment (applicable to gaseous waste streams only)

A01 Flare
A02 Condenser
A03 Scrubber
A04 Absorber
A05 Electrostatic Precipitator
A06 Mechanical Separation
A07 Other Air Emission Treatment

Biological Treatment:

B11 Aerobic
B21 Anaerobic
B31 Facultative
B99 Other Biological Treatment

Chemical Treatment:

C01 Chemical Precipitation—Lime or Sodium Hydroxide
C02 Chemical Precipitation—Sulfide
C09 Chemical Precipitation—Other
C11 Neutralization
C21 Chromium Reduction
C31 Complexed Metals Treatment (other than pH adjustment)
C41 Cyanide Oxidation—Alkaline Chlorination
C42 Cyanide Oxidation—Electrochemical
C43 Cyanide Oxidation—Other
C44 General Oxidation (including Disinfection)—Chlorination
C45 General Oxidation (including Disinfection)—Ozonation
C46 General Oxidation (including Disinfection)—Other
C99 Other Chemical Treatment

Incineration/Thermal Treatment

F01 Liquid Injection
F11 Rotary Kiln with Liquid Injection Unit
F19 Other Rotary Kiln
F31 Two Stage
F41 Fixed Hearth
F42 Multiple Hearth
F51 Fluidized Bed
F61 Infra-Red
F71 Fume/Vapor
F81 Pyrolytic Destructor
F82 Wet Air Oxidation
F83 Thermal Drying/Dewatering
F99 Other Incineration/Thermal Treatment

Physical Treatment

P01 Equalization
P09 Other Blending
P11 Settling/Clarification
P12 Filtration
P13 Sludge Dewatering (non-thermal)
P14 Air Flotation
P15 Oil Skimming
P16 Emulsion Breaking—Thermal
P17 Emulsion Breaking—Chemical
P18 Emulsion Breaking—Other
P19 Other Liquid Phase Separation
P21 Adsorption—Carbon
P22 Adsorption—Ion Exchange (other than for recovery/reuse)
P23 Adsorption—Resin
P29 Adsorption—Other
P31 Reverse Osmosis (other than for recovery/reuse)
P41 Stripping—Air
P42 Stripping—Steam
P49 Stripping—Other
P51 Acid Leaching (other than for recovery/reuse)
P61 Solvent Extraction (other than recovery/reuse)
P99 Other Physical Treatment

Solidification/Stabilization

G01 Cement Processes (including silicates)
G09 Other Pozzolonic Processes (including silicates)
G11 Asphaltic Techniques
G99 Other Solidification Processes

The Agency proposes to replace these codes with the following RCRA H treatment codes:

H040 Incineration—thermal destruction other than use as a fuel
H071 Chemical reduction with or without precipitation
H073 Cyanide destruction with or without precipitation
H075 Chemical oxidation
H076 Wet air oxidation
H077 Other chemical precipitation with or without pre-treatment
H081 Biological treatment with or without precipitation
H082 Adsorption as the major component of treatment
H101 Sludge treatment and/or dewatering
H103 Absorption
H111 Stabilization or chemical fixation prior to disposal at another site
H112 Macro-encapsulation prior to disposal at another site
H121 Neutralization only
H122 Evaporation
H123 Settling or clarification
H124 Phase separation
H129 Other treatment

EPA requests comments on whether reducing the number of codes used in section 7A, column B will affect the quality of TRI data, especially with respect to the use of those data.

2. *Part II, Section 7A—On-Site Waste Treatment Methods and Efficiency (Column C—Range of Influent*

Concentration). To help simplify reporting in section 7A of the Form R, EPA is proposing to eliminate section 7A, column C—*Range of Influent Concentration.* Currently, completion of column C requires facilities to enter a numerical code indicating the concentration range of the EPCRA section 313 chemical as it enters the treatment step. The following range codes are currently used for reporting in column C:

1 = Greater than 10,000 parts per million (1%)
2 = 100 parts per million (0.01%) to 10,000 parts per million (1%)
3 = 1 part per million (0.0001%) to 100 parts per million (0.01%)
4 = 1 part per billion to 1 part per million
5 = Less than 1 part per billion

Column C was implemented in the 1988 rule in which EPA initially published the Form R. 53 FR 4518. During the development of the 1988 rule, EPA believed that concentration information would assist users in determining whether effective treatment methods may be available for wastes containing different amounts of a given chemical because the effectiveness of most treatment methods is concentration-dependent. *See* Proposed Rule, 52 FR 21152, 21163 (June 4, 1987). Further, an indication of influent concentration would aid in the evaluation of treatment methods across industries and therefore put the data into better perspective. 53 FR 4518. Contrary to the intended use of information from section 7, column C, EPA does not believe that this information is widely used by States and the public. Consequently, the Agency is proposing to stop collection of the data currently reported in this column.

The second option that EPA is considering in this proposal is to make reporting under section 7A, column C optional. Under this option, facilities would have a choice as to whether to report the influent concentration range of the EPCRA section 313 chemical.

EPA requests comments on how the proposed removal of column C of section 7A could affect the use of TRI data in general, and in particular, how it could affect the use of information reported in column D of section 7A. EPA also requests comments on whether many facilities could be expected to continue to report data in column C if such reporting was deemed to be optional.

3. *Part II, Section 7A--On-Site Waste Treatment Methods and Efficiency (Column D—Waste Treatment Efficiency Estimate).* In this section, facilities enter the number indicating the percentage of the EPCRA section 313 chemical removed from the waste stream. The waste treatment efficiency (expressed as a percentage) represents the percentage of the TRI chemical destroyed or removed (based on amount or mass).

Under EPCRA section 313(g)(1)(C)(iii), facilities are required to submit an estimate of the treatment efficiency typically achieved by the waste treatment or disposal methods employed for each waste stream. Currently facilities must enter an exact percentage in this column of the form. EPA is proposing to allow facilities to report their treatment efficiency as a range instead of an exact percentage. The Agency is thus proposing to use the following ranges in column D:

E1 = greater than 99.9%
E2 = greater than 95% to 99.9%
E3 = greater than 90% to 95%
E4 = greater than 75% to 90%
E5 = greater than 30% to 75%
E6 = 0% to 30%

The proposed set of range codes were developed by analyzing a subset of treatment efficiencies reported in RY 2002. Most of the efficiencies were between 90% and 100%. The range codes reflect this reporting trend by grouping three of the codes between 90% and 100% while the other three codes represent larger ranges between 0% and 90%.

The Agency is seeking comment on whether replacing an exact percentage estimate with these proposed ranges will make it easier for facilities to complete section 7A, column D. We are also seeking comment on how the use of range codes for treatment efficiency will affect the utility of the data. EPA also requests comment on the specific set of range codes proposed.

4. *Part II, Section 7A—On-Site Waste Treatment Methods and Efficiency (Column E-Based on Operating Data).* This column of section 7A requires facilities to indicate "Yes" or "No" as to whether the waste treatment efficiency reported in section 7A, column D is based on actual operating data such as the case where a facility monitors the influent and effluent wastes from this treatment step. When this data element was first implemented, EPA believed that this information would be valuable to users because it would indicate the relative quality and reliability of the efficiency estimate figure (*see* 52 FR 21152, 21163). If the change mentioned in section C(3) above is made, however, treatment efficacy data will only be represented by a range. Under such conditions, the significance of the method of range determination could be less meaningful. Furthermore, EPA is unaware of any significant use of this data under the present form where specific treatment efficiency is specified. EPA thus proposes to remove column E of section 7A from Form R. We request comments on how removal of this data field could affect the usefulness of TRI data.

5. *Part II, Section 7C—On-Site Recycling Processes.* In this section, facilities that conduct on-site recycling use the sixteen codes below to report the particular recycling methods applied to the EPCRA section 313 chemical being recycled. For each Form R filed, facilities may report up to ten R codes, as appropriate. Following are the currently-used codes:

R11 Solvents/Organics Recovery—Batch Still Distillation
R12 Solvents/Organics Recovery—Thin-Film Evaporation
R13 Solvents/Organics Recovery—Fractionation
R14 Solvents/Organics Recovery—Solvent Extraction
R19 Solvents/Organics Recovery—Other
R21 Metals Recovery—Electrolytic
R22 Metals Recovery—Ion Exchange
R23 Metals Recovery—Acid Leaching
R24 Metals Recovery—Reverse Osmosis
R26 Metals Recovery—Solvent Extraction
R27 Metals Recovery—High Temperature
R28 Metals Recovery—Retorting
R29 Metals Recovery—Secondary Smelting
R30 Metals Recovery—Other
R40 Acid Regeneration
R99 Other Reuse or Recovery

EPA is proposing to eliminate the current recycling codes and replace them with the following three reclamation and recovery management codes used in EPA's biennial Hazardous Waste Report, also known as the EPA Resource Conservation Recovery Act (RCRA) Biennial Report:

H010 Metal recovery (by retorting, smelting, or chemical or physical extraction)
H020 Solvent recovery (including distillation, evaporation, fractionation or extraction)
H039 Other recovery or reclamation for reuse (including acid regeneration or other chemical reaction process)

Similar to the proposed modification to column B of part II, section 7A, the reporting burden associated with completing section 7C would be reduced because facilities would have fewer codes to consider. EPA's data

collection and dissemination would also be improved by adopting the same codes for both the RCRA hazardous waste and TRI reporting programs. Eighty percent of TRI reporters report a RCRA identification number on Form R, part I, section 4.8. The majority of facilities with an assigned RCRA identification number also file a RCRA Biennial Report. These facilities should already be familiar with the RCRA Biennial Report codes.

For further information about the RCRA reclamation and recovery management codes, see EPA's RCRA Biennial Report, which can be found at: *http://www.epa.gov/epaoswer/hazwaste/data/br03/03report.pdf*—PDF screen page 63 of the 80 page report.

EPA requests comment on how the simplification of codes regarding on-site recycling processes will affect the use of the data. Please provide, if available, specific examples of how detailed information on recycling processes is currently used.

D. Removal of Reporting Data Field for Optional Submission of Additional Information (Part II, Section 8.11)

Section 6607(d) of the Pollution Prevention Act (PPA) requires that reporters be provided the opportunity to include "additional information regarding source reduction, recycling, and other pollution control techniques" with their reporting form. 42 U.S.C. 13106(d). Currently, EPA requires that facilities answer a "yes/no" question to indicate whether a facility has included such information. Facilities with such information then attach a physical copy describing their activity. Because such information is long and in varied forms, it has not been coded into the TRI database. This lack of coding creates a large potential burden for users of information seeking to identify innovative programs or processes. EPA is proposing to make a minor change to this question to improve public access to such information.

Under this proposal, an optional text box feature would be added to EPA's *TRI–E* reporting software to enable reporting facilities to add a brief description of their applicable source reduction, recycling, and other pollution control techniques and activities. In addition, reporters would be provided instructions in EPA's "Toxic Chemical Release Inventory Reporting Forms" on how to denote on their Form R submission that they are providing a brief summary and/or more detailed information on one of these activities. Form R would be modified to include a checkbox allowing facilities that provide additional information to check "yes" if they use the text box feature or send EPA additional information in hardcopy. Facilities that do not wish to provide additional information would no longer need to check "no" in section 8.11.

With this revision, EPA could make this additional information available on the Agency's public access Web site for the first time, through one of EPA's system applications, such as Envirofacts. This proposed change would provide TRI data users with improved access to the additional information that facilities submit about their source reduction, recycling, and other pollution control techniques.

EPA requests comments on whether reporters would utilize a text box for section 8.11, and whether TRI data users would find increased access to this additional data useful.

IV. Technical Modifications to 40 CFR 372.85

In addition to the proposals for streamlining the TRI Reporting Forms explained above, EPA is proposing two technical corrections to 40 CFR 372.85.

Prior to 1991, EPA published the current version of the Form R and Reporting Instructions in its regulations at 40 CFR 372.85(a). On June 26, 1991, 56 FR 29183, EPA published a final rule that replaced the full version of the form and instructions in the regulation with a Notice of Availability of the most current version of the Form R and Reporting Instructions and an address from which to obtain a copy.

The address for requesting the current version of Form R is outdated. Moreover, the likelihood exists that the address may change from time to time in the future because the entity managing Form R distribution may change. Therefore, EPA is amending 40 CFR 372.85(a) by giving a reference to the TRI Web site to obtain the Form R instead of publishing in the regulations an address from which to request copies of TRI forms. EPA is also providing a phone number from which to request TRI publications.

The 1991 rule also added a list describing the Form R data elements at 40 CFR 372.85(b). This list includes Paragraph 18 describing a pollution prevention data element, which was optional and set to expire after the 1990 reporting year. After the 1991 rule was finalized, EPA incorporated mandatory pollution prevention reporting elements pursuant to the Pollution Prevention Act of 1990. 57 FR 22330. EPA believes the presence of the outdated Paragraph 18 element in the regulations is unnecessary since it has expired. Further, the Agency is concerned that it may lead to confusion about whether pollution prevention data are required elements of the Form R. Therefore, EPA proposes to delete 40 CFR 372.85(b)(18) for the purposes of order and clarity. This action will not affect the reporting obligations found in section 6607 of the PPA; facilities must continue to report pollution prevention information as collected in part II, section 8 of the Form R.

V. What Are the Statutory and Executive Order Reviews Associated With This Action?

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, 58 FR 51735, the Agency must determine whether this regulatory action is "significant" and therefore subject to formal review by the Office of Management and Budget (OMB) and to the requirements of the Executive Order, which include assessing the costs and benefits anticipated as a result of the proposed regulatory action. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Pursuant to the terms of Executive Order 12866, it has been determined that today's proposed rule is a significant regulatory action. The Agency therefore submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the docket to today's proposal.

To estimate the cost savings, incremental costs, economic impacts and benefits from this rule to affected regulated entities, EPA completed an economic analysis for this rule. Copies of this analysis (entitled "Economic Assessment of the Burden Reduction-Modifications to Form R-Proposed Rule") have been placed in the TRI docket for public review. The Agency solicits comment on the methodology and results from the analysis as well as

any data that the public feels would be useful in a revised analysis.

1. Methodology

To estimate the cost savings, incremental costs, economic impacts and benefits of this rule, the Agency estimated both the cost and burden of completing the TRI reporting forms, as well as the number of affected entities. The Agency has used the 2002 reporting year for TRI data as a basis for these estimates. First, the Agency identified the number of PBT and non-PBT respondents completing Form R and non-PBT respondents for Form A (PBT respondents are currently ineligible to use Form A). Then the Agency determined the unit burden savings and cost savings per form using an engineering analysis. Burden savings for the various forms were calculated separately because not all proposed modifications appear on every form. The total burden and cost savings associated with the proposed modifications to Forms A and R are the product of the unit burden and cost savings per form times the number of forms (Forms A and R) submitted.

2. Cost & Burden Savings Results

Table 1 and Table 2 summarize the number of 2002 first and subsequent year Forms A and R submissions.

TABLE 1.—NATIONAL BURDEN AND COST SAVINGS FOR FIRST YEAR REPORTERS

Number of 2002 forms	Form type	Burden savings per Form R (hours/% of total)	Total burden savings (hours)	Cost saving per Form R	Total cost savings
458	Form R PBT	2.23/3.2	1,023	$97.05	$44,449
880	Form R non-PBT	0.96/1.4	842	40.89	35,979
324	Form A non-PBT	0.52/1.1	168	21.59	6,994
Total			2,033		$87,423

TABLE 2.—PRELIMINARY NATIONAL BURDEN AND COST SAVINGS FOR SUBSEQUENT YEAR REPORTERS

Number of 2002 forms	Form type	Burden savings per Form R (hours/% of total)	Total burden savings (hours)	Cost saving per Form R	Total cost savings
15,085	Form R PBT	1.11/2.4	16,681	$46.99	$708,841
65,006	Form R non-PBT	0.39/1.5	25,167	15.72	1,021,833
11,594	Form A non-PBT	0.11/0.6	1,292	3.58	41,543
Total			43,140		$1,772,217

EPA estimates that the total annual burden savings for this proposal are 45,000 hours. EPA estimates that the total annual cost savings for this proposal are $1.85 million. Average annual cost savings for facilities submitting Form Rs or Form As are between $22 and $97 per form or between $66 and $291 per facility.

3. Impacts on Data

EPA evaluated the potential impacts on data from removing or simplifying these specific data fields and determined that the risk of significant data loss is minimal. In the case of some elements (*e.g.*, latitude and longitude information), reporting is being discontinued because information already exists or can be developed from other EPA data systems. In other cases (*e.g.*, changes in waste management or recycling reporting codes), streamlining is being proposed to bring reporting categories in line with existing practices of other Agency program offices which should ultimately increase the utility of the information. Range reporting options being considered include intervals selected to maintain relatively equal population subcategories which should maintain the utility of the data while minimizing the potential uncertainty associated with individual values. The Agency has also conducted outreach to potentially affected stakeholders to solicit any specific uses of the fields being proposed for removal or simplification. Based on that outreach, the Agency believes the potential for significant data loss to the public to be minimal. EPA solicits comment on whether and how the specific data fields in today's proposal are used and whether or not alternate sources of the same data are available.

B. Paperwork Reduction Act

We have prepared a document estimating the recordkeeping and reporting burden savings associated with this rule. We calculate the reporting and recordkeeping burden reduction for this rule as 45,000 hours and the estimated cost savings as $1.85 million. Burden means total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. That 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.

C. Regulatory Flexibility Act

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 today's rule on small entities, small entity is defined as: (1) A small business that has fewer than either 1000 or 100 employees per firm depending upon the firm's primary SIC code; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

The economic impact analysis conducted for today's proposal indicates that these revisions would generally result in savings to affected entities compared to baseline requirements. The rule is not expected to result in a net cost to any affected entity. Thus, adverse impacts are not anticipated.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for the proposed and final rules with "federal mandates" that may result in expenditures by 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 EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The Agency's analysis of compliance with the Unfunded Mandates Reform Act (UMRA) of 1995 found that today's proposed rule imposes no enforceable duty on any state, local or tribal government or the private sector. This proposed rule contains no federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local, or tribal governments or the private sector. In addition, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The rule merely streamlines reporting requirements for an existing program. Therefore we have determined that today's proposal is not subject to the requirements of sections 202 and 205 of UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" 64 FR 43255 (August 10, 1999), requires EPA to develop an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" 65 FR 67249 (November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the federal Government and the Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes. This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified in Executive Order 13175.

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

"Protection of Children From Environmental Health Risks and Safety Risks," 62 FR 19885 (April 23, 1997), applies to any rule that EPA determines (1) "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potential effective and reasonably feasible alternatives considered by the Agency. This proposed rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866.

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

This 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.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be

inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rule does not establish technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Environmental Justice

Under Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations", EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities.

EPA has considered the impacts of this proposed rulemaking on low-income populations and minority populations and concluded that it will not cause any adverse effects to these populations. As stated above, the Agency has determined that the risk of significant data loss is very low. The data elements proposed for removal or streamlining either have a low incidence of reporting, have other data source readily available or do not appear to be used to any significant degree by the public.

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: December 29, 2004.

Michael O. Leavitt,

Administrator.

For the reasons discussed in the preamble, the Environmental Protection Agency proposes to amend 40 CFR part 372 as follows:

PART 372—[AMENDED]

1. The authority citation for Part 372 continues to read as follows:

Authority: 42 U.S.C. 11023 and 11028.

Subpart E—[Amended]

2. Section 372.85 is amended as follows:

i. Revise paragraph (a).

ii. Remove paragraph (b)(6).

iii. Redesignate paragraphs (b)(7) through (b)(18) as paragraphs (b)(6) through (b)(17).

iv. Revise the newly-designated paragraph (b)(6).

v. Revise the newly-designated paragraph (b)(14)(i)(C).

vi. Remove the newly-designated paragraph (b)(16)(iii).

vii. Redesignate the newly-designated paragraphs (b)(16)(iv) and (v) as paragraphs (b)(16)(iii) and (iv).

viii. Revise the newly-designated paragraph (b)(16)(iii).

ix. Remove the newly-designated paragraph (b)(17).

§ 372.85 Toxic chemical release reporting form and instructions.

(a) *Availability of reporting form and instructions.* The most current version of Form R may be found on the following EPA Program Web site, *http://www.epa.gov/tri.* Any subsequent changes to the Form R will be posted on this Web site. Submitters may also contact the TRI Program at (202) 564–9554 to obtain this information.

(b) * * *

(6) Dun and Bradstreet identification number.

* * * * *

(14) * * *

(i) * * *

(C) Discharges to receiving streams or water bodies.

* * * * *

(16) * * *

(iii) An estimate of the efficiency of the treatment, which shall be indicated by a range.

3. Section 372.95 is amended as follows:

i. Remove paragraphs (b)(11), (b)(13), (b)(14) and (b)(15).

ii. Redesignate paragraph (b)(12) as paragraph (b)(11) and redesignate paragraphs (b)(16) through (b)(17) as paragraphs (b)(12) through (b)(13).

[FR Doc. 05–430 Filed 1–7–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 041221358–4358–01; I.D. 121504A]

RIN 0648–AR56

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries

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

ACTION: Proposed rule, 2005 initial specifications; request for comments.

SUMMARY: NMFS proposes initial specifications for the 2005 fishing year for Atlantic mackerel, squid, and butterfish (MSB). Regulations governing these fisheries require NMFS to publish proposed specifications for the upcoming fishing year and to provide an opportunity for public comment. The intent of this action is to fulfill this requirement and to promote the development and conservation of the MSB resources.

DATES: Public comments must be received no later than 5 p.m., Eastern Standard Time, on February 9, 2005.

ADDRESSES: Copies of supporting documents used by the Mid-Atlantic Fishery Management Council (Council), including the Environmental Assessment (EA) and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available from: Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790. The EA/RIR/IRFA is accessible via the Internet at *http:/www.nero.noaa.gov.*

Comments on the proposed specifications should be sent to: Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298. Please mark the envelope, "Comments–2005 MSB Specifications." Comments also may be sent via facsimile (fax) to 978–281–9135. Comments on the specifications may be submitted by e-mail as well. The mailbox address for providing e-mail comments is *SMB2005Specs@noaa.gov.* Include in the subject line of the e-mail comment the following document identifier: "Comments–2005 MSB Specifications." Comments may also be submitted electronically through the

Federal e-Rulemaking portal: *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Eric Jay Dolin, Fishery Policy Analyst, 978–281–9259, fax 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

Regulations implementing the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP), prepared by the Council, appear at 50 CFR part 648, subpart B. Regulations governing foreign fishing appear at 50 CFR part 600, subpart F. These regulations, at § 600.516(c) and 648.21, require that NMFS, based on the maximum optimum yield (Max OY) of each fishery as established by the regulations, annually publish a proposed rule specifying the initial amounts of the initial optimum yield (IOY), as well as the amounts for allowable biological catch (ABC), domestic annual harvest (DAH), domestic annual processing (DAP), total allowable level of foreign fishing (TALFF), and joint venture processing (JVP) for the affected species managed under the FMP. In addition, these regulations allow *Loligo* squid specifications to be specified for up to 3 years, subject to annual review. The regulations found in § 648.20 also specify that IOY for squid is equal to the combination of research quota and DAH, with no TALFF specified for squid. For butterfish, the regulations specify that a butterfish bycatch TALFF will be specified only if TALFF is specified for Atlantic mackerel.

In addition, the regulations at § 648.21(g) allow the specification of research set-asides (RSA) to be used for research purposes. For 2005, the Council recommended the consideration of RSAs of up to 3 percent of IOY for Atlantic mackerel, butterfish, and squids. The RSAs would fund research and data collection for those species. A Request for Research Proposals was published to solicit proposals for 2005 based on research priorities previously identified by the Council (69 FR 10990, March 9, 2004). The deadline for submission was April 8, 2004. On May 14, 2004, NMFS convened a Review Panel to review the comments submitted by technical reviewers. Based on discussions between NMFS staff, technical review comments, and Review Panel comments, two project proposals requesting Loligo squid set-aside landings were recommended for approval and will be forwarded to the NOAA Grants Office for award, for a total RSA of 255.1 mt. Consistent with the recommendations, the quotas in this proposed rule have been adjusted to reflect the projects recommended for approval. If the awards are not made by the NOAA Grants Office for any reason, NMFS will give notice of an adjustment to the annual quota to return the unawarded set-aside amount to the fishery.

Table 1 contains the proposed initial specifications for the 2005 Atlantic mackerel, *Loligo* and *Illex* squids, and butterfish fisheries.

TABLE 1. PROPOSED INITIAL ANNUAL SPECIFICATIONS, IN METRIC TONS (MT), FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR THE FISHING YEAR JANUARY 1 THROUGH DECEMBER 31, 2005.

Specifications	*Loligo*	*Illex*	Mackerel	Butterfish
Max OY	26,000	24,000	N/A[1]	12,175
ABC	17,000	24,000	335,000	4,545
IOY	16,744.9[4]	24,000	115,000[2]	1,681
DAH	16,744.9	24,000	115,000[3]	1,681
DAP	16,744.9	24,000	100,000	1,681
JVP	0	0	0	0
TALFF	0	0	0	0

[1]Not applicable.
[2]IOY may be increased during the year, but the total ABC will not exceed 335,000 mt.
[3]Includes 15,000 mt of Atlantic mackerel recreational allocation.
[4]Excludes 255.1 mt for Research Set-Aside.

NMFS also proposes three clarifications to the Atlantic mackerel, squid, and butterfish regulations. The first, in § 648.21, would remove references to the dates on which the proposed and final rules for the annual specifications must be published by the Administrator, Northeast Region, NMFS (Regional Administrator), because it is not necessary to specify these dates in regulatory text. The second clarification, in § 648.23, would revise a confusing sentence to make it clearer. The third clarification, in § 648.4(a)(5)(i), would clarify that the *Illex* permit moratorium is in effect until July 1, 2009. These regulatory language changes are purely administrative and reflect previously approved measures in the FMP.

2005 Proposed Specifications

Atlantic Mackerel

Overfishing for Atlantic mackerel is defined by the FMP to occur when the catch associated with a threshold fishing mortality rate (F) of F_{MSY} (the F that produces MSY (maximum sustainable yield)) is exceeded. When spawning stock biomass (SSB) is greater than 890,000 mt, the maximum F threshold is FMSY (0.45), and the target F is 0.25. To avoid low levels of recruitment, the FMP contains a control rule whereby the threshold F decreases linearly from 0.45 at 890,000 mt SSB to zero at 225,000 mt SSB (1/4 of the biomass level that would produce MSY on a continuing basis (B_{MSY})), and the target F decreases linearly from 0.25 at 890,000 mt SSB to zero at 450,000 mt SSB (1/2 B_{MSY}). Annual quotas are specified that correspond to the target F resulting from this control rule.

The most recent estimate of Atlantic mackerel stock biomass was 2.1 million mt. Since SSB is currently above 890,000 mt, the target F for 2005 is 0.25. According to the Altantic mackerel, squid, and butterfish regulations, mackerel ABC must be calculated using the formula ABC = T - C, where C is the estimated catch of mackerel in Canadian waters for the upcoming fishing year and T is the yield associated with a fishing mortality rate that is equal to the target F. The yield associated with the target F=0.25 is 369,000 mt. The estimated Canadian catch is 34,000 mt. Thus, 369,000 mt minus 34,000 mt results in and ABC of 335,000 mt.

The Council proposed that the IOY and the DAH for the 2005 Atlantic mackerel fishery be set at 165,000 mt. The Magnuson-Stevens Fishery

Conservation and Management Act provides that the specification of TALFF, if any, shall be that portion of the optimum yield (OY) of a fishery that will not be harvested by vessels of the United States. As a result, the Council's proposal to set IOY equal to DAH necessarily results in a TALFF of zero. While NMFS agrees that there are legitimate and legally defensible reasons to set the IOY at a level that can be harvested by the domestic fleet and that would thereby preclude the specification of a TALFF, NMFS does not find that the Council's analysis justifies the levels of IOY and DAH that it recommends.

The Council recommended an IOY of 165,000 mt, arguing that this level would provide the greatest overall benefit to the Nation with respect to food production and recreational opportunities. This level of IOY was also adopted because the Council believes that it allows for a significant increase in domestic landings, which have increased considerably in the last several years due to major investments in the domestic mackerel processing sector. This level of IOY represents a modification of MSY based on economic and social factors (the mackerel regulations at § 648.21(b)(2)(ii) state that, "IOY is a modification of ABC, based on social and economic factors, and must be less than or equal to ABC"). The Council expressed its concern, supported by industry testimony, that an allocation of TALFF would threaten the expansion of the domestic industry. TALFF catches would allow foreign vessels to harvest U.S. fish and sell their product on the world market, in direct competition with the U.S. industry efforts to expand exports. The Council noted that this would prevent the U.S. industry from taking advantage of declines in the European production of Atlantic mackerel that have resulted in an increase in world demand for U.S. fish. In 2003, the primary nations that received the U.S. exports were Nigeria, Bulgaria, Romania, and Canada. The only economic benefit associated with a TALFF is the foreign fishing fees it generates. These fees pale in comparison to the economic benefits associated with the development of the domestic mackerel fishery. Increased mackerel production generates jobs both for plant workers and other support industries. More jobs generate more income for people resident in coastal communities and generally enhance the social fabric of these communities.

For these reasons, the Council concluded, and NMFS agrees, that the specification of an IOY at a level that can be fully harvested by the domestic fleet, thereby precluding the specification of a TALFF, will assist the U.S. mackerel industry to expand and will yield positive social and economic benefits to both U.S. harvesters and processors. NMFS therefore recommends that IOY be specified at 115,000 mt. NMFS believes that the commercial and recreational fishery will harvest this amount of mackerel in 2005, based on a reasonable projection of the commercial sector harvesting capacity. Because IOY=DAH, this specification is consistent with the Council's recommendation that the level of IOY should not provide for a TALFF.

The Council's DAH recommendation is composed of commercial landings and recreational landings. The specification of DAH at 165,000 mt includes an allocation for recreational catch of 15,000 mt, and an allocation for commercial landings of 150,000 mt. After reviewing the Council's analysis, NMFS concludes that the available data do not support a projection of commercial landings at that level in 2005. The Council assumes that commercial landings in 2004 will be approximately 60,000 mt, and that the landings for 2005 could be twice that level. The increases in U.S. commercial landings in recent years do not support the Council's conclusion that landings could rise to 150,000 mt. Landings from 2001–2002 more than doubled (increasing 112 percent, from 12,308 mt to 26,192 mt). Landings from 2002 to 2003 (30,378 mt) rose by roughly 16 percent. As of October 1, 2004, 53,352 mt of mackerel had been landed. The final landings for 2004 will likely be roughly the same as they were as of October 1, 2004 (historically, a very small percentage of mackerel is landed in November and December, e.g., roughly 1 percent in 2003). The increase in landings from 2003 (30,738 mt) to 2004 (53,352 mt) is roughly 74 percent. It appears reasonable to project that domestic commercial landings in 2005 could approach a doubling of the 2004 landings. The domestic processor sector appears to have overcome the "start-up" problems associated with new investment in additional processing capacity.

Given all these data, and the upward trend noted, NMFS is proposing to set the DAH at 115,000 mt (including 15,000 mt for the recreational catch). This specification would allocate 100,000 mt to the commercial fishery, allowing room for the fishery to expand in line with its recent significant increase in landings. Given the trends in landings, and the industry's testimony that the fishery is poised for significant growth, NMFS concludes that it is reasonable to assume that in 2005 the commercial fishery will harvest 100,000 mt of mackerel.

The regulations, at § 648.21(e), allow for inseason adjustments of the mackerel, squid, and butterfish specifications. Thus, should the performance of the mackerel fishery during the 2005 fishing year justify increasing the DAH for mackerel, NMFS could use the inseason adjustment mechanism to increase both the DAH and the IOY to the levels necessary to enable the fishery to perform to its fullest potential. Such increases, however, would be constrained by the analysis that the Council included in this year's specifications. That means that DAH and IOY could be increased to a maximum of 175,000 mt, which are the highest levels that the Council originally proposed and analyzed for each of these measures. NMFS invites the public to comment on its proposed use of the inseason adjustment mechanism to set new levels for DAH and IOY during the 2005 fishing year, should such changes be warranted based on the performance of the fishery. More specifically, NMFS invites the public to comment on the appropriateness of potentially increasing DAH and IOY up to the maximum levels of 175,000 mt through the inseason adjustment mechanism.

NMFS also agrees with the Council's recommendation to specify JVP at zero (as compared with 5,000 mt of JVP in 2004). In previous years, the Council specified JVP greater than zero because it believed U.S. processors lacked the capability to process the total amount of mackerel that U.S. harvesters could land. The Council has been systematically reducing JVP because it concluded that the surplus between DAH and DAP has been declining as U.S. shoreside processing capacity for mackerel has expanded over the last several years. The Council received testimony from processors and harvesters that the shoreside processing sector of this industry has been undergoing significant expansion since 2002–2003. As a result of this expansion, the Council concluded that shoreside processing capacity was no longer a limiting factor relative to domestic production of mackerel. The Council, therefore, concluded that the U.S. mackerel processing sector has the potential to process the DAH, so JVP would be specified at zero. In coming to this conclusion, the Council assumed that DAH would be set at 165,000 mt. The argument for zero JVP specification is even stronger for a proposed DAH set at 115,000 mt.

Atlantic Squids

Loligo

In 2004, the Council specified the annual quota and other measures for *Loligo* squid for a period of up to 3 years (i.e., 2004 - 2007). After a review of available information, the Council recommended no change to the *Loligo* quota or other measures in 2005, and NMFS concurs with this recommendation. Based on research projects approved for 2005, the Council recommended that the RSA for scientific research for *Loligo* squid not exceed 255.1 mt. The 2005 proposed Max OY for *Loligo* squid is 26,000 mt, the recommended ABC for the 2005 fishery is 17,000 mt, and the IOY is 16,744.9, which takes into account the 255.1 mt RSA.

The FMP does not authorize the specification of JVP and TALFF for the *Loligo* squid fishery, because of the domestic industry's capacity to harvest and process the OY for this fishery; therefore, JVP and TALFF are zero.

Distribution of the Annual *Loligo* Squid Quota

Since 2001, the annual DAH for *Loligo* squid has been allocated into quarterly periods. The Council and NMFS recommend no change from the 2004 quarterly distribution system. Due to the recommendation of two research projects that would utilize *Loligo* squid RSA, this proposed rule would adjust the quarterly allocations from those that were proposed, based on formulas specified in the FMP. The 2005 quarterly allocations would be as follows:

TABLE 2. *Loligo* SQUID QUARTERLY ALLOCATIONS

Quarter	Percent	Metric Tons[1]	Research Set-aside
I (Jan-Mar)	33.23	5,564.3	N/A
II (Apr-Jun)	17.61	2,948.8	N/A
III (Jul-Sep)	17.3	2,896.9	N/A
IV (Oct-Dec)	31.86	5,334.9	N/A
Total	100	16,744.9	255.1

[1]Quarterly allocations after 255.1 mt RSA deduction.

Also unchanged from 2004, the 2005 directed fishery would be closed in Quarters I-III when 80 percent of the period allocation is harvested, with vessels restricted to a 2,500–lb (1,134–kg) *Loligo* squid trip limit per single calender day until the end of the respective quarter. The directed fishery would close when 95 percent of the total annual DAH has been harvested, with vessels restricted to a 2,500–lb (1,134–kg) *Loligo* squid trip limit per single calender day for the remainder of the year. Quota overages from Quarter I would be deducted from the allocation in Quarter III, and any overages from Quarter II would be deducted from Quarter IV. By default, quarterly underages from Quarters II and III carry over into Quarter IV, because Quarter IV does not close until 95 percent of the total annual quota has been harvested. Additionally, if the Quarter I landings for *Loligo* squid are less than 80 percent of the Quarter I allocation, the underage below 80 percent is applied to Quarter III.

Illex

The Council recommended maintaining the *Illex* specifications in 2005 at the same levels as they were for the 2004 fishing year. NMFS concurs with this recommendation; thus, the specification of Max OY, IOY, ABC and DAH would be 24,000 mt. The overfishing definition for *Illex* squid states that overfishing for Illex squid occurs when the catch associated with a threshold fishing mortality rate of F_{MSY} is exceeded. Max OY is specified as the catch associated with a fishing mortality rate of F_{MSY}, while DAH is specified as the level of harvest that corresponds to a target fishing mortality rate of 75% F_{msy}. The biomass target is specified as B_{MSY}. The minimum biomass threshold is specified as 1/2 B_{MSY}.

In September 2003, the results of an updated assessment of the *Illex* squid stock (the 37th Northeast Regional Stock Assessment Workshop; SAW–37) were released. SAW–37 concluded that overfishing was not likely to have occurred during the period 1992–2002. SAW–37 found that it was not possible to evaluate the current biomass status for *Illex* squid relative to B_{msy} because the size of the stock could not be reliably estimated. SAW 37 noted that, since 1999, the Northeast Fishery Science Center (NEFSC) autumn survey abundance indices have been below the 1982–2002 average, but that it could not determine whether this trend is due to low abundance, low availability or both. The assessment noted that surface and bottom water temperatures in the Mid-Atlantic Bight have been warmer than average during recent years, and that Illex abundance and biomass indices from the autumn surveys were significantly negatively correlated with bottom water temperature anomalies from the autumn surveys. SAW 37 concluded that this likely indicates an environmental effect on productivity. While landings have been below the 1982–2002 average since 1998, SAW 37 found that this could be due to the reduced effort observed during the time period, low biomass or both factors.

SAW 37 cautioned that, under current stock conditions, a DAH of 24,000 mt, which assumes a stock at B_{msy}, may not be sufficient to prevent overfishing. It also cautioned that the existing overfishing definition, which is based on F_{msy}, is not only difficult to estimate given the available information, but may also perform poorly given the stock's production dynamics. In addition, SAW 37 recommended that, given uncertainties in the stock distribution and population biology, the fishery should be managed in relation to the proportion of the stock on the continental shelf and available to U.S. fisheries. However, SAW 37 did not recommend specific action, and the assessment also noted that more knowledge of *Illex* is necessary to respond to these concerns. While cooperative research efforts are underway, there is currently no information to use to construct an alternative recommendation.

Despite the cautions within SAW 37, the assessment also concluded that it was unlikely that overfishing occurred during 1999–2002 for several reasons. Many of these reasons remain applicable to the proposal to maintain DAH at 24,000 mt for 2005. The reasons are: (1) the current small fleet size and effort levels make it unlikely that the fishery could exert the very high fishing mortality rate required to exceed the level recommended in the assessment ($F_{50\%}$), (2) the short fishing season makes high annual average fishing

mortality rates unlikely, (3) the restricted geographical distribution of the fishery makes high annual average fishing mortality rates for the entire stock unlikely, (4) relative exploitation indices have declined considerably since 1999 and have been below the 1982–2002 median since then, and (5) preliminary model results indicate that fishing mortality rates as high as $F_{50\%}$ are unlikely to have occurred even during 1999, when relative fishing mortality was the highest in recent years.

Therefore, NMFS proposes that the annual specifications for *Illex* squid should remain unchanged for 2005, agreeing with the Council that there is no basis for concluding that the specifications are likely to result in overfishing. As the Council noted, the management program for *Illex* requires the directed fishery to be closed when 95 percent of the quota (22,800 mt) is harvested. While incidental landings are allowed following this closure, the amount of *Illex* caught incidentally by vessels targeting other species is limited due to the specialized nature of the *Illex* fishery. *Illex* is harvested offshore near the edge of the continental shelf during the summer. The species spoils quickly, so freezing or refrigerated seawater equipment must be utilized to prevent spoilage. Similar to *Loligo* squid, when a trip limit is in effect, vessels are prohibited from possessing or landing more than the specified amount in a single calendar day, which is 10,000 lb (4,536 kg). Few vessels are expected to invest in the necessary equipment to pursue *Iliex* under the incidental catch allowance. Furthermore, if evidence were to become available that overfishing was occurring, based on stock assessment data gathered in 2005, the current FMP allows for in-season adjustments to the IOY.

The FMP does not authorize the specification of JVP and TALFF for the *Illex* squid fishery because of the domestic fishing industry's capacity to harvest and to process the OY from this fishery.

Butterfish

The proposed specifications would reduce the IOY from 5,900 mt to 1,681 mt to achieve the target fishing mortality rate (75 percent of F_{msy}) specified in the FMP based on the most recent stock assessment for the species (Stock Assessment Review Committe (SARC) 38). Based on that assessment and assuming that biomass in 2005 will be nominally the same as 2000–2002, then the catch associated with the target F would be 2,242 mt, and this forms the basis for the specification of butterfish ABC. Assuming that the discard-to-landing ratio remains constant, then IOY, DAH, and DAP = 1,681 mt (i.e., the allowable landings equals ABC less estimated discards, which are roughly twice landings). NMFS supports this recommended level of landings because it should achieve the target fishing mortality rate and allow for stock rebuilding.

The Council has recommended, and NMFS supports, implementing a 3.0–inch (7.62–cm) minimum codend mesh size requirement for butterfish otter trawl trips greater than 5,000 lb (2,268 kg), the level that the Council concluded would qualify as a directed butterfish trip. The purpose of this minimum mesh size requirement is to allow for escapement of unmarketable sized butterfish and fish below the size at which 50 percent of the butterfish are sexually mature. Based on inspection of the size composition of discarded butterfish from unpublished sea sampling data, the minimum marketable size for butterfish is approximately 5.5 inches (14.0 cm). Based on a scientifially supported selection factor of 1.8, the mesh size corresponding to an L50 of 14 cm is 7.78 cm, or about 3.0 inches. The minimum mesh requirement of 3.0 inches (7.62 cm) in the directed butterfish fishery should have a number of positive biological impacts. First, discards in the directed fishery should be reduced, which, in combination with the reduced quota, should result in reduced fishing mortality on the butterfish stock (especially on small, sexually immature butterfish). This should result in an increase in spawning stock biomass, which will increase the chance of successful recruitment and aid in stock rebuilding. In addition, by delaying age at entry to the fishery, an increase in yield per recruit should be realized. Finally, an increase in mesh size in the butterfish fishery should also result in a decrease in bycatch of non-target species in the directed butterfish fishery.

Classification

This action is authorized by 50 CFR part 648 and has been determined to be not significant for purposes of Executive Order 12866. The Council prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act, which describes the economic impacts this proposed rule, if adopted, would have on small entities. A copy of the IRFA can be obtained from the Council or NMFS (see **ADDRESSES**) or via the Internet at *http:/www.nero.noaa.gov*. A summary of the analysis follows:

Statement of Objective and Need

A description of the reasons why this action is being considered, and the objectives of and legal basis for this action, is contained in the preamble to this proposed rule and is not repeated here.

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

The number of potential fishing vessels in the 2005 fisheries are 381 for *Loligo* squid/butterfish, 72 for *Illex* squid, 2,407 for Atlantic mackerel, and 2,119 vessels with incidental catch permits for squid/butterfish, based on vessel permit issuance. There are no large entities participating in this fishery, as defined in section 601 of the RFA. Therefore, there are no disproportionate economic impacts. Many vessels participate in more than one of these fisheries; therefore, the numbers are not additive.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action does not contain any new collection-of-information, reporting, recordkeeping, or other compliance requirements. It does not duplicate, overlap, or conflict with any other Federal rules.

Minimizing Significant Economic Impacts on Small Entities

The IOY specification under the proposed action for Atlantic mackerel (115,000 mt, with 15,000 mt allocated to recreational catch) represents no constraint on vessels in this fishery. This level of landings has not been achieved by vessels in this fishery in recent years. Mackerel landings for 2001–2003 averaged 24,294 mt; in 2003 they were 30,738 mt; and for 2004 they were 53,352 mt (based on preliminary data). Therefore, no reductions in revenues for the mackerel fishery is expected as a result of the proposed action. However, there is likely to be an increase in revenues as a result of the proposed action. Based on preliminary 2004 data, the mackerel fishery could increase its landings by 46,648 mt in 2005, if it takes the entire IOY. In 2003, the last year with complete financial data, the average value for mackerel was $234 per mt. Using this value, the mackerel fishery could see an increase in revenues of $10,915,632 as a result of the proposed action.

The IOY specification under the proposed action for *Illex* (24,000 mt) represents a slight constraint on revenues in this fishery. *Illex* landings for 2001–2003 averaged 4,350 mt; in

2003 they were 6,389 mt; and for 2004 they were 25,968 mt (based on preliminary data). Therefore, the proposed action represents a reduction in landings, from 2004, of 1,968 mt. In 2003, the last year with complete financial data, the average value for Illex was $626 per mt. Using this value, the *Illex* fishery could see an decrease in revenues of $1,231,968 as a result of the proposed action. But, it is important to note that the preliminary *Illex* landings for 2004 are 8 per cent more than the quota for that year allowed. Had the fishery landed the quota, only, then the proposed action would represent no restraint on the fishery in 2005.

Under the proposed specifications for butterfish (IOY=1,681 mt), landings could be constrained relative to the 2001–2003 fisheries. During the period 2001–2003, butterfish landings averaged 1,906 mt. Compared to this average, the proposed action would reduce landings by about 12 percent. However, compared to the most recent 2 years for which complete information is available, 2002 and 2003, when landings were 873 mt and 473 mt, respectively, the proposed action would not be expected to reduce revenues in this fishery, but would rather increase those revenues. Based on 2003 data, the value of butterfish was $1,269 per mt.

The proposed action would also implement a 3.0–inch (7.62–cm) minimum codend mesh size requirement for otter trawl trips landing greater than 5,000 lb (2,278 kg) of butterfish. During the period 2001–2003, there were 16,854 trips that landed butterfish based on unpublished NMFS Vessel Trip Report (VTR) data. More than half (57 percent) of the landings of butterfish during 2001–2003 were taken with mesh sizes less than 3.0 inches (7.62 cm). Within this mesh size range, most was taken with mesh sizes between 2.5 inches (6.35 cm) and 3.0 inches (7.62 cm). The trips using this mesh size range (i.e., less than 3.0 inches) could potentially be affected by the proposed mesh size. However, the proposed 3.0–inch (7.62–cm) mesh requirement would only apply to otter trawl trips landing 5,000 lb (2,278 kg) or more of butterfish. In terms of numerical frequency of trips, the vast majority of trips during 2001–2003 landed less than 5,000 lb (2,278 kg) of butterfish, based on unpublished NMFS VTR data. While 57 percent of the landings by weight were taken on trips of greater than or equal to 5,000 pounds during the period, less than 1 percent of the trips landing butterfish were greater than or equal 5,000 lb (2,278 kg). There were only 26 vessels that had trips that included landings of butterfish of 5,000 lb (2,278 kg) or more, and also reported using mesh sizes less than 3.0 inches (7.62 cm) on those trips. Therefore, it is expected that the economic impact of this proposed measure should be negligible because the vast majority of trips and vessels would not be affected because they land less than 5,000 lb (2,278 kg) per trip. The costs for those vessels that do land butterfish on trips larger than 5,000 lb (2,278 kg) should also be negligible because virtually all of those vessels already possess codends 3.0 inches (7.62 cm) mesh or greater (because they are fishing for butterfish or in another fishery that uses nets of that size, e.g., whiting), so they should not incur any additional costs due to the proposed minimum mesh size requirement.

The Council analysis evaluated three alternatives for mackerel. One would have set IOY at 175,000 mt. The two other alternatives would have set IOY at 165,000 mt. Neither of these IOYs represents a constraint on vessels in these fisheries. Absent such a constraint, no impacts on revenues in this fishery would be expected as a result of any of these alternatives. Two of these alternatives one setting IOY at 165,000 mt and the other setting it at 175,000 mt would have set the ABC at 347,000 mt. These two alternatives were rejected on biological grounds because that level of ABC is not consistent with the overfishing rule adopted in Amendment 8 to the FMP (F=0.25 yield estimate of 369,000 mt minus the estimated Canadian catch of 34,000 mt). Furthermore, the Atlantic mackerel alternative that would set IOY at 175,000 mt was rejected because it was set too high in light of social and economic concerns relating to TALFF. The specification of TALFF would have limited the opportunities for the domestic fishery to expand, and therefore would have resulted in negative social and economic impacts to both U.S. harvesters and processors (for a full discussion of the TALFF issue, please see the earlier section on Atlantic mackerel). The Atlantic mackerel alternative that would set IOY at 175,000 mt would also would allocate 5,000 mt for JVP. This allocation of JVP was rejected because it was concluded that U.S. processing capacity is sufficient to process the entire DAH. JVP need only be allocated when DAH exceeds DAP, and that is not the case here. The third alternative for mackerel considered was one that would have set IOY at 165,000 mt, and ABC at 335,000 mt. Although this ABC is the same as in the proposed action, this IOY was rejected because it was set too high in light of social and economic concerns relating to TALFF. The specification of TALFF would have limited the opportunities for the domestic fishery to expand, and therefore would have resulted in negative social and economic impacts to both U.S. harvesters and processors (for a full discussion of the TALFF issue, please see the earlier section on Atlantic mackerel).

For *Illex*, one alternative considered would have set Max OY, ABC, IOY, DAH, and DAP at 30,000 mt. This alternative would allow harvest far in excess of recent landings in this fishery. Therefore, there would be no constraints and, thus, no revenue reductions, associated with these specifications. However, the Council considered this alternative unacceptable because an ABC specification of 30,000 mt may not prevent overfishing in years of moderate to low abundance of Illex squid.

For butterfish, one alternative considered would have set IOY at 5,900 mt, while another would have set it at 9,131 mt. These amounts exceed the landings of this species in recent years. Therefore, neither alternative represents a constraint on vessels in this fishery. In the absence of such a constraint, neither of these alternatives would reduce revenues in the fishery. However, both of these alternatives were rejected because they would likely result in overfishing and the additional depletion of the spawning stock biomass.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: January 4, 2005.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out above 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.4, the introductory text of paragraph (a)(5)(i) is revised to read as follows:

§ 684.4 Vessel permits.

