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9:00 a.m.–Noon—(SESSION FULL)

Tuesday, May 17, 2005
9:00 a.m.–Noon

WHERE: Office of the Federal Register
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Contents

Federal Register

Vol. 70, No. 71

Thursday, April 14, 2005

Agency for Healthcare Research and Quality
NOTICES
Meetings:
Technical Review Committee, 19761–19762

Agricultural Marketing Service
PROPOSED RULES
Milk marketing orders:
Upper Midwest, 19709–19718

Agriculture Department
See Agricultural Marketing Service
See Forest Service

Alcohol, Tobacco, Firearms, and Explosives Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 19785–19786

Antitrust Division
NOTICES
National cooperative research notifications:
Institute of Electrical and Electronics Engineers, 19786
National Fenestration Rating Council, Inc., et al., 19783–19784

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Children and Families Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 19762

Commerce Department
See Industry and Security Bureau
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Textile and apparel categories:
Caribbean Basin Trade Partnership Act; commercial availability—
100 percent cotton, 2x2 twill weave, flannel fabrics, 19735–19736

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Safe and Drug-Free Schools Programs—
Emergency Response and Crisis Management Grant Program, 19736–19738
Vocational and adult education—
Tech-Prep Demonstration Program, 19739–19746

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Air programs:
Ambient air quality standards, national—
Fine particles; supplemental amendments, 19844–19856
Air quality implementation plans; approval and promulgation; various States:
New Mexico, 19702–19708
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
New Mexico, 19723–19724
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 19757–19758
Meetings:
Clean Air Scientific Advisory Committee, 19758–19759
Commission for Environmental Cooperation, 19759–19760
Water pollution control:
Total maximum daily loads—
Louisiana, 19760
Water supply:
Public water supply supervision program—
Georgia, 19760–19761

Federal Aviation Administration
RULES
Airworthiness directives:
British Aerospace; correction, 19681
Cessna, 19682–19685
Empresa Brasileira de Aeronautica, S.A. (EMBRAER), 19685–19688
PROPOSED RULES
Airworthiness directives:
Learjet, 19718–19720
Commercial space transportation:
Licensing and safety requirements for launch, 19720–19721
NOTICES
Exemption petitions; summary and disposition, 19836–19837

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings, 19746–19753
Meetings; Sunshine Act, 19753–19757

Federal Law Enforcement Training Center
NOTICES
Meetings:
National Center for State and Local Law Enforcement Training Advisory Committee, 19777

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 19761
Permissible nonbanking activities, 19761

Fish and Wildlife Service
NOTICES
Endangered and threatened species:
Florida manatee; 5-year review, 19780
Endangered and threatened species and marine mammal permit applications, 19778–19780

Food and Drug Administration
NOTICES
Human drugs:
Drug efficacy study implementation; unlawful formulations—
Parenteral multivitamin drug products, 19762–19763
Meetings:
Drug Safety and Risk Management Advisory Committee, 19763–19764
Reports and guidance documents; availability, etc.:
Exploratory investigational new drugs studies, 19764–19765

Forest Service
NOTICES
Environmental statements; notice of intent:
Coronado National Forest, AZ, 19727
Meetings:
Resource Advisory Committees—
Mendocino County, 19727
National Forest System lands:
Outfitter and guide special use permits; maximum term, 19727–19730

Government Accountability Office
RULES
Practice and procedure:
Bid protest regulations, 19679–19681

Health and Human Services Department
See Agency for Healthcare Research and Quality
See Children and Families Administration
See Food and Drug Administration
See Indian Health Service

Homeland Security
See Federal Law Enforcement Training Center

Homeland Security Department
See U.S. Citizenship and Immigration Services

Housing and Urban Development Department
PROPOSED RULES
Public and Indian housing:
Public Housing Operating Fund Program, 19858–19875

Indian Health Service
NOTICES
Grants and cooperative agreements; availability, etc.:
American Indians/Alaska Natives; Health Promotion and Disease Prevention, 19772–19777
American Indians/Alaska Natives; Injury Prevention Program, 19765–19772

Industry and Security Bureau
RULES
Export administration regulations:
Chemical and biological weapons end-user/end use controls; amendments, 19688–19694

Interior Department
See Fish and Wildlife Service
See Reclamation Bureau
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
RULES
Employment taxes and collection of income taxes at source:
Employee withholding exemption certificates; submission and notification guidance, 19694–19697
Procedure and administration:
Foreign business entities; classification of as corporations for Federal tax purposes, 19697–19698
PROPOSED RULES
Employment taxes and collection of income taxes at source:
Employee withholding exemption certificates; submission and notification guidance, 19721–19722
Income taxes
Foreign entities; classification, 19722–19723

International Trade Administration
NOTICES
Antidumping:
Honey from—
China, 19730–19731
Practice and procedure:
Non-market economy countries; antidumping investigations; separation and combination rates; correction, 19841

International Trade Commission
NOTICES
Import investigations:
Disc drives, components, and products, 19782

Justice Department
See Alcohol, Tobacco, Firearms, and Explosives Bureau
See Antitrust Division
NOTICES
Pollution control; consent judgments:
American Cyanamid et al., 19782–19783
Crossing Dev. LLC, et al., 19783
Diamond State Salvage Co., Inc., et al., 19783
New Orleans, LA, et al., 19784
Outboard Marine Corp., et al., 19784–19785
Pneumo Abex Corp., et al., 19785

Labor Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 19786–19788

National Foundation on the Arts and the Humanities
NOTICES
Privacy Act:
Systems of records, 19788–19791

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards:
Exemption petitions, etc.—
DOT Chemical, 19837

National Institute of Standards and Technology
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 19731
Meetings:
Urban search and rescue robot performance standards; public forum, 19731–19732

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pacific cod, 19708
PROPOSED RULES
Fishery conservation and management:
Northeastern United States fisheries—
Georges Bank cod, haddock, and yellowtail flounder, 19724–19726
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 19732–19733
Endangered and threatened species:
Incidental take permits—
Sea turtles, shortnosed sturgeon, Atlantic salmon, 19733–19734
Meetings:
Mid-Atlantic Fishery Management Council, 19734–19735
South Atlantic Fishery Management Council, 19735

Nuclear Regulatory Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 19791–19792

Pipeline and Hazardous Materials Safety Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 19837–19838
Hazardous materials:
Applications; exemptions, renewals, etc., 19838–19840

Reclamation Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 19780–19781

Securities and Exchange Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 19792–19793
Investment Company Act of 1940:
John Hancock Life Insurance Co. et al., 19793–19812
John Hancock Life Insurance Co. et al.; correction, 19812
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 19812–19820

Social Security Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 19820–19821
Grants and cooperative agreements; availability, etc.:
Benefit Offset Pilot Demonstration, 19821–19825

State Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Study of U.S. Institute for Bolivian indigeneous student leaders, 19825–19830
U.S. national security policymaking in post 9/11 world, 19831–19836

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program and abandoned mine land reclamation plan submissions:
Virginia, 19698–19702
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 19781–19782

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Federal Aviation Administration
See National Highway Traffic Safety Administration
See Pipeline and Hazardous Materials Safety Administration

Treasury Department
See Internal Revenue Service

U.S. Citizenship and Immigration Services
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 19777–19778

Separate Parts In This Issue

Part II
Environmental Protection Agency, 19844–19856

Part III
Housing and Urban Development Department, 19858–19875

Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

4 CFR
21 19679

7 CFR

Proposed Rules:
1030 19709

14 CFR
39 (3 documents) 19681, 19682, 19685

Proposed Rules:
39 19718
413 19720
415 19720
417 19720

15 CFR
742 19688
744 19688
774 19688

24 CFR

Proposed Rules:
990 19858

26 CFR
31 19694
301 19697

Proposed Rules:
31 19721
301 19722

30 CFR
946 19698

40 CFR
52 19702
81 19844

Proposed Rules:
52 19723

50 CFR
679 19708

Proposed Rules:
648 19724

Rules and Regulations

Federal Register
Vol. 70, No. 71
Thursday, April 14, 2005

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

GOVERNMENT ACCOUNTABILITY OFFICE

4 CFR Part 21

Government Accountability Office, Administrative Practice and Procedure, Bid Protest Regulations, Government Contracts

AGENCY: Government Accountability Office.

ACTION: Final rule.

SUMMARY: This document amends Government Accountability Office (GAO) Bid Protest Regulations by revising the definition of an interested party to permit a protest to be filed by an agency tender official (ATO) in certain public-private competitions under Office of Management and Budget (OMB) Circular A–76. This document also revises the definition of an intervenor to permit an ATO and an employee representative to intervene in certain protests involving public-private competitions under OMB Circular A–76. This action implements the provisions of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 related to the bid protest process, where a public-private competition has been conducted under OMB Circular A–76 regarding an activity or function of a Federal agency performed by more than 65 full-time equivalent (FTE) employees of the Federal agency.

DATES: Effective April 14, 2005.

FOR FURTHER INFORMATION CONTACT: Daniel I. Gordon (Managing Associate General Counsel), Michael R. Golden (Assistant General Counsel), Linda S. Lebowitz (Senior Attorney), or Paul N. Wengert (Senior Attorney), 202–512–9732.

SUPPLEMENTARY INFORMATION:

Effective Dates

Section 326(d) of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Pub. L. 108–375, 118 Stat. 1811, 1848, states that the provisions apply to protests ''that relate to studies initiated under Office of Management and Budget Circular A–76 on or after the end of the 90-day period beginning on the date of the enactment of this Act.'' The date of enactment was October 28, 2004 and, therefore, the end of the 90-day period was January 26, 2005.

Protests filed after the effective date of this final rule that relate to studies initiated under OMB Circular A–76 on or after January 26, 2005, will be considered under this final rule. Protests filed at GAO after the effective date of this final rule that relate to studies initiated under OMB Circular A–76 before January 26, 2005, will be considered under GAO's regulations as they were prior to the issuance of this final rule. The same is true for (1) protests filed on or after the effective date of this rule that supplement or amend a protest filed at GAO before the effective date of this rule and (2) claims and requests for reconsideration filed on or after the effective date of this rule that concern a protest that was not subject to this rule.

Background

On December 20, 2004, GAO published a proposed rule (69 FR 75878) and a correction on December 23, 2004 (69 FR 76979) in which it proposed to amend its Bid Protest Regulations. The supplementary information included with the proposed rule explained that the proposed revisions to GAO's regulations, promulgated in accordance with the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. 3551–3556, were to implement the requirements in the National Defense Authorization Act for Fiscal Year 2005 regarding standing to protest to GAO by an in-house competitor in a public-private competition.

GAO addressed the in-house competitor standing issue in *Dan Duefrene; Kelley Dull; Brenda Neuerburg; Gabrielle Martin*, B–293590.2 *et al.*, Apr. 19, 2004, 2004 CPD ¶ 82. In that decision, GAO concluded that, notwithstanding the May 29, 2003 revisions to OMB Circular A–76, the in-house competitor in a public-private competition conducted under the Circular was not an offeror and, therefore, under the then-current language of CICA, a representative of an in-house competitor was not an interested party eligible to maintain a protest before GAO.

On the same day that the *Dan Duefrene* decision was issued, the Comptroller General sent a letter to the cognizant congressional committees, explaining that, because an in-house competitor did not meet the then-current CICA definition of an interested party, GAO was required to dismiss any protest that an in-house competitor filed. In the letter, the Comptroller General recognized that policy considerations, including the principles unanimously agreed to by the congressionally-chartered Commercial Activities Panel, weighed in favor of allowing certain protests by in-house competitors with respect to A–76 competitions and, as a result, Congress might want to consider amending CICA to allow GAO to decide such protests. Consistent with that letter, the National Defense Authorization Act for Fiscal Year 2005 amended CICA to permit certain protests by in-house competitors. The revisions to GAO's Bid Protest Regulations in this final rule implement the statutory provisions.

Summary of Comments

Interested persons were invited to submit comments on GAO's proposed rule by February 18, 2005. GAO received written comments from two federal agencies, five organizations representing contractors, seven unions, and three individuals. In adopting this final rule, GAO has carefully considered all comments received.

A summary of the more significant specific comments concerning GAO's proposed rule, and GAO's responses to these comments, are set forth below. As a general matter, and perhaps reflecting the fact that the proposed rule closely followed the statute, the agencies, one individual commenter, and five of the organizations representing contractors agreed that the proposed regulations correctly implemented the statutory language. On the other hand, while not directly addressing whether the proposed regulations correctly implemented the statute, the seven unions and one individual commenter

questioned whether the law, as well as the proposed regulations, provided effective protest rights for the employees whose jobs were placed at risk by these A–76 competitions.

Section 21.0—Definitions

Interested Party

A number of commenters were concerned that the proposed revision to the definition of an ''interested party'' would preclude an ATO from protesting a competition involving a function with 65 or fewer FTEs. That is, because it is defined as an interested party only for competitions related to functions performed by more than 65 FTEs, the ATO cannot file a protest at GAO where an agency conducts a competition (whether standard or streamlined) involving a function performed by 65 or fewer FTEs. While two commenters agreed with this aspect of the proposed rule, five commenters urged GAO to extend the revised definitions of an interested party in sec. 21.0(a)(2) and of an intervenor in sec. 21.0(b)(2) to include all public-private competitions conducted under OMB Circular A–76, regardless of the number of FTEs involved, where the federal agency uses the procurement system to conduct the competition. Two additional commenters recognized that such an extension would be inconsistent with the language of the National Defense Authorization Act for Fiscal Year 2005, but expressed disagreement with the statute. One commenter urged GAO to impose parity by refusing to consider a protest from a private-sector entity in such cases if the public-sector competitor could not file a protest.

GAO recognizes a lack of parity may arise in certain situations: unlike an ATO, a private-sector competitor could have standing to file a protest of a standard A–76 competition involving fewer than 65 FTEs, and of a streamlined A–76 competition, if the agency had issued a solicitation and thereby used the procurement system to determine whether to contract out or to perform work in-house. GAO concludes, however, that the rule appropriately follows the statutory language, which grants interested party and intervenor status to designated parties only in the case of an A–76 competition regarding an activity or function of a Federal agency performed by more than 65 FTEs. In GAO's view, it is for Congress to determine the circumstances under which an in-house entity has standing to protest the conduct of an A–76 competition, and the 2004 statutory changes limited public-sector standing to competitions involving an activity or function of a Federal agency performed by more than 65 FTEs of the Federal agency. Moreover, GAO believes that it would not be consistent with CICA for GAO, in an attempt to achieve parity in a competition related to functions with fewer than 65 FTEs, to refuse to consider a private-sector offeror's protest that is otherwise within GAO's bid protest jurisdiction.

Finally, one commenter objected on the basis that an ATO who files a protest is acting unconstitutionally. Determining the constitutionality of the statutory provisions authorizing ATO protests is beyond the scope of this rulemaking and, indeed, beyond GAO's bid protest function. *See Urban Group, Inc.; McSwain & Assocs., Inc.*, B–281352, B–281353, Jan. 28, 1999, 99–1 CPD ¶ 25 at 8.

Intervenor

One commenter asked that notices of protests be provided to the ATO to allow timely intervention. GAO believes that the requirement in the existing rule for notice to potential intervenors applies and that the existing rule is sufficient to require an agency to provide appropriate notice to the ATO.

Another commenter asked that GAO allow an ATO to intervene only if an employee representative failed to intervene. Two commenters asked GAO to provide standards that a putative employee representative intervenor would have to satisfy in order to be allowed to participate as an intervenor. Two commenters stated that the Federal agency should be permitted to set standards for the putative employee representative intervenor. Three commenters requested that GAO treat a union as presumptively authorized to intervene where it represents affected employees.

GAO believes that it is not possible to anticipate the variety of factual circumstances in which requests to intervene by either ATOs or employee representatives, or both, will occur and, therefore, it is not yet appropriate to set forth standards for how those situations will be resolved. At this time, therefore, GAO will implement the rule as proposed. GAO recognizes that the result may be that two presumably aligned parties (the ATO and the employee representative) may present somewhat different views to GAO. Notwithstanding any difficulty that this result could create, GAO believes that Congress intended that an employee representative could qualify as an intervenor whether or not the ATO is also a party (either as a protester or as an intervenor). In this connection, the conference report stated that ''[a] person representing a majority of the employees would not have standing to file a protest, but would have the right to intervene in a protest filed by an interested party, including the ATO.'' H.R. Rep. No. 108–767, at 648 (2004), *reprinted* in 150 Cong. Rec. H9187, H9527 (daily ed. Oct. 8, 2004).

Protective Order Practice

As noted in the background to the proposed rule, GAO did not propose to address protective order issues in the rule changes, but GAO solicited comments on how those issues should be handled where an ATO and/or employee representative is participating in a protest. Two commenters urged GAO to require counsel for an ATO to apply for admission to a protective order under standards tailored to the role of ATO counsel. One additional commenter opposed requiring application for protective order admission by ATO counsel, but urged GAO to ''admit'' ATO counsel to the protective order if the agency provided certain protections against disclosure of protected material. One other commenter asked GAO to specify the sanctions that would be imposed on an employee representative or ATO if there were an unauthorized disclosure of protected material.

GAO believes that it is premature to provide definitive guidance regarding the access to protected information by the ATO, the employee representative, and their attorneys. Nonetheless, several points of guidance can be offered here. GAO believes that where counsel for the ATO or for the employee representative is not a government employee, that attorney will be required to apply for admission under existing standards established for admission to a protective order. As for the ATO and the employee representative, those individuals would presumably not be provided access to protected information under the protective order, just as non-attorneys in other protests cannot obtain such access. In cases where counsel for the ATO, or for the employee representative, is a government employee, GAO will proceed on a case-by-case basis, with appropriate weight given to the agency's views and, in particular, to the access that the agency has given the attorney to proprietary or source selection sensitive documents before the protest was filed. As the practice develops, and experience is gained by all sides, GAO intends to develop, and publish, uniform procedures that can be incorporated into the bid protest process and, if warranted, into GAO's Bid Protest Regulations.