(a)* * *

(5)* * *

(i) *Loligo squid/butterfish and Illex squid moratorium permits (Illex squid*

moratorium is in effect until July 1, 2009.

* * * * *

3. In § 648.14, paragraphs (a)(74) and (p)(5) are revised and new paragraph (p)(11) is added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(74) Possess nets or netting with mesh not meeting the minimum size requirements of § 648.23, and not stowed in accordance with the requirements of § 648.23, if in possession of *Loligo* or butterfish harvested in or from the EEZ.

* * * * *

(p) * * *

(5) Fish with or possess nets or netting that do not meet the minimum mesh requirements for *Loligo* or butterfish specified in § 648.23(a), or that are modified, obstructed, or constricted, if subject to the minimum mesh requirements, unless the nets or netting are stowed in accordance with § 648.23(b) or the vessel is fishing under an exemption specified in § 648.23(a).

* * * * *

(11) Possess 5,000 lb (2.27 mt) or more of butterfish unless the vessel meets the minimum mesh size requirement specified in § 648.23(a)(2).

* * * * *

4. In § 648.21, paragraph (d) is revised to read as follows:

§ 648.21 Procedures for determining initial annual amounts.

* * * * *

(d) Annual fishing measures. (1) The Squid, Mackerel, and Butterfish Committee will review the recommendations of the Monitoring Committee. Based on these recommendations and any public comment received thereon, the Squid, Mackerel, and Butterfish Committee must recommend to the MAFMC appropriate specifications and any measures necessary to assure that the specifications will not be exceeded. The MAFMC will review these recommendations and, based on the recommendations and any public comment received thereon, must recommend to the Regional Administrator appropriate specifications and any measures necessary to assure that the specifications will not be exceeded. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. The Regional Administrator will review the recommendations and will publish notification in the **Federal Register** proposing specifications and any measures necessary to assure that the specifications will not be exceeded and providing a 30–day public comment period. If the proposed specifications differ from those recommended by the MAFMC, the reasons for any differences must be clearly stated and the revised specifications must satisfy the criteria set forth in this section. The MAFMC's recommendations will be available for inspection at the office of the Regional Administrator during the public comment period. If the annual specifications for squid, mackerel, and butterfish are not published in the **Federal Register** prior to the start of the fishing year, the previous year's annual specifications, excluding specifications of TALFF, will remain in effect. The previous year's specifications will be superceded as of the effective date of the final rule implementing the current year's annual specifications.

(2) The Assistant Administrator will make a final determination concerning the specifications for each species and any measures necessary to assure that the specifications contained in the **Federal Register** notification will not be exceeded. After the Assistant Administrator considers all relevant data and any public comments, notification of the final specifications and any measures necessary to assure that the specifications will not be exceeded and responses to the public comments will be published in the **Federal Register**. If the final specification amounts differ from those recommended by the MAFMC, the reason(s) for the difference(s) must be clearly stated and the revised specifications must be consistent with the criteria set forth in paragraph (b) of this section.

* * * * *

5. In § 648.23, paragraph (a) is revised to read as follows:

§ 648.23 Gear restrictions.

(a) *Mesh restrictions and exemptions.* (1) Vessels subject to the mesh restrictions outlined in this paragraph (a) may not have available for immediate use any net, or any piece of net, with a mesh size smaller than that required.

(2) Owners or operators of otter trawl vessels possessing 5,000 lb (2.27 mt) or more of butterfish harvested in or from the EEZ may only fish with nets having a minimum codend mesh of 3 inches (76 mm) diamond mesh, inside stretch measure, applied throughout the codend for at least 100 continuous meshes forward of the terminus of the net, or for codends with less than 100 meshes, the minimum mesh size codend shall be a minimum of one-third of the net measured from the terminus of the codend to the head rope.

(3) Owners or operators of otter trawl vessels possessing *Loligo* harvested in or from the EEZ may only fish with nets having a minimum mesh size of 1 7/8 inches (48 mm) diamond mesh, inside stretch measure, applied throughout the codend for at least 150 continuous meshes forward of the terminus of the net, or for codends with less than 150 meshes, the minimum mesh size codend shall be a minimum of one-third of the net measured from the terminus of the codend to the head rope, unless they are fishing during the months of June, July, August, and September for *Illex* seaward of the following coordinates (copies of a map depicting this area are available from the Regional Administrator upon request):

Point	N. Lat.	W. Long.
M1	43°58.0′	67°22.0′
M2	43°50.0′	68°35.0′
M3	43°30.0′	69°40.0′
M4	43°20.0′	70°00.0′
M5	42°45.0′	70°10.0′
M6	42°13.0′	69°55.0′
M7	41°00.0′	69°00.0′
M8	41°45.0′	68°15.0′
M9	42°10.0′	67°10.0′
M10	41°18.6′	66°24.8′
M11	40°55.5′	66°38.0′
M12	40°45.5′	68°00.0′
M13	40°37.0′	68°00.0′
M14	40°30.0′	69°00.0′
M15	40°22.7′	69°00.0′
M16	40°18.7′	69°40.0′
M17	40°21.0′	71°03.0′
M18	39°41.0′	72°32.0′
M19	38°47.0′	73°11.0′
M20	38°04.0′	74°06.0′
M21	37°08.0′	74°46.0′
M22	36°00.0′	74°52.0′
M23	35°45.0′	74°53.0′
M24	35°28.0′	74°52.0′

(4) Vessels fishing under this exemption may not have available for immediate use, as defined in paragraph (b) of this section, any net, or any piece of net, with a mesh size less than 1 7/8 inches (48 mm) diamond mesh or any net, or any piece of net, with mesh that is rigged in a manner that is prohibited by paragraph (c) and (d) of this section, when the vessel is landward of the specified coordinates.

* * * * *

[FR Doc. 05–437 Filed 1–7–05; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 70, No. 6
Monday, January 10, 2005

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

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request–Child Nutrition Labeling Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Food and Nutrition Service to request Office of Management and Budget review of information collection activities related to the Child Nutrition Labeling Program.

DATES: Comments on this notice must be received by March 11, 2005, to be assured of consideration.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. All responses to this notice will be summarized and included in the request for Office of Management and Budget approval and will become a matter of public record. Comments may be sent to: William Wagoner, Team Leader, Technical Assistance Section, Nutrition Promotion and Training Branch, Child Nutrition Division, room 632, Food and Nutrition Service, United States Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instruments and instruction should be directed to William Wagoner at (703) 305–2609.

SUPPLEMENTARY INFORMATION:

Title: Child Nutrition Labeling Program.

OMB Number: 0584–0320.

Expiration Date: 05/31/05.

Type of Request: Revision of currently approved collection.

Abstract: The Child Nutrition (CN) Labeling Program is a voluntary technical assistance program to aid schools and institutions participating in the National School Lunch Program (NSLP), School Breakfast Program (SBP), Child and Adult Care Food Program (CACFP), and Summer Food Service Program (SFSP) in determining the contribution a commercial product makes toward the food-based meal pattern requirements of these programs. (*See* Appendix C to 7 CFR Parts 210, 220, 225 and 226 for more information on this program). There is no Federal requirement that commercial products must have a CN label statement.

To participate in the Child Nutrition Labeling Program, industry submits product labels and formulations to the Food and Nutrition Service (FNS) that are in conformance with the Food Safety and Inspection Service (FSIS) label approval program for meat and poultry, or United States Department of Commerce (USDC) label approval program for seafood products. FNS reviews a manufacturer's product formulation to determine the contribution a serving of the product makes toward the food-based meal pattern requirements. The application form submitted to FNS is the same application that companies submit to FSIS or USDC to receive label approval. A CN label application is also reviewed by FNS for accuracy.

Estimate of Burden: Based on our most recent interviews with manufacturers it is estimated that it takes a manufacturer forty-five minutes to complete the required calculations and to formulate the CN label application.

Respondents: Participation in the CN labeling Program is voluntary. Only manufacturers who wish to place CN labels on their products must comply with program requirements. Last year 368 establishments sent in 2,648 CN label applications.

Estimated Number of Respondents: 368.

Estimated Number of Responses Per Respondent: 7.2.

Estimated Total Annual Responses: 2,649.

Estimated Time Per Response: 0.75 Hours.

Estimated Total Annual Burden: 1,987 Hours.

Dated: December 30, 2004.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 05–440 Filed 1–7–05; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Madera County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Resource Advisory Committee meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act of 1972 (Pub. L. 92–463) and under the secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Sierra National Forest's Resource Advisory Committee for Madera County will meet on Monday, January 10, 2005. The Madera Resource Advisory Committee will meet at the Bass Lake Ranger District Office, North Fork, CA 93643. The purpose of the meeting is: Review the goals for FY 2005 RAC proposals and presentation of potential stewardship projects on the Sierra National Forest.

DATES: The Madera Resource Advisory Committee meeting will be held Monday, January 10, 2005. The meeting will be held from 7 p.m. to 9 p.m.

ADDRESSES: The Madera County RAC meeting will be held at the Bass Lake Ranger District Office, 57003 Road 225, North Fork, CA 93643.

FOR FURTHER INFORMATION CONTACT: Dave Martin, U.S.D.A., Sierra National Forest, Bass Lake Ranger District, 57003

Road 225, North Fork, CA, 93643; (559) 877–2218 ext. 3100; e-mail: *dmartin05@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Review of goals for FY 2005 RAC proposals; (2) Presentation of potential stewardship projects on the forest.

Dated: January 4, 2005.

Curtis E. Palmer,

Acting District Ranger, Bass Lake Ranger District.

[FR Doc. 05–405 Filed 1–7–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On December 30, 2004, CEMEX, S.A. de C.V. ("CEMEX") filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the 13th administrative review made by the International Trade Administration, respecting Gray Portland Cement and Clinker from Mexico. A second request for panel review was filed on January 3, 2005 on behalf of GCC Cementos, S.A. de C.V. ("GCCC"). This determination was published in the **Federal Register** (69 FR 77989) on December 29, 2004. The NAFTA Secretariat has assigned Case Number USA–MEX–2004–1904–03 to this request.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on December 30, 2004, requesting panel review of the determination described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is January 31, 2005);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is February 14, 2005); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: January 3, 2005.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. E5–37 Filed 1–7–05; 8:45 am]

BILLING CODE 3510–GT–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Commercial Availability Request under the African Growth and Opportunity Act (AGOA), the United States-Caribbean Basin Trade Partnership Act (CBTPA), and the Andean Trade Promotion and Drug Eradication Act (ATPDEA)

January 6, 2005.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA)

ACTION: Request for public comments concerning a request for a determination that anti-microbial elastomeric filament yarn, incorporated in knit fabric, used in apparel articles, cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA, the CBTPA, and the ATPDEA.

SUMMARY: On January 3, 2005, the Chairman of CITA received a petition from Alston & Bird, LLP, on behalf of their client, Ge-Ray Fabrics, Inc., that a certain anti-microbial elastomeric filament yarn, of the specifications below, classified in under subheadings 5402.49.9005 and 5404.10.8005 of the Harmonized Tariff Schedule of the United States (HTSUS) cannot be supplied by the domestic industry in commercial quantities in a timely manner. The petition requests that apparel articles from such yarns or from U.S. formed fabrics containing such yarns be eligible for preferential treatment under the AGOA, the CBTPA, and the ATPDEA. CITA hereby solicits public comments on this request, in particular with regard to whether such yarns can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by January 25,2005 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, 14th and Constitution Avenue, N.W. Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Shikha Bhatnagar, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 112(b)(5)(B) of the AGOA; Section 213(b)(2)(A)(v)(II) of the Caribbean Basin Economic Recovery Act, as added by Section 211(a) of the CBTPA; Sections 1 and 6 of Executive Order No. 13191 of January 17, 2001; Presidential Proclamations 7350 and 7351 of October 4, 2000; Section 204 (b)(3)(B)(ii) of the

ATPDEA, Presidential Proclamation 7616 of October 31, 2002, Executive Order 13277 of November 19, 2002, and the United States Trade Representative's Notice of Further Assignment of Functions of November 25, 2002.

Background

The AGOA, the CBTPA, and the ATPDEA provide for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns and fabrics formed in the United States or a beneficiary country. The AGOA, the CBTPA, and the ATPDEA also provide 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 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 (66 FR 7271) and pursuant to Executive Order No. 13277 (67 FR 70305) and the United States Trade Representative's Notice of Redelegation of Authority and Further Assignment of Functions (67 FR 71606), CITA has been delegated the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA, the CBTPA, or the ATPDEA. On March 6, 2001, CITA published procedures that it will follow in considering requests (66 FR 13502).

On January 3, 2005, the Chairman of CITA received a petition from Alston & Bird, LLP, on behalf of their client, Ge-Ray Fabrics, Inc., that a certain anti-microbial elastomeric filament yarn, of the specifications below, classified in under HTSUS subheadings 5402.49.9005 and 5404.10.8005 cannot be supplied by the domestic industry in commercial quantities in a timely manner. It request quota and duty-free treatment under the AGOA, the CBTPA, and the ATPDEA for apparel articles that are both cut (or knit-to-shape) and sewn in one or more AGOA CBTPA, or ATPDEA beneficiary countries from such yarns or U.S.-formed fabrics containing such yarns.

The anti-microbial elastomeric yarn that is the subject of this request is of filament fiber, ranging from 20 to 70 denier (22.2 to 77.8 decitex). This elastomeric yarn looks like and can be processed like ordinary elastomeric yarn, but it includes an anti-microbial agent that gives the yarn a unique and desirable functionality. The anti-microbial agent is a compound that represents 0.2 to 5 percent by weight of the elastomeric yarn.

CITA is soliciting public comments regarding this request, particularly with respect to whether these yarns can be supplied by the domestic industry in commercial quantities in a timely manner. Also relevant is whether other yarns that are supplied by the domestic industry in commercial quantities in a timely manner are substitutable for this yarn for purposes of the intended use. Comments must be received no later than January 25, 2005. 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 yarn 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 yarn stating that it produces the yarn that is the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked business confidential from disclosure to the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 05–521 Filed 1–6–05; 2:31 pm]

BILLING CODE 3510–DS–S

DEPARTMENT OF DEFENSE

Department of the Army

Advisory Committee Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following meeting:

Name of Committee: Distance Learning/Training Technology Subcommittee of the Army Education Advisory Committee.

Dates of Meeting: February 2–3, 2005.

Place of Meeting: U.S. Army Signal Center & Ft Gordon, Signal Towers, Building 29808, Regimental Conference Room (10th Floor), Chamberlain Avenue, Ft Gordon, GA 30905.

Time of Meeting: 8:30 a.m. to 4 p.m. (Feb 2, 2005), 8:30 a.m. to 11:30 p.m. (Feb 3, 2005).

Proposed Agenda: Initial starting point of meeting will include updates on The Army Distance Learning Program (TADLP) and infrastructure, followed by discussions that focus on learning and technology.

Purpose of the Meeting: To provide for the continuous exchange of information and ideas for distance learning between the U.S. Army Training and Doctrine Command (TRADOC), HQ Department of the Army, and the academic and business communities.

FOR FURTHER INFORMATION CONTACT: All communications regarding this subcommittee should be addressed to Mr. Mike Faughnan, at Commander, Headquarters TRADOC, ATTN: ATTG–CF, Fort Monroe, VA 23651–5000; e-mail: *faughnanm@monroe.army.mil.*

SUPPLEMENTARY INFORMATION: Meeting of the Advisory Committee is open to the public. Because of restricted meeting space, attendance will be limited to those persons who have notified the Advisory Committee Management Office in writing (see address above) at least five days prior to the meeting of their intention to attend. Contact Mr. Faughnan for meeting agenda and specific locations.

Any member of the public may file a written statement with the committee before, during, or after the meeting. To the extent that time permits, the committee chairman may allow public presentations or oral statements at the meeting.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 05–434 Filed 1–7–04; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 11, 2005.

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, Information Management Case Services Team, Regulatory Information Management Services, 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.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 5, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Vocational and Adult Education

Type of Review: Revision.

Title: Adult Education and Family Literacy Act State Plan (PL 105–220).

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 59.

Burden Hours: 2,655.

Abstract: It is unlikely that Congress will pass a reauthorization of the Workforce Investment Act (WIA) this year. Therefore, the enclosed Policy Memorandum is designed to advise states about how to continue their adult education program under Section 422 of the General Education Provisions Act (GEPA) [20 U.S.C. 1226 (a)].

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 2661. 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. 05–435 Filed 1–7–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EMSSAB), Northern New Mexico. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, January 19, 2005, 1 p.m.–8:30 p.m.

ADDRESSES: Cities of Gold Hotel, 10–A Cities of Gold Road, Pojoaque, NM.

FOR FURTHER INFORMATION CONTACT: Menice Manzanares, Northern New Mexico Citizens' Advisory Board, 1660 Old Pecos Trail, Suite B, Santa Fe, NM 87505. Phone (505) 995–0393; Fax (505) 989–1752 or e-mail: *mmanzanares@doeal.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Wednesday, January 19, 2005

1 p.m. Call to Order by Ted Taylor, Deputy Designated Federal Officer (DDFO)
Establishment of a Quorum
Welcome and Introductions by Chairman, Tim DeLong
Approval of Agenda
Approval of Minutes of November 17, 2004 Meeting
1:15 p.m. Board Business
A. Report from Chairman, Tim DeLong
B. Report from Department of Energy, Ted Taylor, DDFO
C. Report from Executive Director, Menice S. Manzanares
D. New Business
2 p.m. Break
2:15 p.m. Reports
A. Executive Committee, Tim DeLong
B. Waste Management Committee, Jim Brannon
C. Environmental Monitoring, Surveillance and Remediation Committee, Chris Timm
D. Community Involvement Committee, Grace Perez
E. Comments from Ex-Officio Members
5 p.m. Dinner Break
6 p.m. Public Comment
6:15 p.m. Consideration and Action on Board Recommendations or Resolutions
6:30 p.m. Presentation on Environmental Management Issues
8 p.m. Comments from Board Members and Recap of Meeting
8:30 p.m. Adjourn

This agenda is subject to change at least one day in advance of the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Manzanares at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals

wishing to make public comments will be provided a maximum of five minutes to present their comments. This notice is being published less than 15 days before the date of the meeting due to programmatic issues.

Minutes: Minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 1660 Old Pecos Trail, Suite B, Santa Fe, NM. Hours of operation for the Public Reading Room are 9 a.m.–4 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Menice Manzanares at the Board's office address or telephone number listed above. Minutes and other Board documents are on the Internet at: *http://www.nnmcab.org.*

Issued at Washington, DC, on January 4, 2005.

Carol Anne Matthews,

Acting Advisory Committee Management Officer.

[FR Doc. 05–432 Filed 1–7–05; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL05–35–000]

Pacific Gas and Electric Company; Notice of Initiation of Proceeding and Refund Effective Date

December 14, 2004.

On December 13, 2004, the Commission issued an order in Docket Nos. ER05–82–000, EL05–35–000, ER03–409–000 and ER03–666–000. The Commission's order institutes a proceeding in Docket No. EL05–35–000 under section 206 of the Federal Power Act with respect to the methodology used to allocate reliability services costs to standby service. 109 FERC ¶61,266 (2004).

The refund effective date in Docket No. EL05–35–000, established pursuant to section 206(b) of the Federal Power Act will be 60 days following publication of this notice in the **Federal Register.**

Magalie R. Salas,

Secretary.

[FR Doc. E5–35 Filed 1–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL05–29–000 and ER04–1209–001]

Southern California Edison Company; Notice of Initiation of Proceeding and Refund Effective Date

December 13, 2004.

On December 10, 2004, the Commission issued an order in the above-referenced dockets initiating a proceeding in Docket No. EL05–29–000 under section 206 of the Federal Power Act concerning issues related to allocation of costs. 109 FERC ¶ 61,263.

The refund effective date in Docket No. EL05–29–000, established pursuant to section 206(b) of the Federal Power Act will be 60 days following publication of this notice is the **Federal Register**.

Magalie R. Salas,

Secretary.

[FR Doc. E5–36 Filed 1–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–48–000]

Neptune Regional Transmission System, LLC, Complainant; v. PJM Interconnection, L.L.C., Respondent; Notice of Complaint and Request for Fast Track Processing

December 23, 2004.

Take notice that on December 21, 2004, Neptune Regional Transmission System, LLC (Neptune) filed a formal complaint against PJM Interconnection, L.L.C. (PJM) pursuant to section 206 of the Federal Power Act, 16 U.S.C. 824e (2000), and Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206 (2004), alleging that PJM has improperly re-studied the Neptune Project to include subsequently announced generator retirements. Neptune has requested Fast Track Processing of the complaint under 18 CFR 385.206(h) (2004).

Neptune certifies that copies of the complaint were served on the contacts for PJM, FirstEnergy, PSEG, and LIPA as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: January 6, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–34 Filed 1–7–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2003–0081; FRL–7859–7]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Survey Questionnaire To Determine the Effectiveness, Costs, and Impacts of Sewage and Graywater Treatment Devices for Large Cruise Ships Operating in Alaska, EPA ICR Number 2133.01, OMB Control Number 2040–NEW

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 an Information Collection Request

(ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request for a new collection. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before February 9, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OW–2003–0081, to (1) EPA online using EDOCKET (our preferred method), by email to *ow-docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket, EPA West, 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Elizabeth Kim, Oceans and Coastal Protection Division, Office of Water, Mail Code 4504T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: (202) 566–1270; fax number: (202) 566–1546; email address: *kim.elizabeth@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On February 3, 2004 (69 *FR* 5145), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA has addressed the comments received in the supporting statement of this ICR. Please note that the first **Federal Register** notice submitted included an incorrect ICR number (OW–2003–0014). The correct EPA ICR Number is 2133.01.

EPA has established a public docket for this ICR under Docket ID No. OW–2003–0081, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to 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.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public 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. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

Title: Survey Questionnaire to Determine the Effectiveness, Costs, and Impacts of Sewage and Graywater Treatment Devices for Large Cruise Ships Operating in Alaska.

Abstract: On December 12, 2000, Congress passed HR 4577 (Public Law 106–554), "Department of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act." This act included a section entitled "Title XIV: Certain Alaskan Cruise Ship Operations" (33 U.S.C. 1901 Note). Title XIV set requirements for the discharge of sewage and graywater from cruise ships authorized to carry for hire 500 or more passengers while operating in the waters of the Alexander Archipelago and the navigable waters of the United States within the State of Alaska and within the Kachemak Bay National Estuarine Research Reserve (hereafter referred to as waters in and near Alaska). Title XIV also authorized that:

> the Administrator [of EPA] may promulgate effluent standards for treated sewage (human body waste and the wastes from toilets and other receptacles intended to receive or retain human body waste) and graywater (galley, dishwasher, bath, and laundry waste water) from cruise vessels operating in the waters of the Alexander Archipelago or the navigable waters of the United States within the State of Alaska or within the Kachemak Bay National Estuarine Research Reserve. Regulations implementing such standards shall take into account the best available scientific information on the environmental effects of the regulated discharges and the availability of new technologies for wastewater treatment.

EPA has begun an effort to develop and promulgate regulations, as necessary and appropriate, for controlling the discharge of sewage and graywater from cruise ships covered by Title XIV. Title XIV provides that the authority of sections 308(a) and 308(b) of the Clean Water Act, regarding records, reports, and inspections, shall be available to carry out the provisions of the Act (section 1413). EPA has prepared an ICR for OMB approval for gathering data in support of this rulemaking. The ICR requests approval to collect information from cruise lines and cruise ships covered by Title XIV.

The information to be gathered with a survey questionnaire would include: general information regarding the cruise line and each of the cruise vessels authorized to carry for hire 500 or more passengers in waters in and near Alaska (*e.g.*, size, capacity, ports of call); description of sources of graywater; ship-board plumbing systems; data describing the effectiveness of sewage and graywater treatment systems and marine sanitation devices (MSDs) operating on these large vessels at removing pollutants of concern; costs of these systems; pollution prevention programs and management practices; information pertinent to environmental assessment; and financial information and data necessary for economic impact analysis. When possible, EPA will use available information to complete answers to some questions. In these cases, the respondent will be asked to verify the information and update it if necessary. The survey questionnaire will provide instructions on the procedures for making CBI claims, if necessary, and the respondents will be informed of the rules governing protection of CBI, for information that warrants such claims.

EPA also intends to continue to supplement this information collection by gathering additional publicly available information and data from the Alaska Department of Environmental Conservation (ADEC) and the U.S. Coast Guard (USCG), the cruise ship industry, and other stakeholders.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: EPA estimates that 12 cruise line operators would respond to the survey for a total of 30 vessels operating in Alaska. The annual public reporting and recordkeeping burden for this collection of information is estimated to average across all vessels 42.3 hours per response. That is, 54 hours per response to complete and review responses to the survey questionnaire and associated data submissions for each of the 16 cruise ships that are certified by the U.S. Coast Guard to discharge continuously in the waters in and near Alaska under 33 CFR 159.309. This estimate includes the burden for verifying and updating "draft" responses provided by EPA to a portion of the questions. For the remaining 14 ships that do *not* have wastewater treatment systems authorized to discharge continuously, EPA estimates it would take an average of approximately 29 hours per response to complete and review responses to the survey questionnaire.

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.

Respondents/Affected Entities: Operators of cruise lines and individual cruise ships authorized to carry for hire 500 or more passengers, operating in waters in and near Alaska.

Estimated Number of Respondents: 12 cruise line operators.

Frequency of Response: One time response.

Estimated Total Annual Hour Burden: 1,270 hours for all ships.

Estimated Total Annual Cost: $50,981, includes $0 annualized capital expenditure, $890 Respondent O&M costs, and $50,091 Respondent Labor costs.

Dated: December 20, 2004.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–419 Filed 1–7–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OEI–2004–0004, FRL–7859–6]

Agency Information Collection Activities: Submission to OMB for Review and Approval; Comment Request; Compliance Assurance Monitoring Program (Renewal), EPA ICR Number 1663.04, OMB Control Number 2060–0376

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 a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing collection. This ICR is scheduled to expire on February 28, 2005. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before February 9, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OEI–2004–0004, to EPA online using EDOCKET (our preferred method), by email: *oei.Docket@epa.gov,* or by mail to: Environmental Protection Agency, EPA Docket Center (EPA/DC), Office of Environmental Information Docket, MC 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Peter R. Westlin, Environmental Protection Agency, Office of Air Quality Planning and Standards, Mail Code C339–02, Research Triangle park, North Carolina 27711; telephone number: (919) 541–1058; fax number: (919) 541–1039; email address: *westlin.peter@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On October 5, 2004, (69 FR 59589), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA has received no comments.

EPA has established a public docket for this ICR under Docket ID number OEI–2004–0004, which is available for public viewing at the Office of Environmental Information 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 Office of Environmental Information Docket is (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* 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.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public 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. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: Compliance Assurance Monitoring Program (40 CFR part 64) (Renewal).

Abstract: The Clean Air Act contains several provisions directing us to require source owners to conduct monitoring to support certification as to their status of compliance with applicable requirements. These provisions are set forth in title V (operating permits provisions) and title VII (enforcement provisions) of the Act. Title V directs us to implement monitoring and certification requirements through the operating permits program. Section 504(b) of the

Act allows us to prescribe by rule, methods and procedures for determining compliance recognizing that continuous emissions monitoring systems need not be required if other procedures or methods provide sufficiently reliable and timely information for determining compliance. Under section 504(c), each operating permit must "set forth inspection, entry, monitoring, compliance, certification, and reporting requirements to assure compliance with the permit terms and conditions." Section 114(a)(3) requires us to promulgate rules for enhanced monitoring and compliance certifications. Section 114(a)(1) of the Act provides additional authority concerning monitoring, reporting, and recordkeeping requirements. This section provides the Administrator with the authority to require any owner or operator of a source to install and operate monitoring systems and to record the resulting monitoring data. We promulgated the Compliance Assurance Monitoring rule, part 64, on October 22, 1997 (62 FR 54900) to implement these authorities.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 28 hours per response. 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.

Respondents/Affected Entities: Owners/operators and permitting authorities of sources with a pre-control potential to emit major amounts of regulated air pollutants.

Estimated Number of Respondents: 2,308.

Frequency of Response: semiannually.

Estimated Total Annual Hour Burden: 63,688.

Estimated Total Annual Cost: $4,491,927, which includes $1,260,058 annualized capital/start-up costs, $180,000 annual O&M costs, and $3,051,869 annual labor costs.

Changes in the Estimates: There is a decrease of 109,010 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is a result of an adjustment to the number of facilities and emissions units affected by part 64 and a refocusing of the resource burden from regulatory applicability analysis to monitoring design and implementation.

Dated: December 20, 2004.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–420 Filed 1–7–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2004–0062, FRL–7859–3]

Agency Information Collection Activities: Proposed Collection; Comment Request; Information Requirements for Locomotives and Locomotive Engines; EPA ICR Number 1800.03, OMB Control Number 2060–0392

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 an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on December 31, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before February 9, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OAR–2004–0062, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *a-and-r-docket@epa.gov*, or by mail to: Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket and Information Center, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Nydia Y. Reyes-Morales, Mail Code 6403J, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 343–9264; fax number: (202) 343–2804; e-mail address: *reyes-morales.nydia@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 18, 2004 (69 FR 34158), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received only one comment. The commenter suggested that EPA establish zero-emission requirements for nonroad engines.

EPA has established a public docket for this ICR under Docket ID number OAR–2004–0062, which is available for public viewing at the Air and Radiation Docket and Information Center, 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 Air and Radiation Docket and Information Center is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to 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.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public 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. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: Information Requirements for Locomotives and Locomotive Engines (40 CFR part 92) (Renewal).

Abstract: The Clean Air Act requires manufacturers and remanufacturers of locomotives and locomotive engines to obtain a certificate of conformity with applicable emission standards before they may legally introduced their products into commerce. To apply for a certificate of conformity, respondents are required to submit descriptions of their planned production, including detailed descriptions of emission control systems and test data. This information is organized by "engine family" groups expected to have similar emission characteristics and is submitted every year, at the beginning of the model year. Respondents electing to participate in the Averaging, Banking and Trading (AB&T) Program are also required to submit information regarding the calculation, actual generation and usage of credits in quarterly reports, and an end-of-the-year report. Under the Production-line Testing (PLT) Program, manufacturers are required to test a sample of engines as they leave the assembly line. The Installation Audit Program requires remanufacturers to audit the installation of a sample of remanufactured engines. These self-audit programs (collectively referred to as the "PLT Program") allow manufacturers and remanufacturers to monitor compliance with statistical certainty and minimize the cost of correcting errors through early detection. Under the In-use Testing Program, manufacturers and remanufacturers are required to test locomotives after a number of years of use to verify that they comply with emission standards throughout their useful lives. There are recordkeeping requirements in all programs.

The information is collected for compliance purposes by the Engine Programs Group, Certification and Compliance Division, Office of Transportation and Air Quality, Office of Air and Radiation. Confidentiality of proprietary information is granted in accordance with the Freedom of Information Act, EPA regulations at 40 CFR part 2, and class determinations issued by EPA's Office of General Counsel.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2,439 per respondent. 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.

Respondents/Affected Entities: Locomotives and locomotive engine manufacturers and remanufacturers.

Estimated Number of Respondents: 7.

Frequency of Response: Annually, quarterly and on occasion.

Estimated Total Annual Hour Burden: 17,074.

Estimated Total Annual Cost: $2,326,156, which includes $0 annualized capital/startup costs, $1,384,025 annual O&M costs, and $942,131 annual labor costs.

Changes in the Estimates: There is an increase of 5,953 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to an increase in the total number of applications for certification submitted by respondents. The increase in burden is, therefore, due to an adjustment to the estimates.

Dated: December 20, 2004.

Richard T. Westlund,

Acting Director, Collection Strategies Division.

[FR Doc. 05–421 Filed 1–7–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2004–0008; FRL–7859–4]

Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; NESHAP for Solvent Extraction for Vegetable Oil Production (Renewal), ICR Number 1947.03, OMB Number 2060–0471

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on January 31, 2005. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before February 9, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2004–0008 to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Compliance Assessment and Media Programs Division, Office of Compliance, (Mail Code 2223A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 25, 2004 (69 FR 29718), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OECA–2004–0008, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is: (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to 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. When in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public 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. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: NESHAP for Solvent Extraction for Vegetable Oil Production (Renewal).

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Solvent Extraction for Vegetable Oil Production were proposed on May 26, 2000 (65 FR 34252), and promulgated on April 21, 2001. These standards apply to any existing, reconstructed, or new vegetable oil production process, which is defined as a group of continuous process equipment used to remove an oil from oilseeds through direct contact with an organic solvent such as n-hexane. The term "oilseed" refers to the following agricultural products: corn germ, cottonseed, flax, peanut, rapeseed (source of canola oil), safflower, soybean, and sunflower. A vegetable oil production process is only subject to the regulation if it is a major source of hazardous air pollutant (HAP) emissions, or is collocated with other sources that are individually or collectively a major source of HAP emissions.

Notification reports are required upon the construction, reconstruction, or modification of any vegetable oil production processor. Also required is one-time-only initial notification for existing, new and reconstructed sources, and notification of an actual startup date. Annual compliance reports are required, along with a deviation report, an immediate SSM report, and a periodic startup, shutdown, and malfunction report. Affected entities must retain reports and records for five years.

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, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 185 hours per response. 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.

Respondents/Affected Entities: Owner or operator of vegetable oil production processors.

Estimated Number of Respondents: 101.

Frequency of Response: Initially, annually, on occasion.

Estimated Total Annual Hour Burden: 39,385 hours.

Estimated Total Annual Costs: $2,512,947, which includes $0 annualized capital/startup costs, $0 annual O&M costs and $2,512,947 Annual Respondent Labor Costs.

Changes in the Estimates: There is an increase of 29,293 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase in the burden from the most recently approved ICR is due to an increase in the number of new sources per year, by averaging the number of respondents over the three-year period of the ICR.

Dated: December 20, 2004.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–422 Filed 1–7–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2004–0029; FRL–7859–5]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Pollution Prevention Compliance Alternative; Transportation Equipment Cleaning (TEC) Point Source Category (Renewal), EPA ICR Number 2018.02, OMB Control Number 2040–0235

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 an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on January 31, 2005. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before February 9, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OW–2004–0029, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *OW–Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket, Mail Code 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jack Faulk, Office of Wastewater Management, Mail Code 4203M, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–0768; fax number: 202–564–6431; e-mail address: *faulk.jack@ epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On August 30, 2004 (69 FR 52883), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OW–2004–0029, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to 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.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public 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. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: Pollution Prevention Compliance Alternative; Transportation Equipment Cleaning (TEC) Point Source Category (Renewal).

Abstract: EPA issued a final guideline for the TEC point source category on August 14, 2000. This final rule, codified in 40 CFR part 442, included a regulatory compliance option which allows certain facilities to develop a Pollutant Management Plan (PMP) in lieu of meeting numeric standards. Facilities have the option to develop this plan if it would be more beneficial compliance alternative. The PMP is only available for Pretreatment Standards for Existing Sources and Pretreatment Standards for New Sources in subparts A and B of the TEC regulation, representing a potential 336 facilities.

The PMP includes requirements for recordkeeping and paperwork that were not previously included in the burden estimate for the TEC industry. This ICR presents estimates of the burden hours and costs to the regulated community and pretreatment authorities for data collection and recordkeeping associated with implementing the pollution prevention compliance option.

The PMP is an effective alternative method of reducing pollutant discharges from indirect dischargers in subparts A and B (facilities that clean tank trucks, intermodal tank containers, and rail tank cars transporting chemical and petroleum cargos). The PMP contains 10 components that must be considered and addressed when developing the Plan. These components require facilities to identify and segregate incompatible waste streams which may include heels, prerinse or prestream wastewater, and spent cleaning solutions from wastewater discharged to a publicly owned treatment works (POTW). The PMP also requires provisions for recycling or reuse of incompatible waste streams and for minimizing the use of toxic cleaning agents. Data collection and recordkeeping requirements under the pollution prevention compliance option include preparing the PMP and maintaining records to demonstrate compliance with the procedures and provisions of the PMP. Records will be stored on site, and there are no reporting requirements.

An agency may not conduct or sponsor. and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 240 hours per new respondent per year and 209 hours per existing respondent per year. Pretreatment control authority burden is estimated to average 5 hours per respondent per year. 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.

Respondents/Affected Entities: Indirect discharge facilities from 40 CFR part 442, subparts A and B (facilities that clean tank trucks, intermodal tank containers, and rail tank cars transporting chemical and petroleum cargos), that choose the pollution prevention compliance option to reduce pollutant discharges.

Estimated Number of Respondents: 183.

Frequency of Response: Varies.

Estimated Total Annual Hour Burden: 17,869 hours.

Estimated Total Annual Cost: $559,000, includes $0 annualized capital or O&M costs.

Changes in the Estimates: There is a decrease of 1,275 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is the result of adjustments to the numbers of new facilities covered by these requirements.

Dated: December 20, 2004.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–426 Filed 1–7–04; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2004–0127]; FRL–7689–9]

Reporting and Recordkeeping Requirements under EPA's Lead Safety Partnership (LSP) Pilot Program; Request for Comment on New Information Collection Activity

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) EPA is seeking public comment and information on the following Information Collection Request (ICR): Reporting and Recordkeeping Requirements under EPA's Lead Safety Partnership (LSP) Pilot Program (EPA ICR No. 2172.01, OMB Control No. 2070–TBD). This ICR involves a proposed new collection activity not currently approved by the Office of Management and Budget (OMB). The information collected under this ICR relates to identifying and encouraging the use of lead-safe work practices (LSWP) among contractors and homeowners, thereby helping to protect the environment and public health from risks associated with lead-based paint in residential facilities. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to OMB for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket identification (ID) number OPPT–2004–0127, must be received on or before March 11, 2005.

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: *For general information contact*: Colby-Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

For technical information contact: Dave Topping, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 566–1974; fax number: (202) 566–0471; e-mail address: *topping.dave@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a company or individual primarily engaged in renovation, remodeling, and repair, including general contractors such as painters, plumbers, electricians, and other trades, in housing properties built before 1978. Potentially affected entities may include, but are not limited to:

- Residential remodelers (NAICS 236118), e.g., addition, alteration and renovation of buildings, fire and flood restoration, handyman construction service, home improvement, home renovation, and remodeling and renovating general contractors, etc.
- Specialty trade contractors (NAICS 238), e.g., painting and wall covering contractors, electrical contractors, and plumbing contractors, etc.
- Architectural services (NAICS 541310), e.g., architectural private practices, consultants' offices and design services, etc.
- Paint and coating manufacturing (NAICS 325510), e.g., enamel paints manufacturing, lacquers manufacturing, latex paint (i.e., water based) manufacturing, polyurethane coatings manufacturing, wood fillers manufacturing, etc.
- Other construction material merchant wholesalers (NAICS 423390), e.g., building materials merchant wholesalers, etc.
- Plumbing and heating equipment and supplies merchant wholesalers (NAICS 423720), e.g., plumbing supply wholesalers, etc.
- Building material and supplies dealers (NAICS 4441), e.g., paint and wallpaper stores, hardware retailers, plumbing supply stores, building materials supply dealers, etc.
- Lessors of residential buildings and dwellings (NAICS 531110), e.g., building, apartment, rental or leasing, housing authorities operating residential buildings, etc.
- Building inspection services (NAICS 541350), e.g., building inspection services, home inspection services, building or home inspection bureaus, pre-purchase home inspection services, etc.
- Junior colleges, (NAICS 611210) e.g., community colleges, junior colleges, junior college vocational schools, etc.
- Other miscellaneous ambulatory health care services (NAICS 621999), e.g., health screening services, etc.
- Other community housing services (NAICS 624229), e.g., volunteer housing assistance agencies, volunteer housing repair organizations, transitional housing agencies, volunteer housing repair organizations, work (sweat) equity home construction organizations, etc.
- Business associations (NAICS 813910), e.g., Chambers of Commerce, contractors' and construction associations, etc.
- Administration of housing programs (NAICS 9251), urban planning, and community development, e.g., government housing authorities, government community development agencies, etc.
- Regulation, licensing, and inspection of miscellaneous commercial sectors (NAICS 926150), e.g., government building inspection agencies, etc.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPPT–2004–0127. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket

Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in the EPA Docket Center, is (202) 566–0280.

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

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit the 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 OPPT–2004–0127. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2004–0127. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

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

2. *By mail.* Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2004–0127. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside

of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider when 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 collection activity.
7. Make sure to submit your comments by the deadline in this notice.
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.

F. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are 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 estimates of the burdens of the proposed collections of information.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

II. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following ICR:

Title: Reporting and Recordkeeping Requirements under EPA's Lead Safety Partnership (LSP) Pilot Program.

ICR numbers: EPA ICR No. 2172.01, OMB Control No. 2070–TBD.

ICR status: This ICR is a new proposed information collection that has not been approved by OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

Abstract: The LSP is an EPA voluntary program that seeks to increase the use of LSWP among contractors and homeowners. Participants in the LSP fall into two categories: Members and Partners. Members are renovation, remodeling, painting, and other contractors in the building trades who work in properties built before 1978. Partners are entities that participate in the LSP but are not contractors. These may include associations, community-based organizations, retailers, lenders, realtors, state and local agencies.

Members will be asked to sign a Lead Safety Partnership Member Agreement indicating that the contractor will train all workers in LSWP, inform all potential clients in housing built prior to 1978 of LSWP, use LSWP in such homes, and report annually to the LSP about numbers of jobs done with LSWP. Members will also be asked to submit a Lead Safety Partnership Annual Member Report on Progress in Meeting Goals of Agreement that will include the number of renovation and remodeling jobs completed in pre-1978 and other housing, number of employees trained, and information on the Members' satisfaction with the program. Partners will be asked to sign a Lead Safety Partnership Partner Agreement that outlines their role and level of commitment. Partners will also provide an Annual Partner Report on Progress in Meeting Goals of Agreement. This report will include information on services provided in the past year and Partner satisfaction with the program.

EPA will use the information collected under the LSP pilot to determine the effectiveness of the program in increasing the use of LSWP. The Agency will also use feedback from Members and Partners to adjust the pilot program design before instituting a national LSP so that the program is effective and useful for all parties involved. The general public is also expected to use some of the information gathered as homeowners and others undertaking renovation and remodeling projects consult the LSP Member directory.

Responses to the collection of information are voluntary. Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

III. What are EPA's Burden and Cost Estimates for this ICR?

Under the PRA, "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. For this collection it 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.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this collection of information is estimated to average 1.9 hours per response. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: Companies and individuals involved in renovation, remodeling, painting, and other construction activities in the building trades working in properties built before 1978, and companies, associations, and individuals involved

in housing activities, policies, and related issues, such as community-based organizations, retailers, lenders, realtors, and state and local agencies.

Estimated total number of potential respondents: 240.

Frequency of response: Annually.

Estimated total/average number of responses for each respondent: 1.

Estimated total annual burden hours: 377 hours.

Estimated total annual burden costs: $14,087.

IV. Are There Changes in the Estimates from the Last Approval?

No. This is a new proposed ICR.

V. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: December 17, 2004.

Susan B. Hazen,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 05–428 Filed 1–7–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7859–1]

National Drinking Water Advisory Council's Water Security Working Group Meeting Announcement

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) announces the fourth public meeting of the Water Security Working Group (WSWG) of the National Drinking Water Advisory Council (NDWAC), which was established under the Safe Drinking Water Act. The purpose of this meeting is to provide an opportunity for the WSWG members to continue deliberations on the features of active and effective security programs for drinking water and wastewater utilities (water sector), to continue deliberations on incentives to encourage broad adoption of active and effective security programs in the water sector, and to continue deliberations on measures of the performance of water security programs. The focus of the meeting will be on review of draft recommendations on incentives and development of performance measures. The WSWG findings and recommendations will be provided to the NDWAC for their consideration. The WSWG anticipates providing findings and recommendations to the NDWAC in spring 2005. One additional meeting of the WSWG is planned and will be announced in the near future.

DATES: The WSWG meeting is January 25–27, 2004, in Phoenix, Arizona. On January 25, 2005, the meeting is scheduled from 2 p.m. to 6 p.m., mountain time (m.t.). On January 26, 2005, the meeting is scheduled from 8 a.m. to 5 p.m., m.t. On January 27, 2005, the meeting is scheduled from 8 a.m. to 4 p.m., m.t.

ADDRESSES: The meeting will take place at the City of Phoenix Water Services Department Training Room, 9th Floor, 200 West Washington Street, Phoenix, AZ 85003. Parking is available at the City's facilities at 305 West Washington Street. Water Services' reception will be able to validate your parking; please remember to bring your ticket with you. Once in the building, proceed to the 9th floor and check-in at the reception desk—you will then be directed to the meeting room, which is just beyond reception.

FOR FURTHER INFORMATION CONTACT: Interested participants from the public should contact Marc Santora, Designated Federal Officer, U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water, Water Security Division (Mail Code 4601–M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please contact Marc Santora at *santora.marc@epa.gov* or call 202–564–1597 to receive additional details.

SUPPLEMENTARY INFORMATION:

Background

The WSWG mission is to: (1) Identify, compile, and characterize best security practices and policies for drinking water and wastewater utilities and provide an approach for considering and adopting these practices and policies at a utility level; (2) consider mechanisms to provide recognition and incentives that facilitate a broad and receptive response among the water sector to implement these best security practices and policies and make recommendations as appropriate; (3) consider mechanisms to measure the extent of implementation of these best security practices and policies, identify the impediments to their implementation, and make recommendations as appropriate. The WSWG is comprised of sixteen members from water and wastewater utilities, public health, academia, state regulators, and environmental and community interests. Technical experts from the Environmental Protection Agency, the Department of Homeland Security, the Centers for Disease Control and Prevention, and the Department of Defense are also actively supporting the WSWG.

Closed and Open Parts of the Meeting

The WSWG is a working group of the NDWAC; it is not a Federal advisory committee and therefore not subject to the same public disclosure laws that govern Federal advisory committees. The Group can enter into closed session as necessary to provide an opportunity to discuss security-sensitive information relating to specific water sector vulnerabilities and security tactics. Currently, the WSWG does not anticipate closing any parts of the January meeting to the public. However, the Group reserves the right to enter into closed session, if necessary, late in the afternoon of January 25, 2005, immediately before lunch on January 26, 2005, and late in the day on January 27, 2005. If closed sessions are needed, opportunities for public comment will be provided before the closed sessions begin.

If there is a closed meeting session, only WSWG members, Federal resource personnel, facilitation support contractors and outside experts identified by the facilitation support contractors will attend the closed meetings. A general summary of the topics discussed during closed meetings and the individuals present will be included with the summary of the open portions of the WSWG meeting.

Public Comment

An opportunity for public comment will be provided during the open part of the WSWG meeting. Oral statements will be limited to five minutes, and it is preferred that only one person present the statement on behalf of a group or organization. Written comments may be provided at the meeting or may be sent, by mail, to Marc Santora, Designated Federal Officer for the WSWG, at the mail or e-mail address listed in the **FOR**

FURTHER INFORMATION CONTACT section of this notice.

Special Accommodations

Any person needing special accommodations at this meeting, including wheelchair access, should contact Marc Santora, Designated Federal Officer, at the number or e-mail address listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Requests for special accommodations should be made at least five business days in advance of the WSWG meeting.

Dated: January 4, 2005.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 05–425 Filed 1–7–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0024; FRL–7344–9]

Utah State Plan for Certification of Applicators; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent.

SUMMARY: The State of Utah has submitted to EPA several amendments to its State Plan for Certification of Pesticide Applicators. The proposed amendments add new subcategories as well as a Memorandum of Understanding regarding future implementation of an EPA federal pesticide certification program for the Navajo Indian Country. Notice is hereby given of the intention of the Regional Administrator, Region VIII, to approve the revised Plan for the Certification of Applicators. EPA is soliciting comments on the proposed amendments.

DATES: Comments, identified by docket identification (ID) number OPP–2004–0024 must be received on or before February 9, 2005.

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: Barbara Barron, Pesticide Program, 8P-P3T, Environmental Protection Agency, Region VIII, 999 18th St., Suite 300, Denver, CO 80202–2466; telephone number: (303) 312–6617; e-mail address: *barron.barbara@epa.gov*; or

Jeanne Kasai, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–3240; fax number: (703) 308–2962; e-mail address: *kasai.jeanne@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those involved in agriculture and anyone involved with the distribution and application of pesticides for agricultural purposes. Others involved with pesticides in a non-agricultural setting may also be affected. In addition, it may be of interest to others, such as, those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). 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. If you have any questions regarding the applicability of this action to a particular entity, consult either 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–2004–0024. 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 submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be

scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

In addition to the sources listed in this unit, you may obtain copies of the amended Utah Certification Plan, other related documents, or additional information by contacting:

1. Barbara Barron, Pesticide Program, 8P-P3T, Environmental Protection Agency, Region VIII, 999 18th St., Suite 300, Denver, CO 80202–2466; telephone number: (303) 312–6617; e-mail address: *barron.barbara@epa.gov*.

2. Clark Burgess, Utah Department of Agriculture and Food (UDAF), P.O. Box 146500, Salt Lake City, UT 84114–6500; telephone number: (801) 538–7188; e-mail address: *cburgess@utah.gov*.

3. Jeanne Kasai, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., 20460–0001; telephone number: (703) 308–3240; e-mail address: *kasai.jeanne@epa.gov*.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number 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–2004–0024. 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–2004–0024. 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– 0024.