Issues Not for GAO Review

One commenter requested that GAO specify that the prohibition against protests challenging the decision of an ATO to file (or not to file) a protest should explicitly reference its applicability to A–76 competitions involving more than 65 FTEs. GAO believes that the additional language is unnecessary because the proposed rule already encompasses the requested limitation in sec. 21.0. GAO believes that sec. 21.5(k) comports with the statutory intent that the decision of an ATO regarding whether to file a protest is not subject to GAO review.

List of Subjects in 4 CFR Part 21

Administrative practice and procedure, Bid protest regulations, Government contracts, Government procurement.

■ For the reasons set out in the preamble, title 4, chapter I, subchapter B, part 21 of the Code of Federal Regulations is amended to read as follows:

PART 21—BID PROTEST REGULATIONS

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

Authority: 31 U.S.C. 3551–3556.

■ 2. Amend § 21.0 by redesignating paragraph (a) as paragraph (a)(1) and adding new paragraph (a)(2), and by redesignating paragraph (b) as paragraph (b)(1) and adding new paragraph (b)(2) to read as follows:

§ 21.0 Definitions.

(a)(1) * * *

(2) In a public-private competition conducted under Office of Management and Budget Circular A–76 regarding an activity or function of a Federal agency performed by more than 65 full-time equivalent employees of the Federal agency, the official responsible for submitting the Federal agency tender is also an *interested party*.

(b)(1) * * *

(2) If an interested party files a protest in connection with a public-private competition conducted under Office of Management and Budget Circular A–76 regarding an activity or function of a Federal agency performed by more than 65 full-time equivalent employees of the Federal agency, a person representing a majority of the employees of the Federal agency who are engaged in the performance of the activity or function subject to the public-private competition and the official responsible for submitting the Federal agency tender as described in paragraph (a)(2) of this section may also be *intervenors*.

* * * * *

■ 3. Amend § 21.5 by adding paragraph (k) to read as follows:

§ 21.5 Protest issues not for consideration.

* * * * *

(k) *Decision whether or not to file a protest on behalf of Federal employees.* GAO will not review the decision of an agency tender official to file a protest or not to file a protest in connection with a public-private competition.

Anthony H. Gamboa,

General Counsel, United States Government Accountability Office.

[FR Doc. 05–7489 Filed 4–13–05; 8:45 am]

BILLING CODE 1610–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19757; Directorate Identifier 2001–NM–273–AD; Amendment 39–14024; AD 2005–06–14]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model BAe 146 and Model Avro 146–RJ Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting a typographical error in an existing airworthiness directive (AD) that was published in the **Federal Register** on March 28, 2005 (70 FR 15574). The error resulted in an incorrect AD number. This AD applies to certain British Aerospace Model BAe 146 and Model Avro 146-RJ series airplanes. This AD requires repetitive inspections for cracking of the outer links on the main landing gear side stays, and corrective actions if necessary. This AD also provides for optional terminating action for the repetitive inspections.

DATES: Effective May 2, 2005.

ADDRESSES: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Washington, DC. This docket number is FAA–2004–19757; the directorate identifier for this docket is 2001–NM–273–AD.

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

SUPPLEMENTARY INFORMATION: On March 14, 2005, the FAA issued AD 2005–06–14, amendment 39–14024 (70 FR 15574, March 28, 2005), for certain Model BAe 146 and Avro 146–RJ series airplanes. This AD requires repetitive inspections for cracking of the outer links on the main landing gear side stays, and corrective actions if necessary. This AD also provides for optional terminating action for the repetitive inspections.

As published, the AD number of the final rule is incorrectly cited in the product identification section of the preamble and the regulatory information of the final rule. In the regulatory text, that AD reads ''2005–06–04'' instead of ''2005–06–14.''

No other part of the regulatory information has been changed; therefore, the final rule is not republished in the **Federal Register**.

The effective date of this AD remains May 2, 2005.

PART 39—AIRWORTHINESS DIRECTIVES

§ 39.13 [Corrected]

■ In the **Federal Register** of March 28, 2005, on page 15576, in the first column, the product identification line of AD 2005–06–04 is corrected to read as follows:

* * * * *

2005–06–14 BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Amendment 39–14024. Docket No. FAA–2004–19757; Directorate Identifier 2001–NM–273–AD.

* * * * *

Issued in Renton, Washington, on April 5, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–7483 Filed 4–13–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20916; Directorate Identifier 2005–NM–027–AD; Amendment 39–14055; AD 2005–08–03]

RIN 2120–AA64

Airworthiness Directives; Cessna Model 680 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Cessna Model 680 airplanes. This AD requires revising the airplane flight manual (AFM) to add procedures to facilitate recovery of the cockpit display units in the event that the cockpit display units go blank, and to add flight crew briefings on the use of standby instruments in case the cockpit display units go blank and do not recover. This AD also requires repetitive tests of the avionics standard communication bus (ASCB) for any failures, and corrective action if any failure is found. This AD also requires installing hardware and avionics software upgrades; installing the upgrades will allow removal of AFM revisions and will end the repetitive inspections of the ASCB. This AD is prompted by a report indicating that analysis of the Honeywell Primus Epic systems installed on Cessna Model 680 airplanes revealed that all four of the cockpit display units could go blank simultaneously. We are issuing this AD to prevent a simultaneous loss of data from all four cockpit display units, and loss of primary navigation instruments, autopilot, flight director, master caution/warning lights, aural warnings, global positioning system position information, and air data and altitude information to non-avionics systems. These losses could reduce the flightcrew's situational awareness, increase flightcrew workload, and consequently reduce the ability to maintain safe flight of the airplane.

DATES: Effective April 29, 2005.

The incorporation by reference of certain publications listed in the AD are approved by the Director of the Federal Register as of April 29, 2005.

We must receive comments on this AD by June 13, 2005.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, Room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Cessna Aircraft Co., P.O. Box 7706, Wichita, Kansas 67277.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–20916; the directorate identifier for this docket is 2005–NM–027–AD.

Examining the Dockets

You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

FOR FURTHER INFORMATION CONTACT: Bryan Easterwood, Aerospace Engineer, Electrical and Avionics Systems, ACE–119W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4132; fax (316) 946–4107.

SUPPLEMENTARY INFORMATION: We have received reports indicating that, on airplanes equipped with the Honeywell Primus Epic system, all information on all cockpit display units may be lost (blank screens) or may become simultaneously invalid during flight. On Cessna Model 680 airplanes, this condition has been attributed to a failure of the master network interface controller (NIC) in the Honeywell Primus Epic system to synchronize with NICs that control the avionics system communication bus (ASCB). Attempts by all of the NICs to re-synchronize disables all ASCB data. The synchronization process can be delayed or worsened by a failure of any ASCB. This condition, if not corrected, could result in the simultaneous loss of data from all four cockpit display units, and loss of primary navigation instruments, autopilot, flight director, master caution/warning lights, aural warnings, global positioning system position information, and air data and altitude information to non-avionics systems. These losses could reduce the flightcrew's situational awareness, increase flightcrew workload, and consequently reduce the ability to maintain safe flight of the airplane.

Other Relevant Rulemaking

We have determined that, since the Honeywell Primus Epic system is also installed on Dassault Model Falcon 2000EX and 900EX series airplanes, Gulfstream Model GV–SP series airplanes, and Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170 series airplanes, those airplanes are subject to an unsafe condition similar to that addressed in this AD. In light of that determination, we issued the ADs listed in the following table to address the unsafe condition on those airplane models.

RELATED ADS

Airplane	AD citation
Dassault Model Falcon 2000EX and 900EX series airplanes	AD 2005–04–15, amendment 39–13987 (70 FR 9853, March 1, 2005).
Gulfstream Model GV–SP series airplanes	AD 2005–04–06, amendment 39–13978 (70 FR 7847, February 16, 2005).
EMBRAER Model ERJ 170 series airplanes	AD 2004–26–12, amendment 39–13924 (69 FR 78300, December 30, 2004).

Relevant Service Information

We have reviewed Cessna Service Bulletin SB680–34–03, including Attachment, Revision 1, dated March 18, 2005. The service bulletin describes procedures for performing repetitive tests of the avionics standard communication bus (ASCB) for any failures; accomplishing corrective action if any failure is found during the ASCB test; and installing hardware and avionics software upgrades. The corrective action for ASCB test failures includes fixing any wiring problems, replacing parts, and correcting computer configurations. The hardware and avionics software upgrades include:

- Installing a software upgrade of the Honeywell Primus Epic system;
- Replacing the horizontal stabilizer trim actuator with a new, improved actuator;
- Modifying certain wiring associated with the actuator; and
- Replacing two printed circuit boards (PCBs) with new, improved PCBs.

We have also reviewed Cessna Temporary Changes (TC) 68FM TC–R03–01; 68FM TC–R03–02; 68FM TC–R03–03; and 68FM TC–R03–04; all dated March 18, 2005; to the Cessna Model 680 Citation Airplane Flight Manual (AFM). The TCs describe procedures to recover the cockpit display units in the event that all four cockpit display units go blank during flight. Additionally, these TCs advise the flight crew that, during the use of Taxi, Before Takeoff, Approach, and Before Landing checklists, the briefings (takeoff and approach) should include the possibility of the loss of all cockpit display units and the subsequent transition to standby instruments.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other airplanes of the same type design. Therefore, we are issuing this AD to prevent the simultaneous loss of data from all four cockpit display units, and loss of primary navigation instruments, autopilot, flight director, master caution/warning lights, aural warnings, global positioning system position information, and air data and altitude information to non-avionics systems. These losses could reduce the flightcrew's situational awareness, increase flightcrew workload, and consequently reduce the ability to maintain safe flight of the airplane. This AD requires accomplishing the actions specified in the service bulletin described previously, except as discussed under ''Difference Between the AD and the Service Bulletin.'' This AD also requires revising the AFM to include the information in the TCs described previously.

Difference Between the AD and the Service Bulletin

Operators should note that, although the Accomplishment Instructions of the referenced service bulletin describe procedures for submitting a maintenance transaction report recording compliance with the service bulletin, this AD does not require that action. The FAA does not need this information from operators.

Clarification of Actions Beyond What Is Necessary To Prevent the Unsafe Condition

The Cessna service bulletin was being developed for Honeywell Epic Phase 2 certification before the unsafe condition was reported to the FAA. The software upgrade that is necessary for preventing the unsafe condition is included with software upgrades that were developed for the Phase 2 certification. Hardware upgrades that were also developed for the Phase 2 certification are included in the service bulletin. While it is theoretically possible to separate the upgrades and then issue a service bulletin that specifies only the software upgrades necessary to prevent the unsafe conditions, it is impractical to do the service bulletin revision before the effective date of this AD. Therefore, we find it necessary to require accomplishment of all the software upgrades and hardware upgrades specified in the service bulletin.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD; therefore, providing notice and opportunity for public comment before the AD is issued is impracticable, and good cause exists to make this AD effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2005–20916; Directorate Identifier 2005–NM–027–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of our docket Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. 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.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA 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 rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify that the regulation:

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–08–03 Cessna Aircraft Company: Amendment 39–14055. Docket No. FAA–2005–20916; Directorate Identifier 2005–NM–027–AD.

Effective Date

(a) This AD becomes effective April 29, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Cessna Model 680 airplanes, certificated in any category; with serial numbers –0001 through –0021 inclusive.

Unsafe Condition

(d) This AD was prompted by a report indicating that analysis of the Honeywell Primus Epic systems installed on Cessna Model 680 airplanes revealed that all four of the cockpit display units could go blank simultaneously. The FAA is issuing this AD to prevent a simultaneous loss of data from all four cockpit display units, and loss of primary navigation instruments, autopilot, flight director, master caution/warning lights, aural warnings, global positioning system (GPS) position information, and air data and altitude information to non-avionics systems. These losses could reduce the flightcrew's situational awareness, increase flightcrew workload, and consequently reduce the ability to maintain safe flight of the airplane.

Compliance

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

Airplane Flight Manual (AFM) Revisions

(f) Within 72 hours after the effective date of this AD, revise the applicable sections of the Cessna Model 680 Citation Airplane Flight Manual 68FM by inserting a copy of the procedures contained in the temporary changes listed in Table 1 of this AD.

TABLE 1.—CESSNA TEMPORARY CHANGES

Cessna temporary changes	Date
68FM TC–R03–01	March 18, 2005.
68FM TC–R03–02	March 18, 2005.
68FM TC–R03–03	March 18, 2005.
68FM TC–R03–04	March 18, 2005.

Initial and Repetitive Tests

(g) Within 30 days after the effective date of this AD, do a test of the avionics system communication bus for any failure indication in accordance with the Attachment of Cessna Service Bulletin SB680–34–03, Revision 1, dated March 18, 2005. If any failure indications are found during the test, do applicable corrective actions before further flight in accordance with the service bulletin. Repeat the test thereafter at intervals not to exceed 30 days until the actions required by paragraph (h) of this AD are done.

Terminating Actions

(h) Within 90 days after the effective date of this AD, do hardware and avionics software upgrades in accordance with the Accomplishment Instructions of Cessna Service Bulletin SB680–34–03, including Attachment, Revision 1, dated March 18, 2005. Doing the requirements of this paragraph ends the requirements of paragraph (g) of this AD, and the AFM revisions required by paragraph (f) of this AD may be removed from the AFM.

No Reporting Required

(i) Although the service bulletin referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Previous Actions

(j) Hardware and avionics software upgrades done before the effective date of this AD in accordance with the Accomplishment Instructions of Cessna Service Bulletin SB680–34–03, dated February 2, 2005, is acceptable for compliance with the requirements of paragraph (h) of this AD.

Alternative Methods of Compliance (AMOCs)

(k) The Manager, Wichita Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(l) You must use the service information that is specified in Table 2 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For copies of the service information, contact Cessna Aircraft Co., P.O. Box 7706, Wichita, Kansas 67277. To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC. To review copies of the service information, go to 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.*

TABLE 2.—MATERIAL INCORPORATED BY REFERENCE

Cessna service information	Revision level	Date
Cessna Service Bulletin SB680–34–03, including Attachment	1	March 18, 2005
Cessna Temporary Change 68FM TC–R03–01	Original	March 18, 2005.
Cessna Temporary Change 68FM TC–R03–02	Original	March 18, 2005.
Cessna Temporary Change 68FM TC–R03–03	Original	March 18, 2005.
Cessna Temporary Change 68FM TC–R03–04	Original	March 18, 2005.

Issued in Renton, Washington, on April 5, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–7379 Filed 4–13–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19176; Directorate Identifier 2003–NM–36–AD; Amendment 39–14054; AD 2005–08–02]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and –145 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to all EMBRAER Model EMB–135 and –145 series airplanes. That AD currently requires repetitive inspections of the electrical connectors of the electric fuel pumps to detect discrepancies, and follow-on corrective actions. This new AD extends the repetitive intervals for the inspections; adds new criteria for replacing discrepant fuel pumps; adds a new requirement for applying anti-corrosion spray; adds a requirement to replace all fuel pumps with improved fuel pumps; and adds repetitive inspections after all six fuel pumps are replaced. This AD is prompted by the manufacturer's development of a new modification that addresses the unsafe condition in the existing AD. We are issuing this AD to prevent an ignition source in the fuel tank or adjacent dry bay, which could result in fire or explosion.

DATES: This AD becomes effective May 19, 2005.

The incorporation by reference of certain service information, as listed in the AD, is approved by the Director of the Federal Register as of May 19, 2005.

On October 3, 2000 (65 FR 56233, September 18, 2000), the Director of the Federal Register approved the incorporation by reference of certain other service information.

ADDRESSES: For service information identified in this AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil.

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Washington, DC. This docket number is FAA–2004–19176; the directorate identifier for this docket is 2003–NM–36–AD.

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

SUPPLEMENTARY INFORMATION: The FAA proposed to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) with an AD to supersede AD 2000–19–02, amendment 39–11903 (65 FR 56233, September 18, 2000). The existing AD applies to all EMBRAER Model EMB–135 and –145 series airplanes. The proposed AD was published in the **Federal Register** on September 28, 2004 (69 FR 57888), to extend the repetitive intervals for the inspections; add new criteria for replacing discrepant fuel pumps; add a new requirement for applying anti-corrosion spray; add a requirement to replace all fuel pumps with improved fuel pumps; and add repetitive inspections after all six fuel pumps are replaced.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments that have been submitted on the proposed AD.

Request to Extend Compliance Time

One commenter, an operator, ended the repetitive inspections required by AD 2000–19–02 for its fleet after completing an approved alternative method of compliance (AMOC) with that AD (after all pumps had been upgraded to part number (P/N) 2C7–4). As a result, the operator would need more time to reinstitute the inspections specified in the new proposed AD. The commenter requests that we extend the proposed compliance time from 1,200 to 2,000 flight hours.

We agree. We find that P/Ns 2C7–4 must be inspected and sprayed within 8,000 flight cycles after their replacement, and repeated thereafter at intervals not to exceed 8,000 flight cycles. Therefore, for airplanes that have all P/N 2C7–4 pumps, we have revised the initial compliance times specified in paragraph (i) of this AD accordingly.

Request to Change Replacement Part Requirement

The commenter (the manufacturer) opposes the proposed requirement to replace P/N 2C7–1 only with P/N 2C7–4. From the parallel Brazilian airworthiness directive 2000–08–01R2, dated February 13, 2002, the commenter concludes that the electric fuel pumps with P/Ns 2C7–1 and 2C7–4 would be equally airworthy, if they are inspected within 1,200- and 8,000-flight-hour intervals, respectively. The commenter adds that the Brazilian action allows the 8,000-flight-hour interval only when all pumps on the airplane are P/N 2C7–4. The commenter considers the procedures of EMBRAER Service Bulletin 145–28–0013, dated April 25, 2001, ''technically acceptable as a 'terminal action' to prevent fuel tanks and surrounding areas from ignition sources.'' (The proposed AD specified that service bulletin as the source of service information for the new inspections.) The commenter states that the improvements to the P/N 2C7–4 pump should allow its repetitive inspection interval to be extended. The commenter therefore requests that we revise the proposed AD to change the replacement part in paragraph (k) from a ''new electric fuel pump that has part number (P/N) 2C7–4'' to a ''serviceable component'' and remove paragraphs (l) and (o) from the proposed AD. (Paragraph (l) would ensure that all pumps are P/N 2C7–4; paragraph (o) would prohibit installing P/N 2C7–1.) The commenter provides the following additional support for this request:

- Periodic inspections and anti-corrosion spray application within short intervals were effective in avoiding blackened and damaged P/N 2C7–1 pumps.
- There have been no reports of failed pumps due to blackened pins since the service bulletin was released.
- Pumps with blackened pins have functioned properly when removed during the required inspections.
- The results of the manufacturer's SFAR 88 critical analysis indicate that maintaining a pump having P/N 2C7–1 according to the service bulletin would fulfill the requirements of the proposed AD.

We agree with the request. We have determined that undamaged pumps with P/N 2C7–1 will be adequate if they

are lubricated, sprayed, and inspected within 1,200-flight-hour intervals. We have revised paragraph (k), removed paragraphs (l) and (o), and redesignated the paragraphs accordingly in this final rule.

Request To Extend Repetitive Interval

In light of existing operational data, the commenter (an operator) requests that we extend the proposed repetitive inspection interval from 8,000 to 10,000 flight hours. The commenter states that this adjustment would align with current maintenance review board limitations and save operators considerable expense associated with the additional maintenance. The commenter adds that the previously described AMOC for AD 2000–19–02 allowed the inspections of its fleet to be terminated, and notes that no indications of the identified issues exist.

We disagree with the request to extend the repetitive interval. The commenter did not explain how the data would demonstrate that the unsafe condition would be addressed. If additional data are presented that would justify a longer compliance time, we may consider further rulemaking on this issue. In light of this, and in consideration of the amount of time that has already elapsed since issuance of the original notice, we have determined that further delay of this final rule is not appropriate. However, paragraph (n)(1) of this final rule provides affected operators the opportunity to apply for an adjustment of the compliance time if the operator also presents data that justify the adjustment.

Additional Change to Proposed AD

The final sentence of proposed paragraph (i) read as follows: ''Doing the inspection required by this paragraph terminates the repetitive inspections required by paragraph (f) of this AD.'' We have revised paragraph (i) in this final rule to clarify that accomplishment of the initial inspection only is terminating action.

Conclusion

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

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspections (required by AD 2000–19–02).	1 per inspection cycle.	$65	None	$65 per inspection.	290	$18,850 inspection per cycle.
Repetitive inspections (new proposed action).	1 per inspection cycle.	$65	None	$65 per inspection cycle.	290	$18,850 per inspection cycle.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. 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.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA 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 rulemaking action.

Regulatory Findings

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing amendment 39–11903 (65 FR 56233, September 18, 2000) and adding the following new airworthiness directive (AD):

2005–08–02 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–14054. Docket No. FAA–2004–19176; Directorate Identifier 2003–NM–36–AD.

Effective Date

(a) This AD becomes effective May 19, 2005.

Affected ADs

(b) This AD supersedes AD 2000–19–02, amendment 39–11903.

Applicability

(c) This AD applies to all EMBRAER Model EMB–135 and –145 series airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by the manufacturer's development of a new modification that addresses the unsafe condition in AD 2000–19–02. We are issuing this AD to prevent an ignition source in the fuel tank or adjacent dry bay, which could result in fire or explosion.

Compliance

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

Restatement of the Requirements of AD 2000–19–02

Repetitive Inspections

(f) Perform a general visual inspection of the electrical connectors of the fuel pumps in the right- and left-hand wings to detect discrepancies (including blackened connector pins, damage to electrometric insert, cracks, erosion, or charring), in accordance with EMBRAER Alert Service Bulletin S.B. 145–28–A013, dated August 16, 2000, at the times specified in paragraphs (f)(1), (f)(2), and (f)(3) of this AD, as applicable. Repeat the inspection thereafter at intervals not to exceed 400 flight hours until the inspection required by paragraph (i) of this AD is done.

(1) For airplanes having 1,200 total flight hours or less as of October 3, 2000 (the effective date of AD 2000–19–02, amendment 39–11903): Prior to the accumulation of 1,600 total flight hours.

(2) For airplanes having more than 1,200 total flight hours, but less than 4,000 total flight hours, as of October 3, 2000: Within 400 flight hours after October 3, 2000.

(3) For airplanes having 4,000 total flight hours or more as of October 3, 2000: Prior to the accumulation of 4,400 total flight hours, or within 50 flight hours after October 3, 2000, whichever occurs later.

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

Follow-On Corrective Actions

(g) If any discrepancy (including blackened connector pins, damage to electrometric insert, cracks, erosion, or charring) is detected after accomplishment of any inspection required by paragraph (f) of this AD: Before further flight, replace the fuel pump and its mating airplane connector in accordance with EMBRAER Alert Service Bulletin S.B. 145–28–A013, dated August 16, 2000.

(h) After accomplishment of the replacement required by paragraph (g) of this AD, before further flight: Perform a general visual inspection of the electrical connectors adjacent to the fuel pump to detect damage (visible cracks, erosion, or charring), in accordance with EMBRAER Alert Service Bulletin S.B. 145–28–A013, dated August 16, 2000, and accomplish the requirements in paragraph (h)(1) or (h)(2) of this AD, as applicable.

(1) If any damage is detected, before further flight, replace the connectors with new ones in accordance with the alert service bulletin.

(2) If no damage is detected, before further flight, replace only the socket contacts with new contacts in accordance with the alert service bulletin.

New Requirements of This AD

Inspections

(i) Do a general visual inspection of the electrical connectors of the fuel pumps in the right- and left-hand wings to detect discrepancies (including any corrosion, surface irregularities, damaged plating, blackened pins, damaged elastomeric inserts, cracks, erosion, or charring of the connector). Do the first inspection at the applicable time in paragraph (i)(1), (i)(2), or (i)(3) of this AD, in accordance with part I of the Accomplishment Instructions of EMBRAER Service Bulletin 145–28–0013, dated April 25, 2001. Repeat the inspection thereafter at intervals not to exceed 1,200 flight hours until all six fuel pumps are replaced with P/N 2C7–4 pumps. When all six fuel pumps have been replaced with P/N 2C7–4 pumps, repeat the inspection thereafter at intervals not to exceed 8,000 flight hours. Doing the initial inspection required by this paragraph terminates the repetitive inspections required by paragraph (f) of this AD.

(1) For airplanes that have been inspected in accordance with paragraph (f) of this AD as of the effective date of this AD but do not have all six P/N 2C7–4 pumps: Within 1,200 flight hours since the most recent inspection done in accordance with paragraph (f) of this AD.

(2) For airplanes inspected in accordance with paragraph (f) of this AD as of the effective date of this AD that have all six P/N 2C7–4 pumps: Within 8,000 flight cycles since replacement of all six pumps with P/N 2C7–4 pumps, or within 2,000 flight cycles after the effective date of this AD, whichever occurs later.

(3) For airplanes that have not been inspected in accordance with paragraph (f) of this AD as of the effective date of this AD: Within 1,200 flight hours after the effective date of this AD.

Corrective Action If No Discrepancy Is Found

(j) If there is no evidence of a discrepancy found during any inspection required by paragraph (i) of this AD: Before further flight, apply anti-corrosion spray on the male contacts of the fuel pump electrical connectors in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145–28–0013, dated April 25, 2001.

Replacement If Any Discrepancy Is Found

(k) If any evidence of a discrepancy is found during any inspection required by paragraph (i) of this AD: Before further flight, replace the electric fuel pump with a serviceable pump in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145–28–0013, dated April 25, 2001. After the replacement, repeat the inspection required by paragraph (i) of this AD at the applicable interval in that paragraph.

Inspection and Corrective Actions

(l) Before further flight after replacing a fuel pump, as required by paragraph (k) of this AD: Do a general visual inspection for damage of the mating aircraft connectors; and do the applicable corrective action in paragraph (l)(1) or (l)(2) of this AD; in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145–28–0013, dated April 25, 2001.

(1) If there is any sign of damage to the mating aircraft connectors: Replace the affected connector with a new connector, and apply anti-corrosion spray on the male contacts of the fuel pump electric connectors.

(2) If there is no sign of damage to the mating aircraft connectors: Replace only the socket contacts with new socket contacts, and apply anti-corrosion spray on the male contacts of the fuel pump electric connectors.

Master Minimum Equipment List (MMEL)

(m) The inspections required by paragraphs (f) and (i) of this AD apply to the six electric fuel pumps in the right- and left-hand wings (three pumps in each wing). For pump replacement planning purposes, the airplane may be operated in accordance with the provisions and limitations specified in an operator's FAA-approved MMEL, provided that no more than one fuel pump on each wing on the airplane is inoperative.

Note 2: When operating under the MMEL, operators must comply with the unusable fuel quantity as referenced in the Limitations Section of the appropriate FAA-approved Airplane Flight Manual.

Alternative Methods of Compliance (AMOCs)

(n)(1) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) Alternative methods of compliance, approved previously per AD 2000–19–02, amendment 39–11903, are not approved as alternative methods of compliance with this AD.

Related Information

(o) Brazilian airworthiness directive 2000–08–01R2, dated February 13, 2002, also addresses the subject of this AD.

Material Incorporated by Reference

(p) You must use EMBRAER Alert Service Bulletin S.B. 145–28–A013, dated August 16, 2000; and EMBRAER Service Bulletin 145–28–0013, dated April 25, 2001; as applicable; to perform the actions that are required by this AD, unless the AD specifies otherwise.

(1) The incorporation by reference of EMBRAER Service Bulletin 145–28–0013, dated April 25, 2001, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of EMBRAER Alert Service Bulletin S.B. 145–28–A013, dated August 16, 2000, was approved previously by the Director of the Federal Register as of October 3, 2000 (65 FR 56233, September 18, 2000).

(3) Copies may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. 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.*

Issued in Renton, Washington, on April 1, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–7282 Filed 4–13–05; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 742, 744, and 774

[Docket No. 050401091–5091–01]

RIN 0694–AD37

Expansion of the Country Scope of the License Requirements that Apply to Chemical/Biological (CB) Equipment and Related Technology; Amendments to CB-Related End-User/End-Use and U.S. Person Controls

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) is publishing this final rule to amend the Export Administration Regulations (EAR) by increasing the country scope of chemical/biological (CB) controls on those Commerce Control List (CCL) entries that contain chemical/biological equipment and related technology included on the Australia Group (AG) Common Control Lists. Specifically, this final rule expands the country scope of the CB license requirements for these CCL entries from certain countries of concern for chemical/biological weapons reasons to all destinations, worldwide, except for those countries that participate in the Australia Group (AG). These changes are intended to make the EAR license requirements that apply to chemical/biological equipment and related technology identified on the AG Common Control Lists consistent with the AG ''Guidelines for Transfers of Sensitive Chemical or Biological Items.''

In addition, this rule amends certain end-user and end-use based controls in the EAR by expanding these controls to include transfers (in-country), as well as exports and reexports. Specifically, this final rule expands the EAR restrictions on certain chemical and biological weapons end-uses to apply to exports, reexports, and transfers of items subject to the EAR to or within any country or destination, worldwide. Prior to the publication of this rule, such restrictions applied only to exports and reexports.

Finally, this rule amends the EAR by expanding the country scope of the restrictions on certain activities of U.S. persons to include activities in support of the design, development, production, stockpiling, or use of chemical or biological weapons in or by any country or destination, worldwide. This change makes the country scope of these U.S. person controls consistent with the country scope of the chemical and biological weapons end-user/end-use controls in Section 744.4 of the EAR, as described above.

DATES: This rule is effective April 14, 2005. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

ADDRESSES: You may submit comments, identified by RIN 0694–AD37, by any of the following methods:

- E-mail: *wfisher@bis.doc.gov*. Include ''RIN 0694–AD37'' in the subject line of the message.
- Fax: (202) 482–3355. Please alert the Regulatory Policy Division, by calling (202) 482–2440, if you are faxing comments.
- Mail or Hand Delivery/Courier: Willard Fisher, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, ATTN: RIN 0694–AD37.

FOR FURTHER INFORMATION CONTACT: Mark Sagrans, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, telephone: (202) 482–7900.

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) by increasing the country scope of the chemical/biological (CB) controls that apply to entries on the Commerce Control List (CCL) (Supplement No. 1 to Part 774 of the EAR) that list chemical/biological equipment and related technology included on the Australia Group (AG) Common Control Lists. The AG is a multilateral forum, consisting of 38 participating countries, that maintains export controls on lists of chemicals, biological agents, and related equipment and technology that could be used in a chemical or biological weapons program.

Specifically, this rule amends Export Control Classification Numbers (ECCNs) 1A004, 2A226, 2A292, 2B350, 2B351, 2B352, 2E001, 2E002, 2E201, 2E290, and 2E301 by revising the License Requirements section in each of these ECCNs to expand the country scope of the CB license requirements for these ECCNs from CB Column 3 to CB Column 2. The countries that require a license under CB Column 2 or CB Column 3 are indicated in the Commerce Country Chart (Supplement No. 1 to Part 738 of the EAR). Prior to the publication of this rule, these ECCNs required a license, for CB reasons, only to certain countries of concern for chemical/biological weapons reasons. Effective with the publication of this rule, the CB license requirements for these ECCNs now apply to all destinations, worldwide, except for those countries that participate in the Australia Group (AG), *i.e.*, those countries identified in Country Group A:3 (Australia Group) in Supplement No. 1 to Part 740 of the EAR.

This rule also amends ECCN 1E001 by: (1) revising the ECCN, in conformance with entry 1.E.1 on the Wassenaar Arrangement (WA) ''List of Dual-Use Goods and Technologies,'' to control technology for the ''development'' or ''production'' of equipment controlled by 1A004; (2) expanding the CB Column 2 controls in ECCN 1E001 to include technology for the ''development'' or ''production'' of chemical detection systems and dedicated detectors therefor, in 1A004.c, that also have the technical characteristics described in 2B351.a; and (3) correcting the NS Column 1 controls in ECCN 1E001 to include technology for the ''development'' or ''production'' of metals and compounds

controlled under 1C011. These changes are consistent with BIS's regular practice of including technologies on the WA Dual-Use List in the CCL and ensure that this 1A004 technology is subject to the appropriate national security (NS), chemical-biological (CB), and anti-terrorism (AT) controls.

In addition, this rule makes conforming changes to Section 742.2(a) of the EAR, which identifies the CB license requirements that apply to those ECCNs containing items identified on one of the AG lists. Specifically, this rule removes all references to ECCNs 1A004, 2A226, 2A292, 2B350, 2B351, 2B352, 2E001, 2E002, 2E201, 2E290, and 2E301 from Section 742.2(a)(3). This section identifies those ECCNs containing AG-listed items requiring a license to countries indicated under CB Column 3 of the Commerce Country Chart. This rule also adds references to these ECCNs (as well as the 1A004.c CB-controlled technology in ECCN 1E001) to Section 742.2(a)(2), which identifies those ECCNs containing AG-listed items requiring a license to countries indicated under CB Column 2 of the Commerce Country Chart.

The changes made to the Commerce Control List and to Section 742.2 by this rule are intended to make the EAR license requirements that apply to AG-listed chemical/biological equipment and related technology consistent with the AG ''Guidelines for Transfers of Sensitive Chemical or Biological Items.'' These changes will likely result in an increase in the number of license applications that will have to be submitted to BIS for exports and reexports of equipment and technology affected by the expansion in the number of destinations for which a license is required for CB reasons. For example, expanding the number of destinations for which a license is required for exports and reexports of technology related to AG-controlled chemical/biological equipment (*i.e.*, CB-controlled technology in ECCNs 1E001, 2E001, 2E002, 2E201, 2E290, and 2E301) will likely result in an increase in the number of ''deemed'' export license applications that will have to be submitted to BIS.

This rule also amends the EAR by expanding the types of transactions that would require a license pursuant to the chemical and biological weapons end-user/end-use controls in Section 744.4 of the EAR. This final rule amends paragraphs (a), (b), and (d) in Section 744.4 of the EAR to apply to transfers (in-country), as well as exports and reexports. Prior to the publication of this rule, the end-user/end-use controls in Section 744.4 applied only to exports and reexports, although U.S. persons have been and continue to be subject to certain in-country transfer restrictions described in § 744.6 of the EAR. In conjunction with expanding the scope of Section 744.4 to include transfers (in-country), this rule replaces the term ''exporters,'' in paragraph (b) of that section, with the term ''persons,'' to make subsections 744.4(a) and (b) consistent with each other.

As amended by this rule, Section 744.4(a) of the EAR requires a license to export, reexport, or transfer (in-country) items subject to the EAR if, at the time of the export, reexport, or transfer, the party responsible for the export, reexport, or transfer knows that the items are intended for chemical or biological weapons activities in or by any country or destination, worldwide. Section 744.4(b) of the EAR authorizes BIS to inform persons that a license is required for a specific export, reeexport, or transfer (in-country), or for the export, reeexport, or transfer (in-country) of specific items to a certain end-user, because there is an unacceptable risk of diversion to chemical or biological weapons activities, anywhere in the world.