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, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2004–0024. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

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

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

II. Background

FIFRA section 3 requires that pesticide applicators become certified to purchase, use, or supervise the use of restricted use pesticides. FIFRA section 11 allows EPA to designate the pesticide applicator certification program to states with EPA-approved plans. Federal regulations (40 CFR 171.7) describe what constitutes an EPA-approved plan and (40 CFR 171.8) requires that any substantial modification to a plan must receive prior approval from the Administrator. EPA is seeking public comment on amendments that are substantial modifications to the Utah plan.

This amendment will establish two new subcategories under the existing regulatory pest control category: Predator Control/1080 Livestock Protection Collar (LPC) and Predator Control/M-44 Device (M-44). In October 1983, EPA Assistant Administrator for Solid Waste and Emergency Response, Lee M. Thomas, decided to permit registration of 1080 LPC based on an Administrative Law Judge ruling. The decision requires applicators of 1080 LPC to receive specific training and to comply with recordkeeping and reporting requirements beyond that of

applicators of restricted use pesticides. Therefore, a distinct certification process is required in any state wanting to certify applicators of 1080 LPC. The M-44 Device (M-44) is used by certified applicators to control predators of livestock and poultry. Similar to LPC 1080, M-44 has specific use restrictions that go beyond those required for most other categories of applicators of restricted use pesticides. The amendments to the Utah plan satisfy the specific training, recordkeeping, and reporting requirements for both LPC 1080 and M-44.

The Utah Department of Agriculture and Food (UDAF) will only be certifying employees of the U.S. Department of Agriculture, Wildlife Services (WS) and cooperative UDAF employees under the direct supervision of WS to use 1080 LPC and M-44 in performance of their official duties. WS is authorized by Congress to manage wildlife damage. UDAF certification of WS employees as pesticide applicators will allow them to purchase, use, and supervise the use of 1080 LPC and M-44 to carry out their responsibility in Utah.

UDAF also proposes the following new categories and subcategories for commercial applicators: Vertebrate Pest Control; Fumigation/Stored-Commodities Pest Control; Wood-Preservation Pest Control and Wood-Destroying Organisms Pest Control. Under the Aquatic Pest Control category for commercial applicators, Utah is proposing new subcategories for Surface Water and Sewer Root Control. The plan also includes a general provision for proper transportation, storage and disposal of pesticides and pesticide containers.

UDAF is also adding a Memorandum of Understanding (MOU) with EPA Region 9 (San Francisco, CA) in anticipation of an EPA Region 9 program to certify applicators of restricted use pesticides in Navajo Indian Country. EPA Region 9 expects to issue a certificate to applicators already possessing a valid certificate from UDAF. The MOU establishes the roles of UDAF and EPA Region 9 to implement the anticipated program.

EPA finds that the proposed amendment permitting certification of 1080 LPC applicators meets the criteria specified in the Final Decision of October 1983, that requires applicators of 1080 LPC to receive specific training, recordkeeping and reporting requirements beyond that of other restricted use pesticides. In addition, EPA has determined that the proposed M-44 sodium cyanide device amendment complies with specific registration requirements. EPA has reviewed the new categories and subcategories, the provisions for transportation, storage and disposal, and the MOU with EPA Region 9 to certify applicators of restricted use pesticides in Navajo Indian Country. Therefore, EPA announces its intentions to approve the amendment to the Utah State Certification Plan.

III. What Action is the Agency Taking?

EPA has reviewed the revised Utah Certification Plan and finds it in compliance with FIFRA and 40 CFR part 171. Therefore, EPA announces its intentions to approve the amendment to the Utah State Certification Plan permitting certification of 1080 LPC applicators and M-44 sodium cyanide device applicators. EPA is soliciting comments on the proposed amendments.

List of Subjects

Environmental protection, Education, Pesticides and pests.

Dated: October 21, 2004.

Robert E. Roberts,

Regional Administrator, Region VIII.

[FR Doc. 05–513 Filed 1–6–05; 2:31 pm]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7859–2]

Clean Water Act Section 303(d): Availability of 13 Total Maximum Daily Loads (TMDLs)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability for comment of the administrative record file for 13 TMDLs and the calculations for these TMDLs prepared by EPA Region 6 for waters listed in the state of Arkansas under section 303(d) of the Clean Water Act (CWA). These TMDLs were completed in response to the lawsuit styled *Sierra Club,* et al. v: *Browner,* et al., No. LR–C–99–114.

DATES: Comments must be submitted in writing to EPA on or before February 9, 2005.

ADDRESSES: Comments on the 13 TMDLs should be sent to Ellen Caldwell, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733, facsimile (214) 665–6689, or e-mail: *caldwell.ellen@epa.gov*. For further information, contact Ellen Caldwell at (214) 665–7513. Documents from the administrative record file for these TMDLs are available for public inspection at this address as well. Documents from the administrative record file may be viewed at *http://www.epa.gov/region6/water/artmdl.htm,* or obtained by calling or writing Ms. Caldwell at the above address. Please contact Ms. Caldwell to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Ellen Caldwell at (214) 665–7513.

SUPPLEMENTARY INFORMATION: In 1999, five Arkansas environmental groups, the Sierra Club, Federation of Fly Fishers, Crooked Creek Coalition, Arkansas Fly Fishers, and Save our Streams (plaintiffs), filed a lawsuit in Federal Court against the EPA, styled *Sierra Club,* et al. v. *Browner,* et al., No. LR–C–99–114. Among other claims, plaintiffs alleged that EPA failed to establish Arkansas TMDLs in a timely manner. EPA proposes these TMDLs pursuant to a consent decree entered in this lawsuit.

EPA Seeks Comments on 13 TMDLs

By this notice EPA is seeking comment on the following 13 TMDLs for waters located within the state of Arkansas:

Segment-Reach	Waterbody name	Pollutant
08050001–022	Big Bayou	Siltation/turbidity.
08050001–022	Big Bayou	Chloride.
08050001–018	Boeuf River	Siltation/turbidity.
08050001–018	Boeuf River	Chloride.
08050001–018	Boeuf River	Sulfates.
08050001–018	Boeuf River	TDS.
08050001–019	Boeuf River	Siltation/turbidity.
08050001–019	Boeuf River	Chloride.

Segment-Reach	Waterbody name	Pollutant
08050002–010	Oak Log Bayou	Siltation/turbidity.
08050002–010	Oak Log Bayou	Chloride.
08050002–010	Oak Log Bayou	TDS.
08050002–003	Bayou Macon	Siltation/turbidity.
08050002–006	Bayou Macon	Siltation/turbidity.

EPA requests that the public provide to EPA any water quality related data and information that may be relevant to the calculations for these 13 TMDLs. EPA will review all data and information submitted during the public comment period and revise the TMDLs and determinations where appropriate. EPA will then forward the TMDLs to the Arkansas Department of Environmental Quality (ADEQ). The ADEQ will incorporate the TMDLs into its current water quality management plan.

Dated: January 3, 2005.

Miguel I. Flores,

Director, Water Quality Protection Division, EPA, Region 6.

[FR Doc. 05–424 Filed 1–7–05; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

[Public Notice 70]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Export-Import Bank of the U.S.

ACTION: Notice and Request for Comments.

SUMMARY: The Export-Import Bank, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments should be received on or before March 11, 2005.

ADDRESSES: Direct all comments and requests for additional information to Walter Kosciow, Export-Import Bank of the U.S., 811 Vermont Avenue, NW., Room 719, Washington, DC 20571, (202) 565–3649.

SUPPLEMENTARY INFORMATION:

Titles and Form Numbers: Short-Term Multi-Buyer Export Credit Insurance Policy Application, EIB 92–50.

OMB Number: 3048–0009.

Type of Review: Revision of 1 of 9 forms in a currently approved collection. This review affects only the form noted above.

Need and Use: The information requested enables the applicant to provide Ex-Im Bank with the information necessary to obtain legislatively required assurance of repayment and fulfills other statutory requirements.

Affected Public: The form affects entities involved in the export of U.S. goods and services, including exporters, insurance brokers, and non-profit or state and local governments acting as facilitators.

Estimated Annual Responses: 500.

Estimated Time Per Respondent: ½ hour.

Estimated Annual Burden: 250.

Frequency of Reporting or Use: Applications submitted one time, renewals annually.

Dated: January 4, 2005.

Solomon Bush,

Agency Clearance Officer.

BILLING CODE 6690–01–M

OMB No. 3048-0009

EXPORT IMPORT BANK OF THE UNITED STATES

SHORT-TERM MULTI-BUYER EXPORT CREDIT INSURANCE POLICY APPLICATION

Applicant: _____ dba:_____
Address: _____
Phone: _____ Fax: _____ E-Mail: _____ Website: _____
Contact: _____ Title: _____ E-Mail: _____ Phone: _____
Brokerage:_____ Broker Contact:_____

(optional) Is the majority ownership of your business represented by ___ women or ___ an ethnic minority?

How did you learn about Ex-Im Bank? ___ Ex-Im Bank Regional Office ___Broker ___Bank ___ U.S. Export Assistance Center ___ Ex-Im Bank City/State Partner ___ Other (describe):_____

1. Primary reason for application: ☐ risk mitigation ☐ financing ☐ extend more competitive terms

2. Do you have a credit line with a financial institution (exclude overdraft protection and credit cards) ☐ YES ☐ NO

3. Do you have an SBA or Ex-Im Bank Working Capital Loan or are you applying for one? SBA ☐ YES ☐ NO EXIM ☐ YES ☐ NO

4. Total number of your employees and those at companies with whom you are affiliated: _____

5. Average total of annual export credit sales over the last two years for you and your affiliates:$_____

6. Do you wish to insure export credit sales made by your affiliates? (If yes, please refer to "additional named insured" eligibility criteria in question # 24. Answers to all remaining questions must include eligible affiliates you wish to add.)

7. Product and/or services to be exported & NAICS (if known): _____ _____

8. Do you sell Capital Goods to foreign manufacturers or producers? ☐ YES ☐ NO (if yes, attach explanation)

9. Are the products to be covered under the policy:

- Manufactured or reconditioned in the U.S.? ☐Yes ☐No
- Made or reconditioned with more than 50% U.S. content? ☐Yes ☐No
- Shipped from the U.S.? ☐Yes ☐No
- Sold to Military entities or Security Forces? ☐No ☐Yes
- Used to support Nuclear Energy? ☐No ☐Yes
- Environmentally Beneficial? ☐Yes ☐No
- Supporting Renewable Energy? ☐Yes ☐No
- On the U.S. Munitions List? (part 121 of title 22 of the Code of Federal Regulations) ☐No ☐Yes

Note: Your buyers, their guarantors (if any), and end users of the products must be in countries where Ex-Im Bank is able to provide support, see Ex-Im's Country Limitation Schedule (CLS) at www.exim.gov . There may not be trade measures or sanctions against them under Section 201 Trade Act of 1974 . For a list of products and countries with Anti-Dumping or Countervailing Duty sanctions, see Anti-Dumping or Countervailing Sanctions).

10. Policy Payment Limit Requested: $_____ (maximum export credit receivables outstanding at any one time)

11. Buyer Types: ____% Manufacturers ____% Wholesalers/Traders ____% Retailers ____%Service Providers

12. Projected # of buyers to whom you will offer export credit terms:_____

Enter the percentage of export credit sales by payment and term type projected for the next twelve months:

Payment Type	Terms (# of days)							
	Sight	1-30	31-60	61-90	91-120	121-180	181-270	271-360
CAD/SDDP	___%							
Unconfirmed L/C	___%	___%	___%	___%	___%	___%	___%	___%
Open account/draft	___%	___%	___%	___%	___%	___%	___%	___%

13. Export Credit Portfolio (enter amounts for the next 12 months. If more than 9 countries, enter the balance in "all other").

Country	Export Credit Sales	Country	Export Credit Sales
	$		$
	$		$
	$		$
	$		$
	$	"all other countries"	$

15. Identify your three largest buyers:

Name	Country	Export Credit Sales (next 12 months)
_____	_____	$_____
_____	_____	$_____
_____	_____	$_____

16. Year you began: a) exporting? _____
b) exporting on credit terms (other than cash in advance or confirmed letters of credit)?_____

17. For the last three years what were your total export credit:
(include factored or insured receivables and attach any comments)

sales $_____
write-offs $_____
# of accounts written-off _____

18. Highest average amount of export receivables outstanding over the last twelve months: $_____

19. Total export receivables outstanding: $_____ at ___/___/___ (date should be within 30 days of the application)

$_____	$_____	$_____	$_____	$_____
current	1-60 days past due	61-90 days past due	91-180 days past due	> 180 days past due

20. Number of buyers past due more than 60 days for $10,000 or more: _____

21. For each buyer over 60 days past due for $10,000 or more, attach an explanation including name of buyer, country, amount past due, due date, and reason for past due.

22. Name(s) of export credit decision maker(s):	Title(s):	Years of Credit Experience	Years of Foreign Credit Exp.
_____	_____	_____	_____
_____	_____	_____	_____

23. Please submit the following as Attachments:
- Credit Report on your company dated within 6 months of the application or attach a check for $35 payable to Ex-Im Bank.
- Your financial statements for the two most recent completed fiscal years (with notes if available)
- Descriptive product brochures (if available).
- Other pertinent information you wish to include.

24. **Special Coverages** Required: If "none" check ☐ N/A

☐ **Add Additional Named Insureds (ANI's).** Credit decisions of each affiliate listed must be centralized with the Applicant and each affiliate must invoice export credit sales in their own name (or tradestyle); if either is not applicable, please attach an explanation. Questions 7-25 should include export sales of prospective ANI's.

Are the products of each affiliate the same as the applicant's products listed in question 4 of this application? ☐Yes ☐No

Affiliate Company/Trade style	Street Address/City / State / Country	NAICS Code	Relationship to Applicant

☐ **Services (Please attach a copy of your sample services contract)** Services must be: performed by U.S. based personnel or those temporarily domiciled overseas, and billed (invoiced) separately from any product sales.

☐ **Enhanced Assignment** of small business insurance policy proceeds. This is exporter performance risk protection that may be offered to lenders willing to finance Ex-Im Bank insured receivables. **Applicant Please Attach:**

- Written bank reference describing your relationship to date and size of existing credit line.
- 2 written trade references from principal commercial suppliers.
- For applications with policy limits over $500,000, financial statements must be audited or CPA reviewed with notes.

☐ **Other** (please specify):_____

_____

25. Please complete the **Exclusion Worksheet on page 5** to request coverage exclusion of any export credit sales.

CERTIFICATIONS

The Applicant (it) CERTIFIES and ACKNOWLEDGES to the Export-Import Bank of the United States (the Bank) that:

a) it is either organized, or registered to do **business, in the United States.**

b) it and each additional named insured applicant **has not entered into any contract of insurance** or indemnity in respect of any case of loss covered by the Export Credit Insurance Policy or Loss chargeable to a deductible under such Policy, and the applicant will not enter into any such contract of insurance or indemnity without the Bank's consent in writing.

c) neither it nor any of its principals is currently, nor has been within the preceding three years:

- debarred, suspended or declared ineligible from participating in any Covered Transaction or
- formally proposed for debarment, with a final determination still pending;
- voluntarily excluded from participation in a Covered Transaction; or
- indicted, convicted or had a civil judgment rendered against it

for any of the offenses listed in the Regulations governing Debarment and Suspension as defined in the Government Wide Nonprocurement Debarment and Suspension Regulations; Common Rule 53 Fed. Reg. 19204 (1988). It further certifies that it has not nor will it knowingly enter into any agreement in connection with this Policy with any individual or entity that has been subject to any of the above.

d) it is not delinquent on any amount due and owing to the U.S. Government, its agencies, or instrumentalities as of the date of this application.

e) it shall complete and submit standard form-LLL, "Disclosure Form to Report Lobbying" to the Bank (31 USC 1352), if any funds have been paid or will be paid to any person for influencing or attempting to influence i) an officer or employee of any agency, ii) a Member of Congress or a Member's employee, or iii) an officer or employee of Congress in connection with this Policy. This does not apply to insurance broker commissions paid by the Bank.

f) it has not, and will not, engage in any activity in connection with this Policy that is a violation of the **Foreign Corrupt Practices Act of 1977** (15 USC Sec. 78dd-1, et seq.) which provides for civil and criminal penalties against individuals who directly or indirectly make or facilitate corrupt payments to foreign officials to obtain or keep business. To the best of its knowledge, the performance by the parties of their respective obligations covered or to be covered under this Policy does not and will not violate any applicable law.

g) transfer of financial records included in this application to private parties or another U.S. Government authority will not be authorized except as permitted under the **Right of Financial Privacy Act of 1978** (12 USC 3401).

h) the information is being requested under the authority of the **Export-Import Bank Act of 1945** (12 USC 635 et. seq.); disclosure of this information is mandatory **and failure to provide the requested information** may result in the Bank being unable to determine eligibility for the Policy. The information collected will be analyzed to determine the ability of the participants to perform and pay under the Policy. The Bank may not require the information, and applicants are not required to respond, unless a currently valid OMB control number is displayed on this form. The information collected will be held confidential subject to the **Freedom of Information Act** (5 USC 552) and the **Privacy Act of 1974** (5 USC 552a), except as required to be disclosed pursuant to applicable law. The **public burden** reporting for this collection of information is estimated to average 1 hour per response, including time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the collection of information. Send **comments** regarding the burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, to Office of Management and Budget, Paperwork Reduction Project OMB# 3048-0009, Washington, D.C. 20503.

i) the representations made and the facts stated in the application for said Policy are true, to the best of it's knowledge and belief, and it has not misrepresented or omitted any material facts relevant to said representations. It agrees that this application shall form a part of the Policy, if issued, and the truth of the representations and facts, and performance of every undertaking in this application shall be a condition precedent to any coverage under such Policy. It further understands that this certification is subject to the penalties for fraud against The U.S. Government (18 USC 1001).

(Signature) (Print Name and Title) (Date)

SMALL BUSINESS POLICIES APPLICANT CERTIFICATION

"We are an entity which **together with our affiliates** had **average annual export credit sales** during our preceding two fiscal years not exceeding **$5,000,000**, excluding sales made on terms of confirmed irrevocable letters of credit (CILC) or cash in advance (CIA)."

(Signature)

NOTICES

The applicant is hereby notified that information requested by this application is done so under authority of the **Export-Import Bank Act of 1945**, as amended (12 USC 635 et. seq.); provision of this information is mandatory and failure to provide the requested information may result in Ex-Im Bank being unable to determine eligibility for support. The information provided will be reviewed to determine the participants' ability to perform and pay under the transaction referenced in this application. Ex-Im Bank may not require the information and applicants are not required to provide information requested in this application unless a currently valid OMB control number is displayed on this form (see upper right of each page).

Public Burden Statement: Reporting for this collection of information is estimated to average 1 hour per response, including reviewing instructions, searching data sources, gathering information, completing, and reviewing the application. Send comments regarding the burden estimate, including suggestions for reducing it, to Office of Management and Budget, Paperwork Reduction Project OMB# 3048-0009, Washington, D.C. 20503.

The information provided will be held confidential subject to the **Freedom of Information Act** (5 USC 552) the **Privacy Act of 1974** (5 USC 552a), and the **Right to Financial Privacy Act of 1978** (12 USC 3401), except as otherwise required by law. Note that the Right to Financial Privacy Act of 1978 provides that Ex-Im Bank may transfer financial records included in an application for an insurance policy, or concerning a previously approved insurance policy, to another Government authority as necessary to process, service or foreclose on an insurance policy, or collect on a defaulted insurance policy.

Send, or ask your insurance broker or city/state participant to review and send this application to the Ex-Im Bank Regional Office nearest you. Please refer to Ex-Im Bank's website at http://www.exim.gov for Regional Office addresses. Alternatively, email your application and attachments to Ex-Im Bank at exim.applications@exim.gov, or fax it to (202) 565-3675.

Ex-Im Bank reserves the right to request additional information upon review of the application. Please refer to Ex-Im Bank's Short Term Credit Standards (EIB 99-09) to determine the likelihood of approval of a policy.

MULTIBUYER POLICY: EXCLUSIONS WORKSHEET

Instructions:

- Select and list the sales you wish to exclude. Add additional pages, if needed.
- Sign the certification.
- "Non-Standard" Exclusions must be Ex-Im Bank authorized, and are available only for multibuyer policies with deductibles.
- All endorsed exclusions are locked-in for the policy period.
- Premiums must be paid on all "Reportable Transactions" as required by the insurance policy except for the endorsed exclusions.

STANDARD EXCLUSIONS

☐ Unconfirmed Irrevocable Letters of Credit
☐ Sales to Subsidiaries and Affiliates
☐ Any Invoice of $10,000 or less
☐ Payments at Sight (SDDP or CAD)
☐ Sales to Canada
☐ None requested

NON-STANDARD EXCLUSIONS

(for Reasonable Spread of Risk "RSOR" Multibuyer policies) ☐ Not Requested

Instructions: Please provide the complete information for each desired exclusion category.

☐ **A. Sales to "Top Corporates" (Companies with revenues > $100,000,000):**

Buyer Name	City/Country	Total Annual Credit Sales	Payment Terms

☐ **B. Sales to "Prime Customers" (they paid you prompt <0-60 slow> for three consecutive years):**

Buyer Name	City/Country	Total Annual Credit Sales	Payment Terms

☐ **C. Exclude all sales to country (ies):**

Country	Total Annual Credit Sales

CERTIFICATIONS

The representations made and the facts stated in this worksheet for the endorsement of sales exclusions are true, to the best of my knowledge and belief, and I have not misrepresented or omitted any material facts relevant to said representations. It is agreed that this worksheet shall form a part of the Policy, if issued, and the truth of the representations and facts, and performance of every undertaking in this worksheet shall be a condition precedent to any coverage under such Policy. I further understand that this certification is subject to the penalties for fraud against The U.S. Government (18 USC 1001).

(Applicant) (Print Name and Title)

(Broker) (Signature) (Date)

EIB92-50 (01/05) EIB- (06/03) Page 5 of 5

[FR Doc. 05–397 Filed 1–7–04; 8:45 am]
BILLING CODE 6690–01–C

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collections to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the two information collection systems described below.

DATES: Comments must be submitted on or before February 9, 2005.

ADDRESSES: Interested parties are invited to submit written comments to Steven F. Hanft (202–898–3907), Paperwork Clearance Officer, Room MB–3064, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. All comments should refer to the OMB control number of the collection. Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. [FAX number (202) 898–3838].

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Mark Menchik, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Steven F. Hanft, at the address identified above.

SUPPLEMENTARY INFORMATION:

Proposal to Renew the Following Currently Approved Collections of Information

1. *Title:* Interagency Charter and Federal Deposit Insurance Application.

OMB Number: 3064–0001.

Frequency of Response: On occasion.

Affected Public: Banks or savings associations wishing to become FDIC-insured depository institutions.

Estimated Number of Respondents: 193.

Estimated Time per Response: 125 hours.

Total Annual Burden: 24,125 hours.

General Description of Collection: The Interagency Charter and Federal Deposit Insurance Application is used by the FDIC as a deposit insurance application, and by the OCC and OTS as a charter application. Applications for deposit insurance must provide sufficient information to permit the FDIC to consider certain factors which are listed in section 6 of the FDI Act. These factors include: the financial history and condition of the depository institution, the adequacy of its capital structure, its future earnings prospects, the general character and fitness of its management, the risk it presents to the relevant insurance fund, the convenience and needs of the community to be served, and the consistency of its corporate powers. All depository institutions seeking insurance must follow the same procedures.

2. *Title:* Notice of Branch Closure.

OMB Number: 3064–0109.

Frequency of Response: On occasion.

Affected Public: Insured depository institutions.

Estimated Number of Respondents: 1,364.

Estimated Time per Response: 2.4 hours.

Total Annual Burden: 3,028 hours.

General Description of Collection: An institution proposing to close a branch must notify its primary regulator no later than 90 days prior to the closing. Each FDIC-insured institution must adopt policies for branch closings. This collection covers the requirements for notice, and for policy adoption.

Request for Comment

Comments are invited on: (a) Whether these two collections of information are necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collections, including the validity of the methodologies and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 5th day of January, 2005.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 05–439 Filed 1–7–05; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting Notices

AGENCY: Federal Election Commission

DATE AND TIME: Thursday, January 13, 2005 at 10

PLACE: 999 E Street, NW., Washington, DC (ninth floor)

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED: Correction and Approval of Minutes.

Notice of Proposed Rulemaking on Definition of Agent for BCRA Regulations on Coordinated and Independent Expenditures and Non-Federal Funds or Soft Money (11 CFR 109.3 and 300.2(b)).

Future Meeting Dates.

Routine Administrative Matters.

INFORMATION CONTACT: Mr. Robert Biersack, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 05–540 Filed 1–6–04; 8:45 am]

BILLING CODE 6715–01–M

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 February 3, 2005.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Community Bancshares of Mississippi, Inc. Employee Stock Ownership Plan, Brandon, Mississippi; to become a bank holding company by acquiring 58.6 percent of the voting shares of Community Bancshares of Mississippi, Inc., Brandon, Mississippi, and thereby indirectly acquire voting shares of Community Bank of Mississippi, Forest, Mississippi.

B. Federal Reserve Bank of Chicago (Patrick Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Arthur R. Murray, Inc., Milford, Illinois; to acquire 100 percent of the voting shares of Dewey State Bank, Dewey, Illinois.

2. Country Bancorporation, Crawfordsville, Iowa; to acquire 100 percent of the voting shares of White State Bank, South English, Iowa.

3. Alpha Financial Group, Inc. Employee Stock Ownership Plan, Toluca, Illinois; to acquire up to 45.57 percent of the voting shares of Alpha Financial Group, Toluca, Illinois, and thereby indirectly acquire Alpha Community Bank, Toluca, Illinois.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Ozarks Legacy Community Financial, Inc., Thayer, Missouri; to become a bank holding company by acquiring at least 91.3 percent of the voting shares of Bank of Thayer, Thayer, Missouri.

Board of Governors of the Federal Reserve System, January 4, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–392 Filed 1–7–05; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[14Day–05–AR]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer at (404) 371–5978. CDC is requesting an emergency clearance for this data collection with a fourteen-day public comment period. CDC is requesting OMB approval of this package fourteen days after the end of the public comment period.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. As this is an emergency clearance, please direct comments to the CDC Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Comments should be received within fourteen days of this notice.

Proposed Project

Operations and Scope of Public Sexually Transmitted Disease (STD) Clinics in the U.S. States and Territories—New—National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC).

Many clinics around the United States (U.S.) provide care specifically targeted toward people infected with or at risk for sexually transmitted diseases. These clinics are an important community resource in many areas because they provide specialized, affordable, expert care for clients. However, little is known about the number of public clinics in the U.S. that offer categorical STD services, their geographical location, or the range and quality of services offered. Understanding the characteristics and range of public STD clinics in the U.S. and the communities they serve will provide important information about access to STD care in the public setting, as well as identify needed resources. The location of clinics can be compared to local population size and STD morbidity to assess coverage. In addition, clinic information can be used to supplement the referral database for the CDC National STD and AIDS Hotline; to assist the STD clinics in networking with each other; and to provide professionals working with STDs a more accurate and well-rounded national picture of the clinics and the communities they serve. Additional information can also be gathered to assist in developing recommendations, guidelines, programs, and activities.

CDC proposes to mail a brief survey to approximately 2,800 public health clinics in the United States regarding the range of services offered at the clinics, source of their funding, and composition of clinic staff. Respondents will be provided a stamped addressed envelope to return the survey. The only cost to respondents is their time to complete the survey.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Public Health Clinics	2,800	1	15/60	700
Total				700

Dated: December 29, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05–410 Filed 1–7–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Notice of Hearing: Reconsideration of Disapproval of Indiana State Plan Amendment 02–021

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

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing to be held on January 20, 2005, at 10 a.m., 233 North Michigan Avenue, Minnesota Room, Chicago, Illinois 60601 to reconsider the decision to disapprove Indiana State Plan Amendment (SPA) 02–021.

Closing Date: Requests to participate in the hearing as a party must be received by the presiding officer by January 25, 2005.

FOR FURTHER INFORMATION CONTACT: Kathleen Scully-Hayes, Presiding Officer, CMS, LB–23–20, Lord Baltimore Drive, Baltimore, Maryland 21244, Telephone: (410) 786–2055.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider the decision to disapprove Indiana Medicaid State Plan Amendment (SPA) 02–021, which was submitted on December 27, 2002.

In SPA 02–021, Indiana proposed to expand the State's Medicaid mental health rehabilitation benefit to include services furnished by five types of child care facilities to inpatients in the facilities. The State incorporated into the SPA portions of the Indiana State code (470 IAC 3–11, 470 IAC 3–12, 470 IAC 3–13, 470 IAC 3–14, and 470 IAC 3–15) that govern the operation of these facilities.

At issue in this reconsideration is whether SPA 02–021 is consistent with the requirements contained in sections 1902(a)(10), 1902(a)(19), 1902(a)(30)(A), and 1902(a)(4) of the Social Security Act (the Act) as described in more detail below. In general, the Centers for Medicare & Medicaid Services (CMS) found that the SPA had four basic problems: (1) The proposed services would be provided to individuals under age 65 who are patients in institutions for mental diseases (IMDs) (that are not juvenile psychiatric hospitals) and who have not been determined eligible for Medicaid; (2) the proposed services would be provided on order of individuals who are neither physicians nor licensed practitioners; (3) the proposed services would be provided in facilities which permit use of mechanical restraints and provide for seclusion of children and which, therefore, cannot be considered to be "in the best interests" of the recipients; and (4) the proposed payment methodology includes items not encompassed in the definition of Medicaid rehabilitation services and improperly includes payment for state administrative costs.

More specifically, at issue is whether the proposed SPA complies with the requirements of section 1902(a)(10) of the Act, which provides generally that state plans must make "medical assistance" as defined in section 1905(a) of the Act, available to eligible individuals. The definition of medical assistance at section 1905(a)(27), excludes payment for care and services for individuals under age 65 who are patients in institutions for mental diseases (IMDs), except payment for juvenile psychiatric hospital services pursuant to section 1905(a)(16) of the Act. Indiana proposed to furnish services to individuals who are under age 65 in institutions that appear to meet the definition of an IMD at section 1905(i) of the Act and applicable Federal regulations at 42 CFR 435.1009. However, these facilities do not provide services that meet the definition of inpatient psychiatric hospital services contained in section 1905(h) of the Act and do not comply with the regulatory requirements for providers of inpatient psychiatric hospital services set forth at 42 CFR 483 Subpart G (concerning use of restraint or seclusion). Thus, the State has failed to establish that the services are within the scope of medical assistance that is authorized under the Act.

In addition, section 1905(a)(13) of the Act defines rehabilitative services as those that are recommended by a physician or other licensed practitioner of the healing arts. The proposed SPA would include services that are recommended by individuals who are neither physicians nor licensed practitioners, but who are operating under the supervision of these individuals. Nor do the proposed services meet the requirements or services in any inpatient setting within the scope of medical assistance (hospitals, nursing facilities, psychiatric hospital services for juveniles, or intermediate care facilities for the mentally retarded).

Finally, section 1905(a) of the Act defines the term "medical assistance" as payment of part or all of the cost of care and services furnished to eligible individuals. The reimbursement section of this amendment, detailed at section 4.2.2 of the Indiana Residential Care Reimbursement Rate Establishment document, and included in Attachment 4.19B of this amendment, would provide payment for services furnished to individuals who have not been determined eligible for Medicaid.

In addition, at issue is whether the proposed SPA is consistent with the requirement in section 1902(a)(19) of the Act that services be provided "in the best interests of the recipients." Indiana permits the use of mechanical restraints and provides for extended periods of seclusion of children in the facilities covered by this amendment. CMS has determined that these policies, defined in the Indiana Administrative Code (470 IAC 3–11, 470 IAC 3–12, and 470 IAC 3–13) and incorporated in this amendment by reference, would endanger the health and welfare of the victims of these procedures, and cannot be considered to be in the best interests of the children affected.

Finally, at issue is whether the proposed payment methodology complies with section 1902(a)(30)(A) of the Act, which requires that payments for services under the plan be "consistent with efficiency, economy, and quality of care," and with section 1902(a)(4) which requires that the State use methods of administration that are found by the Secretary to be "necessary for the proper and efficient operation of the plan." The payment methodology proposed by the State includes payment for numerous cost items, including elements of room and board and transportation services, that are not encompassed in the definition of Medicaid rehabilitation services. For this reason, CMS found that the State has not documented that the proposed payment methodology would be efficient or economical, as required by section 1902(a)(30)(A) of the Act. Furthermore, CMS determined that the payment methodology improperly includes payment for State administrative costs as medical assistance. The amendment would include Medicaid administrative costs as part of the payment to providers and thus would likely result in incorrect payment of FFP. Because the proposed payment methodology commingles medical assistance and administrative costs, it is not consistent with the requirement for proper and efficient

plan administration contained in section 1902(a)(4) of the Act. Therefore, based on the reasoning set forth above, and after consultation with the Secretary as required under 42 CFR 430.15(c)(2), CMS disapproved Indiana SPA 02–021.

Section 1116 of the Act and 42 CFR Part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a state plan or plan amendment. CMS is required to publish a copy of the notice to a state Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as *amicus curiae* must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

The notice to Indiana announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Ms. Melanie Bella, Assistant Secretary, Medicaid Policy, 402 West Washington Street, Indianapolis, IN 46204.

Dear Ms. Bella: I am responding to your request for reconsideration of the decision to disapprove Indiana Medicaid State Plan Amendment (SPA) 02–021 submitted on December 27, 2002.

In SPA 02–021, Indiana proposed to expand the State's Medicaid mental health rehabilitation benefit to include services furnished by five types of child care facilities to inpatients in the facilities. The State incorporated into the SPA portions of the Indiana State code (470 IAC 3–11, 470 IAC 3–12, 470 IAC 3–13, 470 IAC 3–14, and 470 IAC 3–15) that govern the operation of these facilities.

We do not find the proposed SPA to be consistent with section 1902(a) of the Social Security Act (the Act), which provides generally that state plans must make "medical assistance," as defined in section 1905(a) of the Act, available to eligible individuals. The proposed SPA would provide a facility-based benefit that within the scope of "medical assistance" as that term is used in section 1902(a) of the Act and defined in section 1905(a) of the Act. The definition of medical assistance at section 1905(a) of the Act excludes payment for care and services to individuals under age 65 who are patients in institutions for mental diseases (IMDs), except payment for juvenile psychiatric hospital services pursuant to section 1905(a)(16) of the Act. The services proposed under this SPA would be furnished to individuals who are under age 65 in institutions that appear to meet the definition of an IMD at section 1905(i) of the Act and applicable Federal regulations at 42 CFR 435.1009. (In responses to Centers for Medicare & Medicaid Services (CMS) inquiries, the State itself indicated that the facilities can have over 16 beds, and that the patients reside in the facility in order to receive treatment for mental illness.) But, the proposed services are not within the scope of juvenile psychiatric hospital services which, pursuant to section 1905(h) of the Act, includes services provided to individuals under age 21 in psychiatric residential treatment facilities. It appears that the proposed services would be furnished in facilities that do not meet the regulatory requirements for providers of inpatient psychiatric hospital services set forth at 42 CFR 483 Subpart G (concerning use of restraint or seclusion). Thus, CMS does not find that the State has established that the services are within the scope of medical assistance that is authorized under the Act.

Even if the State were to demonstrate that the individuals were not inpatients in IMDs, CMS does not believe the State has demonstrated that the proposed services are within the proper scope of medical assistance. The proposed services do not meet the requirement under section 1905(a)(13) of the Act that rehabilitation services be recommended by a physician or other licensed practitioner of the healing arts. The proposed SPA would include services that are recommended by individuals who are neither physicians nor licensed practitioners, but who are operating under the supervision of these individuals. Nor has the State shown that the proposed services meet the requirements for any inpatient setting within the scope of medical assistance, including hospitals, nursing facilities, psychiatric hospital services for juveniles, or intermediate care facilities for the mentally retarded.

In addition, the proposed SPA, does not appear to be consistent with the requirement in section 1902(a)(19) of the Act that services be provided "in the best interests of the recipients." Indiana permits the use of mechanical restraints and provides for extended periods of seclusion of children in the facilities covered by this amendment. CMS believes that these policies, defined in the Indiana Administrative Code (470 IAC 3–11, 470 IAC 3–12, and 470 IAC 3–13) and incorporated in this amendment by reference, would endanger the health and welfare of the victims of these procedures, and cannot be considered to be in the best interests of the children affected.

CMS found that the State has not demonstrated that the proposed payment methodology would comply with section 1902(a)(30)(A) of the Act, which requires that payments for services under the plan be "consistent with efficiency, economy, and quality of care." The payment methodology proposed by the State includes payment for numerous cost items, including elements of room and board and transportation services, that are not encompassed in the definition of Medicaid rehabilitation services. For this reason, CMS found that the State has not documented that the proposed payment methodology would be efficient or economical.

Furthermore, the proposed payment methodology does not appear to comply with the requirement for methods of administration that are found by the Secretary to be "proper and efficient" for the operation of the State plan, because the payment methodology improperly includes payment for State administrative costs as medical assistance. Section 1903(a) of the Act provides for FFP for medical assistance at the Federal medical assistance percentage rate, which is currently 62.32 percent in Indiana. Section 1903(a) of the Act provides for FFP at the 50 percent match rate for activities that have been found to be in support of the proper and efficient administration of the state plan. The amendment would include Medicaid administrative costs as part of the payment to providers and thus would likely result in incorrect payment of FFP. Because the proposed payment methodology commingles medical assistance and administrative costs, CMS finds that the payment methodology is not consistent with the requirement for proper and efficient plan administration.

Equally important, section 1905(a) of the Act defines the term "medical assistance" as payment of part or all of the cost of care and services furnished to eligible individuals. The reimbursement section of this amendment, detailed at section 4.2.2 of the Indiana Residential Care Reimbursement Rate Establishment document, and included in Attachment 4.19B of this amendment, would appear to provide payment for services furnished to individuals who have not been determined eligible for Medicaid.

Based on the reasoning set forth above, and after consulting with the Secretary as required by 42 CFR 430.15(c)(2), CMS disapproved Indiana Medicaid SPA 02–021.

I am scheduling a hearing on your request for reconsideration to be held January 20, 2005, at 10:00 a.m., 233 North Michigan Avenue, Minnesota Room, Chicago, Illinois 60601 to reconsider the decision to disapprove Indiana SPA 02–021.

If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR, part 430.

I am designating Ms. Kathleen Scully-Hayes as the presiding officer. If these arrangements present any problems, please contact the presiding officer. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing. The presiding officer may be reached at (410) 786–2055.

Sincerely,

Mark B. McClellan, M.D., Ph.D.

Section 1116 of the Social Security Act (42 U.S.C. 1316); 42 CFR 430.18.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: January 5, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 05–445 Filed 1–7–05; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Pediatric Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Pediatric Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues. The committee also advises and makes recommendations to the Secretary of Health and Human Services under 45 CFR 46.407 on research involving children as subjects that is conducted or supported by the Department of Health and Human Services, when that research is also regulated by FDA.

Date and Time: The meeting will be held on February 14, 2005, from 2 p.m. to 6 p.m. and on February 15, 2005, from 8 a.m. to 4:30 p.m.

Location: Center for Drug Evaluation and Research Advisory Committee Conference Room, rm. 1066, 5630 Fishers Lane, Rockville, MD.

Contact Person: Jan N. Johannessen, Office of Science and Health Coordination of the Office of the Commissioner (HF–33), Food and Drug Administration, 5600 Fishers Lane, (for express delivery, rm. 14C–06) Rockville, MD 20857, 301–827–6687, e-mail: *jjohannessen@fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 8732310001. Please call the Information Line for up-to-date information on this meeting.

Agenda: On Monday, February 14, 2005, the committee will discuss an agency report on Adverse Event Reporting, as mandated in Section 17 of the Best Pharmaceuticals for Children Act (BPCA), for LOTENSIN (benazepril), BREVIBLOC (esmolol), MALARONE (atovaquone/proguanil), VIRACEPT (nelfinavir), XENICAL (orlistat), and GLUCOVANCE (glyburide/metformin). The committee will also be asked to advise the agency on how to improve the process and content of the adverse event reviews and reporting as mandated by BPCA.

On Tuesday, February 15, 2005, the committee will discuss risk evaluation, labeling, risk communication, and dissemination of information on potential cancer risk among pediatric patients treated for atopic dermatitis with topical dermatological immunosuppressants.

The background material will become available no later than the day before the meeting and will be posted under the Pediatric Advisory Committee (PAC) docket Web site at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm* (click on the year 2005 and scroll down to PAC meetings).

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 7, 2005. Oral presentations from the public will be scheduled on Monday, February 14, 2005, between approximately 4 p.m. and 4:30 p.m. and on Tuesday, February 15, 2005, between approximately 12 noon and 12:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person by February 7, 2005, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please notify Jan Johannessen at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 30, 2004.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 05–382 Filed 1–7–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2000P–1378]

Guidance for Industry: Labeling for Topically Applied Cosmetic Products Containing Alpha Hydroxy Acids as Ingredients; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance document entitled "Guidance for Industry: Labeling for Topically Applied Cosmetic Products Containing Alpha Hydroxy Acids as Ingredients." The guidance recommends content for a labeling statement for cosmetic products containing alpha hydroxy acids (AHAs) as ingredients. This action was prompted by a citizen petition filed by the Cosmetic, Toiletry, and Fragrance Association, which requested that FDA issue a regulation establishing labeling requirements relating to sun protection with use of cosmetic products containing AHAs.

DATES: You may submit written or electronic comments on the guidance document at any time.

ADDRESSES: Submit written requests for single copies of the guidance document to the Office of Cosmetics and Colors, Center for Food Safety and Applied Nutrition (HFS–100), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835. Include a self-addressed adhesive label to assist that office in processing your request or include a fax number to which the guidance document may be sent.

Submit written comments on the guidance document to the Division of Dockets Management (HFA–305), 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Julie N. Barrows, Center for Food Safety and Applied Nutrition (HFS–125), Food and

Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–1344.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance document entitled "Guidance for Industry: Labeling for Topically Applied Cosmetic Products Containing Alpha Hydroxy Acids as Ingredients."

On December 2, 2002 (67 FR 71577), FDA announced the availability of the draft version of this guidance document in the **Federal Register**.

II. Comments on Draft Guidance

FDA has evaluated the seven comments received in response to the draft guidance recommending "Sunburn Alert" labeling on cosmetic products that contain AHAs as ingredients.

One comment from a nurse's association fully supported the AHA labeling statement. The comment stated that the inclusion of the "Sunburn Alert" on skin care products containing AHAs is an important step in empowering health providers and consumers with valuable information about how to protect their skin while using these products.

Three comments stated that the guidance should apply only to products intended to function as an exfoliant. For example, the comments suggested that the guidance should not apply to products containing citric acid when it is used for adjusting the hydrogen-ion concentration (pH) in shampoos and other products.

Limiting the recommended labeling statement to products with exfoliation claims may leave out products that FDA believes should bear the labeling statement. FDA's surveys indicated that approximately half of the products on the market that contain an AHA as an ingredient have an intended use as an exfoliant, as determined by the presence of exfoliant claims in the product labeling. Even some salon products containing high levels of AHAs did not contain exfoliation claims in the labeling. FDA has no data suggesting that citric acid has less of an effect on the skin than glycolic acid or lactic acid, the predominant AHAs present in cosmetic products, regardless of its intended use. FDA has not modified the guidance in response to these comments.

Two comments requested that FDA provide an exemption from the AHA labeling statement for products that exceed an appropriately high pH level.

Percutaneous absorption studies suggest that topically applied AHAs in any cosmetic product may be absorbed by the skin to some extent, depending on product formulation, pH, and contact time (Refs. 1 and 2). The studies measured absorption of glycolic acid, lactic acid, and other AHAs by human skin at pH 3 and pH 7 using various product formulations. Although much greater absorption was observed at pH 3, substantial absorption was observed at pH 7. FDA has not modified the guidance in response to these comments.

Three comments requested that FDA provide an exemption from the AHA labeling statement for cosmetic products containing low concentrations of AHAs. One comment suggested that products containing AHA ingredients at concentrations of 1 percent or less should be exempted. The comments did not provide any data to support their request.

The evidence reviewed so far by FDA suggests that topical application of a cosmetic product containing an AHA as an ingredient at any concentration may increase skin sensitivity to the sun and the possibility of sunburn. FDA analyzed approximately 100 cosmetic products containing AHAs as ingredients and found concentrations of AHAs ranging from 0.01 percent to 67 percent (Ref. 3). Most of the analyzed products with very low levels of some AHAs also contained higher levels of other AHAs. One product for which FDA received five adverse experience reports (e.g., skin irritation, burning) contained only 0.3 percent α-hydroxydecanoic acid and 0.4 percent α-hydroxyoctanoic acid, for a total of 0.7 percent AHAs, suggesting that AHAs may be associated with adverse reactions even at these low concentrations. FDA has not modified the guidance in response to these comments.

FDA recognizes that an AHA can be present in a cosmetic product as an incidental ingredient. As defined in § 701.3(l) (21 CFR 701.3(l)), incidental ingredients are ingredients that are present in a cosmetic at insignificant levels and that have no technical or functional effect in the cosmetic. Incidental ingredients are not required to be declared in the ingredient lists on cosmetic labels. Therefore, if an AHA were used only as an incidental ingredient in a cosmetic product, its presence would not require declaration on the label. The agency finds that providing for a "Sunburn Alert" labeling statement on a cosmetic product in which the only use of an AHA was as an incidental ingredient would have very limited utility in protecting the consumer. Moreover, the presence of the "Sunburn Alert" labeling statement could be confusing to consumers because the ingredient label would not declare the presence of an AHA. Therefore, FDA has modified the guidance to state that the agency's recommendation for the AHA labeling statement does not apply to products in which an AHA is present as an incidental ingredient, as defined in § 701.3(l).

Three comments noted that AHA ingredients are used in a wide range of products as pH adjusters, chelating agents, fragrance ingredients, humectants, and skin conditioning agents and asserted that AHAs present in a product for these uses could not be reasonably anticipated to cause increased susceptibility to sunburn. An example given was citric acid. Two of the comments requested that the guidance apply only to AHA-containing cosmetic products used on areas of the body normally susceptible to sunburn.

The comments addressed a range of intended uses for AHAs in cosmetic products, as well as identified many different types of products that contain AHAs as ingredients, but did not provide data to support their request. The percutaneous absorption studies discussed previously suggest that topically applied AHAs in any cosmetic product, regardless of intended use, may be absorbed by the skin, including the skin on the scalp or under the arms. The draft guidance did not address the possibility of unintentional topical application of AHAs to parts of the skin or mucous membrane that are exposed to the sun. Therefore, FDA has modified the guidance to state that FDA recommends "Sunburn Alert" labeling for cosmetic products that contain an AHA as an ingredient and that are intended for application to areas of the body that may result in unintentional application to the skin or mucous membrane that are exposed to the sun.

FDA recognizes that AHAs can be present in cosmetic products that are applied to areas of the body that are not sun exposed. Such products include mouthwashes, breath fresheners, and douches. Therefore, FDA has modified the guidance to state that the guidance does not apply to cosmetic products that contain an AHA as an ingredient and that are intended for application to non-sun exposed areas of the body.

Three comments recommended modified labeling statements for AHA-containing products that also contain a sunscreen. The comments stated that the AHA labeling statement may not be appropriate for products containing sunscreens and may be confusing to consumers. One comment suggested

that inclusion of a sunscreen at an appropriate level might serve as a basis for not recommending the AHA labeling statement. Two comments proposed that the AHA labeling statement for products containing a sunscreen should be shortened to address only the need to use a sunscreen for 7 days after use of the AHA product is discontinued.

When an AHA is present in a product that is labeled to contain a sunscreen, that product meets the definition of a drug-cosmetic. Such products must comply with the requirements for drugs and cosmetics, including applicable over-the-counter sunscreen drug product regulations. FDA has modified the guidance to state that the recommended AHA labeling statement does not apply to drug-cosmetic products that contain an AHA as an ingredient and also are labeled to contain a sunscreen for sunburn protection. FDA intends to address labeling for such products in a future document.

Three comments requested changes to FDA's recommended AHA labeling statement. Two comments urged FDA to reconsider identifying AHAs in the labeling statement because the presence of an AHA ingredient does not always result in increased sun sensitivity or likelihood of sunburn. Another comment stated that FDA's AHA labeling statement is quite long, especially for labeling cosmetic products packaged in small containers. The comment submitted a statement that is about three-fourths the length of FDA's recommended statement.

In the AHA guidance, FDA discusses research on effective labeling statements. The research suggests that an effective labeling statement would begin with a signal phrase, identify the subject of the statement, identify the consequences of not heeding the statement, and provide instructions on what to do (or not do) to avoid these consequences. Removal of any of these elements may significantly decrease the effectiveness of the statement. Therefore, FDA finds that all of the recommendations in the "Sunburn Alert" are important components of information for an AHA labeling statement.

FDA's current thinking on sun protection is that a total program to reduce harmful effects from the sun would include limiting sun exposure, wearing protective clothing, and using sunscreens. Therefore, in accordance with this current thinking on sun protection, the agency has modified the "Sunburn Alert" labeling statement that we recommended in our draft guidance to add the words "wear protective clothing" to the list of actions that may be taken to reduce the possibility of sunburn when using cosmetic products that contain an AHA as an ingredient.

FDA recognizes that there is limited labeling space on cosmetic products packaged in small containers and has modified the guidance to clarify that it recommends that the AHA labeling statement appear prominently and conspicuously once in the labeling of a cosmetic product.