The term ''transfer (in-country),'' as used in the context of Section 744.4 of the EAR, means the transfer of an item subject to the EAR within a foreign country, if the transferor has knowledge that the transferee will use the ''item'' in the design, development, production, stockpiling, or use of chemical or biological weapons. The term ''transfer (in-country),'' as used in Section 744.4, does not apply to a transfer within the United States. However, Section 764.2(e) of the EAR indicates that certain activities involving items subject to the EAR (including transfers of such items within the United States) are prohibited, if a person acts with knowledge of a violation of the EAR, the Export Administration Act (EAA), or any order, license, license exception, or other authorization issued thereunder with respect to such items. The release of technology or source code subject to the EAR to certain foreign nationals in the United States, as described in Section 734.2(b)(2)(ii) of the EAR, constitutes a ''deemed'' export, not a ''transfer (in-country).''

This rule also amends Section 744.6(a)(1)(i)(C) and (a)(2)(ii) of the EAR to expand the country scope of the restrictions on certain activities of U.S. persons to include activities in support of the design, development, production, stockpiling, or use of chemical or biological weapons in or by any country or destination, worldwide. Prior to the publication of this rule, these U.S. person restrictions applied only to activities involving certain countries of concern for chemical and biological weapons reasons (*i.e.*, Country Group D:3 in Supplement 1 to Part 740 of the EAR). This change makes the country scope of these U.S. person controls consistent with the country scope of the chemical and biological weapons end-user/end-use controls in Section 744.4 of the EAR, as described above. On March 30, 2005 (70 FR 16110), BIS published a final rule that expanded the country scope of the end-user/end-use controls in Section 744.4 of the EAR from certain countries of concern for chemical and biological reasons (*i.e.*, Country Group D:3) to include all destinations, worldwide, including the countries identified in Country Group A:3 (*i.e.*, the AG-participating countries).

Although the Act expired on August 20, 2001, Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 6, 2004, 69 FR 48763 (August 10, 2004), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Saving Clause

Shipments of items removed from eligibility for export or reexport under a license exception or without a license (*i.e.*, under the designator ''NLR'') as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export, on April 29, 2005, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previously applicable license exception or without a license (NLR) so long as they are exported or reexported before May 16, 2005. Any such items not actually exported or reexported before midnight, on May 16, 2005, require a license in accordance with this regulation.

Transfers (in-country) that are made subject to a license requirement as a result of this regulatory action may be made without a license before May 16, 2005. Beginning at midnight on May 16, 2005, transfers (in-country) require a license in accordance with this regulation.

Deemed'' exports of ''technology'' and ''source code'' removed from eligibility for export under a license exception or without a license (under the designator ''NLR'') as a result of this regulatory action may continue to be made under the previously available license exception or without a license (NLR) before August 12, 2005. Beginning at

midnight on August 12, 2005, such ''technology'' and ''source code'' may no longer be released, without a license, to a foreign national subject to the ''deemed'' export controls in the EAR when a license would be required to the home country of the foreign national in accordance with this regulation.

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule contains a collection of information subject to the requirements of the PRA. This collection has been approved by OMB under Control Number 0694–0088 (Multi-Purpose Application), which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to David Rostker, Office of Management and Budget (OMB), by e-mail to *David_Rostker@omb.eop.gov*, or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

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

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

List of Subjects

15 CFR Part 742

Exports, Foreign trade.

15 CFR Part 744 and 774

Exports, Foreign trade, Reporting and recordkeeping requirements.

■ Accordingly, parts 742, 744, and 774 of the Export Administration Regulations (15 CFR parts 730 through 799) are amended as follows:

PART 742—[AMENDED]

■ 1. The authority citation for 15 CFR Part 742 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004), Notice of November 4, 2004, 69 FR 64637 (November 8, 2004).

■ 2. Section 742.2 is amended by revising paragraphs (a)(2) and (a)(3) to read as follows:

§ 742.2 Proliferation of chemical and biological weapons.

(a) * * *

(2) If CB Column 2 of the Country Chart (Supplement No. 1 to part 738 of the EAR) is indicated in the appropriate ECCN, a license is required to all destinations except countries in Country Group A:3 (see Supplement No. 1 to part 740 of the EAR) (Australia Group members) for the following:

(i) Chemicals identified in ECCN 1C350 (precursor and intermediate chemicals used in the production of chemical warfare agents).

(A) This license requirement includes chemical mixtures identified in ECCN 1C350.b, .c, or .d, except as specified in License Requirements Note 2 to that ECCN.

(B) This licensing requirement does not include chemical compounds created with any chemicals identified in ECCN 1C350, unless those compounds are also identified in ECCN 1C350.

(C) This licensing requirement does not apply to any of the following medical, analytical, diagnostic, and food testing kits that consist of pre-packaged materials of defined composition that are specifically developed, packaged, and marketed for diagnostic, analytical, or public health purposes:

(*1*) Test kits containing no more than 300 grams of any chemical controlled by ECCN 1C350.b or .c (CB-controlled chemicals also identified as Schedule 2 or 3 chemicals under the CWC) that are destined for export or reexport to CWC States Parties (destinations listed in Supplement No. 2 to part 745 of the EAR). Such test kits are controlled by ECCN 1C395 for CB and CW reasons, to States not Party to the CWC (destinations not listed in Supplement No. 2 to part 745 of the EAR), and for AT reasons.

(*2*) Test kits that contain no more than 300 grams of any chemical controlled by ECCN 1C350.d (CB-controlled chemicals not also identified as Schedule 1, 2, or 3 chemicals under the CWC). Such test kits are controlled by ECCN 1C995 for AT reasons.

(ii) Software (ECCN 1D390) for process control that is specifically configured to control or initiate production of the chemical precursors controlled by ECCN 1C350.

(iii) Technology (ECCN 1E001) for the development or production of chemical detection systems and dedicated detectors therefore, controlled by ECCN 1A004.c, that also have the technical characteristics described in ECCN 2B351.a.

(iv) Technology (ECCNs 1E001 and 1E350) involving the following for facilities designed or intended to produce chemicals described in 1C350:

(A) Overall plant design;

(B) Design, specification, or procurement of equipment;

(C) Supervision of construction, installation, or operation of complete plant or components thereof;

(D) Training of personnel; or

(E) Consultation on specific problems involving such facilities.

(v) Technology (ECCNs 1E001 and 1E351) for the production and/or disposal of chemical precursors described in ECCN 1C350;

(vi) Equipment and materials identified in ECCN 2B350 or 2B351 on the CCL, chemical detection systems controlled by 1A004.c for detecting chemical warfare agents and having the characteristics of toxic gas monitoring systems described in 2B351.a, and valves controlled by ECCN 2A226 or ECCN 2A292 having the characteristics of those described in 2B350.g, which can be used in the production of chemical weapons precursors or chemical warfare agents.

(vii) Equipment and materials identified in ECCN 2B352, which can be

used in the production of biological agents.

(viii) Technology identified in ECCN 2E001, 2E002, or 2E301 for:

(A) The development, production, or use of items controlled by ECCN 2B350, 2B351, or 2B352; or

(B) The development or production of valves controlled by ECCN 2A226 or 2A292 having the characteristics of those described in ECCN 2B350.g.

(ix) Technology identified in ECCN 2E201 or 2E290 for the use of valves controlled by ECCN 2A226 or 2A292 having the characteristics of those described in 2B350.g.

(3) If CB Column 3 of the Country Chart (Supplement No. 1 to part 738 of the EAR) is indicated in the appropriate ECCN, a license is required to Country Group D:3 (*see* Supplement No. 1 to part 740 of the EAR) for medical products identified in ECCN 1C991.d.

* * * * *

PART 744—[AMENDED]

■ 3. The authority citation for 15 CFR Part 744 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of October 29, 2003, 68 FR 62209, 3 CFR, 2003 Comp., p. 347; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004).

■ 4. Section 744.4 is amended by revising paragraphs (a), (b), and (d) to read as follows:

§ 744.4 Restrictions on certain chemical and biological weapons end-uses.

(a) *General prohibition.* In addition to the license requirements for items specified on the CCL, you may not export, reexport, or transfer (in-country) an item subject to the EAR without a license if, at the time of export, reexport, or transfer you know that the item will be used in the design, development, production, stockpiling, or use of chemical or biological weapons in or by any country or destination, worldwide.

(b) *Additional prohibition on persons informed by BIS.* BIS may inform persons, either individually by specific notice or through amendment to the EAR, that a license is required for a specific export, reexport, or transfer (in-country), or for the export, reexport, or transfer (in-country) of specified items to a certain end-user, because there is an unacceptable risk of use in or diversion to the activities specified in paragraph (a) of this section, anywhere in the world. Specific notice is to be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is provided orally, it will be followed by a written notice within two working days signed by the Deputy Assistant Secretary for Export Administration. However, the absence of any such notification does not excuse persons from compliance with the license requirements of paragraph (a) of this section.

* * * * *

(d) *License review standards.* (1) Applications to export, reexport, or transfer (in-country) items subject to this section will be considered on a case-by-case basis to determine whether the export, reexport, or transfer would make a material contribution to the design, development, production, stockpiling, or use of chemical or biological weapons. When an export, reexport, or transfer is deemed to make such a contribution, the license will be denied.

(2) The following factors are among those that will be considered to determine what action should be taken on an application required under this section:

(i) The specific nature of the end-use;

(ii) The significance of the export, reexport, or transfer in terms of its contribution to the design, development, production, stockpiling, or use of chemical or biological weapons;

(iii) The nonproliferation credentials of the importing country or the country in which the transfer would take place;

(iv) The types of assurances or guarantees against the design, development, production, stockpiling, or use of chemical or biological weapons that are given in a particular case; and

(v) The existence of a pre-existing contract. See Supplement No. 1 to Part 742 of the EAR for relevant contract sanctity dates.

■ 5. Section 744.6 is amended by revising paragraphs (a)(1)(i)(C) and (a)(2)(ii) to read as follows:

§ 744.6 Restrictions on certain activities of U.S. persons.

(a) * * *

(1) * * *

(i) * * *

(C) Will be used in the design, development, production, stockpiling, or use of chemical or biological weapons in or by any country or destination, worldwide.

* * * * *

(2) * * *

(ii) Perform any contract, service, or employment that the U.S. person knows will directly assist in the design, development, production, stockpiling, or use of chemical or biological weapons in or by any country or destination, worldwide.

* * * * *

PART 774—[AMENDED]

■ 6. The authority citation for 15 CFR Part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 6, 2004, 68 FR 48763 (August 10, 2004).

Supplement No. 1 to Part 774 [Amended]

■ 7. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—''Materials, Chemicals, 'Microorganisms' & 'Toxins,' '' ECCN 1A004 is amended by revising the License Requirements section of the ECCN to read as follows:

1A004 Protective and detection equipment and components not specially designed for military use as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, CB, AT

Control(s)	Country chart
NS applies to entire entry	NS Column 2.
CB applies to chemical detection systems and dedicated detectors therefor, in 1A004.c, that also have the technical characteristics described in 2B351.a.	CB Column 2.
AT applies to entire entry	AT Column 1.

* * * * *

■ 8. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—''Materials, Chemicals, 'Microorganisms' & 'Toxins,' '' ECCN 1E001 is amended by revising the ECCN heading and the License Requirements section of the ECCN to read as follows:

1E001 ''Technology'' according to the General Technology Note for the ''development'' or ''production'' of items controlled by 1A001.b, 1A001.c, 1A002, 1A003, 1A004, 1A005, 1A101, 1B, or 1C (except 1C355, 1C980 to 1C984, 1C988, 1C990, 1C991, 1C992, and 1C995).

License Requirements

Reason for Control: NS, MT, NP, CB, AT

Control(s)	Country chart
NS applies to ''technology'' for items controlled by 1A001.b and .c, 1A002, 1A003, 1A005, 1B001 to 1B003, 1B018, 1C001 to 1C011, or 1C018.	NS Column 1.
NS applies to ''technology'' for items controlled by 1A004	NS Column 2.
MT applies to ''technology'' for items controlled by 1A101, 1B001, 1B101, 1B102, 1B115, to 1B119, 1C001, 1C007, 1C011, 1C101, 1C102, 1C107, 1C111, 1C116, 1C117, or 1C118 for MT reasons.	MT Column 1.
NP applies to ''technology'' for items controlled by 1A002, 1B001, 1B101, 1B201, 1B225 to 1B233, 1C002, 1C010, 1C116, 1C202, 1C210, 1C216, 1C225 to 1C240 for NP reasons.	NP Column 1.
CB applies to ''technology'' for controlled by 1C351, 1C353, or 1C354	CB Column 1.
CB applies to ''technology'' for materials controlled by 1C350, and for chemical detection systems and dedicated detectors therefor, in 1A004.c, that also have the technical characteristics described in 2B351.a.	CB Column 2.
AT applies to entire entry	AT Column 1.

License Requirements Note: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

* * * * *

■ 9. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2A226 is amended by revising the License Requirements section to read as follows:

2A226 Valves having all of the following characteristics (see List of Items Controlled).

License Requirements

Reason for Control: NP, CB, AT

Control(s)	Country chart
NP applies to entire entry	NP Column 1.
CB applies to valves that also meet or exceed the technical parameters in 2B350.g	CB Column 2.
AT applies to entire entry	AT Column 1.

* * * * *

■ 10. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2A292 is amended by revising the License Requirements section to read as follows:

2A292 Piping, fittings and valves made of, or lined with, stainless steel, copper-nickel alloy or other alloy steel containing 10% or more nickel and/or chromium.

License Requirements

Reason for Control: NP, CB, AT

Control(s)	Country chart
NP applies to entire entry	NP Column 2.
CB applies to valves that meet or exceed the technical parameters described in 2B350.g	CB Column 2.
AT applies to entire entry	AT Column 1.

* * * * *

■ 11. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2B350 is amended by revising the License Requirements section to read as follows:

2B350 Chemical manufacturing facilities and equipment, except valves controlled by 2A226 or 2A292, as follows (see List of Items Controlled).

License Requirements

Reason for Control: CB, AT

Control(s)	Country chart
CB applies to entire entry	CB Column 2.
AT applies to entire entry	AT Column 1.

* * * * *

■ 12. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2B351 is amended by revising the License Requirements section to read as follows:

2B351 Toxic gas monitoring systems that operate on-line and dedicated detectors therefor, except those systems and detectors controlled by ECCN 1A004.c.

License Requirements

Reason for Control: CB, AT

Control(s)	Country chart
CB applies to entire entry	CB Column 2.
AT applies to entire entry	AT Column 1.

* * * * *

■ 13. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2B352 is amended by revising the License Requirements section to read as follows:

2B352 Equipment capable of use in handling biological materials, as follows (see List of Items Controlled).

License Requirements

Reason for Control: CB, AT

Control(s)	Country chart
CB applies to entire entry	CB Column 2.
AT applies to entire entry	AT Column 1.

* * * * *

■ 14. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2E001 is amended by revising the License Requirements section to read as follows:

2E001 ''Technology'' according to the General Technology Note for the ''development'' of equipment or ''software'' controlled by 2A (except 2A983, 2A991, or 2A994), 2B (except 2B991, 2B993, 2B996, 2B997, or 2B998), or 2D (except 2D983, 2D991, 2D992, or 2D994).

License Requirements

Reason for Control: NS, MT, NP, CB, AT

Control(s)	Country chart
NS applies to ''technology'' for items controlled by 2A001, 2B001 to 2B009, 2D001 or 2D002	NS Column 1
MT applies to ''technology'' for items controlled by 2B004, 2B009, 2B018, 2B104, 2B105, 2B109, 2B116, 2B117, 2B119 to 2B122, 2D001, or 2D101 for MT reasons.	MT Column 1
NP applies to ''technology'' for items controlled by 2A225, 2A226, 2B001, 2B004, 2B006, 2B007, 2B009, 2B104, 2B109, 2B116, 2B201, 2B204, 2B206, 2B207, 2B209, 2B225 to 2B232, 2D001, 2D002, 2D101, 2D201 or 2D202 for NP reasons.	NP Column 1
NP applies to ''technology'' for items controlled by 2A290 to 2A293, 2B290, or 2D290 for NP reasons	NP Column 2
CB applies to ''technology'' for equipment controlled by 2B350 to 2B352 and for valves controlled by 2A226 or 2A292 having the characteristics of those controlled by 2B350.g.	CB Column 2
AT applies to entire entry	AT Column 1

License Requirement Notes: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

* * * * *

■ 15. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2E002 is amended by revising the License Requirements section to read as follows:

2E002 ''Technology'' according to the General Technology Note for the ''production'' of equipment controlled by 2A (except 2A983, 2A991, or 2A994), or 2B (except 2B991, 2B993, 2B996, 2B997, or 2B998).

License Requirements

Reason for Control: NS, MT, NP, CB, AT

Control(s)	Country chart
NS applies to ''technology'' for equipment controlled by 2A001, 2B001 to 2B009	NS Column 1.
MT applies to ''technology'' for equipment controlled by 2B004, 2B009, 2B018, 2B104, 2B105, 2B109, 2B116, 2B117, or 2B119 to 2B122 for MT reasons.	MT Column 1.
NP applies to ''technology'' for equipment controlled by 2A225, 2A226, 2B001, 2B004, 2B006, 2B007, 2B009, 2B104, 2B109, 2B116, 2B201, 2B204, 2B206, 2B207, 2B209, 2B225 to 2B232 for NP reasons.	NP Column 1.
NP applies to ''technology'' for equipment controlled by 2A290 to 2A293, 2B290 for NP reasons	NP Column 2.
CB applies to ''technology'' for equipment controlled by 2B350 to 2B352 and for valves controlled by 2A226 or 2A292 having the characteristics of those controlled by 2B350.g.	CB Column 2.
AT applies to entire entry	AT Column 1.