One comment recommended that a "Sunburn Alert" labeling statement be extended to products containing poly hydroxy acid and/or beta hydroxy acid. The comment noted that these compounds are exfoliants with the same increased skin sensitivity concern as that for AHAs. The comment did not define the term "poly hydroxy acid" and did not provide data to support its recommendation to extend a "Sunburn Alert" labeling statement to products containing poly hydroxy acid and/or beta hydroxy acid. FDA does not have data on the effect of topical use of these compounds on the skin. Therefore, FDA finds that there is currently no basis to recommend that the "Sunburn Alert" statement appear in the labeling of cosmetics that contain the compounds discussed in this comment. FDA has not modified the guidance in response to this comment.

Finally, two comments on the draft guidance requested that FDA provide an exemption from the AHA labeling statement for properly formulated cosmetic products when the manufacturer or distributor has competent and reliable scientific evidence demonstrating that the product containing an AHA at any level of concentration and pH does not increase sun sensitivity or the likelihood of sunburn. To support its contention, one comment provided documentation of a study of the effects of ultraviolet (UV) radiation on skin pre-treated with lactic acid.

In its report (Ref. 4), published in 1998, the Cosmetic Ingredient Review (CIR) Expert Panel reported the following conclusion:

> Based on the available information included in this report, the CIR Expert Panel concludes that Glycolic and Lactic Acid, their common salts and their simple esters, are safe for use in cosmetic products at concentrations ≤10 percent, at final formulation pH ≥3.5, when formulated to avoid increasing sun sensitivity or when directions for use include the daily use of sun protection. These ingredients are safe for use in salon products at concentrations ≤30 percent, at final formulation pH ≥3.0, in products designed for brief, discontinuous use followed by thorough rinsing from the skin, when applied by trained professionals, and when application is accompanied by directions for the daily use of sun protection. * * *

FDA reviewed the study submitted in the second comment and determined that the study used less sensitive methods than did the studies reviewed for the guidance (Ref. 5). For example, the study reported that exposure of control sites (i.e., sites without topical treatment with AHA-containing test samples) to 1 minimal erythema dose (MED) of UV radiation resulted in sunburn cell formation in only 4 out of 18 subjects. However, in the studies that FDA reviewed for the guidance and that used sunburn cell formation as an indicator of UV radiation-induced damage, exposure of control sites to 1 MED of UV radiation resulted in sunburn cell formation in 71 out of 72 subjects. (The MED is the minimum level of UV radiation needed to cause skin redness and has to be measured for each subject.)

FDA has modified the guidance to state that it may be possible in the future to formulate a cosmetic product that contains an AHA as an ingredient and that does not increase the sensitivity of skin to the sun. However, FDA is not aware of the current existence of such a product.

Based on evidence reviewed so far, FDA concludes that topically applied cosmetic products containing AHAs as ingredients may increase skin sensitivity to the sun while the products are used and for up to a week after use is stopped, and that this increased skin sensitivity to the sun may increase the possibility of sunburn. FDA does not know the extent of consumer awareness of the potential for increased skin sensitivity to the sun from the topical use of AHA-containing cosmetic products. The agency is publishing this guidance to help assure consumer awareness of this potential and to educate manufacturers to help ensure that their labeling is not false or misleading.

Publication of this guidance is an interim measure while FDA continues to review the data on the effects of AHA-containing products on skin sensitivity to UV radiation, including a photocarcinogenicity study by the National Toxicology Program's Center for Phototoxicology and recent studies published in peer-reviewed journals. FDA invites comments to continue to inform FDA of new studies when they become available.

FDA is issuing this guidance as a level 1 guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115). This guidance represents the agency's current thinking on the

labeling of topically applied cosmetic products that contain an AHA as an ingredient. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if the approach satisfies the requirements of applicable statutes and regulations.

III. Comments on Guidance

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Copies of this guidance also are available on the Internet at *http://www/cfsan.fda.gov/~dms/guidance.html.*

V. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Sah, A., S. Mukherjee and R. R. Wickett, "An In Vitro Study of the Effects of Formulation Variables and Product Structure on Percutaneous Absorption of Lactic Acid," *Journal of Cosmetic Science*, vol. 49, pp. 257–273, 1998.

2. Kraeling, M. E. K. and R. L. Bronaugh, "In Vitro Percutaneous Absorption of Alpha Hydroxy Acids in Human Skin," *Journal of the Society of Cosmetic Chemists*, vol. 48, pp. 187–197, 1997.

3. Yates, R. L. and D. C. Havery, "Determination of Phenol, Resorcinol, Salicylic Acid and α-Hydroxy Acids in Cosmetic Products and Salon Preparations," *Journal of Cosmetic Science*, vol. 50, pp. 315–325, 1999.

4. Andersen, F. A., ed., "Final Report on the Safety Assessment of Glycolic Acid, Ammonium, Calcium, Potassium, and Sodium Glycolates, Methyl, Ethyl, Propyl, and Butyl Glycolates, and Lactic Acid, Ammonium, Calcium, Potassium, Sodium, and TEA-Lactates, Methyl, Ethyl, Isopropyl, and Butyl Lactates, and Lauryl, Myristyl, and Cetyl Lactates," *International Journal of Toxicology*, vol. 17, supplement 1, pp. 1–241, 1998.

5. Wamer, W., Office of Cosmetics and Colors, CFSAN, Review of Documents from Access Business Group: Aupperlee, D., et al., "The Effects of UV Light on Skin Pre-Treated With Alpha Hydroxy Acid Moisturizers," and Thomas J. Stevens and Associates, "The Effects of Repetitive Cutaneous Application of Test Materials Containing Alpha Hydroxy Acid on the Sensitivity of Skin to Ultraviolet (UV) Light," July 1, 2003.

Dated: December 29, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–381 Filed 1–7–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Privacy Act of 1974; New System of Records

AGENCY: Health Resources and Services Administration, DHHS.

ACTION: Notification of a new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Health Resources and Services Administration (HRSA) is publishing notice of a proposal to add a new system of records. The new system of records, "State-Provided Physician Records for the Application Submission & Processing System, SDB, BHPr, HRSA," will cover health care practitioners who are the subjects of databases collected and maintained by State Primary Care Offices/Associations. Such health care practitioners include physicians (both M.D.s and D.O.s), licensed or otherwise authorized by a State to provide health care services. This system of records is required to comply with the implementation directives of the Act, Public Law 108–20. The records will be used to support the Application Submission and Processing System electronic application for the development, submission, and review of applications for HPSAs and MUPs. The most critical requirement for accurate designation determinations is accurate data on the location of primary care providers relative to the population. To this end, SDB continually tries to obtain the latest data on primary care providers and their practice location(s) at the lowest geographical level possible for use in the designation process, with the objective of minimizing the level of effort required on the part of States and communities seeking designations.

DATES: HRSA invites interested parties to submit comments on the proposed New System of Records on or before February 22, 2005. As of the date of the publication of this Notice, HRSA has sent a Report of New System of Records to Congress and to the Office of Management and Budget (OMB). The New System of Records will be effective 40 days from the date submitted to OMB unless HRSA receives comments that would result in a contrary determination.

ADDRESSES: Please address comments to Health Resources and Services Administration (HRSA) Privacy Act Officer, 5600 Fishers Lane, Room 14A–20, Rockville, Maryland 20857; telephone (301) 443–3780. This is not a toll-free number. Comments received will be available for inspection at this same address from 9 a.m. to 3 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Associate Administrator, Bureau of Health Professions, Health Resources and Services Administration (HRSA), 5600 Fishers Lane, Room 8–05, Rockville, Maryland 20857; telephone (301) 443–5794. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Health Resources and Services Administration (HRSA) proposes to establish a new system of records: "State-Provided Physician Records for the Application Submission & Processing System, SDB, BHPr, HRSA." The new system of records, "State-Provided Physician Records for the Application Submission & Processing System, SDB, BHPr, HRSA," will cover health care practitioners who are the subjects of databases collected and maintained by State Primary Care Offices/Associations. Such health care practitioners include physicians (both M.D.s and D.O.s), licensed or otherwise authorized by a State to provide health care services. The records will be used to support the Application Submission and Processing System electronic application for the development, submission, and review of applications for HPSAs and MUPs. The most critical requirement for accurate designation determinations is reliable data on the location of primary care providers relative to the population. To this end, SDB continually tries to obtain the latest data on primary care providers and their practice location(s) at the lowest geographical level possible for use in the designation process, with the objective of minimizing the level of effort required on the part of States and communities seeking designations. The system will include records that show a value for each of the following fields for all of the physicians that are included in each States' database: Provider ID (System-Assigned); Provider Type; Provider Status; First Name; Middle Name; Last Name; Suffix; Physician License Number; Specialty Code; Visa

Status; Federal Employee Status; National Health Service Corps Status; MD/DO; AMA ID; AOA ID; Hospital Privileges Status; Gender; Source Type; Address 1; Address 2; Address 3; City; State; Zip; FIPS State; FIPS County; Census Tract; Minor Civil Division; Longitude; Latitude; Address FTE; Office Visits (Per Year); New Patients Waiting Time For Appointments (days); Current Patients Waiting Time For Appointments (days); Average Wait for New Patient (hours); Average Wait for Current Patient (hours); Patient Percent—Homeless; Patient Percent—Medicaid; Patient Percent—Migrant Farm worker; Patient Percent—Native American; Patient Percent—Sliding Fee Scale; Patient Percent—Language Barrier Present; Patient Percent—Migrant/Seasonal Farm worker; Patient Percent—Other Population; Medicaid Claims; Hours Given Include Time Spent in Hospital; Accepts New Patients; Tour Hours in Direct Patient Care for this Address; Sub Specialty; Sub Specialty Percent; Language 1; Language 1 Percent; Language 2; Language 2 Percent; Language 3; and Language 3 Percent.

Disclosure of these records may be made to HRSA employees in order to accomplish the purposes for which the records are collected. The users are required to comply with the requirements of the Privacy Act with respect to such records. Also, each State Primary Care Office (and a few Primary Care Associations) may have access to provider data within their own state. These users will also have access to bordering states' data (one county-deep) at an aggregate level only. Disclosure may also be made to contractors engaged by the Department to geocode the physicians' address so that it may be seen on a computerized map, or to load the provider data into the Application Submission and Processing Systems. All such contractors shall be required to maintain Privacy Act safeguards with respect to such records and return all records to HRSA.

This system of records is required to comply with the implementation directives of the Act, Public Law 108–20.

The following notice is written in the present tense, rather than in the future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the system becomes effective.

Dated: December 23, 2004.

Elizabeth M. Duke,

Administrator, Health Resources and Services Administration.

09–15–0066

SYSTEM NAME:

State-Provided Physician Records for the Application Submission & Processing System, SDB, BHPr, HRSA

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

System Manager is located in Shortage Designation Branch, Office of Workforce Evaluation and Quality Assurance, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C–26, Rockville, Maryland 20857. Actual computer server is located in Office of Information Technology, Health Resources and Services Administration, 5600 Fishers Lane, Room 10A–08, Rockville, Maryland 20857.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Health care practitioners who are the subjects of databases collected and maintained by State Primary Care Offices/Associations. Such health care practitioners include physicians (both M.D.s and D.O.s), licensed or otherwise authorized by a State to provide health care services.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system will include records that show a value for each of the following fields for all of the physicians that are included in each States' database:

—Provider ID (System-Assigned)
—Provider Type
—Provider Status
—First Name
—Middle Name
—Last Name
—Suffix
—Physician License Number
—Specialty Code
—Visa Status
—Federal Employee Status
—National Health Service Corps Status
—MD/DO
—AMA ID
—AOA ID
—Hospital Privileges Status
—Gender
—Source Type
—Address 1
—Address 2
—Address 3
—City
—State
—Zip
—FIPS State
—FIPS County
—Census Tract
—Minor Civil Division
—Longitude
—Latitude
—Address FTE
—Office Visits (Per Year)
—New Patients Waiting Time For Appointments (days)
—Current Patients Waiting Time For Appointments (days)
—Average Wait for New Patient (hours)
—Average Wait for Current Patient (hours)
—Patient Percent—Homeless
—Patient Percent—Medicaid
—Patient Percent—Migrant Farmworker
—Patient Percent—Native American
—Patient Percent—Sliding Fee Scale
—Patient Percent—Language Barrier Present
—Patient Percent—Migrant/Seasonal Farmworker
—Patient Percent—Other Population
—Medicaid Claims
—Hours Given Include Time Spent in Hospital?
—Accepts New Patients?
—Tour Hours in Direct Patient Care for this Address
—Sub Specialty
—Sub Specialty Percent
—Language 1
—Language 1 Percent
—Language 2
—Language 2 Percent
—Language 3
—Language 3 Percent

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 CFR, chapter 1, part 5—Designation of Health Professional Shortage Areas and section 332 of the Public Health Service (PHS) Act provide that the Secretary of Health and Human Services shall designate health professional shortage areas, (HPSAs), and/or Medically Underserved Populations (MUPs), based on criteria established by regulation. The authority for designation of HPSAs is delegated to the Bureau of Health Profession's Shortage Designation Branch (SDB). Criteria and the process used for designation of HPSAs and/or MUPs were developed in accordance with the requirements of section 332 of the PHS Act. Designation as a HPSA is a prerequisite for application for the National Health Service Corps recruitment assistance. To accomplish this task, the SDB relies on data specified in 42 CFR part 5 and HPSA and/or MUP guidelines, to review applications submitted by State Primary Care Offices (PCO) and their affiliates for designation status.

PURPOSE(S):

The sole purpose of the system is to support the Application Submission and Processing System electronic application for the development, submission, and review of applications for HPSAs and MUPs. The most critical requirement for accurate designation determinations is reliable data on the location of primary care providers relative to the population. To this end, SDB continually tries to obtain the latest data on primary care providers and their practice location(s) at the lowest geographical level possible for use in the designation process, with the objective of minimizing the level of effort required on the part of States and communities seeking designations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to HRSA employees in order to accomplish the purposes for which the records are collected. The users are required to comply with the requirements of the Privacy Act with respect to such records.

2. Each state Primary Care Office (and a few Primary Care Associations) may have access to provider data within their own state. These users will also have access to bordering states' data (one county-deep) at an aggregate level only.

3. Disclosure may be made to contractors engaged by the Department to geocode the physicians' address so that it may be seen on a computerized map, or to load the provider data into the Application Submission and Processing Systems. All such contractors shall be required to maintain Privacy Act safeguards with respect to such records and return all records to HRSA.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and in computer data files.

RETRIEVABILITY:

Retrieval of physician records is by use of personal identifiers used when entering the system.

SAFEGUARDS:

1. *Authorized users:* Access to records is limited to designated HRSA and PCO/A staff. Theses employees are the only authorized users. HRSA maintains current lists of authorized users.

2. *Physical Safeguards:* All computer equipment and files are stored in areas where fire and life safety codes are strictly enforced. All automated and non-automated documents are protected on a 24-hour basis. Perimeter security includes intrusion alarms, on-site guard force, random guard patrol, key/passcard/combination controls, and receptionist controlled area. Hard copy files are maintained in a file room used solely for this purpose with access limited by combination lock to authorized users identified above. Computer files are password protected and are accessible only by use of computers which are password protected.

3. *Procedural Safeguards:* A password is required to access computer files. All users of personal information in connection with the performance of their jobs protect information from public view and from unauthorized personnel entering an unsupervised area. All authorized users sign a "Rules of Behavior" document. All passwords, keys and/or combinations are changed when a person leaves or no longer has authorized duties. Access to records is limited to those authorized personnel trained in accordance with the Privacy Act and ADP security procedures. The safeguards described above were established in accordance with DHHS Chapter 45–13 and supplementary chapter PHS hf:45–13 of the General Administration Manual; and the DHHS Information Resources Management Manual, Part 6, "ADP Systems Security."

RETENTION AND DISPOSAL:

Retention and disposal is in accordance with the HRSA records retention schedule. Contact the System Manager at the following address for further information.

SYSTEM MANAGER(S) AND ADDRESS:

Debra Small, ASAPS System Manager, Public Health Analyst, Shortage Designation Branch, Office of Workforce Evaluation and Quality Assurance, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C–26, Rockville, Maryland 20857.

NOTIFICATION PROCEDURE:

Write to the System Manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a fine.

RECORD ACCESS PROCEDURE:

To obtain access to a record, contact the System Manager at the above specific address. Requesters should provide the same information as is required under the Notification Procedures above. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURES:

Write to the official specified under Notification Procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant. The right to contest records is limited to information which is incomplete, incorrect, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Data are collected from the State Primary Care Offices and a few State Primary Care Associations.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 05–447 Filed 1–7–05; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive

Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301–496–7057; fax: 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Methods and Composition for Development of Preclinical Testing of Anticancer Therapies Using Transgenic Animals

Lyuba Varticovski (NCI), DHHS Reference No. E–017–2005/0—Research Tool

Licensing Contact: John Stansberry; 301–435–5236; *stansbej@mail.nih.gov.*

Mouse models are valuable tools for screening anticancer agents during the preclinical stage of drug development. The methods and composition described here provide a versatile system for testing drug therapies in an *in vivo* setting. This invention combines a unique flexibility for testing therapeutic interventions for tumor prevention, progression, and development of metastasis in tumors with specific genetically defined backgrounds. Because these tumors can be transplanted into immuno-compromised recipients, this invention provides an opportunity for testing the role of host immune system, angiogenesis and stromal cells in tumor development, progression, and metastasis. The tumors that develop in this model system mimic the heterogeneity of human disease and genetic instability associated with tumor progression and metastasis. The combination of these applications makes this method of testing anticancer therapies superior to any currently available *in vivo* preclinical models.

Mabs to IRTA2 for Use in Diagnosis and Therapy of IRTA-Expressing Cancers

Ira Pastan (NCI), U.S. Provisional Application No. 60/615,406 filed 30 Sep 2004 (DHHS Reference No. E–287–2004/0–US–01)

Licensing Contact: Brenda Hefti; 301–435–4632; *heftib@mail.nih.gov.*

Immunoglobulin superfamily receptor translocation associated 2 (IRTA2) is a cell surface receptor that is normally expressed in mature B cells. ITRA2 expression is deregulated in multiple myeloma and Burkitt lymphoma cell lines. The invention discloses monoclonal antibodies specific for the extracellular domain of IRTA2 and their use in diagnostic and therapeutic applications. The antibodies can detect ITRA2 expression on non-Hodgkin's B-cell lymphoma cell lines and can detect hairy cell leukemia cells in blood samples taken from patients. The antibodies are specific for IRTA2, and can detect formalin-fixed antigen and SDS-denatured antigen.

These antibodies could be used for detailed expression studies of IRTA2 in different cancer cells lines. The antibodies could be also be used to treat B cell malignancies. In a diagnostic application the antibodies could be employed to investigate the presence of a residual number of malignant cells following a therapeutic regimen. The IRTA2 gene is known to produce alternative spliced products that encode soluble forms of IRTA2. The antibodies could be used to construct immunoassays to detect soluble IRTA2s in patients' sera as a useful diagnostic maker for B-cell malignancies.

The UBE2G2 Binding Domain in the Ubiquitin Ligase GP78 and Methods of Use Thereof

Allan Weissman *et al.* (NCI), U.S. Provisional Application No. 60/583,263 filed 26 Jun 2004 (DHHS Reference No. E–244–2004/0–US–01)

Licensing Contact: Thomas Clouse; 301–435–4076; *clouset@mail.nih.gov.*

Cytosolic and nuclear proteins are targeted for proteosomal degradation by the addition of multiubiquitin chains. The specificity of this process is largely conferred by ubiquitin protein ligases (E3s) that interact with specific ubiquitin conjugating enzymes (E2s). One important role for ubiquitylation is in quality control in the secretory pathway, targeting proteins for degradation through a set of processes known as endoplasmic reticulum (ER) -associated degradation (ERAD). ERAD is important in many diseases including cystic fibrosis, neurodegenerative disorders, alpha-1 antitrypsin deficiency, tyrosinase deficiency and cancer. ERAD is also important in controlling levels of cell surface receptors and in regulation crucial enzymes involved in cholesterol metabolism. gp78, also known as the autocrine motility factor receptor, is an E3 implicated in ERAD. This invention relates to the identification of a discrete domain within gp78 that encodes a binding site specific for gp78's cognate E2, Ube2g2. Ube2g2 is the most widely implicated E2 in ERAD. Expression of the Ube2g2 binding region provides a means of blocking ERAD by preventing interactions between gp78 and Ube2g2 and has the potential to provide diagnostic and therapeutic methods of intervening in modulating ERAD with consequences for disease processes and for generating recombinant secreted proteins in mammalian cells.

Composition for Detecting the Response of Rectal Adenocarcinomas to Radiochemotherapy

Thomas Ried *et al.* (NCI), U.S. Provisional Application No. 60/535,491 filed 12 Jan 2004 (DHHS Reference No. E–269–2003/0–US–01)

Licensing Contact: Thomas Clouse; 301–435–4076; *clouset@mail.nih.gov.*

Rectal adenocarcinomas are among the most frequent malignant tumors. Surgery, including total mesorectal resection, is the primary treatment. Radiation or combined radiochemotherapy can be necessary before or after resection of the primary tumor. However, the response of individual tumors to radiochemotherapy is not uniform, and patients with radiochemotherapy resistant tumors are needlessly exposed to radiation, chemotherapy drugs, and the associated side effects thereof. The invention discloses the identification of genes and gene products, *e.g.*, molecular markers or molecular signatures that are differentially expressed in responders and non-responders to radiochemotherapy treatment of rectal adenocarcinoma. The detection of differential expression levels of these genes can serve as a basis for diagnostic assays to predict the response to radiochemotherapy and can be used to identify the appropriate agent to be administered to enhance the effectiveness of the radiochemotherapy.

Peptide Agonists of Prostate-Specific Antigen and Uses Thereof

Kwong-yok Tsang and Jeffrey Schlom (NCI), U.S. Provisional Application No. 60/334,575 filed 30 Nov 2001 (DHHS Reference No. E–123–2001/0–US–01); PCT Application No. PCT/US02/37805 filed 26 Nov 2003 (DHHS Reference No. E–124–2001/1–PCT–01); and subsequent National Stage filings in the United States, Europe, Canada, Australia, and Japan

Licensing Contact: Jeff Walenta; 301–435–4633; *walentaj@mail.nih.gov.*

Current treatment for prostate cancer involves surgery, radiation, chemotherapy, and/or hormonal therapy. In spite of these treatments, over 40,000 men die of prostate cancer each year in the United States alone. A promising new treatment modality for prostate cancer involves harnessing the body's own immune response to eliminate a cancer. Traditional and non-traditional vaccine therapies have been shown to stimulate an immune response against commonly expressed tumor-associated antigens. One such common tumor-associated antigen expressed on a

majority of prostate cancer cells is Prostate Specific Antigen (PSA).

The present invention relates to isolated peptides comprising immunogenic peptides derived from PSA. These immunogenic peptides are considered agonist epitopes of the wild-type PSA–3 cytotoxic T lymphocyte (CTL) epitope: an agonist epitope is modified from the wild type epitope and shows greater immune stimulating characteristics. This invention claims the physical composition and use of the PSA–3 agonist epitopes, including peptide, nucleic acid, pharmaceutical composition, and method of treatment. The PSA–3 agonist epitopes would have application in a number of traditional and non-traditional vaccine delivery systems for the treatment of cancer.

Some vaccine delivery fields of use for the PSA–3 epitope have been exclusively licensed. However, a number of fields are available for other traditional and non-traditional vaccine delivery systems. This invention has been published in Schlom, *et al.*, "Identification and Characterization of a Human Agonist Cytotoxic T–Lymphocyte Epitope of Human Prostate-specific Antigen." Clinical Cancer Research, Vol. 8, 41–53, January 2002.

In addition to licensing, the technology is available for further development through collaborative research with the inventors via a Cooperative Research and Development Agreement (CRADA).

Dated: December 29, 2004.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 05–391 Filed 1–7–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel Clinical Science.

Date: February 23–24, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriot Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Jeanette M. Hosseini, Scientific Review Administrator, National Center for Complementary and Alternative Medicine, 6707 Democracy Blvd, Suite 401, Bethesda, MD 20892. (301) 594–9098.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel Basic Science.

Date: March 3–4, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Dale L. Birkle, PhD, Scientific Review Administrator, NIH/NCCAM, 6707 Democracy Blvd, Suite 401, Bethesda, MD 20892. (301) 451–6570. *birkled@mail.nih.gov.*

Dated: January 3, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–386 Filed 1–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel.

Date: February 10–11, 2005.

Time: February 10, 2005, 8 a.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Linda C. Duffy, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, 6701 Democracy Blvd. Room 1082, Bethesda, MD 20892, (301) 435–0810. *duffyl@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS.)

Dated: January 3, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–389 Filed 1–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel, NEI Conference Grant Applications.

Date: January 12, 2005.

Time: 9:30 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, NEI Conference Room, Bethesda, MD 20892.

Contact Person: Houmam H. Araj, PhD, Scientific Review Administrator, Division of Extramural Research, National Eye Institute, NIH, 5635 Fishers Lane, Suite 1300, Bethesda, MD 20892—9602. 301–451–2020. *haraj@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS.)

Dated: January 3, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–390 Filed 1–7–05:8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Review of Conference Meeting (R13) Applications.

Date: February 25, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Shelley S. Sehnert, PhD, Scientific Review Administrator, Review Branch, NIH/NHLBI, 6701 Rockledge Drive, Room 7206, Bethesda, MD 20892–7492. 301–435–0303.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, CV Risks in American Indians and Alaskan Natives.

Date: March 17, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel & Executive Meeting Center Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: William J. Johnson, PhD, Review Branch, Division of Extramural Affairs, National Heart, Lung and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7184, MSC 7924, Bethesda, MD 20892. 301–435–0275.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Review of Training Grants (K18s, K23s, K24s, and K25s).

Date: March 17–18, 2005.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Roy L. White, PhD, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7192, MSC 7924, Bethesda, MD 20892. 301–435–0287.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS.)

Dated: January 3, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–383 Filed 1–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the National Advisory Neurological Disorders and Stroke Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Neurological Disorders and Stroke Council, Clinical Trials Subcommittee.

Date: February 9, 2005.

Open: 8 p.m. to 9 p.m.

Agenda: To discuss clinical trial policy.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Closed: 9 p.m. to 10 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: John Marler, MD, Associate Director for Clinical Trials, National Institute of Neurological Disorders and Stroke, National Institutes of Health, 6001 Executive Blvd., Suite 2216, Bethesda, MD 20892. (301) 496–9135. *jm137f@nih.gov.*

Name of Committee: National Advisory Neurological Disorders and Stroke Council, Training, Career Development, and Special Programs Subcommittee.

Date: February 9, 2005.

Open: 8 p.m. to 9:30 p.m.

Agenda: To discuss the training programs of the Institute.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Closed: 9:30 p.m. to 10 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Margaret Jacobs, Acting Training and Special Programs Officer, National Institute of Neurological Disorders and Stroke, National Institutes of Health, 6001 Executive Blvd., Suite 2154 MSC 9527, Bethesda, MD 20892–9527. 301–496–4188. *mj22o@nih.gov.*

Name of Committee: National Advisory Neurological Disorders and Stroke Council.

Date: February 10–11, 2005.

Open: February 10, 2005, 8:30 a.m. to 3:45 p.m.

Agenda: Report by the Director, NINDS; Report by the Director, Division of Extramural Research; Overview of the NINDS Intramural Program; scientific presentation, and other administrative and program developments.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Closed: February 10, 2005, 3:45 p.m. to 4:45 p.m.

Agenda: To review and evaluate the Division of Intramural Research Board of Scientific Counselors' reports.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Closed: February 11, 2005, 8 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Robert Finkelstein, PhD, Associate Director for Extramural Research, National Institute of Neurological Disorders and Stroke, NIH, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892. (301) 496–9248.

Any interested person may file written comments with the committee by forwarding

the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *http://www.ninds.nih.gov*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS.)

Dated: January, 3, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–384 Filed 1–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Neurological Disorders and Stroke Special Emphasis Panel, Studies in Autonomic Disorders.

Date: January 11–12, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel, Washington, DC.

Contact Person: Andrea Sawczuk, DDS, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, 6100 Executive Boulevard, Room #3208, Bethesda, MD 20892. (301) 496–0660. *sawczuka@ninds.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS.)

Dated: January 3, 2005.

Laverne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–385 Filed 1–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussion could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel, Roadmap Imaging Probes.

Date: March 15–16, 2005.

Time: 8 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Prabha L. Atreya, PhD., Scientific Review Administrator, Office of Scientific Review, National Institute of Biomedical Imaging and Bioengineering, Bethesda, MD 20892. (301) 496–8633. *atreyapr@mail.nih.gov.*

Dated: January 3, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–387 Filed 1–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel Training Grant Review.

Date: February 9, 2005.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Bonnie Dunn, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Blvd., Suite 920, Bethesda, MD 20892. 301–496–8633. *dunnbo@mail.nih.gov.*

Dated: January 3, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–388 Filed 1–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Modification of the National Customs Automation Program Test Regarding Reconciliation

AGENCY: Customs and Border Protection, Homeland Security.

ACTION: General notice.

SUMMARY: This document modifies the Customs and Border Protection Automated Commercial System Reconciliation prototype test by changing the requirement for filing the

Reconciliation entry from no later than 15 months to no later than 21 months after the date the importer declares its intent to file the Reconciliation. This change does not apply to Reconciliation entries covering NAFTA or US–CFTA claims. Other than this modification, the test remains the same as set forth in previously published **Federal Register** notices.

DATES: The test modification set forth in this document is effective on February 9, 2005. The two-year testing period of this Reconciliation prototype commenced on October 1, 1998, and was extended indefinitely starting October 1, 2000. Applications to participate in the test will be accepted throughout the duration of the test.

ADDRESSES: Written inquiries regarding participation in the Reconciliation prototype test and/or applications to participate should be addressed to Mr. Richard Wallio, Reconciliation Team, Bureau of Customs and Border Protection, 1300 Pennsylvania Ave., NW., Room 5.2A, Washington, DC 20229–0001. Inquiries regarding the test may be made by accessing *Recon.Help@dhs.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Wallio at (202) 344–2556.

SUPPLEMENTARY INFORMATION:

Background

Initially, it is noted that on November 25, 2002, the President signed the Homeland Security Act of 2002, 6 U.S.C. 101 *et seq.*, Pub. L. 107–296 (the HS Act), establishing the Department of Homeland Security and, under section 403(1) (6 U.S.C. 203(1)), transferring the U.S. Customs Service, including functions of the Secretary of the Treasury relating to the Customs Service, to the new department, effective on March 1, 2003. Also, under the HS Act and the Reorganization Plan Modification for the Department of Homeland Security that was signed on January 30, 2003, the U.S. Customs Service was renamed the Bureau of Customs and Border Protection (CBP). The agency will be referred to by that name in this document, unless reference to the Customs Service (or Customs) is appropriate in a given context.

Reconciliation, a planned component of the National Customs Automation Program (NCAP), as provided for in Title VI (Subtitle B) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 State. 2057 (December 8, 1993)), is currently being tested by CBP under the CBP Automated Commercial System (ACS) Prototype Test. Customs initially announced and explained the test in a general notice document published in the **Federal Register** (63 FR 6257) on February 6, 1998. Clarifications and operational changes were announced in seven subsequent **Federal Register** notices: 63 FR 44303, published on August 18, 1998; 64 FR 39187, published on July 21, 1999; 64 FR 73121, published on December 29, 1999; 66 FR 14619, published on March 13, 2001, 67 FR 61200, published on September 27, 2002, 67 FR 68238, published on November 8, 2002, and 69 FR 73730, published on September 2, 2004. A **Federal Register** (65 FR 55326) notice published on September 13, 2000, extended the prototype indefinitely.

For application requirements, see the **Federal Register** notices published on February 6, 1998, and August 18, 1998. For additional information regarding the test, *see http://www.customs.gov/xp/cgov/import/cargo_summary/*.

Reconciliation Generally

Reconciliation is the process that allows an importer, at the time an entry summary is filed, to identify undeterminable information (other than that affecting admissibility) to CBP and to provide that outstanding information at a later date. The importer identifies the outstanding information by means of an electronic "flag" which is placed on the entry summary at the time the entry summary is filed. The issues for which an entry summary may be "flagged" (for the purpose of later reconciliation) are limited and relate to: (1) Value issues; (2) classification issues, on a limited basis; (3) issues concerning value aspects of entries filed under heading 9802, Harmonized Tariff Schedule of the United States (HTSUS; 9802 issues); and (4) post-entry claims under 19 U.S.C. 1520(d) for the benefits of the North American Free Trade Agreement (NAFTA) or the United States–Chile Free Trade Agreement (US–CFTA) for merchandise as to which such claims were not made at the time of entry.

The flagged entry summary (the underlying entry summary) is liquidated for all aspects of the entry except those issues that were flagged. The means of providing the outstanding information at a later date relative to the flagged issues is through the filing of a Reconciliation entry. Thus, the flagging of an entry summary constitutes the importer's declaration of intent to file a Reconciliation entry. The flagged issues will be liquidated at the time the Reconciliation entry is liquidated. Any adjustments in duties, taxes, and/or fees owed will be made at that time. (The Reconciliation test procedure for making post-entry NAFTA claims, also applicable to US–CFTA claims, is explained in the February 6, 1998, and December 29, 1999, **Federal Register** notices.)

Test Modification

On December 3, 2004, the Miscellaneous Trade and Technical Corrections Act of 2004 (the Act; Pub. L. 108–429) was signed into law. Section 2101 of the Act amended 19 U.S.C. 1484(b)(1) to change the requirement for filing a Reconciliation entry from not later than 15 months to not later than 21 months after the date the importer declares its intent to file the Reconciliation (date the entry summary is flagged which is the date of its filing). Based on this change, CBP is modifying the ACS Reconciliation prototype test by changing the requirement for filing the Reconciliation entry, except those covering NAFTA or US–CFTA issues, from no later than 15 months to no later than 21 months after the date the importer declares its intent to file the Reconciliation. All other aspects of the test remain the same.

The change to the test announced in this document is effective 30 days after the date this notice is published in the **Federal Register**. Thus, under the test, on and after the effective date, Reconciliation entries covering most Reconciliation issues (those having to do with value, classification, or 9802 issues) must be filed as follows: (1) If the dates of entry relative to the flagged entry summaries covered by the Reconciliation entry fall on or after the effective date of this change, the Reconciliation entry must be filed no later than 21 months after the oldest entry summary date; (2) if the dates of entry relative to the flagged entry summaries covered predate the effective date, the Reconciliation entry must be filed no later than 15 months after the oldest entry summary date; and (3) where the dates of entry relative to the flagged entry summaries covered are a mixture of (1) and (2) above, the Reconciliation entry must be filed no later than 15 months after the oldest entry summary date. (CBP notes that the entry summary date for a given entry of merchandise is always either the same as or later than the entry date.)

The filing of Reconciliation entries for 520(d) Reconciliation (relative to NAFTA and US–CFTA claims) is still required no later than 12 months after the oldest date of entry (date of import) applicable to the flagged entry summaries covered. This requirement has not changed.

Dated: January 4, 2005.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 05–402 Filed 1–7–05; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

General Program Test Extended: Quota Preprocessing

AGENCY: Customs and Border Protection; Department of Homeland Security.

ACTION: General notice.

SUMMARY: With this notice, the Bureau of Customs and Border Protection (CBP) announces that the duration of the quota preprocessing program test, which provides for the electronic processing of certain quota-class apparel merchandise prior to arrival of the importing carrier, is extended until December 31, 2006. The quota preprocessing program test is currently being conducted at all CBP ports and was set to expire on December 31, 2004. The duration of the test is being extended so that CBP can continue to evaluate the program's effectiveness. Public comments concerning any aspect of the program test as well as applications to participate in the test are requested.

DATES: The program test is extended to run until December 31, 2006. Applications to participate in the test and comments concerning the test will continue to be accepted throughout the testing period. Should the test be adopted as a permanent program under the CBP regulations through rulemaking, notification terminating the test will be issued.

ADDRESSES: Written comments regarding this notice or any aspect of the program test should be addressed to Christine DeRiso, Quota Enforcement and Administration, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 5.3–D, Washington, DC 20229, or may be sent via e-mail to *Quota,HQ@dhs.gov*. An application to participate in the program test must be sent to the CBP port(s) (Attention: Program Coordinator for Quota Preprocessing) where the applicant intends to submit quota entries for preprocessing. Information on CBP port addresses may be obtained by contacting the CBP Web site at *http://www.CBP.gov* (Office Locations).

FOR FURTHER INFORMATION CONTACT: Christine DeRiso, Quota Enforcement and Administration (202–344–2319).

SUPPLEMENTARY INFORMATION:

Background

On July 24, 1998, the Bureau of Customs and Border Protection (CBP) published a general notice in the **Federal Register** (63 FR 39929) announcing the limited testing of a new operational procedure regarding the electronic processing of quota-class apparel merchandise. The test, authorized under § 101.9(a), CBP Regulations (19 CFR 101.9(a)), was commenced on September 15, 1998, at the ports of New York/Newark and Los Angeles. Quota preprocessing allows certain quota entries (merchandise classifiable in chapter 61 or 62 of the Harmonized Tariff Schedule of the United States (HTSUS)) to be filed, reviewed for admissibility, and to have their quota priority and status determined by CBP prior to arrival of the carrier, similar to the method of preliminary review by which non-quota entries are currently processed. The purpose of quota preprocessing is to reduce CBP processing time for qualified quota entries and to expedite the release of the subject merchandise to the importer. To this end, participants in the quota preprocessing test have been allowed to submit quota entries to CBP up to 5 days prior to vessel arrival or after the wheels are up on air shipments. The July 24, 1998, **Federal Register** notice described the new procedure, specified the eligibility and application requirements for participation in the program test, and noted the acts of misconduct for which a participant in the test could be suspended and disqualified from continued participation in the program. The test was scheduled to continue for a six-month period that expired on March 14, 1999.

On March 25, 1999, January 6, 2000, and November 30, 2000, CBP published general notices in the **Federal Register** (64 FR 14499, 65 FR 806, and 65 FR 71356, respectively) that extended the program test through December 31, 2002. These extensions of the test procedure were undertaken so that CBP could further evaluate the effectiveness of the program and determine whether the program test should be expanded to other ports. By a notice published in the **Federal Register** (66 FR 66018) on December 21, 2001, the test was expanded to a selected number of additional ports in order to enable CBP to continue to study the program's effectiveness and determine whether the program should be established nationwide on a permanent basis through appropriate amendments to the CBP Regulations. The additional ports selected to participate in the expanded program test were: Atlanta; Boston seaport; Logan Airport, Boston; Buffalo-Niagara Falls; Champlain-Rouses Point; Chicago; Columbus; Memphis; Miami; Miami International Airport; Newport/Portland, Oregon (the area port of Portland); Puget Sound (the ports of Seattle and Seattle/Tacoma International Airport); San Francisco seaport; and San Francisco International Airport. The expansion of the test to these ports was determined by the volume of quota lines of apparel merchandise entered at these ports. Because two of the additional ports selected to participate in the program test received shipments by land (Buffalo-Niagara Falls and Champlain-Rouses Point), CBR allowed quota entries in these circumstances to be presented to CBP after the carrier departed from its location in Canada destined for the U.S. border. Finally, by a notice published in the **Federal Register** (67 FR 57271) on September 9, 2002, CBP expanded the test to all CBP ports effective as of October 9, 2002, and extended the duration of the program test until December 31, 2004.

The duration of the test is now being further extended so that CBP can continue to evaluate the program's effectiveness.

Prospective applicants may consult the December 21, 2001, and July 24, 1998, **Federal Register** notices for a more detailed discussion of the quota preprocessing program and the September 9, 2002, **Federal Register** notice for eligibility criteria.

Application Process; Additional Ports; Misconduct

An importer wishing to participate in the quota preprocessing test must submit a written application to the attention of the Program Coordinator for Quota Preprocessing at each port where the applicant intends to submit quota entries for preprocessing. Information on CBP port addresses may be obtained by contacting the CBP Web site at *http://www.CBP.gov* (Office Locations).

The application must include the following information: (1) The specific port(s) included under the program where entries of the quota merchandise are intended to be made; (2) the importer of record number(s), including suffix(es), and a statement of the importer's/filer's electronic filing capabilities; and (3) names and addresses of any entry filers, including CBP brokers, who will be electronically

filing entries at each port under the program on behalf of the importer/participant. Applicants will be notified in writing of their selection or nonselection to participate in the test. An applicant denied participation may appeal in writing to the port director at the port where the application was denied. Application requirements are set forth in the September 9, 2002, **Federal Register** notice.

Current participants in quota preprocessing that also wish to file entries under the program at any additional ports must notify, in writing, the additional port(s) at least 5 working days before submitting entries at such port(s). Also, for those that are selected to participate in the test, the July 24, 1998, **Federal Register** notice should be consulted regarding the acts of misconduct that may result in a participant being suspended from the program and how a participant may appeal a proposed suspension from the program.

Dated: January 4, 2005.

William S. Heffelfinger III,

Acting Assistant Commissioner, Office of Field Operations.

[FR Doc. 05–403 Filed 1–7–05; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-day notice of information collection under review; Alien Change Address Card, Form AR–11.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on April 21, 2004 at 69 FR 21565, allowed for a 60-day public comment period. The USCIS did not receive any comments on this information collection during that period.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until February 9, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Alien Change of Address Card.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form AR–11. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. Section 265 of the Immigration and Nationality Act requires aliens in the United States to inform the U.S. Citizenship and Immigration Services of any change of address. This form provides a standardized format of compliance.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 720,000 responses at 5 minutes (.083) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 59760 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please contact Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., Washington, DC 20529; (202) 272–8377.

Dated: January 5, 2005.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05–443 Filed 1–7–04; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day notice of information collection under review: application to extend/change nonimmigrant status, Form I–539.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the Federal Register on August 6, 2004 at 69 FR 47937, allowed for a 60-day public comment period. The USCIS did not receive any comments during the period.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until February 9, 2005. This process is conducted in accordance with 5 CFR Part 1320.10.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved information collection.

(2) *Title of the Form/Collection:* Application to Extend/Change Nonimmigrant Status.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security Sponsoring the collection:* Form I–539. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is used by nonimmigrants to apply for extension of stay or change of nonimmigrant status. The USCIS will use the data on this form to determine eligibility for the requested benefit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 256,210 responses at 45 minutes (.75) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 192,158

If you have additional comments, suggestions, or need a copy of the information collection instrument, please contact Mr. Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., Washington, DC 20529; 202–272–8377.

Dated: January 5, 2005.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05–444 Filed 1–7–05; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Final Comprehensive Conservation Plans for Assabet River, Great Meadows, and Oxbow National Wildlife Refuges

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that the final Comprehensive Conservation Plans (CCP) are available for the Assabet River, Great Meadows, and Oxbow National Wildlife Refuges (NWR). These CCPs were prepared pursuant to the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife System Improvement Act of 1997 (16 U.S.C. 6688dd *et seq.*), and the National Environmental Policy Act of 1969. The CCPs describe how the Service intends to manage the refuges over the next 15 years.

ADDRESSES: Copies of the CCPs are available on compact diskette or in hard copy, and may be obtained by writing Bill Perry, U.S. Fish and Wildlife Service, 73 Weir Hill Road, Sudbury, Massachusetts 01776, or by e-mailing *northeastplanning@fws.gov*. These documents may also be accessed at the Web address *http://library.fws.gov/ccps.htm*.

FOR FURTHER INFORMATION CONTACT: Bill Perry, Refuge Planner at the above address, 978–443–4661 ext. 32, or e-mail at *Bill_Perry@fws.gov*.

SUPPLEMENTARY INFORMATION: The National Wildlife System Administration Act of 1966, as amended by the National Wildlife Refuge Improvement Act of 1997, requires the Service to develop a CCP for each refuge. The purpose of developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife science, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and habitats, a CCP identifies wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. The CCP will be reviewed and updated at least every 15 years in accordance with the National Wildlife Refuge System Administration Act of 1969, as amended by the National Wildlife Refuge System Improvement Act of 1997, and the National Environmental Policy Act of 1969.

Great Meadows NWR was established in 1944, when the Concord impoundments became the first tract of land in the refuge. The refuge currently includes 3,863 acres and extends into eight towns. Great Meadows NWR is divided into two units: The Concord unit (1,542 acres) and the Sudbury unit (2,321 acres). The refuge was created under the Migratory Bird Conservation Act "for use as an inviolate sanctuary, or for any other management purpose, for migratory birds." The refuge provides habitat for a variety of species. For example, the Concord impoundments are used by many migrating waterfowl, shorebirds, wading and marsh birds. The upland areas support woodcock, songbirds, and many raptors. The marsh habitats are used by amphibians and reptiles. This diversity of habitats helps to contribute to a number of regional conservation priorities.

Assabet River NWR was formerly known as the Sudbury Training Annex and is the most recent addition to the Eastern Massachusetts National Wildlife Refuge Complex. It was created in the fall of 2000, when Fort Devens Army base transferred 2,230 acres to the Service. This transfer was made in accordance with the Defense Base Closure and Realignment Act of 1990, with the purpose of having "particular value in carrying out the national migratory bird management program." All acres within the approved refuge boundary are acquired. The large wetland complex and the contiguous forested areas are important feeding and breeding areas for migratory birds. Under U.S. Army administration, the refuge was not opened to general public use; however, hunting, fishing, and interpretive opportunities remain a high priority for local community members.

The Oxbow NWR is located in north-central Massachusetts, approximately 35 miles northwest of Boston, Massachusetts. The refuge consists of 1,667 acres of upland, southern New England floodplain forest and wetland communities along nearly 8 miles of the Nashua River corridor. Oxbow NWR is a long, narrow parcel having a north/south orientation and was formed by three land transfers from the former U.S. Army, Fort Devens Military Installation, and a recent purchase of private land in Harvard, Massachusetts. The primary purpose for which Oxbow NWR was created is its "* * * particular value in carrying out the National Migratory Bird Management Program" (16 U.S.C. 667B, an Act authorizing the transfer of certain real property for wildlife, or other purposes, as amended). The refuge's interspersion of wetland, forested upland and old field habitats is ideally suited for this purpose. The refuge supports a diverse mix of migratory birds including waterfowl, wading birds, raptors, shorebirds, passerines, as well as resident mammals, reptiles, amphibians, fish and invertebrates.

The extensive and regionally significant wetlands occurring on and adjacent to all three refuges, including their associated tributary drainages and headwaters, have been listed as a priority for protection under both the

North American Waterfowl Management Plan (NAWMP) and the Emergency Wetlands Resources Act of 1986. The refuges are located in close proximity to the Greater Boston metropolitan area, which, along with their accessibility to the local and regional communities and diverse biological resources, make them highly attractive for natural resource educational or interpretive programs, and compatible wildlife dependent recreational uses.

Our Final CCPs include management direction for each of the refuges and include vegetation management, wildlife management, public use, cultural resources, infrastructure, and refuge operations. On each of the refuges, we have included specific management strategies that include management of native plant communities, non-native invasive species, removal and revegetation of unused roads and stream crossings, and management of water impoundments. Visitor use facilities will include new wildlife observation trails, a visitor contact station for Oxbow NWR, a visitor center for the complex, and new parking areas. Most of the trails would use existing roads and public access would be by foot. A public hunting program will be developed for each of the refuges.

The Service solicited comments on the draft CCP/EA for Great Meadows, Assabet River, and Oxbow NWRs from July 20 to September 3, 2003. We contracted with the U.S. Forest Service's Content Analysis Team (CAT) to compile the nearly 2,000 comments that we received. The CAT developed a summary report of comments as well as a database of individual comments. We used the CAT report and comment database to develop a list of substantive comments that required responses. Editorial suggestions and notes of concurrence with or opposition to certain proposals were noted and included in the decisionmaking process, but do not receive formal responses. The Final CCPs include responses to all substantive comments. Comments are considered substantive if they:

- Question, with reasonable basis, the accuracy of the information in the document,
- Question, with reasonable basis, the adequacy of the environmental analysis,
- Present reasonable alternatives other than those presented in the EIS,
- Cause changes or revisions in the CCP, and
- Provide new or additional information relevant to the analysis.

Based upon comments that we received, we have chosen management alternative B, with the following modifications:

- We have completed a Compatibility Determination (CD) which concludes that jogging is compatible with refuge purposes. However, a study of the impacts of jogging on wildlife will be initiated and results evaluated to evaluate site specific impacts to wildlife. The CD will be reviewed and any appropriate changes will be made using the site specific data in 5 years.
- We have clarified our rules regarding picnicking in the final CCP. No picnic tables will be provided nor will large gatherings or events involving food be permitted. Eating snacks on refuge benches and trails is allowed.
- We modified our original hunting proposal based upon additional analysis of State mandated safety zones, our ability to effectively administer the hunt program, and to balance the needs of the different wildlife-dependent recreationists.
- We clarified that the waterfowl hunting areas along the Concord and Sudbury Rivers at Great Meadows and the Nashua River at Oxbow areas include the main stems of the rivers as well as adjacent wetlands and pools.
- We adjusted the proposed waterfowl hunting areas to remove areas near concentrations of houses, playing fields, and high numbers of additional users.
- We are proposing 1,192 acres of waterfowl hunting that was previously closed.
- We revised the deer hunting program to archery hunting only in areas of specific safety concern.
- We have revised the proposed access fee program to be consistent with other Region 5 refuges and to encourage purchase of the "local" annual pass. Fees would be required at Assabet River, Oxbow (south of Route 2), and the Concord impoundments of Great Meadows. Visitors would be able to use a duck stamp in lieu of the refuge access fee. All access fees are per car or per group for pedestrians.
- We have not modified our decision to prohibit dog walking at Great Meadows and Oxbow NWRs and will not allow dog walking at Assabet River NWR.

Dated: December 23, 2004.