License Requirement Notes: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

* * * * *

■ 16. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2E201 is amended by revising the License Requirements section to read as follows:

2E201 ''Technology'' according to the General Technology Note for the ''use'' of equipment or ''software'' controlled by 2A225, 2A226, 2B001, 2B006, 2B007.b, 2B007.c, 2B008, 2B201, 2B204, 2B206, 2B207, 2B209, 2B225 to 2B232, 2D002, 2D201 or 2D202.

License Requirements

Reason for Control: NP, CB, AT

Control(s)	Country chart
NP applies to entire entry, except 2B008	NP Column 1.
CB applies to ''technology'' for valves controlled by 2A226 that meet or exceed the technical parameters in 2B350.g	CB Column 2.
AT applies to entire entry	AT Column 1.

* * * * *

■ 17. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2E290 is amended by revising the License Requirements section to read as follows:

2E290 ''Technology'' according to the General Technology Note for the ''use'' of equipment controlled by 2A290, 2A291, 2A292, 2A293, or 2B290.

License Requirements

Reason for Control: NP, CB, AT

Control(s)	Country chart
NP applies to entire entry	NP Column 2.
CB applies to ''technology'' for valves controlled by 2A292 that meet or exceed the technical parameters in 2B350.g	CB Column 2.
AT applies to entire entry	AT Column 1.

* * * * *

■ 18. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2E301 is amended by revising the heading of the ECCN and the License Requirements section to read as follows:

2E301 ''Technology'' according to the ''General Technology Note'' for the ''use'' of items controlled by 2B350, 2B351 and 2B352.

License Requirements

Reason for Control: CB, AT

Control(s)	Country chart
CB applies to entire entry	CB Column 2.
AT applies to entire entry	AT Column 1.

* * * * *

Dated: April 11, 2005.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 05–7523 Filed 4–13–05; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[TD 9196]

RIN 1545–BE21

Withholding Exemptions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains regulations providing guidance under section 3402(f) of the Internal Revenue Code (Code) for employers and employees relating to the Form W–4, ''Employee's Withholding Allowance Certificate.'' These regulations provide rules for the submission of copies of certain withholding exemption certificates to the IRS, the notification provided to the employer and the employee of the maximum number of withholding exemptions permitted, and the use of substitute forms. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**. The amendments to the final regulations provide cross-references to the temporary regulations.

DATES: These regulations are effective April 14, 2005.

FOR FURTHER INFORMATION CONTACT: Margaret A. Owens, (202) 622–0047 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations do not impose any new information collection. The Office of Management and Budget (OMB) previously approved the information collection requirements concerning Form W–4 contained in the regulation under section 6001 (§ 31.6001–5; OMB Control No. 1545–0798) and in the regulation under section 3402 (§ 31.3402(f)(2)–1; OMB Control No.1545–0010) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Under section 3402(f)(2)(A), every employee is required to furnish his or her employer with a signed withholding exemption certificate on or before commencing employment. Regulations prescribe the form of the certificate as the Form W–4. The maximum number of withholding exemptions to which an employee is entitled depends upon the employee's marital status, the employee's filing status, the number of the employee's dependents, the number of exemptions claimed by the employee's spouse (if any) on a Form W–4, and the amount of the employee's estimated itemized deductions, tax credits, and certain other deductions from income. A Form W–4 may be in either paper or electronic form.

Section 31.3402(f)(2)–1(g) of the existing regulations requires employers to submit copies of certain questionable Forms W–4 to the IRS. Employers must submit a copy of each Form W–4 on which an employee claims more than 10 withholding exemptions. Employers must also submit a copy of each Form W–4 on which the employee claims a complete exemption from withholding for the taxable year if the employer reasonably expects, when the Form W–4 is received, that the employee's wages from that employer will usually be $200 or more per week.

In addition, the existing regulations provide that, upon written request from the IRS, employers are required to submit to the IRS copies of withholding exemption certificates which are received from employees or groups of employees identified by the IRS in the written request.

The existing regulations provide that the IRS may notify an employer that a named employee is not entitled to claim a complete exemption from withholding and is not entitled to claim a total number of withholding exemptions more than the maximum number specified by the IRS in the notice. The IRS will issue such notice if the IRS finds that the withholding exemption certificate contains a materially incorrect statement or if the IRS finds, after written request to the employee for verification of the statements on the certificate, that the IRS lacks sufficient information to determine if the certificate is correct. In these cases, the employer must withhold tax based on the maximum number of withholding exemptions specified in the notice from the IRS unless otherwise notified by the IRS. However, if the employee furnishes

a new certificate that claims a number of withholding exemptions less than the number specified in the written notice to the employer, the employer must withhold tax based on that certificate.

Under the existing regulations, if the employee furnishes a new withholding exemption certificate that claims complete exemption from withholding or claims a number of withholding exemptions more than the maximum number specified by the IRS in the notice, the employee must submit the new withholding exemption certificate and a written statement to support the claims made by the employee on the new certificate to the IRS or to the employer, who must then submit them to the IRS. The employer must disregard this new certificate until the IRS notifies the employer to withhold tax based on the new certificate.

Explanation of Provisions

The temporary regulations change the procedures for submitting copies of Forms W–4 to the IRS and allow the IRS to issue a notice specifying the maximum number of withholding exemptions permitted without first obtaining a copy of the withholding exemption certificate from the employer.

The temporary regulations also clarify that a substitute withholding exemption certificate developed by the employer may be used in lieu of the prescribed Form W–4, if the employer also provides the worksheets contained in the Form W–4 in effect at that time. The temporary regulations also provide that employers may refuse to accept a substitute form developed by an employee and that the employee submitting such form will be treated as failing to furnish a withholding exemption certificate.

As noted in the *Background* portion of this preamble, § 31.3402(f)(2)–1(g) of the existing regulations sets forth rules for employers to submit copies of certain questionable Forms W–4 to the IRS. The Treasury Department and the IRS want to relieve employers of the burden of submitting copies of certain questionable Forms W–4 and want to more effectively address withholding noncompliance by using information already provided to the IRS. Under the temporary regulations, employers are no longer required to submit a copy of any Form W–4 on which an employee claims more than 10 withholding exemptions. In addition, under the temporary regulations, employers are no longer required to submit a copy of any Form W–4 on which an employee claims complete exemption from withholding for the taxable year if the employer reasonably expects, when the Form W–4 is received, that the employee's wages from that employer will usually be $200 or more per week. Instead, an employer must submit a copy of any currently effective withholding exemption certificate only if directed to do so in a written notice to the employer from the IRS or if directed to do so under any published guidance. As under existing regulations, the written notice may direct the employer to submit copies of Forms W–4 for certain employees. The temporary regulations also authorize the IRS to provide specific criteria for those Forms W–4 that must be submitted either in a written notice to an employer or by published guidance.

The temporary regulations provide that the IRS may issue a notice to an employer specifying the maximum number of withholding exemptions permitted for a specific employee. The IRS may issue such a notice after determining that a copy of a withholding exemption certificate submitted to the IRS contains a materially incorrect statement or after the employee fails to respond adequately to a request for verification of the statements on the certificate.

The IRS may also issue such a notice after it determines an employee is not entitled to claim complete exemption from withholding or more than a specified number of withholding exemptions based on IRS records without first obtaining a copy of the withholding exemption certificate from the employer.

After the IRS issues a notice of the maximum number of withholding exemptions permitted, if the employee wants to claim complete exemption from withholding or claim a number of withholding exemptions more than the maximum number specified by the IRS in the notice, the employee must submit a new withholding exemption certificate and a written statement to support the claims made by the employee on the new certificate to the IRS. To reduce burdens on employers and to more efficiently respond to the employee, the temporary regulations provide that the employee must send this new certificate and written statement directly to the IRS. The option under existing regulations to send this information to the employer for forwarding to the IRS has been removed. The employer must disregard this new certificate until the IRS notifies the employer to withhold tax based on the new certificate. However, if, at any time, the employee furnishes a certificate that claims a number of withholding exemptions less than the maximum number specified in the written notice to the employer, the employer must withhold tax based on that certificate.

The temporary regulations provide a period during which the employee can address the pending withholding adjustment by providing a new certificate and written statement to the IRS. The temporary regulations provide that the earliest the notice of the maximum number of withholding exemptions permitted may be effective is 45 calendar days after the date of the notice. The notice may specify a later effective date.

The Treasury Department and the IRS are considering additional amendments to the regulations under section 3402 to address other issues including, but not limited to, the criteria for identifying a valid withholding exemption certificate. The Treasury Department and the IRS specifically welcome comments on this issue in response to the related notice of proposed rulemaking in the Proposed Rules section in this issue of the **Federal Register**.

Effective Date

These regulations are applicable on April 14, 2005.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) refer to the Special Analyses of the preamble to the cross-reference notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Margaret A. Owens, Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), IRS. However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping

requirements, Social Security, Unemployment compensation.

Amendments to the Regulations

■ Accordingly, 26 CFR part 31 is amended as follows:

PART 31—EMPLOYMENT TAXES

■ **Paragraph 1**. The authority citation for part 31 continues to read in part as follows:

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

Section 31.3402(f)(5)–1T also issued under 26 U.S.C. 3402(i) and (m). * * *

■ **Par. 2.** Section 31.3402(f)(2)–1 is amended by revising paragraph (g) to read as follows:

§ 31.3402(f)(2)–1 Withholding exemption certificates.

* * * * *

(g) For further guidance, *see* § 31.3402(f)(2)–1T(g).

■ **Par. 3.** Section 31.3402(f)(2)–1T is added to read as follows:

§ 31.3402(f)(2)–1T Withholding exemption certificates (temporary).

(a) through (f) [Reserved]. For further guidance, see § 31.3402(f)(2)–1(a) through (f).

(g) *Submission of certain withholding exemption certificates and notice of the maximum number of withholding exemptions permitted*—(1) *Submission of certain withholding exemption certificates.* (i) An employer must submit to the Internal Revenue Service (IRS) a copy of any currently effective withholding exemption certificate as directed in a written notice to the employer from the IRS or as directed in published guidance. A notice to the employer may relate either to one or more named employees; to one or more reasonably segregable units of the employer; or to withholding exemption certificates under certain specified criteria. The notice will designate the IRS office where the copies of the withholding exemption certificates must be submitted. Employers may also be required to submit copies of withholding exemption certificates under certain specified criteria when directed to do so by the IRS in published guidance. For purposes of the preceding sentence, the term published guidance means a revenue procedure or notice published in the Internal Revenue Bulletin (*see* § 601.601(d)(2) of this chapter). Alternatively, upon notice from the IRS, the employer must make withholding exemption certificates received from one or more named employees; from one or more reasonably segregable units of the employer; or from employees who have furnished withholding exemption certificates under certain specified criteria, available for inspection by an IRS employee (*e.g.,* a compliance check).

(ii) After a copy of a withholding exemption certificate has been submitted to the IRS under this paragraph (g)(1), the employer must withhold tax on the basis of the withholding exemption certificate, if the withholding exemption certificate meets the requirements of § 31.3402(f)(5)–1, unless that certificate must be disregarded based on a notice of the maximum number of withholding exemptions permitted under the provisions of paragraph (g)(2) of this section.

(2) *Notice of maximum number of withholding exemptions permitted.* (i) The IRS may notify the employer in writing that the employee is not entitled to claim a complete exemption from withholding and the employee is not entitled to claim a total number of withholding exemptions more than the maximum number of withholding exemptions specified by the IRS in the written notice. The notice will specify the IRS office to be contacted for further information. The notice of maximum number of withholding exemptions permitted may be issued if—

(A) The IRS determines that a copy of a withholding exemption certificate submitted under paragraph (g)(1) of this section contains a materially incorrect statement or determines, after a request to the employee for verification of the statements on the certificate, that the IRS lacks sufficient information to determine if the certificate is correct; or

(B) The IRS otherwise determines that the employee is not entitled to claim a complete exemption from withholding and is not entitled to claim more than a specified number of withholding exemptions.

(ii) If the IRS provides a written notice to the employer under this paragraph (g)(2), the IRS will also provide the employer with a written notice for the employee (employee notice) that identifies the maximum number of withholding exemptions permitted and the process by which the employee can provide additional information to the IRS for purposes of determining the appropriate number of withholding exemptions. The IRS will also mail a similar written notice to the employee's last known address. For further guidance regarding the definition of last known address, *see* § 301.6212–2 of this chapter.

(iii) If the employee is still employed by the employer, the employer must furnish the employee notice to the employee within 10 business days of receipt. If the employee is no longer employed by the employer, the employer is not required to furnish the employee notice to the employee but the employer must send a written response to the IRS office designated in the notice indicating that the employee is no longer employed by the employer.

(iv) Except as provided in paragraph (g)(2)(v) and (vi) of this section, the employer must withhold tax on the basis of the maximum number of withholding exemptions specified in the written notice received from the IRS. The employer must withhold tax in accordance with the notice as of the date specified in the notice, which shall be no earlier than 45 calendar days after the date of the notice.

(v) If a withholding exemption certificate is in effect with respect to the employee before the employer receives a notice from the IRS of the maximum number of withholding exemptions permitted under this paragraph (g)(2), the employer must continue to withhold tax in accordance with the existing withholding exemption certificate rather than on the basis of the notice if the existing withholding exemption certificate does not claim complete exemption from withholding and claims a number of withholding exemptions less than the maximum number specified by the IRS in the written notice to the employer.

(vi) If the employee furnishes a new withholding exemption certificate after the employer receives a notice from the IRS of the maximum number of withholding exemptions permitted under this paragraph (g)(2), the employer must withhold tax on the basis of that new certificate as currently effective only if the new certificate does not claim complete exemption from withholding and claims a number of withholding exemptions less than the number specified by the IRS in the notice to the employer. If any new certificate claims complete exemption from withholding or claims a number of withholding exemptions more than the maximum number specified by the IRS in the notice, then the employer must disregard the new certificate and must continue to withhold tax on the basis of the maximum number specified in the notice received from the IRS unless the IRS by subsequent written notice advises the employer to withhold tax on the basis of that new certificate. If the employee wants to put a new certificate into effect to claim complete exemption from withholding or to claim a number of withholding exemptions more than the maximum number specified by the IRS in the notice to the employer, the employee must submit to the IRS office

designated in the employee notice earlier furnished to the employee under this paragraph (g)(2) that new certificate and a written statement to support the claims made by the employee on the new certificate.

(3) *Definition of employer.* For purposes of this paragraph (g), the term employer includes any person authorized by the employer to receive withholding exemption certificates, to make withholding computations, or to make payroll distributions.

(4) *Effective date.* This paragraph (g) applies on April 14, 2005. The applicability of this paragraph (g) expires on or before April 14, 2008.

■ **Par. 4.** Section 31.3402(f)(5)–1 is amended by revising paragraph (a) to read as follows:

§ 31.3402(f)(5)–1 Form and contents of withholding exemption certificates.

(a) For further guidance, see § 31.3402(f)(5)–1T(a).

* * * * *

■ **Par. 5.** Section 31.3402(f)(5)–1T is added to read as follows:

§ 31.3402(f)(5)–1T Form and contents of withholding exemption certificates (temporary).

(a)(1) *Form W–4.* Form W–4, ''Employee's Withholding Allowance Certificate,'' is the form prescribed for the withholding exemption certificate required to be furnished under section 3402(f)(2). A withholding exemption certificate must be prepared in accordance with the instructions and regulations applicable thereto, and must set forth fully and clearly the data therein called for. Blank copies of paper Forms W–4 will be supplied to employers upon request to the Internal Revenue Service (IRS). An employer may also download and print Form W–4 from the IRS Internet site at *http://www.irs.gov.* In lieu of the prescribed form, employers may prepare and use a form the provisions of which are identical with those of the prescribed form, but only if employers also provide employees with all the tables, instructions, and worksheets contained in the Form W–4 in effect at that time and only if employers comply with all revenue procedures relating to substitute forms in effect at that time. Employers may refuse to accept a substitute form developed by an employee and the employee submitting such form will be treated as failing to furnish a withholding exemption certificate. For further guidance regarding the employer's obligations when an employee is treated as failing to furnish a withholding exemption certificate, see § 31.3402(f)(2)–1.

(2) *Effective date.* This paragraph (a) applies on April 14, 2005. The applicability of this paragraph (a) expires on or before April 14, 2008.

(b) through (c) [Reserved]. For further guidance, see § 31.3402(f)(5)–1(b) through (c).

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: March 28, 2005.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 05–6718 Filed 4–13–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9197]

RIN 1545–BD78

Classification of Certain Foreign Entities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains temporary and final regulations relating to certain business entities included on the list of foreign business entities that are always classified as corporations for Federal tax purposes. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective on October 7, 2004.

Applicability Date: For the dates of applicability of these regulations, see § 301.7701–2T(e).

FOR FURTHER INFORMATION CONTACT: Ronald M. Gootzeit, (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The IRS and Treasury Department issued final regulations concerning the classification of entities under section 7701 of the Internal Revenue Code (Code) on December 18, 1996 (final regulations). See generally TD 8697 (1997–1 C.B. 215) and §§ 301.7701–1 through 301.7701–3. Under the final regulations, a business entity that is not specifically classified as a corporation is an eligible entity that can elect its classification for Federal tax purposes under certain circumstances. However, § 301.7701–2(b)(8) provides a list of certain foreign business entities that are always classified as corporations for Federal tax purposes (the per se corporation list). These foreign business entities are generally referred to as per se corporations.