Marvin E. Moriarty,

Regional Director, Fish and Wildlife Service, Hadley, Massachusetts.

[FR Doc. 05–407 Filed 1–7–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). The U.S. Fish and Wildlife Service ("we") solicits review and comment from local, State, and Federal agencies, and the public on the following permit requests.

DATES: Comments on these permit applications must be received on or before February 9, 2005.

ADDRESSES: Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Chief, Endangered Species, Ecological Services, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (fax: 503–231–6243). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to the address above (telephone: 503–231–2063). Please refer to the respective permit number for each application when requesting copies of documents.

SUPPLEMENTARY INFORMATION:

Permit No. TE–036034

Applicant: Tierra Data Inc., Escondido, California

The permittee requests an amendment to remove/reduce to possession (collect) *Allium munzii* (Munz's onion), *Astragalus brauntonii* (Braunton's milk-vetch), and *Eryngium aristulatum* var. *parishii* (San Diego button-celery) in conjunction with surveys in Orange County, California, for the purpose of enhancing their survival.

Permit No. TE–096454

Applicant: Russell Williams, Murrieta, California

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–096466

Applicant: San Bernardino National Forest, Big Bear City, California

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with surveys in Riverside and San Bernardino Counties, California, for the purpose of enhancing its survival.

Permit No. TE–096456

Applicant: Garvin Hoefler, Soquel, California

The applicant requests a permit to take (survey by pursuit) the Santa Cruz long-toed salamander (*Ambystoma macrodactylum croceum*) in conjunction with surveys in Santa Cruz, Monterey, Santa Clara, and San Benito Counties, California, for the purpose of enhancing its survival.

Permit No. TE–086593

Applicant: Arizona Cooperative Fish and Wildlife Research Unit, Tucson, Arizona

The applicant requests a permit to take (capture and collect) the Owens tui chub (*Gila bicolor snyderi*) and the Owens pupfish (*Cyprinodon radiosus*) in conjunction with parasite research in San Bernardino County, California, for the purpose of enhancing their survival.

Permit No. TE–075112

Applicant: Gregory Chatman, Rialto, California

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–097516

Applicant: Ryan Thomas, Pasadena, California

The applicant requests a permit to take (harass by survey and monitor nests) the southwestern willow flycatcher (*Empidonax traillii extimus*) and the California least tern (*Sterna autillarum browni*), take (locate and monitor nests) the least Bell's vireo (*Vireo bellii pusillus*), and take (harass by survey) the California clapper rail (*Rallus longirostris obsoletus*) and the light-footed clapper rail (*Rallus longirostris levipes*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–097845

Applicant: SRS Technologies, Lompoc, California

The applicant requests a permit to take (harass by survey and monitor nests) the southwestern willow flycatcher (*Empidonax traillii extimus*) and the California least tern (*Sterna autillarum browni*), take (locate and monitor nests) the least Bell's vireo (*Vireo bellii pusillus*), take (capture, handle, and release) the arroyo toad (*Bufo californicus*), and take (harass by survey, capture, handle, and release) the tidewater goby (*Eucyclogobius newberryi*) and the unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*) in conjunction with surveys in Santa Barbara County, California, for the purpose of enhancing their survival.

We solicit public review and comment on each of these recovery permit applications.

Michael B. Fris,

Acting Manager, California/Nevada Operations Office, U.S. Fish and Wildlife Service.

[FR Doc. 05–412 Filed 1–7–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Re-Opening of the Comment Period for the Draft Recovery Plan for the Sentry Milk-Vetch

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of re-opening of public comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the re-opening of the comment period for public review of a draft Recovery Plan for the sentry milk-vetch (*Astragalus cremnophylax* var. *cremnophylax*) for an additional 30 days. The original public comment period was held from September 14, 2004 to October 14, 2004. We are re-opening the public comment period in response to a specific request from the National Park Service, Grand Canyon National Park (Park) to allow additional time for public review of this draft Recovery Plan. All known populations of the species occur on land managed by the Park in Coconino County, Arizona.

DATES: Comments on the draft Recovery Plan must be received on or before February 9, 2005, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft Recovery Plan may obtain a copy by accessing the Service's Arizona Ecological Services Field Office Internet Web page at *http://arizonaes.fws.gov* or by contacting the Field Supervisor, Arizona Ecological Services Field Office, U.S. Fish and Wildlife Service, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona 85021–4951 (602/242–0210) to obtain a copy via the mail or in person at the address above. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the address provided above. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mima Falk, Arizona Ecological Services Tucson Suboffice, 201 N Bonita Ave., Tucson, Arizona 85745 (520/670–6150 ext. 225).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant species to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species, unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. We will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. We, along with other Federal agencies, will also take these comments into account in the course of implementing approved recovery plans.

The draft Recovery Plan describes the status, current management, recovery

objectives and criteria, and specific actions needed to reclassify the sentry milk-vetch from endangered to threatened and for eventual consideration for delisting. An original draft of the recovery plan was developed by Dr. Joyce Maschinski, a botanist and species specialist from The Arboretum at Flagstaff. The document was reviewed and updated by a team of botanists, soil scientists, naturalists and National Park Service land managers that have a history of researching or managing the plant and its environs. In 1993, a draft recovery plan for the sentry milk-vetch underwent technical and public review. The draft was not finalized at that time due to other high priority work. The reviews received on the 1993 draft are maintained in the Service's administrative record. Peer review of this draft Recovery Plan was conducted concurrent with the original public review period.

Sentry milk-vetch is known from two, and up to three, locations on the South Rim and one location on the North Rim of the Park, where Kaibab limestone forms large flat platforms with shallow soils near pinyon-juniper woodlands. The primary cause of population decline prior to protection was trampling by Park visitors, although drought conditions may have worsened the situation. We carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by sentry milk-vetch as part of our 1990 final determination to list this species as endangered (55 FR 50184). The four major threats identified in the rule listing the species were: (1) Destruction of habitat and damage to individuals through human disturbance (trampling); (2) over-utilization due to collection; (3) inadequacy of existing regulatory mechanisms to provide protection of habitat; and (4) naturally low reproduction of the species. The draft Recovery Plan contains action items to alleviate these factors.

Public Comments Solicited

We solicit written comments on the Draft Plan. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: November 24, 2004.

Bryan Arroyo,

Acting Regional Director, Region 2, Fish and Wildlife Service.

[FR Doc. 05–409 Filed 1–7–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent to Scope for the Preparation of an Environmental Impact Statement for the Proposed Issuance of an Incidental Take Permit Associated With the Agua Caliente Band of Cahuilla Indians Habitat Conservation Plan, Riverside County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, as amended, the U.S. Fish and Wildlife Service (Service) as the lead agency, advises the public that it is preparing an Environmental Impact Statement (EIS) for the Agua Caliente Band of Cahuilla Indians Habitat Conservation Plan (HCP) in Riverside County, California. The proposed HCP is being prepared in compliance with the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*). The HCP is intended to support the issuance of an incidental take permit to the Agua Caliente Band of Cahuilla Indians (Tribe) from the Service under section 10(a)(1)(B) of the Act. The requested incidental take permit, if granted, would authorize the permittees to incidentally take species federally listed under the Act as a result of activities proposed to be covered under the HCP. It would also address incidental take of other species that are not currently listed, should they be listed during the permit term. The planning area for the HCP is located within the Coachella Valley in eastern Riverside County. The HCP would provide measures to minimize and mitigate the impacts of the proposed taking of covered species and the habitats upon which they depend.

The Service is furnishing this notice in compliance with the National Environmental Policy Act and implementing regulations for the following purposes: (1) to advise other Federal and State agencies, affected tribes, and the public of our intent to prepare an EIS; (2) announce the initiation of a 30-day public scoping period; and (3) to obtain suggestions and information on the scope of issues and alternatives to be considered in the EIS.

DATES: Written comments should be received on or before February 9, 2005.

ADDRESSES: Address comments, requests for more information, or requests to be added to the mailing list for this project to: Ms. Therese O'Rourke, Assistant Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, California 92009 or by facsimile to (760) 431–5902.

FOR FURTHER INFORMATION CONTACT: Jon Avery, Fish and Wildlife Biologist, at (760) 431–9440, extension 309 [see **ADDRESSES**].

SUPPLEMENTARY INFORMATION:

Background

Section 9 of the Federal ESA (16 U.S.C. 1531 *et seq.*) and Federal regulations prohibit the "take" of a fish or wildlife species listed as endangered or threatened. Take of federally listed fish and wildlife is defined under the ESA as including to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in such conduct" (16 U.S.C. 1538). The Service may, under limited circumstances, issue permits to authorize "incidental take" of listed species. "Incidental take" is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing permits for threatened species and endangered species, respectively, are at 50 CFR 17.32 and 50 CFR 17.22.

An incidental take permit is needed to authorize take of listed species (including harm, injury and harassment) during urban and rural development on the Agua Caliente Reservation (Reservation). The Tribe is requesting a permit for incidental take of covered species on lands included in the proposed HCP. The HCP planning area includes lands within and near the Reservation and encompasses approximately 87,000 acres. The Reservation totals about 31,500 acres.

The HCP proposes coverage of 24 species: 9 federally-listed (threatened or endangered) species, 1 Federal candidate species, and 14 unlisted species that may become listed during the term of the proposed permit. The species proposed for coverage include: Peninsular bighorn sheep (*Ovis canadensis nelsoni*), Coachella Valley round-tailed ground squirrel (*Spermophilus tereticaudus chlorus*), Palm Springs pocket mouse (*Perognathus longimembris bangsi*), southern yellow bat (*Lasiurus ega xanthinus*), least Bell's vireo (*Vireo bellii pusillus*), southwestern willow flycatcher (*Epidonax traillii extimus*),

summer tanager (*Piranga rubra cooperi*), yellow-breasted chat (*Icteria virens*), yellow warbler (*Dendroica petechia brewstri*), burrowing owl (*Athene cunicularia*), gray vireo (*Vireo vicinior*), Le Conte's thrasher (*Toxostoma lecontei*), crissal thrasher (*Toxostoma crissali*), California red-legged frog (*Rana aurora draytonii*), mountain yellow-legged frog (*Rana muscosa*), desert tortoise (*Gopherus agassizii*), Coachella Valley fringe-toed lizard (*Uma inornata*), flat-tailed horned lizard (*Phyrnosoma mcalli*), Coachella Valley grasshopper (*Spaniacris deserticola*), Coachella giant sand-treader cricket (*Macrobaenetes valgum*), Coachella Valley Jerusalem cricket (*Stenopelmatus cahuilaensis*), Coachella Valley milk vetch (*Astragalus lentiginosus* var. *coachellae*), triple-ribbed milk vetch (*Astragalus tricarinatus*), and little San Bernardino Mountains gilia (*Linanthus maculatus*).

The Tribe intends for the HCP to serve four main purposes: (1) To set forth a program for protecting natural resources while managing economic development objectives for the Reservation; (2) to streamline compliance with the Act into a comprehensive Reservation-wide approach; and (3) to recognize the Tribe's traditional sovereign land and resource management policies and practices; and (4) to provide a feasible and practicable means for the Tribe to conserve the 24 species, and for the Service to meet the responsibilities of the Act under Secretarial Order 3206 and Executive Order 13175.

The proposed HCP would be a comprehensive plan that seeks to address the 24 covered species within a reserve system. Specifically, the proposed HCP would establish: (1) A Mountains and Canyons Conservation Area in which certain lands are proposed to be dedicated to the reserve system and general and species-specific conservation measures would be imposed on covered projects and/or implemented by the Tribe, and (2) a Valley Floor Conservation Area from which funding would generally be required for acquisition and management of additional reserve lands, certain lands would be dedicated to the reserve system, and additional conservation measures would be required to protect certain covered species. The proposed HCP includes avoidance and minimization measures, the establishment of the reserve system, and adaptive management and monitoring pursuant to the Act. The activities proposed to be covered by the HCP include construction and development activities and covered conservation and maintenance activities (including operation and maintenance of public facilities and conservation management).

Public Comments

With the publication of this notice, the public is encouraged to submit written comments. Comments received shall be used to identify issues and draft alternatives. All comments received from individuals on Environmental Impact Statements become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act, the Council on Environmental Quality's NEPA regulations [40 CFR 1506.6(f)], and other Service and Departmental policy and procedures.

Environmental Impact Statement

The Tribe and the Service have selected Helix Environmental Planning, 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.*). Helix Environmental Planning, 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 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 Service's proposed actions and alternatives. 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, including a No Action alternative will be considered and analyzed, representing varying levels of conservation, impacts, and permit area configurations. The No Action alternative means that the Service would not issue a section 10(a)(1)(B) permit.

Review of this project will be conducted in accordance with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), associated regulations (40 CFR parts 1500–1508) found at (*http://www.legal.gsa.gov*), other appropriate Federal laws, and Service policies and procedures for compliance with those regulations. This notice is being furnished in accordance with 40 CFR 1501.7 of the National Environmental Policy Act 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. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

Dated: January 4, 2005.

David G. Paullin,

Acting Deputy Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 05–406 Filed 1–7–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1420–BJ]

Idaho: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of surveys.

SUMMARY: The Bureau of Land Management (BLM) has officially filed the plats of survey of the lands described below in the BLM Idaho State Office, Boise, Idaho, effective 9 a.m., on the dates specified.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657.

SUPPLEMENTARY INFORMATION: These surveys were executed at the request of the Bureau of Land Management to meet certain administrative and management purposes:

The plat constituting the entire survey record of the corrective dependent resurvey of a portion of the subdivisional lines, and the subdivision of section 3, in T. 7 N., R. 39 E., Boise Meridian, Idaho, was accepted October 1, 2004.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of sections 2 and 3, in T. 13 N., R. 28 E., Boise Meridian, Idaho, was accepted October 13, 2004.

The plat representing the dependent resurvey of a portion of the south boundary, and a portion of the subdivisional lines, and the subdivision of sections 35, in T. 14 N., R. 28 E., Boise Meridian, Idaho, was accepted October 13, 2004.

The plat representing the dependent resurvey of a portion of the subdivisional lines, the boundaries of certain mineral surveys, and the survey of lot 7, section 11, in T. 6 S., R. 4 W., Boise Meridian, Idaho, was accepted October 21, 2004.

The plat, in two sheets, constitutes the entire survey record of the dependent resurvey of a portion of the south boundary and a portion of the subdivisional lines and a metes-and-bounds survey of a portion of the Craters of the Moon National Monument in sections 23 and 33, in T. 3 N., R. 25 E., Boise Meridian, Idaho, was accepted October 21, 2004.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of sections 13, 14, and 23, in T. 16 S., R. 21 E., Boise Meridian, Idaho, was accepted November 4, 2004.

The plat, in 3 sheets, constitutes the entire survey record of the dependent resurvey of portions of the north and south boundaries, and a portion of the subdivisional lines, and a metes-and-bounds survey of a portion of the Craters of the Moon National Monument in sections 2, 11, 14, 22, 23, 25, 26, 27, and 36, in T. 2 N., R. 26 E., Boise Meridian, Idaho, was accepted November 5, 2004.

The plat representing the dependent resurvey of a portion of the north boundary and subdivisional lines, and the subdivision of section 2, in T. 12 N., R. 7 W., Boise Meridian, Idaho, was accepted November 29, 2004.

The plat, in 2 sheets, constitutes the entire survey record of the dependent resurvey of portions of the south boundary and subdivisional lines, and a metes-and-bounds survey of a portion of the Craters of the Moon National Monument in sections 19, 20, 21, 22, 26, 27, 35, and 36, in T. 3 S., R. 23 E., Boise Meridian, Idaho, was accepted December 3, 2004.

The plat, in 2 sheets, constitutes the entire survey record of the dependent resurvey of portions of the east, west, and north boundaries and a portion of the subdivisional lines, and a metes-and-bounds survey of a portion of the Craters of the Moon National Monument in sections 1, 5, 6, 7, 12, and 13, in T. 3 S., R. 22 E., Boise Meridian, Idaho, was accepted December 7, 2004.

The plat, in 2 sheets, constitutes the entire survey record of the dependent resurvey of portions of the south boundary and subdivisional lines, and a metes-and-bounds survey of a portion of the Craters of the Moon National Monument in sections 32, 33, 34, 35, and 36, in T. 2 S., R. 22 E., Boise Meridian, Idaho, was accepted December 9, 2004.

The plat, in 2 sheets, constitutes the entire survey record of the dependent resurvey of a portion of the subdivisional lines, and a metes-and-bounds survey of a portion of the Craters of the Moon National Monument in sections 11, 12, 14, 15, 16, and 17, in T. 3 S., R. 21 E., Boise Meridian, Idaho, was accepted December 10, 2004.

The plat representing the dependent resurvey of a portion of the east boundary, a portion of the subdivisional lines, and a portion of Mineral Survey Numbers 1827, 1936, 1946 and 3368, in T. 14 N., R. 23 E., Boise Meridian, Idaho, was accepted December 14, 2004.

The plat, in 2 sheets, constitutes the entire survey record of the dependent resurvey of portions of the north boundary and subdivisional lines, and a metes-and-bounds survey of a portion of the Craters of the Moon National Monument in sections 4, 9, 16, 21, and 28, in T. 1 N., R. 27 E., Boise Meridian, Idaho, was accepted December 14, 2004.

The plat, in 2 sheets, constitutes the entire survey record of the dependent resurvey of a portion of the Boise Base Line (north boundary), a portion of the south boundary, and a portion of the subdivisional lines, and the subdivision of section 13 and a metes-and-bounds survey of a portion of the Craters of the Moon National Monument in sections 2, 11, 12, 13, and 35, in T. 1 S., R. 27 E., Boise Meridian, Idaho, was accepted December 15, 2004.

The plat constitutes the entire survey record of the dependent resurvey of a portion of the subdivisional lines, and a metes-and-bounds survey of a portion of the Craters of the Moon National Monument in sections 2, 11, and 14, in T. 2 S., R. 27 E., Boise Meridian, Idaho, was accepted December 16, 2004.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Idaho State Office, Boise, Idaho, 30 days from the date of publication in the **Federal Register**. This survey was executed at the request of the U.S. Forest Service to meet certain administrative and management purposes:

The plat representing the survey of portions of the Atlanta Correction Line (south bdy.), north boundary and subdivisional lines, in T. 7 N., R. 13 E., Boise Meridian, Idaho, was accepted December 16, 2004.

Dated: January 4, 2005.

Stanley G. French,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 05–408 Filed 1–7–05; 8:45 am]

BILLING CODE 4310–GG–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1069 (Final)]

Outboard Engines from Japan

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigation.

EFFECTIVE DATE: January 5, 2005.

FOR FURTHER INFORMATION CONTACT: Olympia Hand (202–205–3182), 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 for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: On August 12, 2004, the Commission established a schedule for the conduct of the final phase of the subject investigation (69 FR 51859, August 23, 2004). Under section 735(b)(2)(B) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)(2)(B)) (the Act), the Commission's final injury determination is to be made by the 45th day after the day on which the administering authority makes its final affirmative antidumping determination. Commerce's final determination was published in the **Federal Register** on January 4, 2005 (70 FR 326). Accordingly, the Commission hereby gives notice that it is revising the schedule for its final determination.

The Commission's new schedule for the remainder of the investigation is as follows: the final staff report will be placed in the nonpublic record and released to the parties on January 19, 2005; the Commission will make its final release of information on January 25, 2005; and final party comments are due on January 27, 2005.

For further information concerning this investigation see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: This investigation is being conducted under authority of title VII of the

Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

By order of the Commission.

Issued: January 5, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–496 Filed 1–7–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–1084–1087 (Final)]

Purified Carboxymethylcellulose From Finland, Mexico, Netherlands, and Sweden

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigations Nos. 731–TA–1084–1087 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from Finland, Mexico, the Netherlands, and Sweden of purified carboxymethylcellulose (CMC), provided for in subheading 3912.31.00 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: December 27, 2004.

FOR FURTHER INFORMATION CONTACT: Cynthia Trainor (202–205–3354), 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 for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background. The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that imports of purified carboxymethylcellulose from Finland, Mexico, the Netherlands, and Sweden are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on June 9, 2004, on behalf of Aqualon Company, a division of Hercules, Incorporated, Wilmington, DE.

Participation in the investigations and public service list. Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list. Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report. The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on April 28, 2005, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing. The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on May 12, 2005, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before May 3, 2005. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on May 6, 2005, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions. Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.23 of the Commission's rules; the deadline for filing is May 5, 2005. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.25 of the Commission's rules. The deadline for filing posthearing briefs is May 19, 2005; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before May 19, 2005. On June 8, 2005,

[1] For purposes of these investigations, the Department of Commerce has defined the subject merchandise as "all purified carboxymethylcellulose (CMC), sometimes also referred to as purified sodium CMC, polyanionic cellulose, or cellulose gum, which is a white to off-white, non-toxic, odorless, biodegradable powder, comprising sodium carboxymethylcellulose that has been refined and purified to a minimum assay of 90 percent. Purified CMC does not include unpurified or crude CMC, CMC Fluidized Polymer Suspensions, and CMC that is cross-linked through heat treatment. Purified CMC is CMC that has undergone one or more purification operations which, at a minimum, reduce the remaining salt and other by-product portion of the product to less than ten percent."

the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before June 10, 2005, but such final comments must not contain new factual information and must otherwise comply with § 207.30 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by § 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to § 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: January 4, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–431 Filed 1–7–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of a Consent Decree Pursuant to the Clean Water Act; Correction

AGENCY: Department of Justice.

ACTION: Correction.

SUMMARY: In notice document 04–27485 on page 75344 in the **Federal Register** issue of Thursday, December 16, 2004, (Volume 69, No. 241) make the following correction:

On page 75344, first column, first paragraph, the case caption was previously listed as *United States of America and The State of Alabama* v. *Knoxville Utilities Board*, Civ. No. 3:04–CV–568, and *Tennessee Clean Water Network*. v. *Knoxville Utilities Board*, Civ No. 3:03–CV–497. This should be changed to *United States of America and The State of Tennessee* v. *Knoxville Utilities Board*, Civ. No. 3:04–CV–568, and *Tennessee Clean Water Network*. v. *Knoxville Utilities Board*, Civ No. 3:03–CV–497.

FOR FURTHER INFORMATION CONTACT: Patricia Hurst, (202) 307–1242.

Maureen Katz,

Assistant Chief, Management, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–395 Filed 1–7–05; 8:45 am]

BILLING CODE 4410–15–M

MEDICARE PAYMENT ADVISORY COMMISSION

Commission Meeting

January 4, 2005.

AGENCY: Medicare Payment Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Wednesday, January 12, 2005 and Thursday, January 13, 2005, at the Ronald Reagan Building, International Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC. The meeting is tentatively scheduled to begin at 9:30 a.m. on January 12, and at 9 a.m. on January 13.

Topics for discussion include findings on congressionally mandated studies on specialty hospitals and risk adjustment and other issues related to the adjusted average per capita cost (AAPCC). The Commission will also discuss and vote on recommendations related to pay for performance for hospitals, physicians, and home health; and incentives for health care information technology for hospitals, physicians, and home health; and incentives for health care information technology adoption. In addition, the Commission will discuss and vote on recommendations related to payment adequacy for hospitals, physicians, skilled nursing facilities, home health, and dialysis. Other topics will include imaging, measuring physician resource use, and outpatient pharmacy services in hospitals.

Agendas will be e-mailed approximately one week prior to the meeting. The final agenda will be available on the Commission's Web site (*http://www.MedPAC.gov*).

ADDRESSES: MedPAC's address is: 601 New Jersey Avenue, NW., Suite 9000, Washington, DC 20001. The telephone number is (202) 220–3700.

FOR FURTHER INFORMATION CONTACT: Diane Ellison, Office Manager, (202) 220–3700.

Mark E. Miller,

Executive Director.

[FR Doc. 05–401 Filed 1–7–05; 8:45 am]

BILLING CODE 6820–BW–M

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting; Notice of Meeting

TIME AND DATE: 2 p.m., Thursday, January 13, 2005.

PLACE: Board Room, 7th floor, room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Final Rule: Section 701.21(c)(7)(ii)(C) of NCUA's Rules and Regulations, Interest Rate Ceiling.
2. Final Rule: Part 708a of NCUA's Rules and Regulations, Conversion of Insured Credit Unions to Mutual Savings Banks.
3. Final Rule: Part 708b of NCUA's Rules and Regulations, Mergers of Federally Insured Credit Unions; Voluntary Termination or Conversion of Insured Status.

RECESS: 3:15 p.m.

TIME AND DATE: 3:30 p.m., Thursday, January 13, 2005.

PLACE: Board Room, 7th floor, room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Appeal under section 701.14, and part 747, subpart J of NCUA's Rules and Regulations. Closed pursuant to exemptions (6) and (8).

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: (703) 518–6304.

Mary Rupp,

Secretary of the Board.

[FR Doc. 05–561 Filed 1–6–05; 3:45 pm]

BILLING CODE 7535–01–M

OFFICE OF NATIONAL DRUG CONTROL POLICY

Meeting of the Advisory Commission on Drug Free Communities

AGENCY: Office of National Drug Control Policy.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Drug-Free Communities Act, a meeting of the Advisory Commission on Drug Free Communities will be held on March 1–2, 2005, at the Office of National Drug Control Policy in the 5th Floor Conference Room, 750 17th Street NW., Washington, DC. The meeting will commence at 12 noon on Tuesday, March 1, 2005 and adjourn for the evening at 5:15 p.m. The meeting will reconvene at 8:30 a.m. on Wednesday, March 2, 2005 and adjourn at 4 p.m. The agenda will include: remarks by ONDCP Director John P. Walters, results of recommendations from the last meeting of the Advisory Commission, and an update from the Acting Drug Free Communities Support Program Administrator. There will be an opportunity for public comment from 12:45–1:15 p.m. on Wednesday, March 2, 2005. Members of the public who wish to attend the meeting and/or make public comment should contact Carlos Dublin at (202) 395–6762 to arrange building access.

FOR FURTHER INFORMATION CONTACT: Kenneth Shapiro, Policy Analyst, (202) 395–4681.

Dated: January 4, 2005.

Linda V. Priebe,

Assistant General Counsel.

[FR Doc. 05–438 Filed 1–7–05; 8:45 am]

BILLING CODE 3180–02–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–395]

South Carolina Electric & Gas Company; Virgil C. Summer Nuclear Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the Code of Federal Regulations, Part 50, Sections 50.44, and 50.46 and Appendix K, for the Renewed Facility Operating License No. NPF–12, issued to South Carolina Electric & Gas Company (the licensee), for operation of the Virgil C. Summer Nuclear Station (VSNS), located in Fairfield County, South Carolina. Therefore, as required by 10 CFR 51.21, the NRC has performed an environmental assessment as described in this notice and has made a finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow operation with up to four lead test assemblies (LTAs) containing fuel rods with Optimized ZIRLO™ and several different developmental clad alloys in the core.

The proposed action is in accordance with the licensee's application dated September 3, 2004, as supplemented by letter dated November 11, 2004.

The Need for the Proposed Action

The proposed exemption is needed because the NRC regulations identified above specifically refer to light-water reactors containing fuel consisting of uranium oxide pellets enclosed in zircaloy or ZIRLO tubes. A new zirconium-based alloy cladding has been developed, which is not the same chemical composition as zircaloy or ZIRLO. Therefore, the licensee needs an exemption to insert up to four assemblies containing the new fuel cladding material into the VSNS reactor core for test during operation.

Environmental Impacts of the Proposed Action

The NRC has completed its safety evaluation of the proposed action and concluded that it will not present an undue risk to the public health and safety. The safety evaluation performed by Westinghouse, upon which the licensee is relying, demonstrates that the predicted chemical, mechanical and material performance of the Advance zirconium-based cladding is within that approved for Zircaloy-4 or ZIRLO under all anticipated operational occurrences and postulated accidents. Furthermore, the LTAs will be placed in nonlimiting core locations. In the unlikely event that cladding failures were to occur in the LTAs, environmental impact would be minimal and is bounded by previous environmental impact statements.

The details of the NRC staff's safety evaluation will be provided as an enclosure to the letter to the licensee granting the exemption.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for the VSNS, NUREG–0719, dated May 1981.

Agencies and Persons Consulted

In accordance with its stated policy, on December 15, 2004, the staff consulted with the South Carolina State official, Henry Porter of the South Carolina Department of Health and Environmental Control, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated September 3, 2004, as supplemented by letter dated November 11, 2004. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should

contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 3rd day of January 2005.

For the Nuclear Regulatory Commission.

Karen R. Cotton,

Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 05–400 Filed 1–7–05; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 26717; 812–13044]

Neuberger Berman Equity Funds, et al.; Notice of Application

January 4, 2005.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 ("Act") for an exemption from sections 12(d)(1)(A) and (B) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

Summary of Application: The applicants request an order that would permit certain registered management investment companies to invest uninvested cash and cash collateral in (a) affiliated money market funds or (b) one or more affiliated entities that operate as cash management investment vehicles and that rely on section 3(c)(1) or 3(c)(7) of the Act. The order would supersede a prior order.[1]

Applicants: Neuberger Berman Equity Funds ("NBEF"), Neuberger Berman Income Funds ("NBIF), Neuberger Berman Advisers Management Trust ("NBAMT"), Neuberger Berman Intermediate Municipal Fund Inc. ("NBIMF"), Neuberger Berman California Intermediate Municipal Fund Inc. ("NBCIMF"), Neuberger Berman New York Intermediate Municipal Fund Inc. ("NBNYIMF"), Neuberger Berman Real Estate Income Fund Inc. ("NBREIF"), Neuberger Berman Realty Income Fund Inc. ("NBRIF"), Neuberger Berman Income Opportunity Fund Inc. ("NBIOF"), Neuberger Berman Real Estate Securities Income Fund Inc. ("NBRESIF"), Neuberger Berman Dividend Advantage Fund Inc. ("NBDAF") on behalf of themselves and their respective series (the "Funds"), Neuberger Berman, LLC ("Neuberger Berman"), Neuberger Berman Management Inc. ("NBMI"), Lincoln Capital Fixed Income Management Company, Inc. ("Lincoln Capital") (Neuberger Berman, NBMI and Lincoln Capital, together with any entity controlling, controlled by or under common control with Neuberger Berman, NBMI or Lincoln Capital, are each an "Adviser" and collectively the "Advisers").

Filing Dates: The application was filed on November 21, 2003, and amended on December 27, 2004.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 31, 2005, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609; Applicants, c/o Robert A. Wittie, Esq., Kirkpatrick & Lockhart LLP, 1800 Massachusetts Avenue, NW., Washington, DC 20036–1800.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 942–0634 or Annette Capretta, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. NBEF, NBIF and NBAMT, each a Delaware statutory trust, are registered under the Act as open-end management investment companies. NBIMF, NBCIMF, NBNYIMF, NBREIF, NBRIF, NBIOF, NBRESIF and NBDAF, each a Maryland corporation, are registered under the Act as closed-end management investment companies. Neuberger Berman, NBMI and Lincoln Capital are each an investment adviser registered under the Investment Advisers Act of 1940. Neuberger Berman and NBMI each serves as an investment adviser to one or more of the Funds. Lincoln Capital will serve as investment adviser to the Private Funds (defined below) and may serve in the future as investment adviser to one or more of the Money Market Funds (defined below).[2] Neuberger Berman, NBMI and Lincoln Capital are each a wholly-owned subsidiary of Lehman Brothers Holdings, Inc.

2. Certain Funds, including money market Funds that comply with rule 2a–7 under the Act, (each, an "Investing Fund") have or may be expected to have cash that has not been invested in portfolio securities ("Uninvested Cash"). Uninvested Cash may result from a variety of sources, including dividends or interest received on portfolio securities, unsettled securities transactions, strategic reserves, matured investments, proceeds from liquidation of investment securities, dividend payments or money from investors. Certain Investing Funds also may participate in a securities lending program ("Securities Lending Program") under which a Fund may lend its portfolio securities to registered broker-dealers or other institutional investors. The loans are secured by collateral, including cash collateral ("Cash Collateral" and together with Uninvested Cash, "Cash Balances"), equal at all times to at least the market value of the securities loaned.

3. Applicants request an order to permit: (a) The Investing Funds to use their Uninvested Cash to purchase shares of one or more of the Funds that are in the same group of investment companies (as defined in section 12(d)(1)(G) of the Act) as the Investing Fund and comply with rule 2a–7 under the Act ("Money Market Funds"); (b) the Investing Funds to use their Cash Collateral to purchase shares of one or more of the Money Market Funds or Private Funds (the Money Market Funds

[1] Equity Managers Trust *et al.*, Investment Company Act Release Nos. 24672 (Oct. 2, 2000) (notice) and 24718 (Oct. 30, 2000) (order).

[2] Applicants request that any relief granted also apply to (a) all existing or future registered management investment companies and series thereof for which an Adviser serves as investment adviser (included in the term "Funds") and (b) unregistered investment vehicles, that are advised by an Adviser and rely on sections 3(c)(1) or 3(c)(7) of the Act ("Private Funds") and that may be used as investment vehicles for cash collateral. All existing registered invesment companies and Private Funds that currently intend to rely on the requested order are named as applicants. Any entities that rely on the requested order in the future will do so only in accordance with the terms and conditions of the application.

and the Private Funds are collectively referred to as the "Central Funds"); (c) the Central Funds to sell their shares to and redeem such shares from the Investing Funds; and (d) the Advisers to effect the above transactions.

4. The investment by each Investing Fund in shares of the Central Funds will be in accordance with that Investing Fund's investment policies and restrictions as set forth in its prospectus and statement of additional information. Certain Private Funds will comply with rule 2a–7 under the Act ("Private Money Market Funds"). Other Private Funds will invest in securities that satisfy the quality requirements of rule 2a–7 and have short maturities. Applicants believe that the proposed transaction may reduce transaction costs, create more liquidity, increase returns and diversify holdings.[3]

Applicants' Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act provides that no investment company may acquire securities of a registered investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of section 12(d)(1) if and to the extent that such exemption is consistent with the public interest and the protection of investors. Applicants request relief under section 12(d)(1)(J) to permit the Investing Funds to use their Cash Balances to acquire shares of the Money Market Funds in excess of the percentage limitations in section 12(d)(1)(A), provided however, that in all cases an Investing Fund's aggregate investment of Uninvested Cash in shares of the Money Market Funds will not exceed 25% of the Investing Fund's total assets. Applicants also request relief to permit the Money Market Funds to sell their securities to the Investing Funds in excess of the percentage limitations in section 12(d)(1)(B).

3. Applicants state that the proposed arrangement will not result in the abuses that sections 12(d)(1)(A) and (B) were intended to prevent. Applicants state that because each Money Market Fund will maintain a highly liquid portfolio, an Investing Fund will not be in a position to gain undue influence over a Money Market Fund. Applicants represent that the proposed arrangement will not result in an inappropriate layering of fees because shares of the Money Market Funds sold to the Investing Funds will not be subject to a sales load, redemption fee, asset-based distribution fee adopted in accordance with rule 12b–1 under the Act or service fee (as defined in rule 2830(b)(9) of the NASD Conduct Rules) or, if such shares are subject to any such fees in the future, the Adviser will waive its advisory fee for each Investing Fund in an amount that offsets the amount of such fees incurred by the Investing Fund. Applicants state that if a Money Market Fund offers more than one class of shares, an Investing Fund will invest its Cash Balances only in the class with the lowest expense ratio (taking into account the expected impact of the Investing Fund's investment) at the time of the investment. In connection with approving any advisory contract, the boards of trustees or directors of the Investing Funds (each a "Board," collectively the "Boards"), including a majority of the trustees or directors who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Trustees") will consider to what extent, if any, the advisory fees charged to each Investing Fund by the Adviser should be reduced to account for reduced services provided to the Investing Fund by the Adviser as a result of Uninvested Cash being invested in the Money Market Funds. Applicants represent that no Money Market Fund will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act.

B. Section 17(a) of the Act

1. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, acting as principal, to sell or purchase any security to or from the investment company. Section 2(a)(3) of the Act defines an affiliated person of an investment company to include any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person, any person 5% or more of whose outstanding securities are directly or indirectly owned, controlled, or held with power to vote by the other person, any person directly or indirectly controlling, controlled by, or under common control with the other person, and any investment adviser to the investment company. Applicants state that the Advisers are under common control and serve as investment advisers to the Investing Funds and Central Funds and that to the extent that the Investing Funds and Central Funds may be deemed to be controlled by the Advisers, they may be under common control and affiliated persons of each other. In addition, if an Investing Fund owns more than 5% of the voting securities of a Central Fund, the Central Fund and the Investing Fund may be affiliated persons of each other. As a result, section 17(a) would prohibit the sale of the shares of Central Funds to the Investing Funds, and the redemption of the shares by the Investing Funds.

2. Section 17(b) of the Act authorizes the Commission to exempt a transaction from section 17(a) of the Act if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from any provision of the Act, if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicants submit that their request for relief satisfies the standards in sections 6(c) and 17(b) of the Act. Applicants state that the Investing Funds will purchase and sell shares on the same terms and on the same basis as shares are purchased and sold by all other shareholders of the Central Funds. In addition, under the proposed transactions, the Investing Funds will retain their ability to invest their Cash Balances directly in money market instruments as permitted by each Investing Fund's investment objectives and policies. Applicants state that each

[3] An Investing Fund that complies with rule 2a–7 under the Act will not invest its Cash Collateral in a Private Fund that does not comply with rule 2a–7.

Money Market Fund reserves the right to discontinue selling shares to any of the Investing Funds if the Money Market Fund's Board determines that such sales would adversely affect its portfolio management and operations.

C. Section 17(d) of the Act and Rule 17d–1 Under the Act

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates, unless the Commission has issued an order authorizing the arrangement. Applicants state that the Investing Funds (by purchasing shares of the Central Funds), the Advisers (by managing the assets of the Investing Funds invested in the Central Funds), and the Central Funds (by selling shares to and redeeming them from the Investing Funds) could be deemed to be participants in a joint enterprise or other joint arrangement within the meaning of section 17(d) of the Act and rule 17d–1 thereunder.

2. In considering whether to approve a joint transaction under rule 17d–1, the Commission considers whether the registered investment company's participation in the joint transaction is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants. Applicants submit that the proposed transactions meet these standards because the investments by the Investing Funds in shares of the Central Funds would be indistinguishable from any other shareholder account maintained by the Central Funds and the transactions will be consistent with the Act.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. The investment of Cash Balances in shares of the Money Market Funds and Cash Collateral in shares of the Private Funds will be in accordance with the Investing Fund's investment restrictions and will be consistent with the Investing Fund's investment objectives and policies as set forth in its prospectus and statement of additional information. An Investing Fund that complies with rule 2a–7 under the Act will not invest its Cash Collateral in a Private Fund that does not comply with rule 2a–7. An Investing Fund's Cash Collateral will be invested in a particular Private Fund only if that Private Fund has been approved for investment by the Investing Fund and if that Private Fund invests in the types of instruments that the Investing Fund has authorized for the investment of its Cash Collateral.

2. Shares of the Central Funds sold to and redeemed by the Investing Funds will not be subject to a sales load, redemption fee, asset-based distribution fee, or service fee (as defined in rule 2830(b)(9) of the NASD Conduct Rules), or if such shares are subject to any such fee, the Adviser will waive its advisory fee for each Investing Fund in an amount that offsets the amount of such fees incurred by the Investing Fund.

3. Before the next meeting of the Board of an Investing Fund is held for the purpose of voting on an advisory contract under section 15 of the Act, the Adviser to the Investing Fund will provide the Board with specific information regarding the approximate cost to the Adviser of, or portion of the advisory fee under the existing advisory contract attributable to, managing the Uninvested Cash of the Investing Fund that can be expected to be invested in the Money Market Funds. Before approving any advisory contract for an Investing Fund, the Board, including a majority of the Independent Trustees, taking into account all relevant factors, shall consider to what extent, if any, the advisory fees charged to the Investing Fund by the Adviser should be reduced to account for reduced services provided to the Investing Fund by the Adviser as a result of Uninvested Cash being invested in one or more of the Money Market Funds. The minute books of the Investing Fund will record fully the Board's consideration in approving the advisory contact, including the considerations relating to fees referred to above.

4. Each Investing Fund will invest Uninvested Cash in, and hold shares of, the Money Market Funds only to the extent that the Investing Fund's aggregate investment of Uninvested Cash in all Money Market Funds does not exceed the greater of 25 percent of the Investing Fund's total assets.

5. Each Investing Fund and Central Fund that may rely on the order shall be advised by an Adviser. Each Investing Fund and Money Market Fund will be in the same group of investment companies as defined in section 12(d)(1)(G) of the Act.

6. So long as its shares are held by an Investing Fund, a Central Fund will not acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act.

7. Each Investing Fund will purchase and redeem shares of a Private Fund as of the same time and at the same price, and will receive dividends and bear its proportionate share of expenses on the same basis, as other shareholders of the Private Fund. A separate account will be established in the shareholder records of each Private Fund for the account of each Investing Fund that invests in such Private Fund.

8. Each Private Fund will comply with sections 17(a), (d), and (e) and 18 of the Act as if the Private Fund were a registered open-end investment company. With respect to all redemption requests made by an Investing Fund, a Private Fund will comply with section 22(e) of the Act. The Adviser of a Private Fund will adopt procedures designed to ensure that the Private Fund will comply with sections 17(a), (d), and (e), 18, and 22(e) of the Act. The Adviser also will periodically review and update (as appropriate) the procedures, will maintain books and records describing the procedures, and will maintain the records required by rules 31a–1(b)(1), 31a–1(b)(2)(ii), and 31a–1(b)(9) under the Act. All books and records required to be maintained under this condition will be maintained and preserved for a period of not less than six years from the end of the fiscal year in which any transaction occurred, the first two years in an easily accessible place, and will be subject to examination by the Commission and its staff.

9. The net asset value per share with respect to shares of the Private Funds that are not Private Money Market Funds will be determined separately for each such Private Fund by dividing the value of the assets belonging to that Private Fund, less the liabilities of that Private Fund, by the number of shares outstanding with respect to that Private Fund.

10. Each Private Money Market Fund will use the amortized cost method of valuation and will comply with rule 2a–7 as though it were a registered open-end investment company. Each Private Money Market Fund will adopt the procedures described in rule 2a–7(c)(7) and the Adviser to the Private Money Market Fund will comply with these procedures and take any other actions that are required to be taken pursuant to these procedures. An Investing Fund may only purchase shares of a Private Money Market Fund if the Adviser determines on an ongoing basis that the Private Money Market Fund is in compliance with rule 2a–7. The Adviser will preserve for a period not less than

six years from the date of determination, the first two years in an easily accessible place, a record of such determination and the basis upon which the determination was made. This record will be subject to examination by the Commission and its staff.

11. Before an Investing Fund may participate in a Securities Lending Program, a majority of the Board, including a majority of the Independent Trustees, will approve the Investing Fund's participation in the Securities Lending Program. The Board will evaluate the securities lending arrangement and its results no less frequently than annually and determine that any investment of Cash Collateral in the Central Funds is in the best interest of the Investing Fund.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–38 Filed 1–7–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of January 10, 2005:

A closed meeting will be held on Thursday, January 13, 2005 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Atkins, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Thursday, January 13, 2005, will be:

Formal orders of investigations;

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature; and

Adjudicatory matters.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: the Office of the Secretary at (202) 942–7070.

Dated: January 5, 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–464 Filed 1–5–05; 4:38 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50956; File No. SR–NASD–2004–190]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Establish the Minimum Quotation Increment for the BRUT ECN System

January 3, 2005.

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 December 30, 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 and II below, which Items have been prepared by Nasdaq. Nasdaq has filed the proposal pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to establish a new NASD Rule 4912 to set the minimum quotation increment for the BRUT ECN System ("BRUT"). Nasdaq has designated this proposal as non-controversial and has requested that the Commission waive the 30-day pre-operative waiting period contained in Rule 19b-4(f)(6)(iii) under the Act.[5] If the Commission grants such a waiver, then this rule proposal, which is effective upon filing with the Commission, shall become operative on January 3, 2005 pursuant to Rule 19b-4(f)(6) under the Act.[6]

The text of the proposed rule change is below. Proposed new language is italicized.[7]

* * * * *

4912. Minimum Quotation Increment

The minimum quotation increment in the BRUT ECN System for quotations of $1.00 or above in Nasdaq-listed securities and in securities listed on a national securities exchange shall be $0.01. The minimum quotation increment in the BRUT ECN System for quotations below $1.00 in Nasdaq-listed securities and in securities listed on a national securities exchange shall be $0.0001.

* * * * *

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 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. 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

Currently, the minimum quotation increment in the Nasdaq Market Center ("NMC") is $0.01 for all quotations. However, in BRUT, which was recently purchased by Nasdaq, the minimum quotation increment can be below $0.01 for orders priced under $5.00. Nasdaq states that the purpose of the proposed rule change is to bring BRUT closer to the existing NMC practice by lowering the $5.00 threshold to $1.00 and setting the minimum quotation increment at $0.01 for all Nasdaq-listed and exchange-listed security quotations of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] 17 CFR 240.19b-4(f)(6)(iii).

[6] 17 CFR 240.19b-4(f)(6).

[7] The proposed rule change will add a new NASD Rule 4912 to a pending new NASD Rule series 4900 (proposed NASD Rules 4901 through 4911), which has been filed with the Commission. *See* SR–NASD–2004–173. When the proposed rule change contained herein becomes operational, Nasdaq will make a conforming amendment to the pending filing.

$1.00 or higher.[8] As such, the language of the proposed new rule closely mirrors the language of similar provisions applicable to NMC quotations. *See* NASD Rules 4613(a)(1)(B) and 6330(d). The minimum quotation increment for quotations below $1.00 will remain at $0.0001.

Nasdaq believes that reducing "sub-penny" quoting in BRUT will benefit investors for many of the same reasons cited by the Commission in its original Regulation NMS Proposing Release (the "Regulation NMS Release"),[9] which would similarly restrict sub-penny quoting to under-$1 securities. For example, this proposal would address the "hidden market" problem of prices not being transparent to the general public, and it would decrease the incidence of "flickering quotes" and the attendant difficulties for members. In its Regulation NMS Release, the Commission analyzes in great detail the benefits of limiting sub-penny quoting, and Nasdaq agrees with this analysis.

Since the proposed rule change would bring BRUT's rules closer to the long-established NMC rules, Nasdaq believes that the proposed rule change should not be seen as controversial, and asks that the Commission waive the 30-day pre-operative period applicable to non-controversial rule changes contained in Rule 19b-4(f)(6)(iii) under the Act.[10]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[11] in general, and with Section 15A(b)(6) of the Act,[12] in particular, in that it is designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market. Specifically, Nasdaq believes that the proposal would address the "hidden market" problem of prices not being transparent to the general public, and would decrease the incidence of "flickering quotes" and the attendant difficulties for members.[13]

[8] If BRUT receives a "sub-penny" order priced at or above the threshold (*i.e.*, at or above $5 today and $1 when the proposed rule becomes operational), BRUT automatically adjusts the price of such an order down (for bids) or up (for offers) to the nearest penny for display, execution, and routing purposes.

[9] Securities Exchange Act Release No. 49325 (February 26, 2004), 69 FR 11126 (March 9, 2004).

[10] 17 CFR 240.19b-4(f)(6)(iii).

[11] 15 U.S.C. 78o-3.

[12] 15 U.S.C. 78o-3(b)(6).

[13] Telephone conversation between Alex Kogan, Associate General Counsel, Nasdaq, and David Liu, Attorney, Division of Market Regulation, Commission, on January 3, 2005.

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.

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

The foregoing proposed rule change is subject to Section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6) thereunder[15] because the proposal: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that Nasdaq has given the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

Nasdaq satisfied the five-day pre-filing requirement. In addition, Nasdaq has requested that the Commission waive the 30-day operative delay requirement to permit the proposed rule change to become operative on January 3, 2005. The Commission believes that accelerating the operative date is consistent with the protection of investors and the public interest because such acceleration will permit Nasdaq to lower the minimum quotation increment threshold for BRUT from $5.00 to $1.00, thereby more closely mirroring the minimum quotation increment applicable to NMC quotations. For this reason, the Commission designates the proposal to be effective upon filing with the Commission and operative as of January 3, 2005.[16]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.[17]

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml)*; or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2004–190 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–2004–190. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml)*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the 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

[17] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

should refer to File Number SR–NASD–2004–190 and should be submitted on or before January 31, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 05–396 Filed 1–7–05; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #10005]

State of Texas; TX–00001

Guadalupe and Wharton Counties and the contiguous counties of Austin, Bexar, Brazoria, Caldwell, Colorado, Comal, Fort Bend, Gonzales, Hays, Jackson, Matagorda, and Wilson in the State of Texas constitute a disaster area as a result of damages caused by severe storms, excessive rain, and flooding that occurred November 19–27, 2004. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on March 7, 2005 and for economic injury until the close of business on October 4, 2005 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Floor, Niagara Falls, NY 14303.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.875
Homeowners without Credit Available Elsewhere	2.937
Businesses with Credit Available Elsewhere	5.800
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) with Credit Available Elsewhere	4.750
For Economic Injury:	
Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10005 and for economic damage is 10006.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: January 4, 2005.

Hector V. Barreto,

Administrator.

[FR Doc. 05–413 Filed 1–7–05; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4953]

Culturally Significant Objects Imported for Exhibition; Determinations: "From Filippo Lippi to Piero della Francesca: Fra Carnevale and the Making of a Renaissance Master"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985; 22 U.S.C. 2459], Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition, "From Filippo Lippi to Piero della Francesca: Fra Carnevale and the Making of a Renaissance Master," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Metropolitan Museum of Art, New York, New York, from on or about January 31, 2005, to on or about May 1, 2005, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information or a listing of objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is United States Department of State, SA–44, Room 668–10, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: December 22, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 05–433 Filed 1–7–05; 8:45 am]

BILLING CODE 4710–08–P

[18] 17 CFR 200.30–3(a)(12).