On October 8, 2001, the Council of the European Union adopted Council Regulation 2157/2001 2001 O.J. (L 294) (the EU Regulation) to provide for a new business entity, the European public limited liability company (Societas Europaea or SE). The EU Regulation entered into force on October 8, 2004, and has effect in all the Member States of the European Economic Area (which includes all Member States of the European Union plus Norway, Iceland, and Liechtenstein). An SE must have a registered office in one of the Member States.

The SE is a public limited liability company. The EU Regulation provides general rules that govern the formation and operation of an SE and supplements those rules for specified issues and issues it does not address by reference to the laws with respect to public limited liability companies for the country in which the SE has its registered office. Most of the countries in which an SE can have its registered office have a business entity that constitutes a public limited liability company and that currently is on the per se corporation list. However, an SE can have its registered office in the following countries that have a business entity that is a public limited liability company but that is not yet on the per se corporation list: Estonia, Latvia, Lithuania, Slovenia, and Liechtenstein.

Explanation of Provisions

In Notice 2004–68 (2004–43 IRB 706), the IRS and Treasury stated that the SE is properly classified as a per se corporation because it will function as a public limited liability company. The Notice also stated that the IRS and Treasury will issue temporary and proposed regulations that will modify § 301.7701–2(b)(8) to include the SE on the per se corporation list. The Notice further stated that the temporary and proposed regulations will modify § 301.7701–2(b)(8) to include as per se corporations the Estonian Aktsiaselts, Latvian Akciju Sabiedriba, Lithuanian Akcine Bendroves, Slovenian Delniska Druzba, and Liechtenstein Aktiengesellschaft. These entities are the public limited liability companies in their respective countries. The temporary regulations in this document

make these modifications to § 301.7701–2(b)(8). In addition, in accordance with Notice 2004–68, these regulations will be effective for the Estonian, Latvian, Liechtenstein, Lithuanian, and Slovenian entities formed on or after October 7, 2004, and for the European Economic Area entity formed on or after October 8, 2004. See also section 7805(b)(1)(C).

The status of an SE may be relevant to the application of various Federal income tax provisions, such as the subpart F same-country exception under section 954(c)(3). Treasury and the IRS are considering these issues and invite comments on any additional areas in which guidance on the Federal tax treatment of an SE may be warranted.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. As a result of the issuance of Notice 2004–68, good cause is found for dispensing with prior notice and comment pursuant to 5 U.S.C. 553(b). For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analyses section of the preamble to the notice of proposed rulemaking published in the proposed rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact.

Drafting Information

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

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read, in part, as follows:

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

■ **Par. 2.** In § 301.7701–2, paragraph (b)(8)(vi) is added to read as follows:

§ 301.7701–2 Business entities; definitions.

* * * * *

(b) * * *

(8) * * *

(vi) *Certain European entities.* [Reserved]. For further guidance, *see* § 301.7701–2T.

* * * * *

■ **Par. 3.** Section 301.7701–2T is amended by adding paragraphs (b)(8)(vi) and (e) to read as follows:

§ 301.7701–2T Business entities; definitions (temporary).

(a) through (b)(8)(v) [Reserved]. For further guidance, *see* § 301.7701–2(a) through (b)(8)(v).

(b)(8)(vi) *Certain European entities.* The following business entities formed in the following jurisdictions:

Estonia, Aktsiaselts;

European Economic Area/European Union, Societas Europaea;

Latvia, Akciju Sabiedriba;

Liechtenstein, Aktiengesellschaft;

Lithuania, Akcine Bendroves;

Slovenia, Delniska Druzba.

(c) and (d) [Reserved]. For further guidance, see § 301.7701–2(c) and (d).

(e) *Effective dates.*

(1) and (2) [Reserved]. For further guidance, *see* § 301.7701–2(e)(1) and (2).

(3) The reference to the Estonian, Latvian, Liechtenstein, Lithuanian, and Slovenian entities in paragraph (b)(8)(vi) of this section applies to such entities formed on or after October 7, 2004, and to any such entity formed before such date from the date any person or persons, who were not owners of the entity as of October 7, 2004, own in the aggregate a 50 percent or greater interest in the entity. The reference to the European Economic Area/European Union entity in paragraph (b)(8)(vi) of this section applies to such entities formed on or after October 8, 2004.

* * * * *

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: March 28, 2005.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 05–6716 Filed 4–13–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

[VA–121–FOR]

Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving a proposed amendment to the Virginia regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The program amendment revises Virginia's Coal Surface Mining Reclamation Regulations concerning performance bonds furnished pursuant to the Coal Surface Mining Reclamation (Pool Bond) Fund. The amendment is intended to conform the performance bond release procedures that are applied to Virginia's ''alternative bonding system'' with bond release procedures used for other performance bonds. The amendment is also intended to clarify language regarding minimum bond amounts for phased bond release.

DATES: Effective April 14, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Penn, Director, Big Stone Gap Field Office; Telephone: (540) 523–4303. Internet: *rpenn@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Virginia Program
II. Submission of the Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Virginia program on December 15, 1981. You can find background information on the Virginia program, including the

Secretary's findings, the disposition of comments, and conditions of approval of the Virginia program in the December 15, 1981, **Federal Register** (46 FR 61088). You can also find later actions concerning Virginia's program and program amendments at 30 CFR 946.12, 946.13, and 946.15.

II. Submission of the Amendment

By letter dated July 20, 2004 (Administrative Record Number VA–1036), the Virginia Department of Mines, Minerals and Energy (DMME) submitted an amendment to the Virginia program. The program amendment revises Virginia's Coal Surface Mining Reclamation Regulations concerning performance bonds furnished pursuant to the Coal Surface Mining Reclamation (Pool Bond) Fund. The amendment also clarifies language regarding minimum bond amounts set for phased bond release.

We announced receipt of the proposed amendment in the September 14, 2004, **Federal Register** (69 FR 55375). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment (Administrative Record Number VA–1043). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on October 14, 2004. We received comments from one State agency and three Federal agencies. By letter dated February 16, 2005, DMME sent us a letter that clarifies how the State interprets and would implement the proposed amendment concerning minimum bond amount at 4 VAC 25–130–801.17 (Administrative Record Number VA–1046).

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment.

The Virginia regulations at 4 VAC 25–130 part 801 concern the Coal Surface Mining Reclamation Fund, penalties, and self-bonding. The proposed amendment revises 4 VAC 25–130–801.17, concerning bond release application, and 4 VAC 25–130–801.18, concerning criteria for release of bond.

In its submittal of this amendment to OSM, the DMME stated that Virginia is amending its regulations at 4 VAC 25–130–801.17, to conform the performance bond release procedures that are applied to bonds furnished pursuant to the Coal Surface Mining Reclamation (Pool Bond) Fund, Virginia's ''alternative bonding system,'' with bond release procedures used for other performance bonds. The DMME stated that the amendment will allow use of a phased bond release for all permitted coal mine sites in Virginia.

1. 4 VAC 25–130–801.17

This provision is amended by adding and deleting language at 4 VAC 25–130–801.17(a), by deleting 4 VAC 25–130–801.17(a)(1) through (a)(3), and by deleting 4 VAC 25–130–801.17(b) through (e). As amended, 4 VAC 25–130–801.17 provides as follows:

> (a) The permittee participating in the Pool Bond Fund, or any person authorized to act upon his behalf, may file an application with the division [Division of Mined Land Reclamation] for the Phase I, II or III release of the bond furnished in accordance with 4 VAC 25–130–801.12(b) for the permit area or any applicable increment thereof. The bond release application, the procedural requirements and the released percentages shall be consistent with the release criteria of 4 VAC 25–130–800.40. However, in no event shall the total bond of the permit be less than the minimum amounts established pursuant to Section 45.1–241 and 45.1–270.3.B of the Virginia Coal Surface Mining Control and Reclamation Act prior to completion of Phase III reclamation of the entire permit area.

We find that the proposed amendments are no less effective than the Federal regulations and can be approved for the following reasons. The State's rules at 4 VAC 25–130–801.17(a) concern bond release application procedures for Pool Bond Fund participants. Virginia has added the following requirement at 4 VAC 25–130–801.17(a):

> The bond release application, the procedural requirements and the released percentages shall be consistent with the release criteria of 4 VAC 25–130–800.40.

The Virginia regulations at 4 VAC 25–130–800.40 concern the requirements to release performance bonds and are substantively identical to the Federal performance bond release requirements at 30 CFR 800.40. Under the revised provision quoted directly above, the bond release procedures for Pool Bond Fund participants will be the procedures specified at 4 VAC 25–130–800.40. With this change, all Virginia permittees are subject to the bond release requirements at 4 VAC 25–130–800.40. We find the proposed change is consistent with and no less effective than 30 CFR 800.40 and can be approved.

Virginia has also proposed to delete the existing bond release procedures at 4 VAC 25–130–801.17 that were specific to Pool Bond Fund permits. We find that the addition of the requirement that Pool Bond Fund participants must comply with the bond release procedures at 4 VAC 25–130–800.40 renders the deleted language at 4 VAC 25–130–801.17 unnecessary. Therefore, we find that the deletion of that language does not render 4 VAC 25–130–801.17 less effective than the Federal bond release requirements at 30 CFR 800.40 and can be approved.

Virginia has added language at 4 VAC 25–130–801.17(a), which provides that a permittee may file an application for the ''Phase I, II or III release'' of the bond for ''the permit area or any applicable'' increment ''thereof.'' We find these changes to be consistent with and no less effective than the Federal performance bond requirements at 30 CFR 800.40(c) which allows the release of all or part of a performance bond for the permit/increment area in accordance with a three-phase schedule of reclamation and can be approved.

Virginia also amended 4 VAC 25–130–801.17(a) by revising language that previously stated that in no event shall the total bond of the permit be less than the minimum amounts established pursuant to 4 VAC 25–130–801.12(b) prior to completion of the required reclamation. The provision was revised by deleting the regulatory citation and adding in its place the citations of two Virginia Coal Surface Mining Control and Reclamation Act (VA Code) provisions and additional language. The amended language provides as follows:

> However, in no event shall the total bond of the permit be less than the minimum amounts established pursuant to Sections 45.1–241 and 45.1–270.3B of the Virginia Coal Surface Mining Control Act prior to completion of Phase III reclamation of the entire permit area.

During our review of this provision, it was unclear as to what the minimum bond amount is pursuant to Sections 45.1–241 and 45.1–270.3.B of the VA Code prior to completion of Phase III reclamation of the entire permit area because VA Code Sections 45.1–241 and 45.1–270.3.B contain different minimum bond amounts. Therefore, we asked DMME to explain which minimum bond amount would apply (Administrative Record Number VA–1045).

In its February 16, 2005, letter, the DMME clarified the meaning of the proposed minimum bond amount language at 4 VAC 25–130–801.17(a), and how the State will implement that provision. Specifically, the DMME stated that VA Code Section 45.1–270 applies to bond amounts for new permits or new acreage in the Pool Bond, while VA Code 45.1–241 authorizes the Division of Mined Land Reclamation (DMLR) to determine the

required bond amount, with a $10,000 minimum to be retained after completion of Phase II reclamation. However, the actual bond amount to be retained will be determined on a case-by-case basis, based on the amount needed to assure the completion of reclamation work if the work must be performed by DMLR in the event of bond forfeiture. The amount of bond to be released on completion of Phase II reclamation will be determined based upon any remaining reclamation and revegetation costs to be expected.

The DMME also stated that implementation of this procedure (minimum bond amount of $10,000 as described above) would not cause a negative impact on the reclamation fund. Phase II bond release will only be approved, the DMME stated, upon meeting the success standards required for a Phase II bond release.

Section 509(a) of SMCRA provides that the amount of bond shall be sufficient to assure the completion of the reclamation plan if the work has to be performed by the regulatory authority in the event of forfeiture, and in no case shall the total bond initially posted for the entire area under one permit be less than $10,000. Virginia's approved statutory counterpart to 509(a) of SMCRA is VA Code Section 45.1–241.A. All Pool Bond Fund participants must comply with the applicable parts of Section 45.1–241. See 4 VAC 25–130–801.11(b)(2). The Federal regulations at 30 CFR 800.40(c) do not specify a dollar amount that the regulatory authority must retain after completion of Phase II reclamation, but, instead, require an amount that ''would be sufficient to cover the cost of reestablishing revegetation.''

For the reasons discussed above, we find that the proposed revision to the State's minimum bond amount language at 4 VAC 25–130–801.17(a) is not inconsistent with the Federal bond release provisions at 30 CFR 800.40 and can be approved.

2. 4 VAC 25–130–801.18

This provision is amended by adding and deleting language at 4 VAC 25–130–801.18(a) and (b), by deleting 4 VAC 25–130–801.18(c), and by amending and re-numbering existing 4 VAC 25–130–801.18(d) as 4 VAC 25–130–801.18(c). As amended, 4 VAC 25–130–801.18 provides as follows:

(a) The division shall release bond furnished in accordance with Section 45.1–241 and 45.1–270.3 of the Virginia Coal Surface Mining Control and Reclamation Act through the standards specified at 4 VAC 25–130–800.40 upon receipt of an application for Phase I, II or III release.

(b) The division shall terminate jurisdiction for the permit area, or any increment thereof upon approval of the Phase III bond release for that area.

(c) In the event a forfeiture occurs the division may, after utilizing the available bond monies, utilize the Fund [Pool Bond Fund] as necessary to complete reclamation liabilities for the permit area.

Virginia has amended 4 VAC 25–130–801.18, concerning criteria for the release of bond, by deleting most of the existing language concerning bond release procedures specific only to Pool Bond Fund permits. In place of the deleted language, Virginia added language that specifies that release must be in accordance with the bond release standards at 4 VAC 25–130–800.40. We find that the proposed changes at 4 VAC 25–130–801.18(a) are consistent with and no less effective than the Federal performance bond requirements at 30 CFR 800.40(c) (which allows for phased bond release) and can be approved.

Virginia added language at 4 VAC 25–130–801.18(b) which provides that the Division of Mined Land Reclamation ''shall terminate jurisdiction for the permit area, or any increment thereof upon approval of the Phase III bond release for that area.'' The Federal regulations at 30 CFR 700.11(d)(1)(ii) provide that the regulatory authority may terminate its jurisdiction over the reclaimed site of a completed surface coal mining and reclamation operation, or increment thereof, when the regulatory authority has made a final decision in accordance with the State program counterpart to 30 CFR part 800, concerning performance bonds, to release the performance bond fully. If a regulatory authority chooses to terminate jurisdiction, then the Federal regulations require that the regulatory authority must have the ability to reassert its jurisdiction in certain circumstances. Virginia, at 4 VAC 25–130–700.11(c)(2), as part of its approved program, already provides for reassertion of its jurisdiction in certain circumstances. Thus, when 4 VAC 25–130–801.18(b) and 4 VAC 25–130–700.11(c)(2) are read in conjunction with each other, we find that this requirement is no less effective than 30 CFR 700.11(d)(1)(ii) of the Federal regulations. Therefore, this provision can be approved.

Virginia deleted the words ''after partial bond release'' at former 4 VAC 25–130–801.18(d) (now 801.18(c)). The deletion is intended to clarify that a bond may be for the entire permit area or an increment thereof. This revision renders the provision consistent with revisions to 4 VAC 25–130–801.17, which clarify that bond furnished under 4 VAC 25–130–801.12 may be for an entire permit area or for an increment thereof. We find that this revision is consistent with and no less effective than the Federal regulations at 30 CFR 800.50(c), concerning forfeiture of bonds, and with 30 CFR 800.11(e), concerning alternate bonding systems. The Federal regulations at 30 CFR 800.50(c) provide that upon default, the regulatory authority may cause the forfeiture of any and all bonds deposited to complete reclamation for which the bonds were posted. The Federal regulations at 30 CFR 800.11(e) provide that alternative bonding systems must assure that the regulatory authority will have available sufficient money to complete the reclamation plan for any areas which may be in default at any time. Therefore, the amendments at 4 VAC 25–130–801.18(b) can be approved.

IV. Summary and Disposition of Comments

Public Comments

The Commonwealth of Virginia, Department of Historic Resources responded and stated that it had reviewed the materials submitted and has no objection to the proposed amendment (Administrative Record Number VA–1040).

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, on August 2, 2004, we requested comments on the amendments from various Federal agencies with an actual or potential interest in the Virginia program (Administrative Record Number VA–1038). The United States Department of Labor, Mine Safety and Health Administration (MSHA) responded and stated that it has no comments on the proposed amendment (Administrative Record Number VA–1042). The United States Bureau of Land Management (BLM) reviewed the proposed amendments but provided no comments on the proposed amendments (Administrative Record Number VA–1039).

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Virginia proposed to make in this amendment pertain to air or

water quality standards. Therefore, we did not ask EPA to concur on the amendment. Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from EPA (Administrative Record Number WV–1038).

The EPA responded by letter dated August 27, 2004 (Administrative Record Number VA–1041), and stated that there are no apparent inconsistencies with the Clean Water Act or other statutes or regulations under EPA's jurisdiction. EPA also stated that, regarding bond release, its main concern is that there must be available funds—whether in individual performance bonds, a bond pool, other types of financial assurance, or a combination of these—to guarantee remediation of any land disturbed or water impaired in case the responsible party goes out of business. EPA offered no other comments. We agree with EPA's comment that there must be sufficient bond to guarantee reclamation of any land disturbed or water impaired in case the permittee is unable to complete the reclamation. The proposed amendment to 4 VAC 25–130–801.18 specifically requires that in the event of a bond forfeiture, Virginia shall first use available bonds and then money from the Pool Bond Fund to complete reclamation of the permit area.

V. OSM's Decision

Based on the above findings, we approve the amendment sent to us by Virginia on July 20, 2004.

To implement this decision, we are amending the Federal regulations at 30 CFR part 946, which codify decisions concerning the Virginia program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

Executive Order 12866—Regulatory Planning and Review

This rule is exempt from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This final rule applies only to the Virginia program and therefore does not affect tribal programs.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior 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.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not

have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 946

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 14, 2005.

Brent Wahlquist,

Regional Director, Appalachian Region.

■ For the reasons set out in the preamble, 30 CFR part 946 is amended as set forth below:

PART 946—VIRGINIA

■ 1. The authority citation for part 946 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 946.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 946.15 Approval of Virginia regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * * *	*	* *
July 20, 2004	April 14, 2005	4 VAC 25–130–801.17 and 801.18.

[FR Doc. 05–7495 Filed 4–13–05; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R06–OAR–2005–NM–0001; FRL–7897–6]

Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Albuquerque/Bernalillo County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving State Implementation Plan (SIP) revisions submitted by the Governor of New Mexico on September 7, 2004. The submittal revises the second ten-year carbon monoxide (CO) maintenance plan for the Albuquerque/Bernalillo County, New Mexico area. The submittal also revises the relevant parts of the New Mexico Administrative Code (NMAC) including revisions to the General Provisions, Inspection and Maintenance (I&M) Program, and the contingency measures. We are approving these revisions in accordance with the requirements of the Federal Clean Air Act (the Act).

DATES: This rule is effective on June 13, 2005 without further notice, unless EPA receives relevant adverse comment by May 16, 2005. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID No. R06–OAR–2005–NM–0001, by one of the following methods:

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

Agency Web site: http://docket.epa.gov/rmepub/ Regional Material in EDocket (RME), EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

U.S. EPA Region 6 ''Contact Us'' Web site: http://epa.gov/region6/r6coment.htm. Please click on ''6PD'' (Multimedia) and select ''Air'' before submitting comments.

E-mail: Mr. Thomas Diggs at *diggs.thomas@epa.gov.* Please also cc the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

Fax: Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), at fax number 214–665–7263.

Mail: Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.

Hand or Courier Delivery: Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Regional Material in EDocket (RME) ID No. R06–OAR–2005–NM–0001. The EPA's policy is that all comments received will be included in the public file without change, and may be made available online at *http://docket.epa.gov/rmepub/,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through Regional Material in EDocket (RME), regulations.gov, or e-mail if you believe that it is CBI or otherwise protected from disclosure. The EPA RME Web site and the Federal regulations.gov 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 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 file 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 Regional Material in EDocket (RME) index at *http://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 the official file which is available 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 a.m. and 4:30 p.m. 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:

The City of Albuquerque, Environmental Health Department, One Civic Plaza, Albuquerque, NM 87102.

FOR FURTHER INFORMATION CONTACT: Alan Shar, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–6691, *shar.alan@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Evaluation of New Mexico's Submittal
A. Elements of a Limited Maintenance Plan
B. Control Measures in the Limited Maintenance Plan
C. Part 20.11.1 NMAC, General Provisions
D. Part 20.11.100 NMAC, Motor Vehicle Inspection—Decentralized
E. Part 20.11.102 NMAC, Oxygenated Fuels
III. Final Action
IV. Statutory and Executive Order Reviews

Throughout this document ''we,'' ''us,'' and ''our'' refer to EPA.

I. Background

Under the 1990 Clean Air Act Amendments, the Albuquerque/Bernalillo County area was classified as a moderate nonattainment area for CO. On November 5, 1992, the State of New Mexico submitted for EPA approval a revision to the SIP to address the CO pollution in the Albuquerque/Bernalillo County area. Different aspects of this SIP revision were approved at different times by EPA, with the entire plan being approved by the end of 1995 (see 58 FR 62535, 58 FR 67326, 59 FR 23167 and 60 FR 52641).

On April 14, 1995, New Mexico submitted a request that the Albuquerque/Bernalillo County nonattainment area be redesignated to attainment for CO. Along with this request, the state submitted a maintenance plan which demonstrated that the area was expected to stay in attainment of the CO National Ambient Air Quality Standards (NAAQS) for the initial maintenance period of 1996–2006. Included in the maintenance plan was a commitment to update the plan for a subsequent ten-year period (2006–2016) no later than eight years after redesignation to attainment by EPA. The redesignation request and maintenance plan were approved by EPA on June 13, 1996 (61 FR 29970). Subsequent revisions to the maintenance plan were submitted by New Mexico and ultimately approved by EPA (see 61 FR 48404, 65 FR 33455 and 68 FR 58276).

Section 175A(b) of the Act as amended in 1990 requires the state to submit a subsequent maintenance plan covering a second ten-year period to EPA eight years after designation to attainment. To fulfill this requirement of the Act, and in response to a commitment in the current maintenance plan for the Albuquerque/Bernalillo County area, the Governor of New Mexico submitted the second ten-year update of the CO maintenance plan to EPA on September 7, 2004. See section II of this document for our evaluation of the CO maintenance plan.

On December 30, 2004 (69 FR 78312), we published the recodification and renumbering of the NMAC for the Albuquerque/Bernalillo County.

Today, we are approving, as a part of the SIP, the second ten-year carbon monoxide (CO) maintenance plan for the Albuquerque/Bernalillo County, New Mexico area. In addition, we are approving the relevant parts of the NMAC for the Albuquerque/Bernalillo County area that further support the second ten-year maintenance plan for CO within that area. Specifically, we are approving revisions to title 20, chapter 11, parts 1 (General Provisions) ''Definitions,'' ''Resolutions,'' and ''Interpretation,'' 100 (Motor Vehicle Inspection-Decentralized), and 102 (Oxygenated Fuels) of the NMAC. Our Technical Support Document (TSD) prepared in conjunction with this SIP revision contains detailed information concerning our evaluation of each one of these parts.

II. Evaluation of New Mexico's Submittal

On September 7, 2004, the State of New Mexico submitted a revision to the SIP for Bernalillo County. This revision provides the second 10-year update to the maintenance plan for the area, as required by the section 175A(b) of the Act. The purpose of this plan is to ensure continued maintenance of the NAAQS for carbon monoxide in Bernalillo County by demonstrating that future emissions of this criteria pollutant are expected to remain at or below emission levels necessary for continued attainment of the CO NAAQS.

Since there are few specific content requirements defined in section 175A of the Act for maintenance plans, EPA has exercised its discretion in determining the required content and has a Limited Maintenance Plan policy in effect for areas that can demonstrate consistent air quality at or below 85% of the NAAQS for carbon monoxide. Other criteria for the Limited Maintenance Plan approach are detailed in the EPA guidance memorandum, ''Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas'' from Joseph Paisie, Office of Air Quality Planning and Standards, dated October 6, 1995. The Albuquerque/Bernalillo County area has opted to develop a Limited Maintenance Plan to fulfill the second ten-year maintenance period required by the Act.

Pursuant to this approach, EPA will consider the maintenance demonstration satisfied if the monitoring data show the 8-hour CO design value is at or below 7.65 parts per million (ppm), or 85% of the 8-hour CO NAAQS of 9 ppm. In addition, the 1-hour CO design value must be at or below 29.75 ppm, or 85% of the 1-hour CO NAAQS of 35 ppm. The EPA believes that if the area begins the maintenance period at or below 85% of the applicable NAAQS, the continuing applicability of PSD and other Federal measures along with the existing control measures already adopted should provide adequate assurance of maintenance of the NAAQS over the ten-year period. The last monitored violation of the CO NAAQS in Bernalillo County occurred in December of 1991 and monitored CO levels have been steadily in decline ever since. For this submission, the state provided data

showing monitored CO values from 1994–2003, reflecting 2003 design values of 3.9 ppm and 9.6 ppm of the 8-hour and 1-hour CO standards, respectively. These values, well below the 85% threshold, render the Albuquerque/Bernalillo County maintenance area eligible for the Limited Maintenance Plan option.

A. Elements of a Limited Maintenance Plan

A Limited Maintenance Plan consists of several core provisions per the Limited Maintenance Plan Guidance memo: an attainment inventory, a demonstration of maintenance of the CO NAAQS, operation of a monitoring network, a provision for contingency measures, a discussion of the approach necessary to meet conformity requirements, and a commitment to develop a full maintenance plan upon violation of the NAAQS.

Emission inventories contain estimates of how much CO is produced by all categories in the maintenance area on an annual basis: on-road mobile sources, off-road mobile sources, area sources and stationary sources. As part of the currently approved maintenance plan, Bernalillo County has produced Periodic Emissions Inventories (PEIs) for CO every three years, and approved PEIs exist for 1993, 1996, and 1999. The 2002 PEI is currently under review but is not required for approval of a limited maintenance plan. These emission inventories establish the baseline amount of emissions, which is the amount of CO in tons per day under which an area's emissions must remain in order to not exceed the NAAQS for CO. The submitted attainment year inventory was developed from the previous 1993 CO attainment inventory. Since 1993 was a year in which Bernalillo County did not violate the CO NAAQS, this inventory remains applicable as the baseline CO inventory. The attainment inventory was developed following EPA guidance, and therefore is approvable for the Limited Maintenance Plan. Under the Limited Maintenance Plan option a cap on total emissions is not needed during the maintenance period (2006–2016). However, the State provided the draft 2002 PEI estimates for informational purposes with this SIP revision. The estimates from the table below are from the 2002 PEI still under review. Although we do not expect major changes, some fine-tuning and revision of emissions estimates may occur.

TABLE I.—CO EMISSIONS BY SOURCE CATEGORY, 2002

Source category	Tons per day (tpd)
On-road Mobile	364.14
Off-road Mobile	34.45
Area	71.51
Stationary	3.24
Total	473.34

The State has chosen to demonstrate maintenance of the NAAQS by continued monitoring of the air quality in Bernalillo County. To qualify for the Limited Maintenance Plan option, the design value for each monitor must be at or below 85% of the 8-hour and 1-hour CO NAAQS. The values corresponding to this 85% threshold are 7.65 ppm for the 8-hour CO standard and 29.75 ppm for the 1-hour CO NAAQS. The 2003 design values for Bernalillo County are 3.9 ppm and 9.6 ppm for the 8-hour and 1-hour standards, respectively. Thus, the design value for the 8-hour standard is less than 44% of the CO NAAQS and the design value for the 1-hour standard is less than 28% of the CO NAAQS. The EPA believes that if an area begins the maintenance period at or below the 85% threshold, it is unreasonable to expect that so much growth will occur during the ten-year maintenance period to cause a violation of the NAAQS. Therefore, we find that the State demonstrates continued maintenance of the standard.

The Plan includes a commitment to maintain operation of the existing EPA-approved air quality monitoring network in accordance with 40 CFR part 58. The Environmental Health Department of the City of Albuquerque will continue to monitor CO through the end of the second ten-year maintenance period to ensure the CO level remains below 85% of the NAAQS. This data will be reported to EPA annually.

Section 175A of the Act requires that a maintenance plan include contingency provisions to promptly correct any violation of the NAAQS that occurs after redesignation of the area to attainment. Contingency measures are specific control strategies that will be activated if they are triggered by a predefined event. Under the current EPA-approved plan, two contingency measures were incorporated: an annual Inspection and Maintenance Program versus the current biennial program and an increase in the oxygenate content in fuels from 2.7% to 3%. The current EPA-approved plan's trigger for these contingency measures is a monitored CO violation. There have been no violations at any monitor since the area was redesignated to attainment in 1996, thus these contingency measures have never been triggered.

With this submission, the State is revising the contingency measures and trigger for Bernalillo County. The contingency requirement to implement an annual Inspection and Maintenance Program is being eliminated. The contingency requirement to increase the oxygenate concentration in fuels from 2.7% to 3%, by weight, will remain in place. Instead of the contingency trigger being a monitored CO violation, it will be triggered if an air quality monitor indicates that the 85% CO NAAQS threshold has been exceeded. This oxygenated fuel contingency measure will be implemented no later than November 1st following activation of the contingency trigger. The State rule (20.11.102 NMAC) has been updated to reflect this change to the contingency trigger. We believe that the new stricter trigger and one control measure are as protective as the previously-approved trigger and two control measures. Therefore, the revised contingency measures plan is being approved.

Finally, in the event that a violation of the CO NAAQS occurs, the State has committed to development and submission of a full maintenance plan within 12 months of EPA certification of the monitored violation. This plan would supercede the Limited Maintenance Plan. [Note that the State submittal reflects on p.15 an 18-month time frame for submittal of a full maintenance plan following a violation of the NAAQS. However, elsewhere in the State submittal (see p. 13), the 12-month commitment is stated.] The EPA was informed by the State that the 18-month time frame is a typographical error and therefore we are approving the State's commitment to submit a full maintenance plan within 12 months of EPA certification of the monitored violation.

Section 176(c) of the Act defines conformity as actions that do not interfere with the SIP's purpose of eliminating or reducing the severity and number of NAAQS violations. It also says that actions cannot cause or contribute to any new violation or delay attainment or any milestones. In most nonattainment and maintenance areas this is shown by regional emissions analyses that demonstrate that estimated emissions from the proposed project(s) are expected to be below a defined emissions budget contained in the State's SIP, or by an interim emissions test prior to availability of emissions budgets. However, in areas with adequate or approved Limited Maintenance Plans, emissions budgets

are treated as essentially not constraining for the length of the maintenance plan as long as the area continues to meet the Limited Maintenance Plan criteria. The EPA believes there is no reason to expect that these areas will experience so much growth that a violation of the CO NAAQS would result. Therefore, for areas meeting the Limited Maintenance Plan criteria, all Federal actions that require conformity determinations are considered to have satisfied the regional emissions analysis requirement of the conformity regulations. Since these areas are still maintenance areas; however, other aspects of the transportation conformity regulations still apply. Specifically, such areas must demonstrate that the metropolitan transportation plans and transportation improvement programs are fiscally constrained (40 CFR part 108) and that any Transportation Control Measures in the SIP are being implemented according to the conformity rule (40 CFR 93.113). Additionally, for most transportation projects in limited maintenance areas, a CO ''hot spot'' analysis will still be required, incorporating the latest planning assumptions and using the latest available EPA-approved emissions model.

B. Control Measures in the Limited Maintenance Plan

The CO control program for Bernalillo County is comprised of both Federal and local measures. The current maintenance plan for the area includes several control strategies that will remain in place for the duration of the second ten-year maintenance period of 2006–2016. The Federal strategies expected are continued implementation of the Tier 2 motor vehicle emission standards along with the requirement for reduced sulfur in gasoline, which became effective on February 10, 2000 (65 FR 6697). Additionally, EPA's newly approved non-road rule (69 FR 38957; June 29, 2004) will regulate non-road diesel engines and diesel fuel. This rule incorporates new emission standards, based on advanced emission control devices, for non-road diesel engines and will result in significant reductions in several criteria pollutants, including CO. As newer vehicles gradually replace older ones in the fleet, these control programs will result in lowered CO emissions in the Albuquerque/Bernalillo County area and elsewhere.

Local control strategies remaining in place for the duration of the second ten-year maintenance plan include an I&M Program, Oxygenated Fuels Program, Woodburning Control Program, and the Prevention of Significant Deterioration Program (PSD). The I&M program has been in effect in Bernalillo County since 1989. The I&M SIP requires biennial emissions testing of 1975 and newer vehicles with a 2-speed idle test. For more information on the I&M SIP revision see section D of this document and our TSD. Today, we are approving revisions to the I&M SIP that, among other things, includes annual testing of 1975 through 1985 vehicles. The annual testing of older vehicles is designed to reduce CO emissions from the on-road mobile sector by identifying high-emitting vehicles and requiring repair. Failure to do so, as with all failing vehicles, will result in vehicles not being issued a registration renewal. The biennial testing of 1986 and newer vehicles will continue. In addition, non-Bernalillo County vehicles used for commuting into Bernalillo County for sixty or more days per year will now be required to be tested. The combined annual/biennial program as described above with the revisions discussed below in section C, will remain in place for the duration of the second ten-year maintenance period (2006–2016).

The Oxygenated Fuels Program aims to reduce vehicle emissions by providing for the use of oxygenated fuels. Various forms of this program have been in place during the Winter months (November 15 through February) since 1988. The minimum oxygenate content of Winter fuels in Bernalillo County is 2.7% by weight, and this requirement will remain in effect for the duration of the second ten-year (2006–2016) maintenance period.

Another local control strategy is the Woodburning Control Program, which initially began during the winter of 1988. Because poor air dispersion combined with high CO emissions from woodburning activities can contribute to elevated CO levels, the Environmental Health Department of the City of Albuquerque uses weather forecast information to declare ''no burn'' periods which restrict woodburning activity in Bernalillo County. This control program will remain in effect for the duration of the second ten-year maintenance period.

The PSD program is a control program that has been approved into the Bernalillo County SIP for local implementation. This program has been in effect for CO since Bernalillo County was redesignated to attainment in 1996. Under this program, new stationary sources of CO are evaluated and are required to use the Best Available Control Technology (BACT) to control emissions. This program will continue as a control strategy during the second maintenance period of 2006–2016.

Based on above evaluation, outlined in sections A and B, this SIP revision satisfies the requirements of the Act as amended in 1990 for the second ten-year update to the Albuquerque/Bernalillo County CO maintenance area.