Federal Register

Monday,
January 10, 2005

Part II

Department of Housing and Urban Development

24 CFR Parts 200 and 242
Revisions to the Hospital Mortgage Insurance Program; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 200 and 242

[Docket No. FR–4927–P–01; HUD–2004–0011]

RIN 2502–AI22

Revisions to the Hospital Mortgage Insurance Program

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the regulations governing the Federal Housing Administration (FHA) mortgage insurance program for hospitals. The rule would update and incorporate some earlier provisions that currently are not published as part of the FHA regulations. Further, the rule would add new provisions to make them consistent with current industry practices. The rule also would codify the relevant regulations that address hospital mortgage insurance in one part, and therefore make the regulations more user-friendly.

DATES: *Comment Due Date:* March 11, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Interested persons may also submit comments electronically through either:

- The Federal eRulemaking Portal at: *http://www.regulations.gov;* or
- The HUD electronic Web site at: *http://www.epa.gov/feddocket.* Follow the link entitled "View Open HUD Dockets." Commenters should follow the instructions provided on that site to submit comments electronically.

Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title. All comments and communications submitted will be available, without revision, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Copies are also available for inspection and downloading at *http://www.epa.gov/feddocket.*

FOR FURTHER INFORMATION CONTACT: Christopher D. Boesen, Director, Office of Insured Health Care Facilities, Department of Housing and Urban Development, Room 9224, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone (202) 708–0599 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number through TTY by calling the Federal Information Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 242 of the National Housing Act (the Act), codified at 12 U.S.C. 1715z–7 (section 242), most recently amended in 2003 by the Hospital Mortgage Insurance Act of 2003 (Pub. L. 108–91, approved October 3, 2003) (HMI Act), authorizes HUD to insure mortgages on hospitals in accordance with the terms of the section and upon such conditions as HUD may prescribe. The purpose of the law is to "assist the provision of urgently needed hospitals for the care and treatment of persons who are acutely ill or who otherwise require medical care and related services of the kind customarily furnished only (or most effectively) by hospitals." (See 12 U.S.C. 1715z–7(a).) Another aspect of the statutory purpose is to encourage programs to provide comprehensive health care, including outpatient and preventive care as well as hospitalization. In the case of public hospitals, the statute is designed to encourage programs to provide health care services to all members of a community regardless of ability to pay. (*See* 12 U.S.C. 1715z–7(f).)

The statute defines the hospitals that are eligible for insurance as those that: (a) Provide community service for inpatient medical care of the sick or injured, including obstetrical care; (b) have not more than 50 percent of their total patient days customarily assignable to the specified categories of convalescent rest, drug and alcoholic, epileptic, mentally deficient, nervous and mental health, and tuberculosis, with the exception, introduced in the 2003 amendment, of critical access hospitals; and (c) are a public facility, proprietary facility, or facility of a private nonprofit corporation or organization. The statute encourages programs that are undertaken to provide essential health care services to all members of a community regardless of ability to pay. (*See* 12 U.S.C. 1517z–7(f).) The 2003 exception to the 50 percent patient day requirement for critical access hospitals lasts until 2006; HUD is to report to Congress no later than July 31, 2006, on the effect of the exception for critical access hospitals on section 242 hospital mortgage insurance and on the General Insurance Fund. (*See* 12 U.S.C. 1715z–7(b).)

The statute authorizes mortgage insurance for new and rehabilitated hospitals, including equipment. The insured mortgage may involve a principal obligation of up to 90 percent of the estimated replacement cost of the property or project, including equipment to be used in the operation of the hospital when the proposed improvements are completed and the equipment is installed and systems to conserve energy where the Secretary determines that the systems will be cost-effective. The Secretary may exercise regulatory control over the mortgagor's charges and methods of financing, corporate entity, capital structure, and rate of return. (*See* 12 U.S.C. 1715z(d)(1)–(2).)

The statute provides for HUD to take steps to ensure that a hospital supported by HUD mortgage insurance is properly established and responds to a real need. As to hospital operation, HUD must require, before insuring, that satisfactory evidence be provided that the hospital will be located in an area with reasonable minimum standards of licensure and methods of operation of hospitals. HUD also must require a satisfactory assurance that such standards will be applied and enforced with respect to the hospital for which mortgage insurance is being sought. (*See* 12 U.S.C. 1715z(d)(4)(A).)

As to need, the revised statute requires that HUD establish the means for determining the need for, and feasibility of the hospital if the State does not have an official procedure for making this determination. If the State does have a procedure, HUD must require that the procedure be followed and documented and that need has "also been established under this procedure." (*See* 12 U.S.C. 1715z–7(d)(4).) HUD therefore contemplates that in cases where the State has a procedure, both the State procedure and HUD's criteria for determining need must be followed, which has been the historical practice. The need documentation provision was changed in the 2003 revision made by the HMI Act. Prior to that revision, the statute had provided that where the State has no procedure for assessing need, the State commission must conduct an independent study following certain procedures and standards.

The statute also contains some technical provisions regarding mortgage insurance. Section 242(d)(5) of the Act, 12 U.S.C. 1715z–7(d)(5), places restrictions on mortgage insurance under part 242 on mortgages that back Government National Mortgage Association (GNMA) securities. The statute provides that in the case where

HUD requires a private nonprofit organization or public facility mortgagor to provide cash money in excess of the amount of the mortgage, the mortgagor shall be entitled to use a letter of credit instead of cash. In such an event, mortgage proceeds may be advanced to the mortgagor prior to any demand being made on the letter of credit. (*See* 12 U.S.C. 1715z–7(d)(6).)

The statute also gives HUD authority to approve a partial release of lien for any insured section 242 mortgage. Accordingly, if a hospital wanted to dispose of some of its equipment or some surplus property, for example, the lien as to those particular items could be released under such terms and conditions as HUD may prescribe. (*See* 12 U.S.C. 1715z–7(e).)

The statute makes applicable certain provisions of section 207 of the Act, 12 U.S.C. 1713, entitled "Rental Housing Insurance." These applicable provisions are the following sections: 1713(d) (Premium, appraisal, and inspection charges); 1713(e) (Adjusted premium charges on payment of a mortgage prior to the maturity date); 1713(g) (Payment of insurance after default); 1713(h) (Certificate of claim and division of excess proceeds); 1713(i) (Debentures); 1713(j) (Form and amounts of debentures); 1713(k) (Acquisition of property by conveyance or foreclosure); 1713(l) (Handling and disposal of property; settlement of claims); and 1713(n) (Default and the rights of parties).

HUD's current regulations for hospital mortgage insurance authorized by section 242, codified in 24 CFR part 242, are extremely brief and rely mostly on cross-references to the general regulatory provisions applicable to Federal Housing Administration (FHA) programs, codified in 24 CFR part 200, and the multifamily housing mortgage insurance regulations codified in 24 CFR part 207. The only statutory provisions that are reflected in the current part 242 regulations are the licensing provisions of 12 U.S.C. 1715z(d)(4)(A) (see 24 CFR 242.2) and the provisions on eligible hospitals at 12 U.S.C. 1715z(d) (see 24 CFR 242.3).

The last detailed stand-alone regulation for part 242 insurance was codified in the April 1, 1995, edition of the Code of Federal Regulations (CFR). Where relevant, part II of this preamble entitled "This Notice of Proposed Rulemaking" will reference those prior regulations.

II. This Notice of Proposed Rulemaking (NPRM).

Overall, this NPRM provides more detailed regulations for hospital mortgage insurance than either the current streamlined 24 CFR part 242, or the detailed section that existed prior to the 1996 edition of the CFR. Experience has shown that certain sections of the 1995 regulations are still pertinent to the program, while changes in the hospital industry, including the increase in applicants for insurance and new forms of ownership including mergers and physician participation, require some changes. This regulation proposes new details, described below, which respond to HUD's actual experience with hospital mortgage insurance and to changes in the hospital industry, which have dramatically increased every year.

The hospital mortgage insurance is a unique program (the section 242 program), unlike the multifamily housing programs in many respects. It is believed to be more helpful to the public to include all the necessary material in a single part, rather than relying heavily on cross-references to the general provisions at 24 CFR part 200. Therefore, this NPRM proposes to take a comprehensive approach.

There has been an overall increase in applications for insurance and preapplication contacts. Often, these section 242 applicants are new and inexperienced in this program, requiring greater guidance from HUD for mortgagees and greater regulatory supervision of mortgagors. This regulation provides this greater level of guidance. In addition, this regulation provides for a preapplication procedure whereby issues and problems can be addressed early in the process, or an application that has deficiencies can be identified early in the process before an applicant expends substantial resources on preparing it.

Changes to Part 200

This NPRM proposes to remove references to the hospital program from 24 CFR part 200 so that users of the regulation can find everything they need in one location and to avoid unnecessary repetition. Specifically, 24 CFR 200.24 and 200.25 are revised to remove references to 24 CFR part 242, and 24 CFR 200.40 is revised to remove material concerning application and commitment fees that would be contained entirely in 24 CFR part 242.

Proposed Part 242

Subpart A—General Eligibility Requirements

In accordance with the more detailed guidance being provided in this regulation, this NPRM proposes to introduce an expanded section on pertinent definitions in proposed 24 CFR 242.1. Among the more significant definitions that would be added are definitions for *affiliate; hospital,* which essentially tracks the statutory definition in 12 U.S.C. 1715z–7(b)(1); *personalty,* which includes hospital equipment and which in many cases will be covered by the insured mortgage; *preliminary review letter,* a proposed new element to assist in the application process; *surplus cash; debt service coverage ratio;* and *working capital.* The definition section would also include definitions of a variety of other commonly used terms related to mortgage insurance.

The definition of "hospital" differs from the definition in the 1995 and earlier versions of the regulation primarily by adding the exemption for critical access hospitals to the 50 percent-of-patient-days cap on certain forms of care (chronic convalescent and rest, drug and alcoholic, epilepsy, mentally deficient, mental and nervous, and tuberculosis). This critical access hospital exemption was introduced in 2003, and sunsets on July 31, 2006 (*see* HMI Act).

Proposed section 242.2 makes explicit that HUD has an obligation to protect the soundness of the mortgage insurance fund. Therefore, this NPRM proposes to require as an overall principle that HUD seek to avoid defaults and claims for insurance and promote the program's financial self-sufficiency and actuarial soundness.

Proposed section 242.3 is similar to 24 CFR 242.2 from the 1995 stand-alone regulation (24 CFR 242.2, April 1, 1995 edition) (1995 regulation), and reflects the overall purpose of the statute to encourage comprehensive health care (*see* 12 U.S.C. 1715z–7(f)). This NPRM proposes to add an additional sentence to emphasize the intent to insure mortgages for public and certain nonpublic hospitals that serve a public purpose by providing a substantial amount of care to those who have no ability, or limited ability, to pay.

A number of sections in proposed subpart A establish basic eligibility requirements. Sections 242.4, 242.5, 242.6, 242.7, and 242.10 relate, respectively, to eligible hospitals, eligible mortgagees, property requirements, maximum mortgage amounts, and eligible mortgagors. Similar material is contained in the 1995 regulation; this proposed rule would reorganize this material more logically at the beginning of the rule. The maximum mortgage amount is up to 90 percent of the estimated replacement cost, is statutory (*see* 12 U.S.C. 1715z–7(d)(2)), and has not changed since the 1995 regulation, where the analogous

section is 24 CFR 242.27. Eligible activities are the same as stated in the 1995 regulation in 24 CFR 242.12, "Eligible hospitals," and include the new construction or substantial rehabilitation or replacement of a hospital (*see* 12 U.S.C. 1715z–7(d)). The section on "eligible mortgagees" simply clarifies that the requirements in 24 CFR part 202 apply, and is similar to 24 CFR 242.25 from the 1995 regulation. The property requirements are the same as found in the 1995 regulation at 24 CFR 242.87 and provide assurance of long-term ownership.

Proposed 24 CFR 242.8, "Standards for licensure and methods of operation," implements 12 U.S.C. 1715z(d)(4)(A). The same material was contained within a larger section dealing with certification requirements in the 1995 regulation at 24 CFR 242.5.

Proposed 24 CFR 242.10, "Eligible mortgagors," is similar to 242.23 of the 1995 regulations. The proposed rule would give greater specificity to the types of for-profit mortgagors that would be eligible, specifically excluding joint ventures, natural persons, and general partnerships. These entities are specifically excluded because of an increased exposure to liability caused by the continuity problems which can arise with these specific entities. HUD needs assurance that the hospital will remain in existence for the duration of the insured mortgage loan and that the mortgagor will not be engaging in other business activities that could affect the ability of the mortgagor to make timely payment under the terms of the insured loan.

Proposed 24 CFR 242.9, "Physician ownership," is a new provision that is designed to recognize the reality of increased physician participation in the ownership of hospitals, within certain limits. Under current HUD Handbook guidelines, "a proposal in which the mortgagor is controlled in any manner by the professionals practicing in the hospital will not be eligible." (Handbook 4615.1, "Mortgage Insurance for Hospitals," ¶ 1–4(b).) HUD has been administratively waiving this prohibition under certain conditions. These are: a determination that the proposed mortgagor will be at low risk for violations of regulations of the Department of Health and Human Services and other Federal and State regulations governing kickbacks; self-referrals; and other issues that could increase the risk of default. HUD proposes to codify this standard for approval of physician ownership in the new regulation.

Proposed 242.11, "Regulatory compliance required," would set an eligibility criterion that hospitals be in substantial compliance with government regulations. Hospitals under investigation would generally not be eligible for the program, unless the Commissioner determines that the investigation is minor in nature, that is, unlikely to result in substantial liability or otherwise harm the creditworthiness of the hospital.

Proposed 242.13, "Parents and affiliates," recognizes the increase in mergers, affiliations, and multi-provider systems in the hospital industry. This section gives HUD express authority to take actions to mitigate the insurance risks posed by these arrangements.

Proposed 242.14, "Mortgage reserve fund," adapts the reserve requirements to current industry conditions. The Section 242 program long required that the mortgagor contribute to a depreciation reserve fund, and in some cases, contribute additional reserve funds. The depreciation reserve fund was designed for the era when insurers reimbursed hospitals for their costs, including capital costs. The fund was available in the later years of the mortgage to provide cash flow to the hospital as depreciation and interest expense declined. Also, the fund was available to help the hospital through unexpected cash flow difficulties at any time during the mortgage term. With the shift from cost reimbursement to reimbursement by case, the rationale for the depreciation reserve fund is no longer valid. However, a reserve fund is still needed to provide a cushion in times of financial difficulty to help the hospital and the Commissioner avoid mortgage defaults. Beginning in 2000, hospitals coming into the program were required to maintain a Mortgage Reserve Fund (MRF) instead of a depreciation reserve fund and hospitals with existing insured mortgage loans were permitted to convert their depreciation reserve fund to an MRF if they met certain conditions. The contribution requirements of the MRF are lower than those for the depreciation reserve fund. The language in § 242.14 permits variation in fund requirements on a case-by-case basis, especially for critical access hospitals and others that receive partial cost-based reimbursement.

Finally, proposed 24 CFR 242.15 provides that some preexisting long-term debt may be refinanced under the Section 242 program; however, the "hard costs" of construction and equipment must represent at least 20 percent of the total mortgage amount. The types of loans that may be refinanced under this provision may or may not be HUD-insured.

Subpart B—Application Procedures and Commitments

Proposed 24 CFR 242.16, "Applications," includes new material along with elements of the application procedures that have been in place in the program. For example, the requirement that the approval process entails a determination of market need in proposed § 242.16(a) is statutory (12 U.S.C. 1715z–7(d)(4)(B)) and also was found in the 1995 regulation in § 242.3(a). Both proposed § 242.16(c) on the application fee and § 242.16(d) on filing are unchanged from §§ 242.3(b) and 242.3(c) of the 1995 regulation.

The NPRM also proposes some important new elements in the application procedure. In many cases, these are codifications of procedures the Department is currently using.

The rule proposes, at 24 CFR 242.16(a)(1)(ii), a list of relevant factors in determining market need. These factors include matters such as the service area definition; current and projected future population; the occupancy rates of the applicant and competing hospitals; outpatient volume; and other factors related to assessing the need for the hospital and the services it would provide in the area. These factors are to be addressed, as applicable. This is in addition to the State's procedure, if any, for determining market need. In cases where the State has such a procedure, the State's procedure must be followed prior to application submission (proposed 24 CFR 242.16(a)(1)(i)), and HUD's own determination of need must also be made. Also, the rule clarifies that for start-up hospitals or major expansions, it generally must be demonstrated that existing hospital capacity or services are not adequate to meet the needs of the population in the service area.

The NPRM would also change long-standing policy for operating margin and financial feasibility. These standards are necessary to protect the soundness of the insurance fund. Proposed § 242.16(a)(2) would require a positive three-year aggregate operating margin, with discretion for HUD to find eligibility on the basis of a financial turnaround in the most recent year, and a debt service coverage ratio of 1.25 in the three most recent audited years, unless the Commissioner finds a financial turnaround, based on the audited financial data, resulting in a debt service coverage ratio of at least 1.40 in the most recent year. Proposed § 242.16(a)(3) contains detailed factors for determining whether the project is financially feasible; that is, whether it will be able to meet its debt service

obligations over the life of the mortgage that is proposed to be insured. Among the factors included are a current debt service coverage ratio of 1.25 or higher and a projected debt service coverage ratio of 1.40 or higher, and a balance sheet that shows the resources to withstand a short period of net operating losses without jeopardizing financial viability.

Because of the overall increase in applications for the Section 242 program, and an increase in the number of new applicants, the rule would codify in § 242.16(a)(4) the preliminary review process that HUD has used in recent years. This process is designed to forestall problems and provide guidance to applicants early in the process. The preliminary review is performed at the request of a hospital, a hospital's financial consultant, or a HUD-approved lender for the purpose of identifying any factor that would likely cause an application to be rejected before the applicant spends substantial resources on the application. The applicant submits a preliminary information package to the Commissioner, and, on that basis, the rule proposes that the Commissioner would issue a preliminary review letter stating either that the application would likely result in a rejection, or that there appears to be no bar to proceeding to the next step in the application process. The rule specifies that this latter determination is not to be construed to imply that the application will necessarily be approved.

If a finding is made of probable rejection, the applicant may not seek another preliminary review for one year from the date of notification, unless the Commissioner grants an exception based on a determination that the circumstances which led to the conclusion of a likely rejection have changed. If a finding is made that the application may go forward, the complete application should be submitted within one year from the date of notification, or a new preliminary review may be required.

Section 242.16(a)(5) provides that the next step in the application process is a preapplication meeting between the applicant and HUD. The result of this meeting will be either a determination that there is no bar to further process, or that there are issues that must be resolved before an application should be submitted.

The remainder of § 242.16 contains administrative components of application processing. Section 242.16(b) specifies the application contents. Section 242.16(e) provides that only technically complete applications will be processed and that the Commissioner, upon determination that an application is complete, issue a Completeness Letter to the applicant stating that the application is complete. Completeness letters generally are endeavored to be issued three weeks from the date that the application is determined to be complete. Section 242.16(f), "Application review," gives the Commissioner broad discretion to consider any relevant factors in determining whether to grant an application, to solicit the advice of experts within and outside of government, and to request additional information from the applicant. At a minimum, HUD will consider eligibility, market need, financial feasibility, and compliance with applicable regulations. Section 242.16(f) also states that the Commissioner will render a decision within 12 months of the date of the completeness letter, unless the Commissioner for good cause extends the period of review. The review period could also be shorter than 12 months, depending generally on when the necessary information and materials are received and on the completeness of the materials.

The remainder of subpart B concerns commitments to insure the mortgage. Much of this portion of the regulation—including inspection fees (proposed § 242.18); fees in increases in commitments prior to endorsement (§ 242.19(a)) and increases between initial and final endorsement (§ 242.19(b)); reopening of expired commitments (§ 242.20); refund of fees (§ 242.21); adjusted and reduced mortgage amounts (§ 242.23(a) and (b))—are similar to the analogous sections in the 1995 regulations. In other cases, technical changes are proposed. For example, where the 1995 regulations provide that insurance on advances may be made, this proposed rule would require such insurance on advances and specifies that they reflect the mortgage amount, interest rate, mortgage term, date of commencement of amortization, and other requirements (proposed § 242.17(a)). The proposed regulation would also change the term of the commitment from 180 days stated in the 1995 regulation to 90 days, subject to extensions not to exceed 180 days (proposed § 242.17(c)).

There are also proposed changes from the 1995 provisions to the lender's maximum fees and charges (proposed § 242.22) to include a 3½ percent permanent financing fee, and technical changes to regulations dealing with the Commissioner's discretion to evaluate the amount of cash equity that any mortgagor must supply, as well as discretion as to whether a nonprofit or public entity mortgagor may use a letter of credit in lieu of cash. (See proposed § 242.23(c).) The latter section requires that the loan-to-value ratio not exceed 90 percent, although it may be less than 90 percent. In no case may the equity contribution be proceeds from a loan. Finally, proposed § 242.24 would give the Commissioner discretion to evaluate, on a case-by-case basis, the amount of working capital that must be available to the new hospital at the commencement of operations. Minimum working capital is required to ensure that hospitals, especially new hospitals, have sufficient operating cash on hand pending the receipt of income from operations. Generally, the working capital shall not be borrowed funds, unless the Commissioner determines that there are offsetting financial strengths to compensate for the risks associated with borrowing.

Subpart C—Mortgage Requirements

Many of the requirements in this subpart are adopted without change from the 1995 regulations, and have been ongoing features of the program. This section of the preamble focuses on new or changed requirements proposed to be introduced in this NPRM. The following table shows the substantially equivalent sections:

SUBSTANTIALLY EQUIVALENT SECTIONS

1995 Regulation	Proposed rule
242.31(a)	242.25(a)(1)
242.31(b)	242.25(b)
242.33(a)	242.26(a)
242.33(b)	242.26(b)
242.35	242.27
242.37	242.29
242.39	242.30
242.41(a)	242.31(a)
242.41(b)	242.31(b)
242.51(b)	242.37(b)
242.51(b)(1)	242.37(b)(1)
242.51(b)(2)	242.37(b)(2)

Proposed § 242.32 is a covenant against liens other than the insured mortgage, with an exception for other liens that the Commissioner may approve. This section codifies a policy that has been part of the standard regulatory agreement. In HUD mortgage insurance programs generally, the insured loan must have priority over other liens. Permitting the Commissioner to approve additional secondary liens for hospitals may enable hospitals to benefit from programs offered by the Department of Health and Human Services and States.

The mortgage lien certifications proposed in § 242.35 would add a new element to the 1995 equivalent section, 24 CFR 242.49, that is, a certification

that the security agreement and Uniform Commercial Code (UCC) financing statements establish a first lien on the personalty of the mortgagor. "Personalty" would be defined in this regulation as well.

The 1995 regulations generally grant a prepayment privilege except in the case of mortgage loans that have been funded by the issuance and sale of bonds or bond anticipation notes (24 CFR 242.51(a) and (c)), in which case the mortgage may contain a prepayment restriction. Proposed § 242.37(a), however, would allow the Commissioner to establish additional exceptions to the prepayment privilege. Proposed § 242.37(c) would allow for prepayment restrictions in the case of bond funding as in the 1995 regulation, as well as where the mortgage secures GNMA mortgage-backed securities, in those cases where the statute allows such mortgages to be insured under this part (*see* Section 242(d)(5) of the Act, 12 U.S.C. 1715z–7(d)(5) for the restrictions on insuring mortgages that are used to collateralize GNMA securities). Proposed § 242.37(d) would provide that in the event of a default, the Commissioner could override any prepayment penalty in order to facilitate a refinancing of the property to avoid a claim on the insurance fund.

There is a change from the 1995 regulations in the area of late charges. Where the 1995 regulation imposed a limitation on the amount of late charges, the proposed rule would be flexible in this area, allowing the Commissioner to establish the terms and conditions for late charges. (Compare 24 CFR 242.52 of the 1995 regulation with proposed § 242.38.) This aligns the current rule with HUD's regulations in other insurance programs on this subject, as codified in 24 CFR 200.88.

Subpart D—Endorsement for Insurance

The proposed sections on endorsement for insurance essentially track similar requirements in 24 CFR part 200. This proposed rule would add to those typical insurance provisions specific requirements as to the application of cost savings in proposed §§ 242.41(b) and 242.43. These requirements for the application of cost savings codify current program practice.

Subpart E—Construction

Proposed §§ 242.44 through 242.53 would establish construction standards for the hospital mortgage insurance program. Proposed § 242.44 would codify as the minimum standard the Guidelines for Construction and Equipment of Hospital and Medical Facilities published by the American Institute of Architects, which is the standard currently being used in the program.

Proposed § 242.45 would codify the practice of approving, for good cause shown and with the concurrence of the Commissioner, early commencement of work; that is, commencement of certain preliminary work before the commitment to insure the mortgage. In such cases, the inspection fee must be prepaid before the commencement of the early work. Section 242.45 also makes clear the fact that no preliminary site work may be started prior to HUD doing an environmental review under 24 CFR part 50 and indicating its approval of the proposed work.

Proposed § 242.46, "Insured advances—building loan agreement," and 242.47, "Insured advances for building components stored off-site," would simply recodify similar sections of the 1995 regulations. (*See* §§ 242.53 and 242.54 of the 1995 regulations.) Proposed § 242.46 would provide for progress payments during construction. Proposed § 242.47 would allow for insured advances for building components stored off-site if certain requirements are met. On-site storage must be impractical because of size or weight or the threat of weather damage or other adverse conditions at the site. This section also contains certain storage and labeling requirements, and places responsibility for storage, transportation, and insurance of the components on the general contractor.

Proposed § 242.48 would provide for insurance of "long lead items," that is, items for which an interim payment is needed in order to insure the timely production and delivery to the project site of the item. This provision for such items is a codification of existing program practice.

Proposed § 242.49 would provide that the Commissioner may require the mortgagor to make a deposit of cash or securities. The Commissioner may also permit the use of a letter of credit instead of cash or securities. This provision would be similar to 24 CFR 242.55 of the 1995 regulation, the primary difference being that if a letter of credit is used, it must be issued by an institution with a Standard & Poor's rating of AA or equivalent.

Proposed § 242.50, "Funds and finances—off-site utilities and streets" would recodify 24 CFR 242.59 of the 1995 regulations. This section requires assurance of completion of off-site public utilities and streets except in cases where a municipality or other local governmental body agrees to install streets and utilities without cost to the mortgagor.

Proposed § 242.51 provides for assurances of completion in the form of surety bonds, and would abbreviate 24 CFR 242.61 of the 1995 regulation to remove references to Hill-Burton grants and costs of less than $500,000. It is HUD's experience that these elements are not needed for hospitals now applying for loans. The section also provides that its requirements are a minimum, and that the mortgagee may require more stringent sureties of completion. Proposed § 242.52, "Construction contracts," would require the mortgagor to enter into a construction contract with a builder selected by competitive bidding procedures. Proposed § 242.52(b) would allow for such a contract to take a variety of forms, including a lump sum contract; a construction management contract with a guaranteed maximum price, the final costs of which are subject to a certification acceptable to the Commissioner; a design-build contract; or such other contract as the Commissioner may approve. This section would differ from a similar section of the 1995 regulation by not providing for a waiver of competitive bidding, and by expanding the types of contracts that may be used (formerly, only a lump sum contract was allowed). By doing so, the rule would allow for a wider variety of participants who may wish to use a variety of contracting methods.

Proposed § 242.53 would require that contracts relating to construction of the project not be made with any firm that has been found to be ineligible to participate by HUD or the Department of Labor. These restrictions on ineligible contractors are similar to those found in 24 CFR 242.71 of the 1995 regulation, with an additional provision prohibiting identity of interest contracts, as determined by the Commissioner, between the applicant and the general contractor.

Subpart F—Nondiscrimination and Wage Rates

Proposed §§ 242.54 and 242.55 would reference the basic nondiscrimination and Davis-Bacon wage rate requirements applicable to this program as well as the special requirement for payment of overtime to laborers and mechanics that applies to this program under section 212 of the Act.

Subpart G—Regulatory Agreement, Accounting and Reporting, and Financial Requirements

Proposed §§ 242.56–242.93 would primarily focus on improved HUD supervision of the insured mortgagor, as well as on administrative provisions

necessary to run the program. Overall, HUD will exercise financial supervision over its insured mortgagors to minimize the risk to the insurance fund.

Proposed § 242.56 would provide for regulation by a Regulatory Agreement which can be flexible and include such clauses as the Commissioner deems necessary on a case-by-case basis. This section also makes clear that the mortgagor will be subject to continuing supervision by government agencies and their contractors and agents for the life of the insured loan. The purpose of this provision is to ensure financial soundness and prevent program abuse.

Proposed §§ 242.57 and 242.59 would restate, respectively, 24 CFR 242.77 and 242.81 from the 1995 regulation. These sections require the mortgagor to maintain the property in good repair and allow for HUD to inspect the property, and the mortgagor's books and records, at reasonable times. In addition to these provisions, proposed § 242.58, "Books, accounts, and financial statements," expands on the parallel 1995 regulation, 24 CFR 242.79, by specifying details of financial reports and when these reports must be filed with the Commissioner. This section also expands on the auditing requirements of the 1995 regulation. The purpose of these changes is to improve on the financial oversight of the mortgagor and reduce risk to the insurance fund.

Proposed § 242.61, "Management," would provide that the Commissioner must approve any management contract for the hospital insured under this section. Furthermore, HUD could require that the principals of the mortgagor and key management employees could be removed, substituted, or terminated for cause by written request of the Commissioner. Experience has shown that there is a need to ensure appropriate management of hospitals insured under this program.

Under proposed § 262.64, all current and future property and equipment will become subject to the HUD-insured mortgage unless the Commissioner, for cause, approves otherwise. Given the importance of the security for the insured loan, proposed § 242.62, "Release of lien," and § 242.65, "Distribution of assets," would contain important concepts. Under § 242.62, the mortgagor would not be able to dispose of any non-cash assets secured by the mortgage without the approval of the mortgage lender and the Commissioner. If such disposal of assets involves a partial release of the lien, the lender, subject to review by the Commissioner, must make a determination that the remaining lien is sufficient to cover the remaining property.

Proposed § 242.65 would provide for the distribution of assets, including surplus cash. Cash, to be considered surplus and available for distribution, must either meet the terms of the definition of "surplus cash" in proposed 24 CFR 242.1 or be approved for distribution by the Commissioner. This section clarifies to whom distributions may occur.

Two proposed sections would regulate affiliate transactions. Proposed § 242.66 would prohibit transactions with affiliates except with prior written approval of the Commissioner. Proposed § 242.67 would prohibit acquisition, development, organization, or acquisition of a significant interest in any corporation, subsidiary, or affiliate other than those with which the mortgagor was affiliated with as of the date of application, without the prior written approval of the Commissioner.

Subpart H—Miscellaneous Requirements

This subpart contains a number of requirements that do not fit under other categories of 24 CFR part 242. For example, § 242.68 refers to disclosure and verification of Social Security and Employer Identification numbers. Section 242.69 relates to fees for transfers of physical assets.

Although the program has generally prohibited the leasing of an entire hospital, proposed § 242.72 would permit leasing of the hospital in two limited instances. One is where there is a State law prohibition against State entity mortgaging of health care facilities. Another is where the Commissioner determines that leasing is necessary to reduce the risk of default by a financially troubled hospital with an existing loan under 24 CFR part 242.

Proposed § 242.73 provides for the waiver of eligibility requirements for insurance under the part of a mortgage assigned to the Secretary or acquired by the Secretary subsequent to a payment of claim. This provision would help to enable the Secretary to dispose of such mortgages after such assignment or acquisition, thereby recouping losses to the insurance fund.

Proposed §§ 242.74 (smoke detectors), 242.75 (title requirements), and 242.76 (title evidence) would restate, without substantive change, 1995 §§ 242.87, 242.89, and 242.91, respectively. Proposed § 242.77 would provide that the hospital must be free and clear of all liens other than the insured mortgage, except for certain categories of liens as the Commissioner may provide.

Proposed § 242.89, "Supplemental loans," would provide for a loan or advance of credit for financing improvements or additions to a hospital covered by this part. This section implements section 241 of the Act (12 U.S.C. 1715z–6), for the hospital mortgage insurance program.

Proposed § 242.90, "Eligibility of mortgages covering hospitals in certain neighborhoods," restates 24 CFR 242.94 from the 1995 regulation. The purpose of this section is to provide for hospital care in older or declining neighborhoods, subject to certain conditions, such as ensuring that the area is reasonably viable and the mortgage is an acceptable risk.

Proposed § 242.91, "Eligibility of refinancing transactions," restates 24 CFR 242.96 from the 1995 regulations. Proposed §§ 242.92 (minimum principal loan amount), 242.93 (amendment of regulations), and 242.94 (cross reference) restate 24 CFR 242.97, 242.249, and 242.251 of the 1995 regulations, respectively.

Findings and Certifications

Information Collection Requirements

The information collection requirements contained in this proposed rule are found in §§ 242.8, 242.13, 242.16, 242.20, 242.25, 242.33, 242.35, 242.40, 242.41, 242.42, 242.46, 242.52, 242.57, 242.58, 242.61, 242.68, and 242.76. As discussed in the preamble of this rule, the information collection requirements in these sections are largely unchanged from those already in place for the Section 242 program, and found in the existing regulations in 24 CFR parts 200, 207 and 242, and documents such as form, HUD–92013–HOSP (Application for Hospital Project Mortgagee Insurance) and Mortgagee Letter 04–08 (issued February 23, 2004), which details the requirements for the market need study and financial feasibility study. The existing information collection requirements were approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB approval number 2502–0518.

The existing information collections, which remain unchanged by this proposed rule, are found in the following sections: §§ 242.8 (requiring evidence that the hospital is located in a State or a political subdivision of a State with reasonable minimum standards for licensure and methods of operation), 242.13 (concerning financial and operational information about parents and affiliates), 242.20 (concerning request for reopening

expired commitment), 242.25 (form of the mortgage), 242.33 (maintenance of adequate malpractice liability, fire, and extended coverage insurance on the property), 242.40 (form of mortgagee certificate), 242.41 (concerning agreement precluding excess of mortgage proceeds over statutory limitations), 242.42 (mortgagor's certificate of actual cost), 242.46 (building loan agreement), 242.50 (assurances of completion of off-site public utilities and streets), 242,51 (assurance of completion of construction or rehabilitation where cost is more than $500,000), 242.52 (a contract for construction or rehabilitation of a hospital), 242.56 (execution of regulatory agreement), and 242.75 (marketable title requirements), and 242.76 (evidence of title).

The Department has estimated the total burden for the information collection currently in place for the Section 242 program, which includes the Application for Hospital Project Mortgage Insurance (HUD–92013–HOSP), the market need and feasibility studies, and the requirements set forth in the regulations, as a total of 17,280 hours. This total is based on an estimate of 18 applicants a year and 960 hours per response.

The additional information collection set forth in this proposed rule can be found in the following regulatory sections. Several of these sections, such as 242.16 (the application requirements) contain the existing requirements, and these requirements have been expanded upon by the proposed rule, particularly with respect to the market need and feasibility study. In § 242.16(a)(1)(ii), HUD proposes a list of additional relevant factors in determining market need, and § 242.16(a)(3) contains detailed factors for determining whether a project is financially feasible. Section 242.35 proposed to add to the existing mortgage lien certification a certification that the security agreement and UCC financing statements establish a first line on the personalty of the mortgagor. Section 242.58 expands upon the recordkeeping requirements currently in place. Section 242.61 provides for a management contract for the hospital and § 242.68 requires a disclosure and verification of Social Security and employer identification numbers. The additional burden of the information collections in this proposed rule is estimated as follows:

REPORTING AND RECORDKEEPING BURDEN

Section reference	Number of parties	Number of responses per respondent	Estimated average time for requirement (in hours)	Estimated additional annual burden (in hours)
§ 242.16	18	1	5	90
§ 242.35	18	1	2	36
§ 242.58	18	1	1	18
§ 242.61	18	1	3	54
§ 242.68	18	1	1	18
Total Additional Annual Burden Presented by Proposed Rule				216
Total Estimated Annual Burden: 17, 280 hrs + 216 hrs				17,416

The changed collection of information is being submitted to OMB for review and approval. In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(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;

(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 collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this rule no later than February 9, 2005. This time frame does not affect the deadline for comments to the agency on the rule, however. Comments on information collection 2502–0518 must refer to the proposed rule by name and docket number (FR–4927–P–01) and must be sent to:

Mark D. Menchik, HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax number: (202) 395–6947, E-mail: *Mark_D._Menchik@omb.eop.gov;*

and

Kathleen McDermott, Reports Liaison Officer, Office of Housing-Federal Housing Commissioner, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9116, Washington, DC 20410–8000.

In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Environmental Impact

A Finding of No Significant Impact with respect to the environment for this rule has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–5000.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This rule does not impose a Federal mandate on any State, local, or tribal government, or on the private sector, within the meaning of UMRA.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

There are no anti-competitive discriminatory aspects of the rule with regard to small entities, and there are not any unusual procedures that would need to be complied with by small entities. The rule revises the regulations under the mortgage insurance program for hospitals to update and improve the efficiency of the program.

Therefore, the undersigned certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required.

Notwithstanding the determination that this rule would not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments nor preempt State law within the meaning of the Executive Order.

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this rule is a "significant regulatory action" as defined in section 3(f) of the order (although not an economically significant regulatory action under the order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection in the Regulations Division, Office of the General Counsel, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

List of Subjects in 24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Lead poisoning, Loan programs—housing and community development, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number is 14.128.

List of Subjects in 24 CFR Part 242

Hospitals, Mortgage insurance, Reporting and record keeping requirements.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR parts 200 and 242 to read as follows:

PART 200—INTRODUCTION TO FHA PROGRAMS

1. Section 200.24 is revised to read as follows:

§ 200.24 Existing projects.

A mortgage financing the purchase or refinance of an existing rental housing project under section 207 of the Act, or for refinancing the existing debt of an existing nursing home, intermediate care facility, assisted living facility, or board and care home, or any combination thereof, under section 232 of the Act, may be insured pursuant to provisions of section 223(f) of the Act and such terms and conditions established by the Commissioner.

2. Section 200.25 is revised to read as follows:

§ 200.25 Supplemental loans.

A loan, advance of credit or purchase of an obligation representing a loan or advance of credit made for the purpose of financing improvements or additions to a project covered by a mortgage insured under any section of the Act or Commissioner-held mortgage, or equipment for a nursing home, intermediate care facility, board and care home, assisted living facility, or group practices facility, may be insured pursuant to the provisions of section 241 of the Act and such terms and conditions established by the Commissioner.

3. 24 CFR 200.40 is amended by revising paragraphs (c), (d), and (f) to read as follows:

§ 200.40 HUD fees.

The following fees apply to mortgages to be insured under this part.

* * * * *

(c) *Application fee—conditional commitment.* For a mortgage being insured under section 223(f) of the Act (12 U.S.C. 1715n), an application-commitment fee of $3 per thousand dollars of the requested mortgage amount shall accompany an application for conditional commitment.

(d) *Application fee—firm commitment: General.* An application for firm commitment shall be accompanied by an application-commitment fee which, when added to any prior fees received in connection with applications for a SAMA letter or a feasibility letter, will aggregate $5 per thousand dollars of the requested mortgage amount to be insured. The payment of an application-commitment fee shall not be required in connection with an insured mortgage involving the sale by the government of housing or property acquired, held, or contracted pursuant to the Atomic Energy Community Act of 1955 (42 U.S.C. 2301 *et seq.*).

* * * * *

(f) *Fees on increases—in general.* This section applies to all applications except applications involving hospitals, which are covered in 24 CFR part 242.

(1) *Increase in firm commitment before endorsement.* An application, filed before initial endorsement (or before endorsement in a case involving insurance upon completion), for an increase in the amount of an outstanding firm commitment shall be accompanied by a combined additional application and commitment fee. This combined additional fee shall be in an amount which will aggregate $5 per thousand dollars of the amount of the requested increase. If an inspection fee was required in the original commitment, an additional inspection fee shall be paid in an amount computed at the same dollar rate per thousand dollars of the amount of increase in commitment as was used for the inspection fee required in the original commitment. When insurance of advances is involved, the additional inspection fee shall be paid at the time of initial endorsement. When insurance upon completion is involved, the additional inspection fee shall be paid before the date construction is begun or if construction has begun, it shall be paid with the application for increase.

(2) *Increase in mortgage between initial and final endorsement.* Upon an application, filed between initial and final endorsement, for an increase in the

amount of the mortgage, either by amendment or by substitution of a new mortgage, a combined additional application and commitment fee shall accompany the application. This combined additional fee shall be in an amount which will aggregate $5 per thousand dollars of the amount of the increase requested. If an inspection fee was required in the original commitment, an additional inspection fee shall accompany the application in an amount not to exceed the $5 per thousand dollars of the amount of the increase requested.

(3) *Loan to cover operating losses.* In connection with a loan to cover operating losses (*see* § 200.22), a combined application and commitment fee of $5 per thousand dollars of the amount of the loan applied for shall be submitted with the application for a firm commitment. No inspection fee shall be required.

* * * * *

PART 242—MORTGAGE INSURANCE FOR HOSPITALS

4. Part 242 is revised to read as follows:

PART 242—MORTGAGE INSURANCE FOR HOSPITALS

Subpart A—General Eligibility Requirements

Sec.

Subpart B—Application Procedures and Commitments

Subpart C—Mortgagee Requirements

Subpart D—Endorsement for Insurance

Subpart E—Construction

Subpart F—Nondiscrimination and Wage Rates

Subpart G—Regulatory Agreement, Accounting and Reporting, and Financial Reporting

Subpart H—Miscellaneous Requirements

Authority: 12 U.S.C. 1709, 1710, 1715b, and 1715u; 42 U.S.C. 3535(d).

Subpart A—General Eligibility Requirements

§ 242.1 Definitions.

As used in this subpart, the following terms shall have the meaning indicated: *Act* means the National Housing Act (12 U.S.C. 1701 *et seq.*).

Affiliate means a person or entity which, directly or indirectly, either controls or has the power to control or exert significant influence on the other, or a person and entity both controlled by a third person or entity, which may be a parent entity. Indicia of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension or debarment of a person or entity which has the same or similar management, ownership, or principal employees as the suspended, debarred, ineligible, or voluntarily excluded person or entity or as defined in the Medicare reimbursement regulations.

Chronic convalescent and rest means skilled nursing services, intermediate care services, respite care services, hospice services, rehabilitation services, and other services of a similar nature.

Commissioner means the Assistant Secretary for Housing—Federal Housing Commissioner or his or her authorized representatives. (The operation of the hospital mortgage insurance program is centralized directly under the Commissioner.)

Debt service coverage ratio is a measure of a hospital's ability to pay interest and principal with cash generated from current operations. A high coverage ratio indicates that an institution is in good financial position to meet its long-term obligations (including its FHA-insured loan) and service its debt. Higher values are

preferable. Debt service coverage ratio is calculated as follows:

$$\text{Debt Service Coverage Ratio} = \frac{\text{Net Income} + \text{Depreciation Expense} + \text{Interest Expense}}{\text{Current Portion of Long-Term Debt (Prior Year)} + \text{Interest Expense.}}$$

Hospital means a facility that has been proposed for approval or has been approved by the Commissioner under the provisions of this subpart, and:

(1) Which provides community services for inpatient medical care of the sick or injured (including obstetrical care);

(2) Where not more than 50 percent of the total patient days during any year are customarily assignable to the categories of chronic convalescent and rest, drug and alcoholic, epileptic, mentally deficient, mental, nervous and mental, and tuberculosis, except that the 50 percent patient day restriction does not apply to Critical Access Hospitals (hospitals designated as such under the Medicare Rural Hospital Flexibility Program) between [effective date of final rule] and July 31, 2006.

(3) Which is a facility licensed or regulated by the State (or, if there is no such State law providing for such licensing or regulation by the State, by the municipality or other political subdivision in which the facility is located) and is:

(i) A public facility owned by a State or unit of local government or by an instrumentality thereof, or owned by a public benefit corporation established by a State or unit of local government or by an instrumentality thereof;

(ii) A proprietary facility; or

(iii) A facility of a private nonprofit corporation or association.

Identity of interest means a relationship that must be disclosed and may be prohibited pursuant to the requirements of the Regulatory Agreement.

Mortgage means such classes of first liens as are commonly given to secure advances on, or the unpaid purchase price of, real estate under the laws of the State in which the real estate is located, together with any credit instrument secured thereby. The mortgage may be in the form of one or more trust mortgages or mortgage indentures or deeds of trust securing notes, bonds, or other credit instruments; and by the same instrument or by a separate instrument, it may create a security interest in the personalty, including, but not limited to, the equipment whether or not the equipment is attached to the realty, and in the revenues and receivables of the hospital.

Mortgagee or lender means the original lender under a mortgage, and its successors and assigns, and includes the holders of credit instruments issued under a trust indenture, mortgage, or deed of trust pursuant to which such holders act by and through a trustee therein named. (All official contacts and actions by the Commissioner shall be with or through a HUD-approved lender.)

Mortgagor means the original borrower under a mortgage and its successors and assigns.

Mortgage Reserve Fund means a trustee-held account to which the mortgagor contributes and from which withdrawals must be approved by the Commissioner. The purpose of the fund is to provide the Commissioner a means to assist the hospital to avoid mortgage defaults and to preserve the value of the mortgaged property or the hospital's business.

Non-operating revenues and expenses are those revenues and expenses not directly related to patient care, hospital-related patient services, or the sale of hospital-related goods. Examples of items classified as non-operating are State and Federal income tax, general contributions, gains and losses from investments, unrestricted income from endowment funds, and income from related entities. Classification of items as operating or non-operating shall follow written guidance by the Commissioner.

Operating margin is operating income divided by operating revenue, where:

Operating revenue is the revenue from the core patient care operations of the hospital. It includes revenues from the provision of such items as patient care (including hospital-based nursing home and physicians' clinics); transfers from temporarily restricted accounts that are used for current operating expenses; and patient-related activities such as the operation of the cafeteria, parking facilities, television services to patients, sale of medical scrap or waste, etc. (Additional sources of revenue, which are classified as non-operating, are deliberately excluded from this measure.)

Operating income is operating revenue minus operating expenses, where operating expenses are the expenses incurred in providing patient care, including such items as salaries, supplies, and the cost of capital.

Parent means an organization or entity that controls or has a controlling interest in another organization or entity.

Personalty means all furniture, furnishings, equipment, machinery, building materials, appliances, goods, supplies, tools, books, records (whether in written or electronic form), computer equipment (hardware and software) and other tangible or electronically stored personal property (other than fixtures) which are owned or leased by the borrower or the lessee now or in the future in connection with the ownership, management or operation of the land or the improvements or are located on the land or in the improvements, and any operating agreements relating to the land or the improvements, and any surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the land or the improvements, choses in action and all other intangible property and rights relating to the operation of, or used in connection with, the land or the improvements, including all governmental permits relating to any activities on the land. Personalty also includes all tangible and intangible personal property used for health care (such as major movable equipment and systems), accounts, licenses, bed authorities, certificates of need required to operate the project and to receive benefits and reimbursements under provider agreements with Medicaid, Medicare, State and local programs, payments from health care insurers and any other assistance providers ("Receivables"); all permits, instruments, rents, lease and contract rights, and equipment leases relating to the use, operation, maintenance, repair, and improvement of the hospital. Generally, intangibles shall also include all cash and cash escrow funds, such as but not limited to: depreciation reserve fund or mortgage reserve fund accounts, bank accounts, residual receipt accounts, all contributions, donations, gifts, grants, bequests and endowment funds by donors, and all other revenues and accounts receivable from whatever source paid or payable. All personalty shall be securitized with appropriate

UCC filings and any excluded personalty shall be indicated in the Regulatory Agreement.

Preapplication meeting means a meeting between HUD and a potential applicant for mortgage insurance where there has been a positive Preliminary Review of the proposed project. The preapplication meeting is an opportunity for the potential applicant to summarize the proposed project, for HUD to summarize the application process, and for issues that could affect the eligibility or underwriting of the proposed loan to be identified and discussed.

Preliminary Review Letter means a letter from the Commissioner to a potential applicant communicating the result of the Preliminary Review. The letter may state that an application for mortgage insurance would result in a rejection and provide the reasons for this determination, or state that no factors that would cause an application to be rejected have been identified, and therefore there appears to be no bar to the applicant proceeding to the next step in the application process.

Project means the construction, modernization, expansion, or renovation of an eligible hospital, including equipment, which has been proposed for approval or has been approved by the Commissioner under the provisions of this subpart, including the financing and refinancing, if any, plus all related activities involved in completing the improvements to the property.

Regulatory Agreement means the agreement under which all mortgagors shall be regulated by the Commissioner, as long as the Commissioner is the insurer or holder of the mortgage, in a published format determined by the Commissioner, and such additional covenants and restrictions as may be determined necessary by the Commissioner on a case-by-case basis.

Security instrument means a mortgage, deed of trust, and any other security for the indebtedness, and shall be deemed to be the mortgage as defined by the National Housing Act, as amended, implementing regulations, and HUD directives.

State includes the several States, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, and the Virgin Islands.

Surplus Cash means any cash earned in the applicable fiscal period, including accounts receivable, remaining after the following have been achieved:

(1) Mortgage payments for the preceding 12 months have been made when due, including any grace period;

(2) There is a Debt Service Coverage Ratio greater than or equal to 1.50;

(3) Days in Accounts Receivable are less than or equal to 80;

(4) Days in Accounts Payable are less than or equal to 80;

(5) The Mortgage Reserve Fund is compliant with the scheduled balance;

(6) All income, property, and statutory employer payroll taxes and employee payroll withholding contributions have been deposited as required;

(7) The Current Ratio is greater than or equal to 1.50;

(8) Days of cash on hand are greater than or equal to 15 days; and

(9) The payment of:

(i) All sums due or currently required to be paid under the terms of the Mortgage Note and Regulatory Agreement due on the first day of the month following the end of the fiscal period, including, without limitation, in the Mortgage Reserve Fund or any other reserves as may be required by HUD; and

(ii) All other obligations of the hospital (accounts payable and accrued, unescrowed expenses), unless funds for payment are set aside or HUD has approved deferment of payment.

Secretary means the Secretary of Housing and Urban Development or his or her authorized representatives.

Working capital means the excess of current assets over current liabilities.

§ 242.2 Program financial self-sufficiency.

The Commissioner shall administer the Section 242 program in such a way as to encourage financial self-sufficiency and actuarial soundness; *i.e.*, to avoid mortgage defaults and claims for insurance benefits in order to protect the mortgage insurance fund.

§ 242.3 Encouragement of certain programs.

The activities and functions provided for in this part shall be carried out so as to encourage provision of comprehensive health care, including outpatient and preventive care as well as hospitalization, to a defined population, and in the case of public and certain not-for-profit hospitals, to encourage programs that are undertaken to provide essential health care services to all residents of a community regardless of ability to pay.

§ 242.4 Eligible hospitals.

The hospital to be financed with a mortgage insured under this part shall involve the construction of a new hospital or the substantial rehabilitation (or replacement) of an existing hospital.

§ 242.5 Eligible mortgagees.

The lender requirements set forth in 24 CFR part 202 regarding approval, recertification, withdrawal of approval, approval for servicing, report requirements and conditions for supervised mortgagees, nonsupervised mortgagees, investing mortgagees, and governmental and similar institutions, apply to these programs.

§ 242.6 Property requirements.

The mortgage, to be eligible for insurance, shall be on property located in a State, as defined in § 242.1. The mortgage shall cover real estate in which the mortgagor has one of the following interests:

(a) A fee simple title.

(b) A lease for not less than 99 years that is renewable.

(c) A lease having a term of not less than 50 years to run from the date the mortgage is executed.

§ 242.7 Maximum mortgage amounts.

The mortgage shall involve a principal obligation not in excess of 90 percent of the Commissioner's estimate of the replacement cost of the hospital, including the equipment to be used in its operation when the proposed improvements are completed and the equipment is installed.

§ 242.8 Standards for licensure and methods of operation.

The Secretary shall require satisfactory evidence that the hospital will be located in a State or political subdivision of a State with reasonable minimum standards of licensure and methods of operation for hospitals, and satisfactory assurance that such standards will be applied and enforced with respect to the hospital.

§ 242.9 Physician ownership.

Ownership of an interest in the mortgagor by physicians or other professionals practicing in the hospital is permitted within limits determined by the Commissioner to avoid insurance risks that may be associated with such ownership. The Commissioner shall determine if the proposed mortgagor will be at low risk for violation of regulations of the U. S. Department of Health and Human Services, other Federal regulations, and State regulations governing kickbacks, self-referrals, and other issues that could increase the risk of eventual default. The Commissioner's determination shall be based on an unqualified legal opinion as to compliance with

applicable Federal law, among other considerations.

§ 242.10 Eligible mortgagors.

The mortgagor shall be a public mortgagor (*i.e.*, an owner of a public facility), a private nonprofit corporation or association, or a profit-motivated mortgagor meeting the definition of "hospital" in § 242.1. The mortgagor shall be approved by the Commissioner and shall possess the powers necessary and incidental to operating a hospital. Eligible proprietary or profit-motivated mortgagors may include for-profit corporations, limited partnerships, and limited liability corporations and companies, but may not include natural persons, joint ventures, and general partnerships. Any proposed mortgagor must demonstrate that it has a continuity of organization commensurate with the term of the mortgage loan being insured. For new organizations, or those whose continuity is necessarily dependent upon an individual or individuals, broad community participation is required.

§ 242.11 Regulatory compliance required.

An application for insurance of a mortgage under this part shall be considered only in connection with a hospital that is in substantial compliance with regulations of the Department of Health and Human Services and the various States governing the operation and reimbursement of hospitals. A hospital that is under investigation by any State or Federal agency for statutory or regulatory violations is not eligible so long as the investigation is unresolved, unless the Commissioner determines that the investigation is minor in nature, that is, the investigation has little chance of resulting in substantial liabilities or of otherwise substantially harming the creditworthiness of the hospital.

§ 242.13 Parents and affiliates.

As a condition of issuing a commitment, the Commissioner may require corporate parents, affiliates, or principals of the proposed mortgagor to provide assurances, guarantees, or collateral. The Commissioner may also require financial and operational information on the parent, other businesses owned by the parent, or affiliates of the proposed mortgagor and may also require a parent or affiliate to be regulated by the Commissioner as to certain actions which could impact on the insurance of a mortgage loan for the benefit of the hospital.

§ 242.14 Mortgage reserve fund.

As a condition of issuing a commitment, the Commissioner shall require establishment of a Mortgage Reserve Fund (MRF), a trustee-held account to which the mortgagor will contribute and from which withdrawals must be approved by the Commissioner. The mortgagor shall be required to make contributions to the MRF such that, with fund earnings, the MRF will build to one year of debt service at five years following commencement of amortization, increasing thereafter to two years of debt service on and after ten years according to a schedule established by the Commissioner, unless the Commissioner determines that a different schedule of contributions is appropriate based on the mortgagor's risk profile, reimbursement structure, or other characteristics. In particular, hospitals that receive cost-based reimbursement may be required to have MRFs that build to more than two years of debt service. Expenditures from the fund are made at the Commissioner's sole discretion or in accordance with the mortgagor's MRF Schedule. Upon termination of insurance, the balance of the MRF shall be returned to the mortgagor provided that all obligations to HUD have been met.

§ 242.15 Limitation on refinancing of existing indebtedness.

Some existing long-term debt may be refinanced with the proceeds of a section 242 insured loan; however, the hard costs of construction and equipment must represent at least 20 percent of the total mortgage amount.

Subpart B—Application Procedures and Commitments

§ 242.16 Applications.

(a) *Application process.* (1) *Market need.* The approval process entails a determination of the market need of the proposal and stresses, on a market-wide basis, the impact of the proposed facility on, and its relationship to, other health care facilities and services (particularly other hospitals with mortgages insured under this part and hospitals that have a disproportionate share of Medicaid and uninsured patients or provide a substantial amount of charity care); the number and percentage of any excess beds; and demographic projections. Generally, section 242 insurance may support start-up hospitals or major expansions of existing hospitals only if existing hospital capacity or services are clearly not adequate to meet the needs of the population in the service area.

(i) If the State has an official procedure for determining need for hospitals, the Commissioner shall require that such procedure be followed before the application for insurance is submitted, and that the application shall document that need has also been established under that procedure.

(ii) The following factors are relevant in evaluating market need for the project and should be addressed, as applicable, in the study of market need and feasibility submitted with the application. Because each hospital presents a unique situation, there is no formula or cutoff level that applies to all applications:

(A) Service area definition;

(B) Existing or proposed hospital;

(C) Designation as sole community provider, critical access hospital, or rural referral center;

(D) Community-wide use rates (discharges and days/1000);

(E) Statewide use rates (for benchmarking purposes);

(F) Current population and five-year projection by age cohort;

(G) Staffed vs. licensed beds;

(H) Applicant hospital's occupancy rate;

(I) Competitors' occupancy rates;

(J) Outpatient volume;

(K) Availability of emergency services;

(L) Teaching hospital status;

(M) Services offered by hospitals in the service area;

(N) Migration of patients out of the service area;

(O) Planned construction at other facilities in the region;

(P) Historical market share by major service category;

(Q) Disproportionate Share Hospital designation; and

(R) Distance to other hospitals.

(2) *Operating margin and debt service coverage ratio.* (i) Hospitals with an aggregate operating margin of less than 0.00 when calculated from the three most recent annual audited financial statements are not eligible for section 242 insurance unless the Commissioner determines, based on the financial data in those statements, that the hospital has achieved a financial turnaround resulting in a positive operating margin in the most recent year, calculated using classifications of items as operating or non-operating in accordance with guidance that shall be provided in written directives by the Commissioner.

(ii) Hospitals with an average debt service coverage ratio of less than 1.25 in the three most recent audited years are not eligible for section 242 insurance unless the Commissioner determines, based on the audited financial data, that the hospital has achieved a financial turnaround resulting in a debt service

coverage ratio of at least 1.40 in the most recent year. In cases of refinancing at a lower interest rate, the Commissioner may authorize the use of the projected debt service requirement in lieu of the historical debt in calculating the debt service coverage ratios for each of the prior three years. In cases where the Commissioner authorizes the use of the projected debt service requirement in lieu of the historical debt to determine the debt service coverage ratio, hospitals must have an average debt service coverage ratio of 1.40 or greater.

(3) *Financial Feasibility.* The approval process entails a determination of the financial feasibility of the proposal, *i.e.*, a determination that it is probable that the proposed mortgagor will be able to meet its debt service requirements during the life of the proposed mortgage. It includes analysis of the reimbursement structure of the proposed hospital (including patient/payer mix); actions of competitors; and the probable projected impact on the proposed hospital of general health care system trends, such as the development of alternative health care delivery systems and new reimbursement methods. In addition to historical operating margin, determination of financial feasibility includes, but is not limited to, evaluation of the following factors. The application must address, and HUD will review, each of the following factors:

(i) Current and projected gains from operations and a manageable debt load using reasonable assumptions;

(ii) Current debt service coverage ratio of 1.25 or higher and projected debt service coverage ratio of 1.40 or higher;

(iii) Cushion in the balance sheet sufficient to demonstrate the ability to withstand short periods of net operating losses without jeopardizing financial viability;

(iv) Patient utilization forecasts (including average length of stay, case intensity, discharges, area-wide use rates) that are consistent with the hospital's historical trends, future service mix, market trends, population forecasts, and business climate;

(v) The hospital's demonstrated ability to position itself to compete in its marketplace;

(vi) Organizational affiliations or relationships that help optimize financial, clinical, and operational performance;

(vii) Management's demonstrated ability to operate effectively and efficiently, and to develop effective strategies for addressing problem areas;

(viii) Systems in place to monitor hospital operations, revenues, and costs accurately and in a timely manner;

(ix) A Board that is appropriately constituted and provides effective oversight;

(x) Required licensures and approvals; and

(xi) Favorable ratings from the Joint Commission on Accreditation of Healthcare Organizations or other organization acceptable to the Commissioner.

(4) *Preliminary Review.* A Preliminary Review is a general overview of the acceptability of a potential mortgagor performed at the request of a hospital, a financial consultant representing a hospital, or a lender, to identify any factors that would likely cause an application to be rejected, should an application be submitted.

(i) The purpose of the preliminary review is for HUD to identify any obvious factors that would cause an application to be rejected, before the potential applicant expends the resources needed to prepare an application and before the Commissioner expends resources to review it. The hospital, financial consultant, or lender shall submit a preliminary information package to the Commissioner that provides evidence of statutory eligibility, market need, financial strength, and such other documentation as the Commissioner may require.

(ii) If the Commissioner identifies factors that would cause an application to be rejected, the Commissioner shall issue a Preliminary Review Letter notifying the potential applicant that an application for mortgage insurance would result in a rejection and providing the reasons for this decision. Also, no further request from the proposed applicant for a Preliminary Review shall be entertained for a period of one year from the date of the Commissioner's notification. The Commissioner may grant an exception to this one-year limitation if, during the year, there is a major change in the circumstances that caused the Commissioner to determine that the project would be rejected. For example, if the sole reason for the Commissioner's determination was the hospital's failure to meet the historical operating margin test, and a new audited annual financial statement contains results that would cause the hospital to meet the test, then the lender may request a new Preliminary Review within one year of the Commissioner's notification.

(iii) If the Commissioner does not identify any factors that would cause an application to be rejected, the Commissioner shall issue a Preliminary Review Letter advising the potential applicant that there appears to be no bar to the applicant's proceeding to the next step in the application process, provided that if a complete application is not received by the Commissioner within one year following the date of the Commissioner's letter, another Preliminary Review may be required, at the Commissioner's discretion, before the application process may proceed.

(iv) The Commissioner's determination in the preliminary review phase that no factors have been identified that would cause an application to be rejected shall in no way be construed as an indication that a subsequent application will be approved.

(5) *Preapplication meeting.* The next step in the application process is the preapplication meeting. At the Commissioner's discretion, this meeting may be held at HUD Headquarters in Washington, DC, or at another site agreeable to the Commissioner and the potential applicant. The preapplication meeting is an opportunity for the potential applicant to summarize the proposed project, for HUD to summarize the application process, and for issues that could affect the eligibility or underwriting of the project to be identified and discussed to the extent possible. Following the meeting, the Commissioner may:

(i) Advise the potential applicant that there appears to be no bar to submitting an application for mortgage insurance; or

(ii) Identify issues that must be resolved before a full application should be submitted for processing.

(b) *Application contents.* The application for mortgage insurance shall include exhibits that follow such guidance as to content and format that the Commissioner shall provide from time to time. The application shall include:

(1) A description of the proposed sources and uses of funds;

(2) A description of the mortgagor entity, its ownership structure, and its directors and managers;

(3) A description of the project, the business plan of the hospital, and how the project will further that plan;

(4) Historical audited financial statements and interim year-to-date financial results (for existing hospitals);

(5) A study of market need and financial feasibility, addressing the factors listed in paragraphs (a)(1)(ii), (a)(2) and (a)(3) of this section, with assumptions and financial forecast clearly presented, and prepared by a

certified accounting firm acceptable to HUD;

(6) Architectural plans and specifications;

(7) Evidence that the hospital will be located in a State or political subdivision of a State with reasonable minimum standards of licensure and methods of operation for hospitals and satisfactory assurance that such standards will be applied and enforced with respect to the hospital;

(8) If the State has an official procedure for determining need for hospitals, evidence that such procedure has been followed and that need has been established under that procedure;

(9) Evidence of compliance with Federal and State environmental regulations; and

(10) Such other exhibits as the Commissioner shall require based upon the facts pertaining to the particular case.

(c) *Fee.* An application fee of $1.50 per thousand dollars of the amount of the loan to be insured shall be paid to the Commissioner at the time the application is submitted to the Commissioner for approval.

(d) *Filing of application.* An application for insurance of a mortgage on a project shall be submitted on an approved FHA form by an approved mortgagee and by the sponsors of such project to the FHA Office of Insured Health Care Facilities.

(e) *Complete application.* Only technically complete applications will be processed. Partial applications cannot be processed. Upon determination that an application is complete, the Commissioner shall issue a Completeness Letter to the applicant stating that the application is complete.

(f) *Application Review.* Upon receipt of a complete application, the Commissioner shall evaluate the application to determine if eligibility, market need, financial feasibility, and compliance with applicable regulations (including but not limited to federal environmental regulations, wage rate regulations, and health care regulations) have been demonstrated, and to evaluate any other factors, including but not limited to risk to the Insurance Fund, that should be considered in determining if the application for mortgage insurance should be approved. As a part of this review, the Commissioner may solicit the advice of private consultants and expert staff in the Department of Health and Human Services and other Federal agencies. Based on review of the complete application, the Commissioner may request additional information from the applicant. The timeliness of the applicant's submission of the additional information may affect the approval or disapproval of the application. The Commissioner's decision shall be communicated in the form of a Commitment Letter or a Rejection Letter within 12 months of the date of the Completeness Letter, unless the Commissioner for good cause extends the period of review.

§ 242.17 Commitments.

(a) *Issuance of commitment.* Upon approval of an application for insurance, a commitment shall be issued by the Commissioner setting forth the terms and conditions under which an insurance endorsement shall be issued for the hospital. The commitment shall include the following:

(1) A commitment for insurance of advances reflecting the mortgage amount, interest rate, mortgage term, date of commencement of amortization, and other requirements pertaining to the mortgage and construction project;

(2) HUD's computation of the replacement cost and maximum insurable mortgage amount;

(3) Financial requirements for closing;

(4) Approval covenants, including any special conditions that must be satisfied prior to initial endorsement;

(5) Mortgage Reserve Fund Agreement.

(b) *Type of commitment.* The commitment will provide for the insurance of advances of mortgage funds during construction.

(c) *Term of commitment.* (1) The initial commitment shall be issued for a period of 90 days.

(2) The term of a commitment may be extended in such manner as the Commissioner may prescribe, provided, however, that the combined term of the original commitment and any extensions do not exceed 180 days.

(d) *Commitment fee.* A commitment fee which, when added to the application fee, will aggregate $3.00 per thousand dollars of the amount of the loan set forth in the commitment, shall be paid within 30 days of the date of issuance of the commitment. If such fee is not paid within this 30-day period, the commitment shall automatically terminate.

§ 242.18 Inspection fee.

The commitment may provide for the payment of an inspection fee in an amount not to exceed $5 per thousand dollars of the commitment. The inspection fee shall be paid at the time of initial endorsement.

§ 242.19 Fees on increases.

(a) *Increase in commitment prior to endorsement.* An application, filed prior to initial endorsement, for an increase in the amount of an outstanding commitment, shall be accompanied by an additional application fee of $1.50 per thousand dollars computed on the amount of the increase requested. Any increase in the amount of a commitment shall be subject to the payment of an additional commitment fee which, when added to the additional application fee, will aggregate $3.00 per thousand dollars of the amount of the increase. The additional commitment fee shall be paid within 30 days after the date of the amended commitment. If the additional commitment fee is not paid within 30 days, the commitment novation providing for the increased amount will automatically terminate and the previous commitment will be reinstated. If an inspection fee was required in the original commitment, an additional inspection fee shall be paid in an amount not to exceed $5.00 per thousand dollars of the amount of increase in commitment. The additional inspection fee shall be paid at the time of initial endorsement.

(b) *Increase in mortgage between initial and final endorsement.* Upon an application, filed between initial and final endorsement, for an increase in the amount of the mortgage, either by amendment or by substitution of a new mortgage, an additional application fee of $1.50 per thousand dollars computed on the amount of the increase requested shall accompany the application. The approval of any increase in the amount of the mortgage shall be subject to the payment of an additional commitment fee which, when added to the additional application fee, will aggregate $3.00 per thousand dollars of the amount of the increase granted. If an inspection fee was required in the original commitment, an additional inspection fee shall be paid in an amount not to exceed $5.00 per thousand dollars of the amount of the increase granted. The additional commitment and inspection fees shall be paid within 30 days after the date that the increase is granted.

§ 242.20 Reopening of expired commitments.

An expired commitment may be reopened if a request for reopening is received by the Commissioner no later than 90 days after the date of expiration of the commitment. The reopening request shall be accompanied by a fee of 50 cents per thousand dollars of the amount of the expired commitment. A commitment which has expired because of failure to pay the commitment fee

may be reopened only upon payment of the commitment fee and the reopening fee. If the reopening request is not received by the Commissioner within the required 90-day period, a new application, accompanied by an application fee, must be submitted. If a commitment for an increased amount has expired because of failure to pay an additional commitment fee based on the amount of the increase, the reopening fee shall be computed on the basis of the amount of the commitment increase rather than on the amount of the original commitment.

§ 242.21 Refund of fees.

Commitment, inspection, and reopening fees (but not application fees) may be refunded, in whole or in part, if the Commissioner determines that the construction or financing of the project has been prevented because of condemnation proceedings or other legal action taken by a government body or public agency, or in such other instances as the Commissioner may determine as being beyond the control of the applicant and resulting from no fault of the applicant. A transfer fee may be refunded only in such instances as the Commissioner may determine.

§ 242.22 Maximum fees and charges by mortgagee.

The mortgagee may collect from the mortgagor the amount of the fees provided for in this subpart. The mortgagee may also collect from the mortgagor an initial service charge not to exceed two percent of the original principal amount of the mortgage to reimburse the mortgagee for the cost of closing the transaction. A permanent financing fee not to exceed three and one-half percent may be collected from the mortgagor; however, the combined initial service charge and permanent financing fee may not exceed five and one-half percent in bond transactions and three and one-half percent in all other transactions. Any additional charges or fees collected from the mortgagor shall be subject to prior approval of the Commissioner and shall be clearly disclosed in the Mortgagee's Certificate.

§ 242.23 Adjusted and reduced mortgage amounts.

(a) *Adjusted mortgage amount-rehabilitation projects.* A mortgage financing the rehabilitation of an existing hospital shall be subject to the following limitations, in addition to those set forth in § 242.7:

(1) *Property held unencumbered.* If the mortgagor is the fee simple owner of the property and the ownership is not encumbered by an outstanding indebtedness, the mortgage shall not exceed 100 percent of the Commissioner's estimate of the cost of the proposed rehabilitation.

(2) *Property subject to existing mortgage.* If the mortgagor owns the property subject to an outstanding indebtedness, which is to be refinanced with part of the insured mortgage, the mortgage shall not exceed the total of the following:

(i) The Commissioner's estimate of the cost of rehabilitation, plus

(ii) Such portion of the outstanding indebtedness as does not exceed 90 percent of the Commissioner's estimate of the fair market value of such land and improvements prior to rehabilitation.

(3) *Property to be acquired.* If the property is to be acquired by the mortgagor and the purchase price is to be financed with a part of the insured mortgage, the mortgage shall not exceed 90 percent of the total of the following:

(i) The Commissioner's estimate of the cost of rehabilitation, plus

(ii) The actual purchase price of the land and value of improvements or the Commissioner's estimate (prior to rehabilitation) of the fair market value of such land and improvements, whichever is the lesser.

(b) *Reduced mortgage amount—leaseholds.* In the event the mortgage is secured by a leasehold estate rather than a fee simple estate, the value or replacement cost of the property described in the mortgage shall be the value or replacement cost of the leasehold estate (as determined by the Commissioner), which shall in all cases be less than the value or replacement cost of the property in fee simple.

(c) *Cash equity.* The Commissioner shall have the discretion to evaluate, on a case-by-case basis, the amount of equity that a mortgagor must supply depending upon the financial circumstances of each hospital facility. Exercise of this discretion shall never cause loan-to-value to exceed 90 percent, although it may cause it to be less than 90 percent. A private mortgagor must supply equity in cash. The equity contribution may not be made from borrowed funds. A nonprofit or public mortgagor, in the Commissioner's discretion and subject to 24 CFR 242.49, may supply equity in the form of a letter of credit.

§ 242.24 Working capital.

In the case of a new hospital or a hospital expansion, the Commissioner shall establish, on a case-by-case basis, the amount of working capital that must be deposited in cash or a letter of credit (or combination) to be available to the new hospital upon commencement of operations. Generally, the working capital shall not be borrowed funds unless the Commissioner determines that there are offsetting financial strengths to compensate for the risk associated with borrowing.

Subpart C—Mortgage Requirements

§ 242.25 Mortgage form and disbursement of mortgage proceeds.

(a) *Mortgage form.* The mortgage shall be:

(1) Executed on a form approved by the Commissioner for use in the jurisdiction in which the property covered by the mortgage is situated, which form shall not be changed without the prior written approval of the Commissioner.

(2) Executed by an eligible mortgagor.

(b) *Disbursement of mortgage proceeds.* The mortgagee shall be obligated, as a part of the mortgage transaction, to disburse the principal amount of the mortgage to (or for the account of) the mortgagor or to his or her creditors for his or her account and with his or her consent.

§ 242.26 Agreed interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor.

(b) The amount of any increase approved by the Commissioner in the mortgage amount between initial and final endorsement in excess of the amount that the Commissioner had committed to insure at initial endorsement shall bear interest at the rate agreed upon by the mortgagee and the mortgagor.

§ 242.27 Maturity.

The mortgage shall have a maturity not to exceed 25 years from the date amortization begins.

§ 242.28 Allowable costs for consultants.

Consulting fees for work essential to the development of the project may be included in the insured mortgage. Allowable consulting fees include those for analysis of market demand, expected revenues, and costs; site analysis; architectural and engineering design; and such other fees as the Commissioner may determine to be essential to project development. Fees for work performed more than one year prior to application are not allowable. Fees for work performed by any party with an identity of interest with the proposed mortgagor or mortgagee are not allowable.

§ 242.29 Payment requirements.

The mortgage shall provide for payments on the first day of each month in accordance with an amortization plan agreed upon by the mortgagor, the mortgagee and the Commissioner.

§ 242.30 Application of payments.

All payments to be made by the mortgagor to the mortgagee shall be added together and the aggregate amount thereof shall be paid by the mortgagor each month in a single payment. The mortgagee shall apply each payment received to the following items in the following order:

(a) Premium charges under the contract of mortgage insurance;

(b) Ground rents, taxes, special assessments, and fire and other hazard insurance premiums;

(c) Interest on the mortgage; and

(d) Amortization of the principal of the mortgage.

§ 242.31 Accumulation of accruals.

(a) The mortgage shall provide for payments by the mortgagor to the mortgagee on each interest payment date of an amount sufficient to accumulate in the hands of the mortgagee one payment period prior to its due date, the next annual mortgage insurance premium payable by the mortgagee to the Commissioner. Such payments shall continue only so long as the contract of insurance shall remain in effect.

(b) The mortgage shall provide for such equal monthly payments by the mortgagor to the mortgagee as will amortize the ground rents, if any, and the estimated amount of all taxes, water charges, special assessments, and fire and other hazard insurance premiums, within a period ending one month prior to the dates on which the same become delinquent. The mortgage shall further provide that such payments shall be held by the mortgagee, for the purpose of paying such items before they become delinquent. The mortgage shall also make provision for adjustments in case such estimated amounts shall prove to be more, or less, than the actual amounts so paid therefore by the mortgagor.

§ 242.32 Covenant against liens.

The mortgage shall contain a covenant against the creation by the mortgagor of liens against the property superior or inferior to the lien of the mortgage except for such liens as may be approved by the Commissioner.

§ 242.33 Covenant for malpractice, fire and other hazard insurance.

The mortgage shall contain a covenant binding the mortgagor to maintain adequate malpractice liability, fire, and extended coverage insurance on the property.

§ 242.35 Mortgage lien certifications.

The mortgagor shall certify at the final endorsement of the mortgage for insurance as to each of the following:

(a) That the mortgage is the first lien upon and covers the entire hospital, as *hospital* is defined in § 242.1.

(b) That the property upon which the improvements have been made or constructed and the equipment financed with mortgage proceeds are free and clear of all liens other than the insured mortgage and such other secondary liens as may be approved by the Commissioner.

(c) That the Security Agreement and Uniform Commercial Code financing statements establish a first lien on the personalty of the mortgagor, including but not limited to equipment, either acquired with mortgage proceeds or otherwise before or after initial endorsement of the mortgage, and on the personalty of the hospital all as defined in the Regulatory Agreement between the Commissioner and the hospital.

(d) That the certificate sets forth all unpaid obligations in connection with the mortgage transaction, the purchase of the mortgaged property, the construction or rehabilitation of the project, or the purchase of the equipment financed with mortgage proceeds.

§ 242.37 Mortgage prepayment.

(a) *Prepayment privilege.* Except as provided in paragraph (c) of this section or otherwise established by the Commissioner, the mortgage shall contain a provision permitting the mortgagor to prepay the mortgage in whole or in part upon any interest payment date, after giving the mortgagee 30 days notice in writing in advance of its intention to so prepay.

(b) *Prepayment charge.* The mortgage may contain a provision for such charge, in the event of prepayment of principal, as may be agreed upon between the mortgagor and the mortgagee, subject to the following:

(1) The mortgagor shall be permitted to prepay up to 15 percent of the original principal amount of the mortgage in any one calendar year without any such charge.

(2) Any reduction in the original principal amount of the mortgage resulting from the certification of cost, which the Commissioner may require, shall not be construed as a prepayment of the mortgage.

(c) *Prepayment of bond-financed or GNMA-securitized mortgages.* Where the mortgage is given to secure GNMA mortgage-backed securities or a loan made by a lender that has obtained the funds for the loan by the issuance and sale of bonds or bond anticipation notes, or both, the mortgage may contain a prepayment restriction and prepayment penalty charge acceptable to the Commissioner as to term, amount, and conditions.

(d) *HUD override of prepayment restrictions.* In the event of a default, the Commissioner may override any lockout, prepayment penalty, or combination of penalties in order to facilitate a partial or full refinancing of the mortgaged property and avoid a claim.

§ 242.38 Late charge.

The mortgage may provide for the collection by the mortgagee of a late charge in accordance with terms, conditions, and standards of the Commissioner for each dollar of each payment to interest or principal more than 15 days in arrears to cover the expense involved in handling delinquent payments. Late charges shall be separately charged to and collected from the mortgagor and shall not be deducted from any aggregate monthly payment.

Subpart D—Endorsement for Insurance

§ 242.39 Insurance endorsement.

Initial endorsement of the credit instrument shall occur before any mortgage proceeds are insured and the time of final endorsement shall be as set forth in paragraph (b) of this section.

(a) *Initial endorsement.* The Commissioner shall indicate the insurance of the mortgage by endorsing the original credit instrument and identifying the section of the Act and the regulations under which the mortgage is insured and the date of insurance.

(b) *Final endorsement.* When all advances of mortgage proceeds have been made and all the terms and conditions of the commitment have been met to the Commissioner's satisfaction, the Commissioner shall indicate on the original credit instrument the total of all advances approved for insurance and again endorse such instrument.

(c) *Contract rights and obligations.* The Commissioner and the mortgagee or lender shall be bound from the date of initial endorsement by the provisions of the Contract of Mortgage Insurance set forth in subpart B of this part.

§ 242.40 Mortgagee Certificate.

At initial endorsement the mortgagee shall execute a Mortgagee Certificate in a form prescribed by the Commissioner.

§ 242.41 Certification of cost requirements.

Before initial endorsement of the mortgage for insurance, the mortgagor, the mortgagee, and the Commissioner shall enter into an agreement in form and content satisfactory to the Commissioner for the purpose of precluding any excess of mortgage proceeds over statutory limitations. Under this agreement, the mortgagor shall disclose its relationship with the builder, including any collateral agreement, and shall agree:

(a) To execute a Certificate of Actual Costs, upon completion of all physical improvements on the mortgaged property.

(b) To apply any cost savings in accordance with the provisions below.

§ 242.42 Certificates of actual cost.

(a) The mortgagor's certificate of actual cost, in a form prescribed by the Commissioner, shall be submitted upon completion of the physical improvements to the satisfaction of the Commissioner and before final endorsement, except that in the case of an existing hospital that does not require substantial rehabilitation and where the commitment provides for completion of specified repairs after endorsement, a supplemental certificate of actual cost will be submitted covering the completed costs of any such repairs. The certificate shall show the actual cost to the mortgagor, after deduction of any kickbacks, rebates, trade discounts, or other similar payments to the mortgagor, or to any of its officers, directors, stockholders, partners or other entity member ownership, of construction and other costs, as prescribed by the Commissioner.

(b) The Certificate of Actual Cost shall be verified by an independent certified public accountant or independent public accountant in a manner acceptable to the Commissioner.

(c) Upon the Commissioner's approval of the mortgagor's certification of actual cost, such certification shall be final and incontestable except for fraud or material misrepresentation on the part of the mortgagor.

§ 242.43 Application of cost savings.

Any cost savings identified through the cost certification process shall be used to:

(a) Reduce the principal amount of the mortgage and the mortgagor's cash equity contribution proportionally, and/or

(b) Fund any additional construction, modernization, rehabilitation, or purchase of equipment approved by the Commissioner.

Subpart E—Construction

§ 242.44 Construction standards.

Work designed and performed under this section shall conform to the standards adopted by the Commissioner, which as a minimum, shall include the "Guidelines for Construction and Equipment of Hospital and Medical Facilities," which is regularly updated and published by the American Institute of Architects.

§ 242.45 Early commencement of work.

(a) *Pre-commitment work.* Prior to the issuance of a commitment by the Commissioner, the mortgagor may request for good cause the commencement of certain necessary preliminary site work of the project within legal guidelines and State law. Such work can commence only after the review and concurrence of the work by the Commissioner, including the environmental review under 24 CFR 242.79, and the agreement to certain conditions by the applicant. The work must meet all requirements and guidelines as if it were approved for mortgage insurance and is accomplished at the sole risk of the applicant prior to the initial endorsement.

(b) *Early Start.* Subsequent to the issuance of a commitment, if the mortgagor requests the commencement of the project, the work may commence after the review of the request by the Commissioner, including the environmental review under 24 CFR 242.79, and the agreement to certain conditions by the applicant. Prior to the initial endorsement, the work is accomplished at the sole risk of the applicant.

(c) *Prepayment of inspection fee.* The applicant shall pay the inspection fee to HUD before pre-commitment or early start work commences.

(d) *Work started prior to application submission.* The Commissioner has the sole discretion to allow certain initial site preparation to be incorporated into the application if HUD has reviewed and approved the drawings and specifications and has inspected the work.

(e) *No expressed or implied intent.* Approval to proceed under paragraphs (a) and (b) of this section shall in no way be construed as indicating any intent, expressed or implied, on the part of the Commissioner to approve, disapprove, or make any undertaking or promise whatsoever with respect to the application or with respect to any commitment for mortgage insurance. Any work under paragraphs (a) and (b) of this section shall be accomplished at the sole risk and responsibility of the applicant.

§ 242.46 Insured advances—building loan agreement.

Prior to the initial endorsement of the mortgage for insurance, the mortgagor and mortgagee shall execute a building loan agreement, approved by the Commissioner, setting forth the terms and conditions under which progress payments may be advanced during construction. To be covered by mortgage insurance, or to be included as an eligible cost, each progress payment involving mortgage proceeds and the owner's equity requirement shall be approved by the Commissioner.

§ 242.47 Insured advances for building components stored off-site.

(a) *Building components.* In insured advances for building components stored off-site, the term building component shall mean any manufactured or pre-assembled part of a structure which the Commissioner has specifically identified for incorporation into the property and has designated for off-site storage because it is of such size or weight that:

(1) Storage of the number of components required for timely construction progress at the construction site is impractical, or

(2) Weather damage or other adverse conditions prevailing at the construction site would make storage at the site impractical or unduly costly.

(b) *Storage.* (1) An insured advance may be made for up to 90 percent of the invoice value (to exclude costs of transportation and storage) of the building components stored off-site if the components are stored at a location approved by the mortgagee and the Commissioner.

(2) Each building component shall be adequately marked so as to be readily identifiable in the inventory of the off-site location. Each component shall be kept together with all other building components of the same manufacturer intended for use in the same project for which insured advances have been made and separate and apart from similar units not for use in the project.

(3) Storage costs, if any, shall be borne by the contractor.

(c) *Responsibility for transportation, storage, and insurance of off-site building components.* The general contractor of the insured mortgaged property shall have the responsibility for:

(1) Insuring the components in the name of the mortgagor while in transit and storage; and

(2) Delivering or contracting for the delivery of the components to the storage area and to the construction site, including payment of freight.

(d) *Advances.* (1) Before an advance for a building component stored off-site is insured:

(i) The mortgagor shall:

(A) Obtain a bill of sale for the component;

(B) Give the mortgagee a security agreement, and

(C) File a financing statement in accordance with the Uniform Commercial Code, and

(ii) The mortgagee shall warrant to the Commissioner that the security instruments are a first lien on the building components covered by the instruments except for such other liens or encumbrances as may be approved by the Commissioner.

(2) Before each advance for building components stored off-site is insured, the mortgagor's architect shall certify to the Commissioner that the components, in their intended use, comply with HUD-approved contract plans and specifications. Under those circumstances permitted by the Commissioner in which there is no architect, compliance with the HUD-approved contract plans and specifications shall be determined by the Commissioner.

(3) Advances may be made only for components stored off-site in a quantity required to permit uninterrupted installation at the site.

(4) At no time shall the invoice value of building components being stored off-site, for which advances have been HUD insured, represent more than 50 percent of the total estimated construction costs for the insured mortgaged project as specified in the construction contract. Notwithstanding the preceding sentence and other regulatory requirements that set bonding requirements, the percentage of total estimated construction costs insured by advances under this section may exceed 25 percent but not 50 percent if the mortgagor furnishes assurance of completion in the form of a corporate surety bond for the payment and performance each in the amount of 100 percent of the amount of the construction contract. In no event will insurance of components stored off-site be made in the absence of a payment, and a performance bond.

(5) No single advance which is to be insured shall be in an amount less than ten thousand dollars ($10,000).

§ 242.48 Insured advances for certain equipment and long lead items.

The Commissioner may allow advances for certain pieces of equipment or other construction materials for which a manufacturer, fabricator, or other source requires an interim payment(s) in order to assure the timely manufacture or fabrication and delivery to the project site. Such advances can be made only if a bill of sale or invoice describes the material or equipment and its completion and delivery dates in no uncertain terms, and that such displayed timetable is necessary to meet the requirements of the overall construction schedule cited in the construction contract.

§ 242.49 Funds and finances: deposits and letters of credit.

(a) *Deposits.* Where the Commissioner requires the mortgagor to make a deposit of cash or securities, such deposit shall be with the mortgagee or a depository acceptable to the mortgagee. The deposit shall be held by the mortgagee in a special account or by the depository under an appropriate agreement approved by the Commissioner.

(b) *Letter of credit.* Where the use of a letter of credit is acceptable to the Commissioner in lieu of a deposit of cash or securities, the letter of credit shall be issued to the mortgagee by a banking institution with a Standard & Poor's credit rating of at least AA or equivalent or by another entity acceptable to the Commissioner and shall be unconditional and irrevocable. The mortgagee shall be responsible to the Commissioner for collection under the letter of credit. In the event a demand for payment thereunder is not immediately met, the mortgagee shall forthwith provide a cash deposit equivalent to the undrawn balance of the letter of credit.

(c) *Mortgagee not issuer.* The mortgagee of record may not be the issuer of the letter of credit without the prior written consent of the Commissioner.

§ 242.50 Funds and finances: off-site utilities and streets.

The Commissioner shall require assurance of completion of off-site public utilities and streets in all cases, except where a municipality or other public body has by agreement (acceptable to the Commissioner) agreed to install such utilities and streets without cost to the mortgagor. Where such assurance is required, it shall be either in the form of a cash escrow deposit or the retention of a specified amount of mortgage proceeds by the mortgagee. If a cash escrow is used, it shall be deposited with the mortgagee or with an acceptable trustee or escrow agent designated by the mortgagee. If mortgage proceeds are used, the mortgagee shall retain under terms approved by the Commissioner, rather than disburse at the initial closing of the mortgage, a portion of the mortgage proceeds allocated to land in the project analysis. As additional assurance, the Commissioner may also require a surety company bond or bonds.

§ 242.51 Funds and finances: insured advances and assurance of completion.

(a) Where the estimated cost of construction or rehabilitation is more than $500,000, the mortgagor shall furnish assurance of completion in the form of corporate surety bonds for payment and performance, each in the minimum amount of 100 percent of the accepted bid prices.

(b) All types of assurance of completion shall be on forms approved by the Commissioner. All surety companies executing a bond and all parties executing a personal indemnity agreement must be satisfactory to the Commissioner.

(c) A mortgagee may prescribe more stringent requirements for assurance of completion than the minimum requirements provided for in this section.

§ 242.52 Construction contracts.

(a) *Awarding of contract.* A contract for the construction or rehabilitation of a hospital shall be entered into by a mortgagor with a builder selected by a competitive bidding procedure acceptable to the Commissioner.

(b) *Form of contract.* The construction contract shall be a lump sum form providing for payment of a specified amount; a construction management contract with a guaranteed maximum price, the final costs of which are subject to a certification acceptable to the Commissioner; a design-build contract with terms and certification requirements acceptable to the Commissioner; or such other form of contract as may be acceptable to the Commissioner.

(c) *Competitive bidding.* A competitive bidding procedure acceptable to the Commissioner must be used in the selection of bidders to perform work or otherwise provide service to the project, the costs of which are included in any form of construction contract cited in paragraph (b) of this section. Fixed equipment not included in the construction contract, and movable equipment, may be purchased by securing quotations or by using competitive bidding procedures.

§ 242.53 Ineligible contractors.

(a) Contracts relating to the construction of the project shall not be made with a general contractor, a subcontractor, or construction manager (or any firm, corporation, partnership, or association in which such contractor, subcontractor, or construction manager has a substantial interest), the name of which is on the list of ineligible contractors, subcontractors, or construction managers established by the Commissioner, or by the Comptroller General under the applicable regulations of the Secretary of the U.S. Department of Labor.

(b) Contracts relating to the construction of the project shall not be made with a general contractor that has an identity of interest, as defined by the Commissioner, with the applicant.

(c) If the Commissioner determines that a contract has been made contrary to the requirements of paragraphs (a) or (b) of this section and so notifies the mortgagee, the Commissioner may refuse to insure any subsequent advances of mortgage proceeds.

Subpart F—Nondiscrimination and Wage Rates

§ 242.54 Nondiscrimination.

Hospital facilities financed with mortgages insured under this part must be made available without discrimination as to race, color, religion, sex, age, disability, or national origin. Hospitals must be operated in compliance with all applicable civil rights laws and regulations, including 24 CFR part 200, subpart J (Equal Employment Opportunity), and the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*). Racially restrictive covenants are per se illegal and their use is prohibited.

§ 242.55 Labor standards.

Projects financed under this part (except under 24 CFR 242.91) must comply with the prevailing wage standards under the Davis-Bacon Act (40 U.S.C. 3141 *et seq.*), and implementing U.S. Department of Labor regulations.

(a) The requirements set forth in 29 CFR parts 1, 3, and 5 for compliance with labor standards laws apply to projects under this program to the extent that labor standards apply as provided in section 212 of the Act, provided that:

(1) Supplemental loans under section 241 of the Act made in connection with loans insured under this part are subject to the provisions of section 212 applicable to mortgages insured under section 242 of the Act.

(b) The requirements stated in 24 CFR part 70 governing HUD waiver of Davis-Bacon prevailing wage rates for volunteers apply to hospitals with mortgages insured under this part.

(c) Each laborer or mechanic employed on any facility covered by a mortgage insured under this part (except under 24 CFR 242.91) shall receive compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in any workweek in excess of eight hours in any workday or 40 hours in the workweek.

(d) Project commitments, contracts, and agreements, as determined by the Commissioner, and construction contracts and subcontracts, shall include terms, conditions, and standards for compliance with applicable requirements set forth in 29 CFR parts 1, 3, and 5 and section 212 of the Act.

(e) No advance under a loan or mortgage that is subject to the requirements of section 212 shall be eligible for insurance unless there is filed with the application for the advance a certificate as required by the Commissioner certifying that the laborers and mechanics employed in construction of the project have been paid not less than the wage rates required under section 212.

Subpart G—Regulatory Agreement, Accounting and Reporting, and Financial Requirements

§ 242.56 Form of regulation.

As long as the Commissioner is the insurer or holder of the mortgage, all mortgagors shall be regulated by the Commissioner through the use of a regulatory agreement in a published format determined by the Commissioner and such additional covenants and restrictions as may be determined necessary by the Commissioner on a case-by-case basis. In addition, all mortgagors shall be subject to the provisions of 24 CFR part 24 and such other enforcement provisions as may be applicable. The mortgager shall be subject to monitoring by HUD and the U.S. Department of Health and Human Services, and their agents, employees, and contractors, on an ongoing basis for the life of the insured mortgage to ensure against the risk of default, and the mortgagor must make its financial records available to the monitoring agencies upon request.

§ 242.57 Maintenance of hospital facility.

The mortgagor shall maintain the hospital's grounds and buildings and the equipment financed with mortgage proceeds in good repair and shall promptly complete such repairs and maintenance as the Commissioner considers necessary.

§ 242.58 Books, accounts, and financial statements.

(a) *Books and accounts.* The mortgagor's books and accounts relating to the operation of the physical facilities of the hospital shall be established in a manner satisfactory to the Commissioner, and shall be kept in accordance with the requirements of the Commissioner as long as the mortgage is insured or held by the Commissioner.

(b) *Financial reports.* The mortgagor shall file with the Commissioner:

(i) Annual audited financial statements in accordance with the guidance below,

(ii) Quarterly unaudited financial reports, within 40 days following the end of each quarter of the mortgagor's fiscal year,

(iii) If requested by the Commissioner, monthly financial reports within 40 days following the end of each month,

(iv) Board-certified annual financial results within 120 days following the close of the fiscal year (if the annual audited financial statement has not yet been filed with the Commissioner) and at such other times as the Commissioner may designate on a case-by-case basis, and

(v) Such other financial and utilization reports as the Commissioner may require.

(c) *Audits.* (1) Not-for-profit organizations shall conduct audits in accordance with the Consolidated Audit Guide for Audits of HUD Programs (Handbook 2000.04) and OMB Circular A–133 (Audits of States, local governments and nonprofit organizations).

(2) For-profit organizations shall conduct audits in accordance with the Consolidated Audit Guide for Audits of HUD Programs (Handbook 2000.04).

(d) *Changes in accounting policies.* The annual audited financial statements shall identify any changes in accounting policies and their financial effect on the balance sheet and on the income statement.

(e) *Compliance reporting.* The mortgagor shall instruct the auditor of the annual financial statement to include in its report an evaluation of the mortgagor's compliance with the Regulatory Agreement.

(f) *Books of management agents.* The books and records of management agents, lessees, operators, managers, and affiliates, as they pertain to the operations of the project, shall be maintained in accordance with Generally Accepted Accounting

Principles (GAAP) and shall be open and available to inspection by HUD, after reasonable prior notice, during normal office hours, at the project or other mutually agreeable location. Every contract executed on behalf of the project with any of the aforesaid parties shall include the provision that the books and records of such entities shall be properly maintained and open to inspection during normal business hours by HUD at the project or other mutually agreeable location.

(g) *Medicare cost reports.* Upon request, the mortgagor shall provide to the Commissioner a copy of the Medicare Cost Report most recently submitted to the Centers for Medicare and Medicaid Services (an agency of the Department of Health and Human Services), along with related financial documents.

§ 242.59 Inspection of facilities by Commissioner.

The mortgaged property (including buildings and equipment) and the books, records, and documents relating to the operation of the physical facilities of the hospital shall be subject to inspection and examination by the Commissioner or his or her authorized representative at all reasonable times.

§ 242.61 Management.

The mortgagor shall provide for management of the hospital in a manner satisfactory to the Commissioner.

(a) *Contract management.* The mortgagor shall not execute a management agreement or any other contract for management of the hospital without the Commissioner's prior written approval. Any management agreement or contract shall contain a provision that it shall be subject to termination without penalty and with or without cause, upon written request by the Commissioner addressed to the mortgagor and management agent.

(b) *Principals.* HUD shall have the authority to require that any principals of the mortgagor, including but not limited to board members of a corporate entity, be removed, substituted, or terminated for cause upon written request by the Commissioner addressed to the mortgagor.

(c) *Employees.* HUD shall have the authority to require that any key management employees of the mortgagor (as defined and determined solely by HUD) be terminated for cause upon written request by the Commissioner addressed to the mortgagor.

(d) *Procedures upon receipt of request under paragraphs (a) through (c) of this section.* Upon receipt of such requests under paragraphs (a) through (c) of this section, the mortgagor shall immediately terminate said management agreement, principals or employees within the shortest applicable period the Commissioner determines appropriate and shall make arrangements satisfactory to the Commissioner for on-going proper management of the hospital.

§ 242.62 Releases of lien.

The mortgagor shall not sell, dispose of, transfer, or permit to be encumbered any security property without the prior approval of the lender and Commissioner, subject to thresholds the Commissioner may establish for the approval requirement. Where there is a partial release of lien, the lender must make a determination, subject to review by the Commissioner, that the remaining or replacement property subject to the first lien provides adequate security for the remaining principal indebtedness.

§ 242.63 Additional indebtedness and leasing.

The mortgagor shall not enter into any long-term debt, short-term debt, or equipment leases except in conformance with policies and procedures established by the Commissioner.

§ 242.64 Current and future property.

All current or future property or personalty (all as defined in the Regulatory Agreement) of the mortgagor on or off mortgaged real estate (except that specifically restricted by donors or specifically excluded by the Commissioner) will be considered as part of the HUD-insured hospital and subject to all provisions of the HUD regulatory agreement. All equipment acquired by the hospital following initial endorsement and at any time during the term of the loan shall become subject to the lien of the security agreement and any Uniform Commercial Code Financing Statements filed pursuant to the security agreement, unless the mortgagor specifically requests and the Commissioner for good cause approves, subordination of the lien of the insured mortgagee on specific personalty for specific periods of time. The first lien on the realty (as defined in the regulatory agreement and as identified in the security instrument) cannot be subordinated in whole or in part.

§ 242.65 Distribution of assets.

The Commissioner shall establish financial thresholds and procedures for the distribution of surplus cash and other assets. Surplus cash that meets the definition in 24 CFR 242.1, or cash that has been expressly approved for distribution by the Commissioner, may be distributed to other organizations formally affiliated with the mortgagor, a parent organization with which the mortgagor is also affiliated, partners, or stockholders, in accordance with those financial thresholds and procedures set forth in the regulatory agreement. Other assets may be distributed to other organizations formally affiliated with the mortgagor, a parent organization with which the mortgagor is also affiliated, partners, or stockholders, in accordance with those financial thresholds and procedures set forth in the regulatory agreement, and in accordance with the release of lien conditions in 24 CFR 242.62, if applicable.

§ 242.66 Affiliate transactions.

Transactions that are arms-length are permitted as specified in the Regulatory Agreement. Transactions with affiliates that are not arms-length are not permitted except with the prior written approval of the Commissioner in accordance with such policies and procedures as the Commissioner shall prescribe.

§ 242.67 New corporations, subsidiaries, affiliations, and mergers.

The mortgagor shall not establish, develop, organize, acquire, become the sole member of, or acquire an interest sufficient to require disclosure on the audited financial statements of the mortgagor, in any corporation, subsidiary, or affiliate organization other than those with which the mortgagor was affiliated as of date of application, without the prior approval of the Commissioner. The mortgagor shall obtain the Commissioner's written approval for all future mergers.

Subpart H—Miscellaneous Requirements

§ 242.68 Disclosure and verification of Social Security and Employer Identification Numbers.

The requirements set forth in 24 CFR part 5, regarding the disclosure and verification of social security numbers and employer identification numbers, and employer identification numbers by applicants and participants in assisted mortgage and loan insurance and related programs, apply to this program.

§ 242.69 Transfer fee.

Upon application for review of a transfer of physical assets or the substitution of mortgagors, a transfer fee of 50 cents per thousand dollars of the outstanding principal balance of the mortgage shall be paid to the

Commissioner. A transfer fee is not required if both parties to the transfer transaction are not-for-profit or public organizations.

§ 242.70 Fees not required.

The payment of an application, commitment, inspection, or reopening fee shall not be required in connection with the insurance of a mortgage involving the sale by the Secretary of any property acquired under any section or title of the Act.

§ 242.72 Leasing of hospital.

Leasing of a hospital in its entirety is prohibited. Notwithstanding this prohibition, any proposal in which leasing of the entire facility is a factor due to State law prohibitions against the mortgaging of health care facilities by State entities shall be considered on a case-by-case basis. Also, leasing of a hospital that has an existing Section 242 insured loan is permitted if the Commissioner determines that leasing is necessary to reduce the risk of default by a financially troubled hospital.

§ 242.73 Waiver of eligibility requirements for mortgage insurance.

The Secretary may insure under this part, without regard to any limitation upon eligibility contained in this subpart, any mortgage assigned to him or her in connection with payment under a contract of mortgage insurance, or executed in connection with a sale by him or her of any property previously insured under this part and acquired subsequent to a claim.

§ 242.74 Smoke detectors.

Each occupied room must include at least one battery-operated or hard-wired smoke detector in proper working condition. If the room is occupied by hearing-impaired persons, the smoke detector must have an alarm system designed for hearing-impaired persons, unless the smoke alarm is connected to a central alarm system that is monitored on a 24-hour basis, or otherwise meets industry standards.

§ 242.75 Title requirements.

In order for the mortgaged property to be eligible for insurance, the Commissioner shall determine that marketable title thereto is vested in the mortgagor as of the date the mortgage is filed for record. The title evidence shall be examined by the Commissioner and the endorsement of the credit instrument for insurance shall be evidence of its acceptability.

§ 242.76 Title evidence.

Upon insurance of the mortgage, the mortgagee shall furnish to the Commissioner a survey of the mortgage property, satisfactory to the Commissioner, and a policy of title insurance covering the property, as provided in paragraph (a) of this section. If, for reasons the Commissioner considers to be satisfactory, title insurance cannot be furnished, the mortgagee shall furnish such evidence of title in accordance with paragraph (b) or (c) of this section as the Commissioner may require. Any survey, policy of title insurance, or evidence of title required under this section shall be furnished without expense to the Commissioner. The types of title evidence are:

(a) A policy of title insurance issued by a company and in a form satisfactory to the Commissioner. The policy shall name as the insureds the mortgagee and the Secretary of Housing and Urban Development, as their respective interests may appear. The policy shall provide that upon acquisition of title by the mortgagee or the Secretary, it will continue to provide the same coverage as the original policy, and will run to the mortgagee or the Secretary, as the case may be.

(b) An abstract of title satisfactory to the Commissioner, prepared by an abstract company or individual engaged in the business of preparing abstracts of title, accompanied by a legal opinion satisfactory to the Commissioner as to the quality of such title, signed by an attorney-at-law experienced in the examination of titles.

(c) A Torrens or similar title certificate.

§ 242.77 Liens.

The hospital must be free and clear of all liens other than the insured mortgage, except that the property may be subject to a lien as provided by terms and conditions established by the Commissioner as follows:

(a) An inferior lien made or held by a Federal, State, or local government instrumentality;

(b) An inferior lien required in connection with a supplemental loan insured pursuant to section 241 of the Act;

(c) An inferior or superior lien on equipment as may be approved in connection with an equipment leasing program approved by the Commissioner;

(d) An inferior or superior lien on accounts receivable as approved by the Commissioner as collateral for a line of credit or other borrowing by a hospital insured under this part that has extraordinary needs such as cash flow difficulties; or

(e) Similar liens otherwise approved by the Commissioner.

§ 242.78 Zoning, deed, and building restrictions.

The project when completed shall not violate any material zoning or deed restrictions applicable to the project site, and shall comply with all applicable building and other governmental codes, ordinances, regulations, and requirements.

§ 242.79 Environmental quality determinations and standards.

Requirements set forth in 24 CFR part 50, Protection and Enhancement of Environmental Quality, 24 CFR part 51, Environmental Criteria and Standards, and 24 CFR part 55, Implementation of Executive Order 11988, Flood Plain Management governing environmental review responsibilities (as applicable) and as otherwise required by the Commissioner apply to this program.

§ 242.81 Lead-based paint poisoning prevention.

Requirements set forth in 24 CFR part 35 apply to this program.

§ 242.82 Energy conservation.

Construction, mechanical equipment, and energy and metering selections shall provide cost-effective energy conservation in accordance with standards established by the Commissioner.

§ 242.83 Debarment and suspension.

The requirements set forth in 24 CFR part 24, except subpart F, apply to this program.

§ 242.84 Previous participation and compliance requirements.

The requirements set forth in 24 CFR part 200, subpart H, apply to this program.

§ 242.86 Property and mortgage assessment.

The requirements set forth in 24 CFR part 200, subpart E, regarding the mortgagor's responsibility for making those investigations, analysis, and inspections it deems necessary for protecting its interests in the property apply to these programs.

§ 242.87 Certifications.

Any agreement, undertaking, statement, or certification required by the Commissioner shall specifically state that it has been made, presented, and delivered for the purpose of influencing an official action of the FHA, and of the Commissioner, and may be relied upon by the Commissioner as a true statement of the facts contained therein.

§ 242.89 Supplemental loans.

A loan, advance of credit, or purchase of an obligation representing a loan or advance of credit made for the purpose of financing improvements or additions to a hospital covered by a mortgage insured under this section of the Act or for a Commissioner-held mortgage, or equipment for a hospital, may be insured pursuant to the provisions of section 241 of the Act and under the provisions of this part as applicable and such additional terms and conditions as established by the Commissioner. See subpart B of 24 CFR part 241 with respect to the contract of mortgage insurance for all loans insured under section 241 of the Act. *See* 24 CFR part 241, subpart C, for energy improvements.

§ 242.90 Eligibility of mortgages covering hospitals in certain neighborhoods.

(a) A mortgage financing the repair, rehabilitation, or construction of a hospital located in an older declining urban area shall be eligible for insurance under this subpart subject to compliance with the additional requirements of this section.

(b) The mortgage shall meet all of the requirements of this subpart, except such requirements (other than those relating to labor standards and prevailing wages) as are judged to be not applicable on the basis of the following determinations to be made by the Commissioner.

(1) That the conditions of the area in which the property is located prevent the application of certain eligibility requirements of this subpart.

(2) That the area is reasonably viable, and there is a need in the area for an adequate hospital to serve low and moderate income families.

(3) That the mortgage to be insured is an acceptable risk.

(c) Mortgages complying with the requirements of this section shall be insured under this subpart pursuant to section 223(e) of the National Housing Act. Such mortgages shall be insured under and be the obligation of the Special Risk Insurance Fund.

§ 242.91 Eligibility of refinancing transactions.

A mortgage given to refinance an existing insured mortgage under section 241 or section 242 of the Act covering a hospital may be insured under this subpart pursuant to section 223(a)(7) of the Act. Insurance of the new, refinancing mortgage shall be subject to the following limitations:

(a) *Principal amount.* The principal amount of the refinancing mortgage shall not exceed the lesser of:

(1) The original principal amount of the existing insured mortgage, or

(2) The unpaid principal amount of the existing insured mortgage, to which may be added loan closing charges associated with the refinancing mortgage, and costs, as determined by the Commissioner, of improvements, upgrading, or additions required to be made to the property.

(b) *Debt service rate.* The monthly debt service payment for the refinancing mortgage may not exceed the debt service payment charged for the existing mortgage.

(c) *Mortgage term.* The term of the new mortgage shall not exceed the unexpired term of the existing mortgage, except that the new mortgage may have a term of not more than 12 years in excess of the unexpired term of the existing mortgage in any case in which the Commissioner determines that the insurance of the mortgage for an additional term will inure to the benefit of the FHA Insurance Fund, taking into consideration the outstanding insurance liability under the existing insured mortgage, and the remaining economic life of the property.

(d) *Minimum loan amount.* The mortgagee may not require a minimum principal amount to be outstanding on the loan secured by the existing mortgage.

§ 242.92 Minimum principal loan amount.

A mortgagee may not require, as a condition of providing a loan secured by a mortgage insured under this part, that the principal amount of the mortgage exceed a minimum amount established by the mortgagee.

§ 242.93 Amendment of regulations.

The regulations in this subpart may be amended by the Commissioner at any time and from time to time, in whole or in part, but such amendment shall not adversely affect the interests of a mortgagee or lender under the insurance on any mortgage or loan already insured and shall not adversely affect the interests of a mortgagee or lender on any mortgage or loan to be insured on which the Commissioner has issued a commitment to insure.

§ 242.94 Cross-reference.

All of the provisions of 24 CFR part 207, subpart B, relating to mortgages insured under section 207 of the Act, apply to mortgages on hospitals insured under section 242 of the Act, except § 207.259 (Insurance benefits).

Dated: November 19, 2004.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 05–49 Filed 1–7–05; 8:45 am]

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Part III

Department of Housing and Urban Development

24 CFR Part 81

Release in the Public Use Database of Certain Mortgage Data and Annual Housing Activities Report (AHAR) Information of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac); Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 81

[Docket No. FR–4947–P–01; HUD–2004–0019]

RIN 2501–AD09

Release in the Public Use Database of Certain Mortgage Data and Annual Housing Activities Report (AHAR) Information of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac)

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: The Department of Housing and Urban Development is proposing a change to its regulations to permit the release to the public of certain data and information that have been, and will be, submitted to HUD by the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the government sponsored enterprises, or GSEs). The changes the Department is proposing would allow for the release of GSE mortgage data that fall into two separate categories. The first category involves the Department's public release, both prospectively and in all preceding years' public use databases, of GSE mortgage data that the Secretary, by regulation or order, reclassifies from proprietary to non-proprietary status. This first category also involves the Department's public release, both prospectively and for all preceding years, of certain aggregated data derived from proprietary loan-level mortgage data that the Secretary determines are not proprietary when presented in aggregated form. The second category involves the release of certain GSE mortgage data that are at least five years old and that the Secretary determines, by regulation or order, to reclassify from proprietary to non-proprietary status because of the passage of time. The Department is proposing that such data may lose proprietary status once they have aged a minimum of five years, with the time interval for particular data elements to be determined by the Secretary on a case-by-case basis. The proposed rule describes the procedures and standards that the Secretary would use to make determinations under both of these categories, and clarifies that these same procedures and standards are equally applicable whenever the Secretary seeks to modify the list of proprietary determinations. In addition, the Department is proposing some minor technical and editorial changes to its regulations at 24 CFR 81.75.

DATES: *Comment Due Date:* March 11, 2005.

ADDRESSES: Interested persons are invited to submit written comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Interested persons may also submit comments electronically through either:

- The Federal eRulemaking Portal at: *http://www.regulations.gov;* or
- The HUD electronic Web site at: *http://www.epa.gov/feddocket.* Follow the link entitled, "View Open HUD Dockets". Commenters should follow the instructions provided on that site to submit their comments electronically.

Facsimile (FAX) comments are *not* acceptable. In all cases, communications must refer to the above docket number and title.

All comments and communications submitted will be available, without charge, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Copies are also available for inspection and downloading at *http://www.epa.gov/feddocket.* Comments that are submitted electronically to the above websites, or that are submitted to the HUD Regulations Division at the above address, during the 60-day opportunity for notice and comment are placed in the public rules docket and are available to the public for inspection and copying. As a result, these comments are in the public domain and will be treated by the Department as public comments.

FOR FURTHER INFORMATION CONTACT: Sandra Fostek, Director, Office of Government Sponsored Enterprises, Office of Housing, Room 3150, telephone 202–708–2224. For questions on data, contact John L. Gardner, Director, Financial Institutions Regulation Division, Office of Policy Development and Research, Room 8212, telephone (202) 708–1464. For legal questions, contact Paul S. Ceja, Assistant General Counsel for Government Sponsored Enterprises/RESPA, or Sharmeen Dosky, Senior GSE/RESPA Division Attorney, Office of the General Counsel, Room 9262, telephone 202–708–3137. The address for all of these persons is the Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Persons with hearing and speech impairments may access the phone numbers via TTY by calling the Federal Information Relay Service at (800) 877–8399.

SUPPLEMENTARY INFORMATION:

I. Purpose of This Proposed Rule

The Department of Housing and Urban Development (HUD) is proposing to release to the public certain mortgage data and aggregated data that have been, and will be, submitted to HUD by the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the government sponsored enterprises, or GSEs). The data that HUD proposes to release fall into two separate categories:

- The first category involves the Department's public release of GSE mortgage data after the Secretary modifies the list of proprietary determinations and reclassifies certain mortgage data as non-proprietary. The GSE mortgage data would be released to the public both prospectively and for all years preceding the date of the Secretary's determination, unless otherwise provided by the Secretary. Such data would be released to the public via the public use database established by section 1323 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Pub. L. 102–550, approved October 28, 1992) (FHEFSSA). This proposal to release prior years' data would also apply to the Department's public release of certain aggregated data derived from proprietary loan-level mortgage data that the Secretary determines are not proprietary when presented in aggregated form. The aggregated data also would be released to the public both prospectively and for all years preceding the date of the Secretary's determination, unless otherwise provided by the Secretary. The Department would release periodically to the public such aggregated data in the form of a compendium, or by other means.
- The second category involves the release of certain GSE mortgage data included on the list of proprietary determinations that are at least five years old and that the Secretary has determined, by regulation or order, to reclassify from proprietary to non-proprietary status because of the passage of time. The Department is proposing that, subject to the Secretary's determination, data classified as proprietary that have aged a minimum of five years could be subject to reclassification as non-proprietary data for release to the public. However, the

time interval for particular data elements would be determined by the Secretary on a case-by-case basis.

To implement the public release of GSE mortgage data and aggregated data, as described above, the Department is proposing to change its regulations at 24 CFR 81.75. These changes would include redesignating a portion of the current text as paragraph (a) and moving to a new paragraph (b)(1) the Secretary's existing authority to modify, by regulation or order, the list of proprietary determinations. The Department also is proposing to eliminate the name of the list of proprietary information (which currently is identified as "GSE Mortgage Data and AHAR Information: Proprietary Information/Public Use Data"). The Department will continue to issue such a list, but believes it is unnecessary for its regulations to specify the name of the list.

Section 81.75(b)(2) of the proposed rule provides that whenever the Secretary determines to modify the list of proprietary determinations by reclassifying certain GSE mortgage data on that list as non-proprietary, the Secretary will release to the public the reclassified, non-proprietary mortgage data both prospectively and for all years preceding the effective date of the Secretary's determination, unless otherwise provided by the Secretary.

Section 81.75(b)(3) of the proposed rule provides that certain GSE mortgage data that are included on the list of proprietary determinations may lose their proprietary status if they are at least five years old (as measured from the end of the calendar year to which the mortgage data pertain). If the Secretary determines that such mortgage data have lost their proprietary status, the proposed rule provides that these data shall be released publicly.

Section 81.75(c) of the proposed rule provides that the Secretary may determine that certain aggregated data derived from proprietary loan-level GSE mortgage data are not proprietary and that, in such case, the Secretary will release the aggregated data to the public both prospectively and for all years preceding the effective date of the Secretary's determination, unless otherwise provided by the Secretary.

The Department provides in § 81.75(b) that the Secretary may, based upon a consideration of the regulatory factors in § 81.74(b), modify the list of proprietary determinations by regulation, or by order using the procedures in § 81.74(f)(1) and (f)(2), as applicable. This proposal represents a codification of the Department's existing practice of using the standards in § 81.74(b) whenever the Secretary seeks to modify under § 81.75 the list of proprietary determinations. Similarly, the proposal represents a codification of the Department's existing practice of using the procedures in § 81.74(f)(1) and (f)(2) (with the exception of § 81.74(f)(2)(i), which does not apply to the reclassification of GSE mortgage data from proprietary to non-proprietary status) whenever the Secretary seeks to modify, by order under § 81.75, the list of proprietary determinations.

The Department proposes similar language in § 81.74(c), which deals with the release of aggregated data that the Secretary determines to be non-proprietary. The proposed rule provides that the Secretary may, based upon a consideration of the factors in § 81.74(b) and using the procedures in § 81.74(f)(1) and (f)(2), as applicable, determine that certain aggregated data derived from proprietary loan-level mortgage data are not proprietary.

In addition to the above changes, minor editorial corrections to § 81.75 are proposed.

II. Background

A. FHEFSSA and the Public Use Database

The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 requires HUD to establish and monitor the performance of Fannie Mae and Freddie Mac in meeting annual goals for purchases of mortgages on housing for low- and moderate-income families, housing located in central cities, rural areas, and other underserved areas, and special affordable housing (*i.e.*, housing meeting the needs of and affordable to low-income families in low-income areas and very low-income families).

Section 1323 of FHEFSSA requires the Department to make available to the public, in forms useful to the public (including forms accessible by computers) data relating to the GSEs' mortgage purchases.

Fannie Mae submits to the Department data on its mortgage purchases and aggregated data pursuant to sections 309(m) and (n) of the Fannie Mae Charter Act. Freddie Mac makes these submissions pursuant to sections 307(e) and (f) of the Freddie Mac Act.[1]

In conjunction with this mandate of public access to GSE mortgage data, the law prohibits the Secretary from disclosing mortgage data that he or she determines to be proprietary.[2] Specifically, section 1326 of FHEFSSA states that the Secretary may, by regulation or order, "provide that certain information shall be treated as proprietary information and not subject to disclosure under section 1323 of [title 12 of the United States Code], section 309(n)(3) of the [Fannie Mae Charter Act], or section 307(f)(3) of the [Freddie Mac Act]."

This prohibition on the disclosure of proprietary information is repeated in section 1323(b)(1) of FHEFSSA, which states that "[e]xcept as provided in paragraph (2) [of this section], the Secretary may not make available to the public data that the Secretary determines pursuant to section 1326 are proprietary information." The exception set forth in paragraph (2) of section 1323(b) of FHEFSSA states that the Secretary may not restrict access to GSE single-family mortgage data submitted to the Secretary under section 309(m)(1)(A) of the Fannie Mae Charter Act or section 307(e)(1)(A) of the Freddie Mac Act relating to "the income, census tract location, race, and gender of mortgagors under such mortgages."

Thus, the Secretary is authorized by section 1326 of FHEFSSA to make determinations, by regulation or order, that certain GSE mortgage data are proprietary, except as expressly prohibited by section 1323(b)(2) of FHEFSSA.

B. Department's Authority To Propose Rule Changes

The Department notes that section 1326(a) of FHEFSSA broadly confers on the Secretary the authority to determine, through either regulation or order, "that certain information shall be treated as proprietary information and not subject to disclosure under section 1323."

Inherent in this authority is the Secretary's authority to reconsider and modify a prior determination that information is proprietary. This inherent authority is expressed in the Department's implementing regulations at 24 CFR 81.75, which authorize HUD to issue a list providing that certain information shall be treated as proprietary information, but expressly authorizing the Secretary to modify the list by regulation or order.

[1] HUD defines the term "mortgage data" at 24 CFR 81.2 to mean "data obtained by the Secretary from the GSEs under subsection 309(m) of the Fannie Mae Charter Act and subsection 307(e) of the Freddie Mac Act."

[2] HUD's regulations at 24 CFR 81.2 define the term "proprietary information" to mean "all mortgage data and all AHAR information that the GSEs submit to the Secretary in the AHARs that contain trade secrets or privileged or confidential, commercial, or financial information that, if released, would be likely to cause substantial competitive harm."

Moreover, the Department's express authority to modify the list of proprietary data and information is repeated in each of HUD's prior public use database orders.[3] Thus, by the terms of HUD's regulations and prior orders, the Department has provided the GSEs, and the public at large, with notice that it may seek to withdraw or modify its list of proprietary determinations "by regulation or order."

The Department believes that its proposed disclosure of additional GSE mortgage data and aggregated data will bring it into greater conformity with data that currently are available from the Home Mortgage Disclosure Act (HMDA) database. The legislative history of FHEFSSA specifically provides that "* * * every effort should be made to provide public disclosure of the information required to be collected and/or reported to the regulator consistent with the exemption for proprietary data."[4] The FHEFSSA legislative history further indicates that Congress intended that the GSE public use database would help fill the "information vacuum" on GSE mortgage activities and complement the database established under HMDA.[5] In addition, the FHEFSSA legislative history affirmed that "public access and disclosure of information is a key tool for permitting appropriate public scrutiny and oversight of the activities of the [GSEs] and in evaluating possible improvements in housing finance markets."[6]

More recently, the Comptroller General of the United States echoed this view when he testified before the U.S. Senate Committee on Banking, Housing and Urban Affairs. In specifically identifying a framework for strengthening GSE governance and oversight that described the need to establish standards to measure GSE mission compliance,[7] the Comptroller General testified that:

> GSEs should strive to achieve * * * reasonable transparency of financial and performance activities * * * Because of a lack of clear measures, it is difficult for Congress, accountability organizations, and the public to determine whether the benefits provided by the GSEs' activities are in the public interest and outweigh their financial risks. * * * In some cases, there is a lack of measurable mission-related criteria that would allow for a meaningful assessment of the GSEs' mission achievement or whether the GSEs' activities are consistent with their charters.[8]

Congress has mandated in the GSEs' charter acts that the GSEs carry out public purposes not required of other private sector entities in the housing finance industry. Public disclosure, including disclosure via the public use database authorized by section 1323 of FHEFSSA, is critical to ensure that there is public accountability and transparency concerning the GSEs' accomplishment of their clear and explicit Congressional missions and charters.

Accordingly, the Department believes that it has both the legal authority and obligation, as the GSEs' housing mission regulator, to ensure that the GSEs provide as much data as possible to the public, via the public use database and otherwise, to heighten the level of public transparency and accountability while also protecting GSE mortgage data that qualify as "proprietary information."

III. Summary of Prior HUD Regulatory Actions

Beginning with October 13, 1993, the Department has issued a series of orders detailing the type of loan level mortgage data and other information on mortgages the GSEs purchase that it would make available to the public and the data elements it would classify as proprietary and not release to the public. Orders addressing these classifications and the structure of the GSE public use database were issued on June 7, 1994 (59 FR 29514; the "1994 Temporary Order"), October 17, 1996 (61 FR 54322; the "1996 Final Order"), and October 4, 2004 (69 FR 59476; the "2004 Final Order"). The Department has also addressed the structure and content of the public use database in its final order and rulemaking of December 1, 1995 (60 FR 61846; the "1995 Final Order") and its proposed rule dated March 9, 2000 (65 FR 12660; the "2000 Proposed Rule").

In 2000 and 2001, the Department further determined that certain data, when aggregated at the national level, were not proprietary and could be released into tables for public use. In April 2002, the Department released a compendium of 18 tables of aggregated data describing the GSEs' loan purchases in 1999–2000.

IV. Discussion of HUD's Proposals

A. Release of Prior Years' Mortgage Data and Aggregated Data

As the Department noted in its 2000 Proposed Rule, it has previously taken "a conservative approach in making determinations about the proprietary nature of the loan level data elements."[9] Consequently, the Department believes that mortgage data that it previously and conservatively determined to be proprietary could, with the benefit of several years of experience, be reclassified as non-proprietary as HUD reviews its initial determinations of data elements. Moreover, significant portions of the GSE mortgage data that the Department has previously determined to be proprietary are, in fact, available publicly through private vendors, or are otherwise made available by lenders under HMDA. As the Department noted in the 2000 Proposed Rule, most of the changes to the GSE public use database were intended "* * * to make available to the public the same data from the GSEs that is made available by primary lenders under HMDA" and thus "* * * affirm Congress' intent that the HMDA database and the GSE database complement each other."[10] The Senate Committee Report accompanying Senate bill S. 2733, which preceded the enactment of FHEFSSA, stated that "[i]mposing data collection requirements on the enterprises will close gaps that exist in the current HMDA system."[11] These are the reasons why the Department recently undertook in the 2004 Final Order to re-examine the proprietary status of certain GSE mortgage data that it had previously classified as proprietary and which, upon re-examination, the Department determined to reclassify as non-proprietary.

The Department is concerned, however, that even after reclassifying proprietary mortgage data as non-proprietary, or even after determining that proprietary loan-level mortgage data are not proprietary when presented in aggregated form, a significant gap in the public availability of these data will remain. It is this gap that HUD proposes to fill in this proposed rule. Accordingly, the Department is proposing that upon a reclassification, by regulation or order, of mortgage data from proprietary to non-proprietary

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[3] *See* the discussion under Section III of this proposed rule regarding HUD's prior issuances in 1994, 1995, and 1996 of orders relating to the public use database. Each of these orders provides that it "shall be effective until such time as it is determined necessary or appropriate to withdraw or modify it."

[4] *See* S. Rep. No. 102–282, 102d Cong., 2d Sess. 40 (1992).

[5] *Id.* at 39.

[6] *Id.* at 44.

[7] *See* testimony of David M. Walker, Comptroller General of the United States, before the U.S. Senate Committee on Banking, Housing and Urban Affairs in a report entitled, "Government Sponsored Enterprises: A Framework for Strengthening GSE Governance and Oversight", Report No. GAO–04–269T, issued for release on February 10, 2004.

[8] *Id.* at 9.

[9] *See* 65 FR 12632, 12670 (March 9, 2000).

[10] *Id. at* 12669; also, *see*, S. Rep. 102–282, 102d Cong., 2d Sess. 39 (1992).

[11] S. Rep. 102–282, 102d Cong., 2d Sess. 39 (1992).

status, the reclassified mortgage data will be released to the public both prospectively and for all preceding years' public use databases. Similarly, the Department is proposing that, upon making a determination that certain aggregated data derived from proprietary loan-level mortgage data are not proprietary, the aggregated data will be released to the public both prospectively and for all preceding years, in the form of compendia or by other means.

The Department believes that any concerns about the public release of multiple and successive prior years' mortgage data and aggregated data under the above circumstances are unwarranted. Multiple and successive prior years' data already are available in the public use database for any mortgage data that HUD has previously determined to be non-proprietary.

Moreover, even with respect to newly reclassified mortgage data, or with respect to aggregated data that the Department has determined can be released to the public, there will emerge after a number of years data and information that cover multiple and successive years of GSE mortgage purchases. Consequently, the Department believes that its determinations to reclassify mortgage data from proprietary to non-proprietary status, and to release to the public in one-year increments data and information covering successive future years (*e.g.*, covering the years 2004–2014), equally support and justify the automatic release to the public of data and information covering successive prior years (*e.g.*, covering the years 1993–2003) for such mortgage data. This same rationale also supports the Department's release to the public of successive prior years of aggregated data following a determination that such data does not qualify for proprietary status.

The proposed rule also would codify the Department's existing practice of: (1) Using the regulatory factors described in 81.74(b) whenever the Secretary seeks to modify, by regulation or order, the list of proprietary determinations; and (2) using the procedures in § 81.74(f)(1) and (f)(2), as applicable, whenever the Secretary seeks to modify, by order under § 81.75, the list of proprietary determinations. The Department also is proposing to use the regulatory factors in § 81.74(b) and the procedures in § 81.74(f)(1) and (f)(2), as applicable, whenever the Secretary evaluates whether certain aggregated data derived from proprietary loan-level mortgage data are non-proprietary and can be released to the public.

In its recent 2004 Final Order, the Department noted that it would release in the public use database, beginning in 2005, the mortgage data elements that were reclassified in that Order from proprietary to non-proprietary status and covering the GSEs' 2004 mortgage purchases. When the Department finalizes this rulemaking by issuing a final and effective rule, it will release in the public use database GSE mortgage data that HUD has determined to be non-proprietary for the years 1993 through 2003, including GSE mortgage data that HUD has determined in the 2004 Final Order to be non-proprietary.

In the future, the Department intends that whenever it makes a determination that certain GSE mortgage data, or aggregated data, are non-proprietary and may be released to the public, it will release mortgage data and aggregated data both prospectively and for all years preceding the effective date of HUD's determination.

The Department is proposing to implement this regulatory authority by its addition of a new § 81.75(b)(2) (which applies to the Secretary's release of prior and future years' GSE mortgage data following a reclassification from proprietary to non-proprietary status) and a new § 81.75(c) (which applies to the Secretary's release of prior and future years' aggregated data derived from proprietary loan-level data after the Secretary determines that such data are not proprietary).

B. Release of Aged Data

In its 2000 Proposed Rule, the Department requested comments on whether certain data elements that are classified as proprietary when submitted to the Department might no longer be so classified after several years because they would be unlikely to provide proprietary information about the GSEs' current business activities.[12] While numerous commenters on the 2000 Proposed Rule expressed general views favoring, or opposing, expanded release of GSE mortgage data, only three commenters responded specifically to the Department's request for comments on the release of aged data. These included Fannie Mae and Freddie Mac (which both opposed disclosure of aged data) and an academic organization (which supported the Department's proposal to release aged data that it determines, on reconsideration, to no longer be proprietary).

After considering the comments submitted on the 2000 Proposed Rule, the Department has decided to propose the addition of a new regulatory provision to address the issue of aged data that would be codified at § 81.75(b)(3). Under this proposal, the Secretary could determine by regulation—or by order using the procedures in § 81.74(f)(1) and (f)(2), as applicable—that certain GSE mortgage data that are included on the list of proprietary determinations may lose their proprietary status if they are at least five years old. The Secretary would make his or her determination based upon a consideration of the regulatory factors in § 81.74(b). This consideration of the proprietary status of data would affect only mortgage data after the expiration of the minimum five-year period, as measured from the end of the calendar year to which that mortgage data pertain. Mortgage data that are less than five years old would remain proprietary and, as a result, could not be released publicly until at least five years have elapsed.

A commenter on the 2000 Proposed Rule asked the Department to conform any regulation that it may ultimately adopt authorizing the release of aged GSE data with the 10-year confidentiality period granted under the Department's regulations implementing the Freedom of Information Act (FOIA). In response to this comment, the Department notes that its current proposal to establish a minimum five-year period for the reconsideration of aged data is fully consistent with its existing regulations implementing the FOIA. Under the Department's Exemption 4 FOIA regulations at 24 CFR 15.108(b)(1), a submitter may request confidential treatment of business information at the time the information is submitted to HUD, or within a reasonable time thereafter.[13] A submitter's designation of confidentiality expires 10 years after the date the information is submitted to HUD, unless the submitter provides a reasonable explanation in support of a later expiration date.[14] However, the Department does not make a determination under FOIA as to whether the submitter's assertion of confidentiality is valid until it actually receives a request for disclosure of the information.[15]

The Secretary does, however, make determinations (or reconsiderations of

[12] *See* 65 FR 12632, 12674 (published March 9, 2000).

[13] Under section 15.108(b)(2), the submitter must support its request with an authorized statement or a certification giving the facts and the legal justification for the confidential request and stating that the information has not been made public. In addition, the submitter must designate the specific information that it deems to be confidential.

[14] *See* 24 CFR 15.108(b)(3).

[15] *See* 24 CFR 15.108(g)(2).

initial determinations) about the confidential and proprietary status of GSE information under its separate and independent authority under section 1326 of FHEFSSA and the implementing regulations under 24 CFR part 81, subpart F ("Access to Information"). Under the current proposed rule, the Secretary would also have the authority to determine based on the criteria in § 81.74(b), either by regulation, or by order using the procedures in § 81.74(f)(1) and (f)(2), as applicable, that data may lose proprietary status once they have aged a minimum of five years.

Thus, if the Secretary determines in accordance with its proposed regulations that certain aged data do not qualify for confidential and proprietary treatment under FHEFSSA and its regulations at 24 CFR part 81, then this information would be released to the public. Since this would constitute an official and lawful Departmental release of GSE information to the public in accordance with FHEFSSA and its regulations at 24 CFR part 81, the information also would not be withholdable under Exemption 4 of FOIA.[16]

Conversely, the Secretary will not release to the public data that he or she has determined to be proprietary under FHEFSSA and its implementing regulations even after the expiration of the 10-year period described in the FOIA regulations. Thus, the expiration of the 10-year confidentiality period under FOIA does not affect the continued confidentiality of the same information under FHEFSSA and its implementing regulations.

For all of the above reasons, the Department believes that its proposal to adopt a minimum five-year period for the release of aged data pursuant to FHEFSSA does not in any way contradict the ten-year confidentiality period referred to in HUD's FOIA regulations.

The Department wishes to clarify that its proposal in § 81.75(b)(3) to release certain mortgage data that have aged a minimum of five years does not limit its current ability under § 81.75(b)(1) to seek, at any time, to reclassify GSE mortgage data from proprietary to non-proprietary status. This is because the Department's current proposal deals only with the reclassification and release of aged GSE mortgage data. This provision is independent of, and does not remove or limit, the Department's existing authority under § 81.75 (§ 81.75(b)(1) in this proposed rule) to modify at any time the list of proprietary determinations by changing the *current* classification of GSE mortgage data from proprietary to non-proprietary status.

Public comment is solicited, in particular, on whether five years represent a reasonable minimum period after which mortgage data might lose their proprietary character and, as a result, warrant a reconsideration of proprietary status under HUD's regulations. The Department also solicits public comment on whether a longer or shorter period should be adopted in the final rule, and the point at which the period should begin to run.

The Department is proposing to implement this regulatory authority by its addition of a new paragraph (b)(3) to 24 CFR 81.75.

[16] *See* 24 CFR 15.108(c)(2)(ii).

V. Findings and Certifications

Executive Order 12866. The Office of Management and Budget (OMB) reviewed this proposed rule under Executive Order 12866, *Regulatory Planning and Review*, which the President issued on September 30, 1993. Any changes made to this proposed rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC.

Paperwork Reduction Act. HUD's collection of information on the GSEs' activities has been reviewed and authorized by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), as implemented by OMB in regulations at 5 CFR part 1320. The OMB control number is 2502–0514.

Environmental Impact. This proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction; or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Regulatory Flexibility Act. The undersigned, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities. This final regulation is applicable only to the GSEs, which are not small entities for purposes of the Regulatory Flexibility Act, and, thus, does not have a significant economic impact on a substantial number of small entities.

Executive Order 13132, Federalism. Executive Order 13132 ("Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act. Title II of the Unfunded Mandates Reform Act of 1995 (12 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and the private sector. This proposed rule would not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

List of Subjects in 24 CFR Part 81

Accounting, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

Accordingly, 24 CFR part 81 is proposed to be amended as follows:

PART 81—THE SECRETARY OF HUD'S REGULATION OF THE FEDERAL NATIONAL MORTGAGE ASSOCIATION (FANNIE MAE) AND THE FEDERAL HOME LOAN MORTGAGE CORPORATION (FREDDIE MAC)

1. The authority citation for 24 CFR part 81 continues to read as follows:

Authority: 12 U.S.C. 1451 *et seq.*, 1716–1723h, and 4501–4641; 42 U.S.C. 3535(d) and 3601–3619.

2. Section 81.75 is proposed to be revised to read as follows:

§ 81.75 Proprietary information withheld by order or regulation.

(a) *Secretarial determination of proprietary classification.* Following a determination by the Secretary that mortgage data or AHAR information are proprietary under FHEFSSA, the Secretary shall expeditiously issue a

temporary order, final order, or regulation withholding the mortgage data or AHAR information from the public-use database and from public disclosure by HUD in accordance with 12 U.S.C. 4546. The Secretary may, from time to time, by regulation or order, issue a list providing that certain information shall be treated as proprietary.

(b) *Modification of proprietary classification.* (1) *General.* The Secretary may, based upon a consideration of the factors in § 81.74(b), modify the list of proprietary determinations by regulation, or by order using the procedures in § 81.74(f)(1) and (f)(2), as applicable.

(2) *Release of data following a modification of proprietary classification.* Following the Secretary's determination under paragraph (b)(1) of this section to modify the list of proprietary determinations by reclassifying certain mortgage data on that list as non-proprietary, the Secretary shall release the reclassified, non-proprietary mortgage data to the public both prospectively and for all years preceding the effective date of HUD's determination, unless otherwise provided by the Secretary.

(3) *Release of aged data.* The Secretary may determine under paragraph (b)(1) of this section that certain mortgage data that are included on the list of proprietary determinations may lose their proprietary status if they are at least five years old (as measured from the end of the calendar year to which the mortgage data pertain). If the Secretary determines that such aged mortgage data have lost their proprietary status, these data shall be released publicly.

(c) *Release of aggregated data derived from proprietary loan-level data.* The Secretary may, based upon a consideration of the factors in § 81.74(b) and using the procedures in § 81.74(f)(1) and (f)(2), as applicable, determine that certain aggregated data derived from proprietary loan-level mortgage data are not proprietary. If the Secretary makes such a determination, then the aggregated data shall be released to the public both prospectively and for all years preceding the effective date of the Secretary's determination, unless otherwise provided by the Secretary.

Dated: December 3, 2004.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 05–316 Filed 1–7–05; 8:45 am]

BILLING CODE 4210–27–P

Federal Register

Monday,
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Part IV

The President

Federal Register
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Presidential Documents

Title 3—

The President

Presidential Determination No. 2004–48 of September 20, 2004

Intention to Grant Waiver of the Application of Section 901(j) of the Internal Revenue Code with Respect to Libya

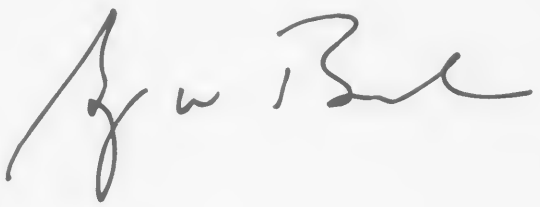
Memorandum for the Secretary of the Treasury

By virtue of the authority vested in me by the Constitution and the laws of the United States, including section 901(j)(5) of the Internal Revenue Code (the "Code") and section 301 of title 3, United States Code:

(a) I hereby determine that the waiver of the application of section 901(j)(1) of the Code with respect to Libya is in the national interest of the United States and will expand trade and investment opportunities for U.S. companies in Libya;

(b) I intend to grant such a waiver with respect to Libya; and

(c) I authorize and direct you to report to the Congress in accordance with section 901(j)(5)(B) of the Code my intention to grant the waiver and the reason for this determination and to arrange for publication of this determination in the **Federal Register**.



THE WHITE HOUSE,
Washington, September 20, 2004.

[FR Doc. 05–514
Filed 1–7–05; 8:45 am]
Billing code 4810–31–P

Presidential Documents

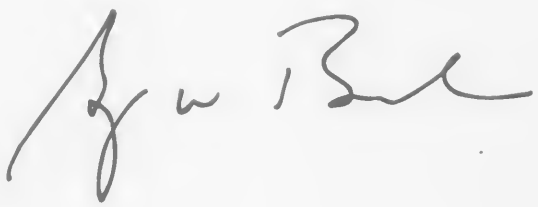
Presidential Determination No. 2005–12 of December 10, 2004

Presidential Determination to Waive the Application of Section 901(j) of the Internal Revenue Code With Respect to Libya

Memorandum for the Secretary of the Treasury

By virtue of the authority vested in me by the Constitution and the laws of the United States, including section 901(j)(5) of the Internal Revenue Code (the "Code"), I hereby waive the application of section 901(j)(1) of the Code with respect to Libya.

I hereby authorize and direct you to arrange for publication of this determination in the **Federal Register**.



THE WHITE HOUSE,
Washington, December 10, 2004.

[FR Doc. 05–515
Filed 1–7–05; 8:45 am]
Billing code 4810–31–P

Presidential Documents

Presidential Determination No. 2005–16 of January 4, 2005

Provision of Emergency Disaster Relief Assistance to Twelve Countries Affected by the Asian Tsunami, including the Drawdown Under Section 506(a)(2) of the Foreign Assistance Act of 1961, as Amended, of Articles and Services

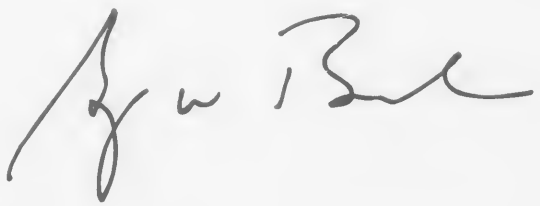
Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me by the Constitution and the laws of the United States, including my authority as Commander in Chief, I hereby direct the Secretary of Defense to provide such disaster assistance to Indonesia, Thailand, Sri Lanka, India, Maldives, Malaysia, Burma, Kenya, Somalia, Tanzania, Bangladesh, and the Seychelles as is necessary to prevent further loss of life, as determined by the Secretary of Defense and the Secretary of State.

In addition, pursuant to section 506(a)(2) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2318(a)(2) (FAA), I hereby determine that it is in the national interest of the United States to draw down articles and services from the inventory and resources of the Department of Defense, for the purpose of providing international disaster relief assistance to countries affected by the Asian tsunami.

I therefore direct the drawdown of up to $65 million of defense articles and services from the inventory and resources of the Department of Defense for these countries for the purposes and under the authorities of chapter 9 of part I of the FAA related to international disaster assistance.

The Secretary of State is authorized and directed to report this determination to the Congress and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
Washington, January 4, 2005.

[FR Doc. 05–516
Filed 1–07–05; 8:45 am]
Billing code 4710–10–P

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JANUARY 10, 2005

AGRICULTURE DEPARTMENT

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Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]

AGRICULTURE DEPARTMENT

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Plant-related quarantine, domestic:

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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.*

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents,

U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.J. Res. 102/P.L. 108–479

Recognizing the 60th anniversary of the Battle of Peleliu and the end of Imperial Japanese control of Palau during World War II and urging the Secretary of the Interior to work to protect the historic sites of the Peleliu Battlefield National Historic Landmark and to establish commemorative programs honoring the Americans who fought there. (Dec. 21, 2004; 118 Stat. 3905)

H.R. 2457/P.L. 108–480

To authorize funds for an educational center for the Castillo de San Marcos National Monument, and for other purposes. (Dec. 23, 2004; 118 Stat. 3907)

H.R. 2619/P.L. 108–481

Kilauea Point National Wildlife Refuge Expansion Act of 2004 (Dec. 23, 2004; 118 Stat. 3910)

H.R. 3632/P.L. 108–482

Intellectual Property Protection and Courts Amendments Act of 2004 (Dec. 23, 2004; 118 Stat. 3912)

H.R. 3785/P.L. 108–483

To authorize the exchange of certain land in Everglades National Park. (Dec. 23, 2004; 118 Stat. 3919)

H.R. 3818/P.L. 108–484

Microenterprise Results and Accountability Act of 2004 (Dec. 23, 2004; 118 Stat. 3922)

H.R. 4027/P.L. 108–485

To authorize the Secretary of Commerce to make available to the University of Miami property under the administrative jurisdiction of the National Oceanic and Atmospheric Administration on Virginia Key, Florida, for use by the University for a Marine Life Science Center. (Dec. 23, 2004; 118 Stat. 3932)

H.R. 4116/P.L. 108–486

American Bald Eagle Recovery and National Emblem Commemorative Coin Act (Dec. 23, 2004; 118 Stat. 3934)

H.R. 4548/P.L. 108–487

To authorize appropriations for fiscal year 2005 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes. (Dec. 23, 2004; 118 Stat. 3939)

H.R. 4569/P.L. 108–488

To provide for the development of a national plan for the control and management of Sudden Oak Death, a tree disease caused by the fungus-like pathogen Phytophthora ramorum, and for other purposes. (Dec. 23, 2004; 118 Stat. 3964)

H.R. 4657/P.L. 108–489

District of Columbia Retirement Protection Improvement Act of 2004 (Dec. 23, 2004; 118 Stat. 3966)

H.R. 5204/P.L. 108–490

To amend section 340E of the Public Health Service Act (relating to children's hospitals) to modify provisions regarding the determination of the amount of payments for indirect expenses associated with operating approved graduate medical residency training programs. (Dec. 23, 2004; 118 Stat. 3972)

H.R. 5363/P.L. 108–491

To authorize salary adjustments for Justices and judges of the United States for fiscal year 2005. (Dec. 23, 2004; 118 Stat. 3973)

H.R. 5382/P.L. 108–492

Commercial Space Launch Amendments Act of 2004 (Dec. 23, 2004; 118 Stat. 3974)

H.R. 5394/P.L. 108–493

To amend the Internal Revenue Code of 1986 to modify the taxation of arrow components. (Dec. 23, 2004; 118 Stat. 3984)

H.R. 5419/P.L. 108–494

To amend the National Telecommunications and Information Administration Organization Act to facilitate the reallocation of spectrum from governmental to commercial users; to improve, enhance, and promote the Nation's homeland security, public safety, and citizen activated emergency response capabilities through the use of enhanced 911 services, to further upgrade Public Safety Answering Point capabilities and related functions in receiving E-911 calls, and to support in the construction and operation of a ubiquitous and reliable citizen activated system; and to provide that funds received as universal service contributions under section 254 of the Communications Act of 1934 and the universal service support programs established pursuant thereto are not subject to certain provisions of title 31, United States Code, commonly known as the Antideficiency Act, for a period of time. (Dec. 23, 2004; 118 Stat. 3986)

S. 1301/P.L. 108–495

Video Voyeurism Prevention Act of 2004 (Dec. 23, 2004; 118 Stat. 3999)

S. 2657/P.L. 108–496

Federal Employee Dental and Vision Benefits Enhancement Act of 2004 (Dec. 23, 2004; 118 Stat. 4001)

S. 2781/P.L. 108–497

Comprehensive Peace in Sudan Act of 2004 (Dec. 23, 2004; 118 Stat. 4012)

S. 2856/P.L. 108–498

To limit the transfer of certain Commodity Credit Corporation funds between conservation programs for technical assistance for the programs. (Dec. 23, 2004; 118 Stat. 4020)

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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13	(869–052–00038–8)	55.00	Jan. 1, 2004
14 Parts:			
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60–139	(869–052–00040–0)	61.00	Jan. 1, 2004
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20 Parts:			
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2003, through January 1, 2004. The CFR volume issued as of January 1, 2002 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2004. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2004. The CFR volume issued as of July 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2002, through July 1, 2004. The CFR volume issued as of July 1, 2002 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2003, through July 1, 2004. The CFR volume issued as of July 1, 2003 should be retained.

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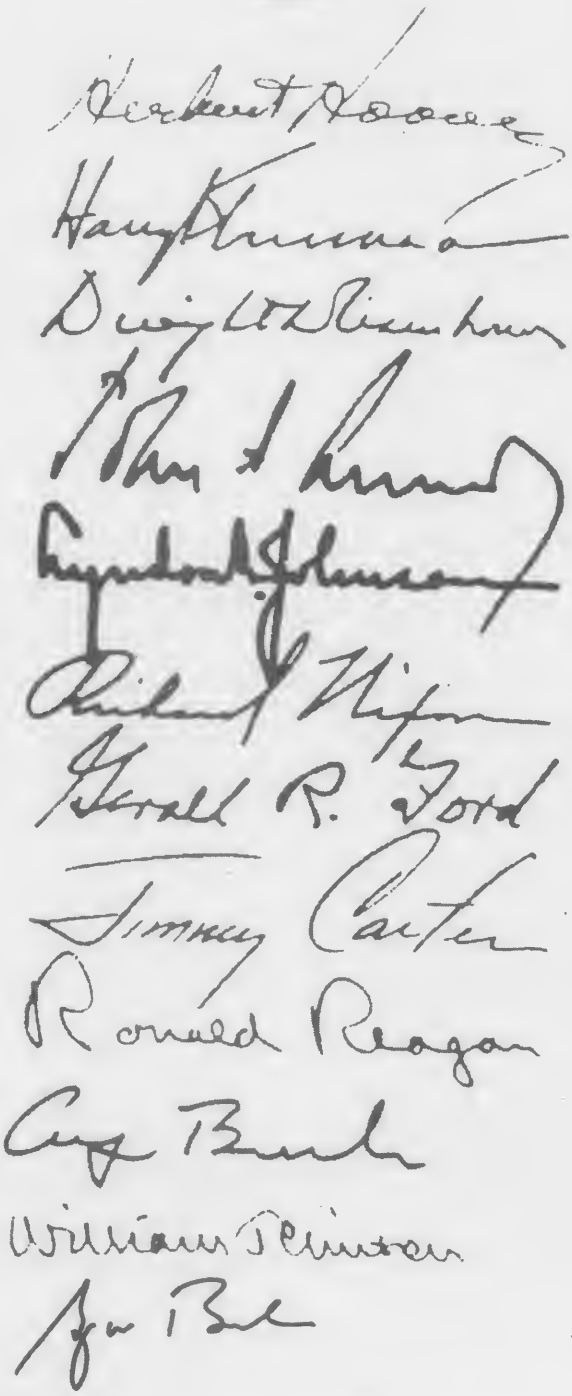

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