C. Part 20.11.1 NMAC, General Provisions

The title 20, chapter 11, part 1, General Provisions, was submitted to us for approval by the Governor of New Mexico, in a letter dated September 7, 2004, on behalf of the Albuquerque/Bernalillo County, Environmental Health Department. The proposed title 20, chapter 11, part 1, General Provisions, contains three sections titled ''Resolution,'' ''Definitions,'' and ''Interpretation.'' The EPA initially approved Regulation 1 (Resolution) of the Albuquerque/Bernalillo County, New Mexico on 04/10/1980 (45 FR 24468). See 40 CFR 52.1620(c)(11). The EPA initially approved Regulation 2 (Definitions) on 04/10/1980 (45 FR 24468). Further revisions to Regulation 2 were later approved by EPA on 12/21/93 (54 FR 67330). See 40 CFR 52.1620(c)(53). The EPA initially approved Regulation 26 (Interpretation) on 02/23/1993 (58 FR 10972). See 40 CFR 52.1620 (c)(49). The proposed revisions to ''Resolution,'' ''Definitions,'' and ''Interpretation'' reflect the new format and renumbering of the NMAC. The proposed revisions also reflect renaming of ''Regulation'' to ''Part.'' These changes are administrative in nature, and do not change the text of the SIP-approved rules. We published our approval of the recodification and renumbering of chapter 11 on December 30, 2004 (69 FR 78312). Therefore, these revisions are being approved today. The proposed revisions may be found at: *http://www.nmcpr.state.nm.us/nmac/_title20/T20C011.htm*.

D. Part 20.11.100 NMAC, Motor Vehicle Inspection-Decentralized

As a moderate nonattainment area for CO, the Albuquerque/Bernalillo County area was required to implement a basic vehicle I&M program. The latest version of the I&M SIP for this program was approved by EPA on June 13, 1996 (61 FR 29970), along with the area redesignation to attainment for CO. The program consists of a decentralized network of ''test only'' and ''test and repair'' stations. One of the submitted revisions is that vehicles model years 1975–1985 are tested annually instead of biennially with a 2-speed idle test. Vehicles model years 1986–1995 will

continue to be tested biennially with a 2-speed idle test. Vehicles model years 1996 and newer will be tested biennially consistent with the new On-board Diagnostic testing required by the Act. Revisions to this SIP also include adding a gas cap pressure test, and exempting the first four years for new vehicles from testing. Language clarification, minor format changes, and some innovative measures are also included. An example of an innovative measure is commuter vehicles which are more than four years old and are driven into Bernalillo County for 60 or more days per year are now subject to I&M testing. For further information about the changes to the program, see the TSD.

The revisions made to the 20.11.100 NMAC, Motor Vehicle Inspection-Decentralized for the Albuquerque/ Bernalillo County area are consistent with the requirements of the Act, the Federal Inspection and Maintenance rules in 40 CFR 51 subpart S, do not weaken, but rather strengthen the existing federally approved SIP. Therefore, these revisions are being approved today.

E. Part 20.11.102 NMAC, Oxygenated Fuels

The initial EPA-approved revision to the SIP concerning oxygenated fuels program for the Albuquerque/Bernalillo County utilizing ethanol was approved on November 29, 1993 (58 FR 62535). Various forms of this program have been in place during the Winter months (November 1 through February) since 1988. The current SIP revision requires a minimum oxygenate concentrate of Winter fuels of 2.7% by weight in the Albuquerque/Bernalillo County (November 1 through February).

In a letter dated September 7, 2004, the Governor of New Mexico submitted a request to revise the current carbon monoxide maintenance plan for the Albuquerque/Bernalillo County area. This request, among others as described above, was to incorporate the revised regulation 20.22.102 NMAC, Oxygenated Fuels, which only applies to the Albuquerque/Bernalillo County area. The Albuquerque/Bernalillo County Air Control Board adopted the amended regulation on July 14, 2004, after a public comment period and public hearing conducted on June 9, 2004. The amended regulation became locally effective on September 1, 2004.

The SIP revision submitted provides minor grammatical and typographical changes to the current EPA-approved Oxygenated Fuels program. These changes are administrative in nature and are approvable. Therefore, we are approving the revisions to the Oxygenated Fuels Program into the SIP.

As noted and previously discussed in section A, the State also submitted a request for the revision of the current contingency measures plan in the Albuquerque/Bernalillo County maintenance plan approved on June 13, 1996 (61 FR 29970). The oxygenated fuels' contingency measure functions in 2 phases.

The first contingency measure phase, July 1, 1995 until June 13, 2006, or when EPA has approved this SIP revision regarding the second half of the carbon monoxide maintenance plan for Bernalillo county, increases the oxygenate concentration in gasoline from 2.7% to 3.0%, by weight, for ethanol in the event the area exceeds the CO NAAQS. The increase in oxygenate concentration will occur beginning November 1 immediately following the period of violation and will continue every subsequent winter pollution season. The winter pollution season lasts from November through February.

The second contingency measure phase, June 13, 2006 until June 13, 2016, or when EPA has approved this SIP revision regarding the second half of the CO maintenance plan for Albuquerque/Bernalillo County, whichever is sooner increases the oxygenate concentration in gasoline from 2.7% to 3.0%, by weight, for ethanol in the event the area exceeds 85% of the CO NAAQS. The increase in oxygenate concentration will occur beginning November 1 immediately following the period in which the area exceeded 85% of the CO NAAQS and continues every subsequent winter pollution season.

The EPA performed an analysis of the Albuquerque/ Bernalillo County Air Control Board's submission and determined that it meets the applicable requirements of the Act, and EPA's regulations, and is consistent with our policies. The implementation of the oxygenated fuels contingency measure triggered at 85% of the NAAQS for carbon monoxide will provide for the reduction in the probability of the area falling into nonattainment. Therefore, we are approving the revisions to the Oxygenated Fuels rule. Our TSD prepared in conjunction with today's action contains more information concerning this rulemaking.

III. Final Action

The EPA is approving the aforementioned changes to New Mexico's Albuquerque/Bernalillo County SIP because the revisions are consistent with the Act and EPA regulatory requirements. The EPA is publishing this rule without prior proposal because the EPA views this as a non-controversial submittal 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 the SIP revision should adverse comments be filed. This rule will be effective June 13, 2005 without further notice, unless EPA receives relevant adverse comment by May 16, 2005.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent 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 June 13, 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 law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175

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

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

The Congressional Review Act, 5 U.S.C. section 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. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 13, 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 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.

Dated: March 31, 2005.

Richard E. Greene,

Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart GG—New Mexico

■ 2. Section 52.1620 is amended as follows:

■ a. In paragraph (c), in the second table entitled ''EPA Approved Albuquerque/Bernalillo County, NM Regulations,'' by revising the entries for parts 1, 100, and 102.

■ b. In paragraph (e), in the second table entitled ''EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the New Mexico SIP'' by adding one new entry to the end of the table.

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED ALBUQUERQUE/BERNALILLO COUNTY, NM REGULATIONS

State citation	Title/subject	State approval/effective date	EPA approval date	Explanation
Albuquerque/Bernalillo County, Air Quality Control Regulations				
*	*	*	*	*
New Mexico Administrative Code (NMAC) Title 20—Environment Protection, Chapter 11—Albuquerque/Bernalillo County Air Quality Control Board				
Part 1 (20.11.1 NMAC) ..	General Provisions	09/07/04	04/14/05 [Insert FR page where document begins].	
*	*	*	*	*
Part 100 (20.11.100 NMAC).	Motor Vehicle Inspection—Decentralized	09/07/04	04/14/05 [Insert FR page where document begins].	
Part 102 (20.11.102 NMAC).	Oxygenated Fuels	09/07/04	04/14/05 [Insert FR page where document begins].	
*	*	*	*	*

* * * * * (e) * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE NEW MEXICO SIP

Name of SIP provision	Applicable geographic or non-attainment area	State submittal date/effective date	EPA approval date	Explanation
* *	*	*	* *	*
Second 10-year maintenance plan (limited maintenance plan) for Albuquerque/ Bernalillo County.	Bernalillo County	09/07/04	04/14/05 [Insert FR page where document begins].	

* * * * *

■ 3. Section 52.1627 is amended by designating the existing text as paragraph (a) and by adding paragraph (b) to read as follows:

§ 52.1627 Control strategy and regulations: Carbon monoxide.

* * * * *

(b) Approval—The Albuquerque/ Bernalillo County carbon monoxide limited maintenance plan revision dated September 7, 2004, meets the requirements of section 172 of the Clean Air Act, and is therefore approved.

[FR Doc. 05–7336 Filed 4–13–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126332–5039–02; I.D. 041105A]

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of Pacific cod from vessels using jig gear to catcher vessels less than 60 feet (18.3 meters (m)) length overall (LOA) using pot or hook-and-line gear in the Bering Sea and Aleutian Islands management area (BSAI). These actions are necessary to allow the 2005 A season total allowable catch (TAC) of Pacific cod to be harvested.

DATES: Effective April 13, 2005, through 2400 hrs, Alaska local time (A.l.t.), December 31, 2005.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2005 A season allowance of the Pacific cod TAC specified for vessels using jig gear in the BSAI is 1,524 metric tons (mt) as established by the 2005 and 2006 final harvest specifications for groundfish in the BSAI (70 FR 8979, February 24, 2005), for the period 1200 hrs, A.l.t., January 1, 2005, through 1200 hrs, A.l.t., April 30, 2005. See §§ 679.20(a)(7)(i)(C)(1), (c)(3)(iii), and (c)(5).

As of April 1, 2005, the Administrator, Alaska Region, NMFS, has determined that jig vessels will not be able to harvest 1,150 mt of the A season apportionment of Pacific cod allocated to those vessels under §§ 679.20(a)(7)(i)(A) and (a)(7)(iii)(A). Therefore, in accordance with § 679.20(a)(7)(ii)(C)(*1*), NMFS apportions 1,150 mt of Pacific cod from the A season apportionment of jig gear to catcher vessels less than 60 feet (18.3 m) LOA using pot or hook-and-line gear.

The harvest specifications for Pacific cod included in the harvest specifications for groundfish in the BSAI (70 FR 8979, February 24, 2005) are revised as follows: 374 mt to the A season apportionment for vessels using jig gear and 2,504 mt to catcher vessels less than 60 feet (18.3 m) LOA using pot or hook-and-line gear.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of Pacific cod specified for jig vessels to catcher vessels less than 60 feet (18.3 m) LOA using pot or hook-and-line gear and therefore would cause disruption to the industry by requiring unnecessary closures, disruption within the fishing industry and the potential for regulatory discards when the current allocation is projected to be reached on April 2, 2005. This reallocation will relieve a restriction on the industry and allow for the orderly conduct and efficient operation of this fishery.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: April 11, 2005.

Galen R. Tromble

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 05–7513 Filed 4–13–05; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 71
Thursday, April 14, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1030

[Docket No. AO–361–A39; DA–04–03A]

Milk in the Upper Midwest Marketing Area; Tentative Partial Decision on Proposed Amendments and Opportunity To File Written Exceptions to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This tentative partial decision adopts, on an interim final and emergency basis, proposals that would amend certain features of the pooling standards and transportation credit provisions of the Upper Midwest (UMW) milk marketing order. A separate decision will be issued at a later time that will address proposals concerning the depooling and repooling of milk, temporary loss of Grade A status, and increasing the maximum administrative assessment. This decision requires determining if producers approve the issuance of the amended order on an interim basis.

DATES: Comments should be submitted on or before June 13, 2005.

ADDRESSES: Comments (6 copies) should be filed with the Hearing Clerk, STOP 9200–Room 1083, United States Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250–9200. You may send your comments by the electronic process available at the Federal eRulemaking portal: *http://www.regulations.gov* or by submitting comments to *amsdairycomments@usda.gov*. Reference should be made to the title of action and docket number.

FOR FURTHER INFORMATION CONTACT: Gino Tosi, Marketing Specialist, Order Formulation and Enforcement Branch, USDA/AMS/Dairy Programs, STOP 0231—Room 2971, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 690–3465, e-mail address: *gino.tosi@usda.gov*.

SUPPLEMENTARY INFORMATION: Specifically, this tentative partial decision proposes to adopt amendments which would ensure that producer milk originating outside the states that comprise the UMW order (Illinois, Iowa, Minnesota, North Dakota, South Dakota, Wisconsin, and the Upper Peninsula of Michigan) is providing consistent service to the order's Class I market, and would eliminate the ability to pool as producer milk diversions to nonpool plants outside of the states that comprise the UMW marketing area. Additionally, this decision proposes to adopt a limit to the transportation credit received by handlers that would only apply to the first 400 miles of applicable milk movements.

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

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

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

Regulatory Flexibility Act and Paperwork Reduction Act

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

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

During August 2004, the month during which the hearing occurred, there were 15,608 dairy producers pooled on, and 60 handlers regulated by, the UMW order. Approximately 15,082 producers, or 97 percent, were considered small businesses based on the above criteria. On the processing side, approximately 49 handlers, or 82 percent, were considered ''small businesses.''

The adoption of the proposed pooling standards serves to revise established criteria that determine those producers, producer milk, and plants that have a reasonable association with, and are consistently serving the fluid needs of, the UMW milk marketing area. Criteria for pooling are established on the basis of performance levels that are considered adequate to meet the Class I fluid needs and, by doing so, determine those producers who are eligible to share in the revenue that arises from the classified pricing of milk. Criteria for pooling are established without regard

to the size of any dairy industry organization or entity. The criteria established are applied in an identical fashion to both large and small businesses and do not have any different economic impact on small entities as opposed to large entities. The criteria established for transportation credits is also identically applied to both large and small businesses and do not have any different economic impact on small entities. Therefore, the proposed amendments will not have a significant economic impact on a substantial number of small entities.

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

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

No other burdens are expected to fall on the dairy industry as a result of overlapping Federal rules. This rulemaking proceeding does not duplicate, overlap, or conflict with any existing Federal rules.

Interested parties are invited to submit comments on the probable regulatory and informational impact of this proposed rule on small entities. Also, parties may suggest modifications of this proposal for the purpose of tailoring their applicability to small businesses.

Prior Documents in This Proceeding

Notice of Hearing: Issued June 16, 2004; published June 23, 2004 (69 FR 34963).

Notice of Hearing Delay: Issued July 14, 2004; published July 21, 2004 (69 FR 43538).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this tentative partial decision with respect to the proposed amendments to the tentative marketing agreement and the order regulating the handling of milk in the Upper Midwest marketing area. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Room 1083-Stop 9200, 1400 Independence Avenue, SW, Washington, DC 20250–9200, by June 13, 2005. Six (6) copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The hearing notice specifically invited interested persons to present evidence concerning the probable regulatory and informational impact of the proposals on small businesses. While no evidence was received that specifically addressed these issues, some of the evidence encompassed entities of various sizes.

The proposed amendments set forth below are based on the record of a public hearing held in Bloomington, Minnesota, on August 16–19, 2004, pursuant to a notice of hearing issued June 16, 2004, published June 23, 2004 (69 FR 34963), and a notice of a hearing delay issued July 14, 2004, published July 21, 2004 (69 FR 43538).

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

The material issues on the record of the hearing relate to:

1. Pooling Standards—Changing performance standards and diversion limits.

2. Transportation credits.

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

Findings and Conclusions

This tentative partial decision specifically addresses Proposals 1, 6, and features of Proposal 2 that are intended to better identify the milk of those producers who provide a reasonable and consistent servicing of the Class I needs of the UMW marketing area and thereby become eligible to pool on the UMW order. This decision also limits the transportation credits received by handlers that would only apply to the first 400 miles of applicable milk movements. The portion of Proposal 2 that addresses depooling, the portion of Proposal 6 that addresses temporary loss of Grade A approval, and Proposals 3, 4, 5, and 7 will be addressed in a separate decision. For the purpose of this tentative partial decision, references to Proposal 2 will only pertain to the second and third portions of the proposal (limiting the pooling of distant milk and transportation credits), and references to Proposal 6 will only pertain to the touch-base standard of the proposal, as published in the hearing notice.

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

1. Pooling standards

Several proposed changes to the pooling standards of the UMW order should be adopted immediately. Certain inadequacies of the current pooling provisions are resulting in large volumes of milk pooled on the UMW order which do not demonstrate a reasonable and consistent servicing of the UMW Class I market.

Specifically, the following amendments should be adopted immediately: (1) Establish that only supply plants located in Illinois, Iowa, Minnesota, North Dakota, South Dakota, Wisconsin, and the Upper Peninsula of Michigan (hereinafter referred to as the ''7-state milkshed'') may use milk delivered directly from producers'' farms for qualification purposes; and (2) Establish that diversions to nonpool plants must be to plants located in the 7-state milkshed in order to be eligible as producer milk under the order. These amendments to the pooling standards were contained in two proposals, published in the hearing notice as Proposal 1 and Proposal 2, and as modified at the hearing.

Three proposals (Proposals 1, 2, and 6) seeking to limit the ability of ''distant'' milk to become pooled were considered in this proceeding. The hearing record makes clear that the proponents of these proposals are of the

opinion that the current pooling provisions of the order enable milk which has no reasonable ability to service the Class I needs of the UMW market to become pooled on the order. According to the proponents, such milk currently need only make an initial qualifying delivery to a pool plant to become pooled on the order. The witnesses assert that this is causing the unwarranted lowering of the order's blend price.

Proposal 1 was offered by Associated Milk Producers, Inc. (AMPI), Bongards' Creameries, Ellsworth Cooperative Creameries, and First District Association. Hereinafter, this decision will refer to these proponents as ''AMPI, *et al.*'' All are cooperative associations whose members'' milk is pooled on the UMW order.

Proposal 2 was offered by Mid-West Dairymen's Company on behalf of Cass-Clay Creamery, Inc. (Cass-Clay), Dairy Farmers of America, Inc. (DFA), Foremost Farms USA Cooperative (Foremost Farms), Land O'Lakes, Inc. (LOL), Manitowoc Milk Producers Cooperative (MMPC), Mid-West Dairymen's Company, Milwaukee Cooperative Milk Producers (MCMP), Swiss Valley Farms Company (Swiss Valley), and Woodstock Progressive Milk Producers Association. Hereinafter, this decision will refer to these proponents as ''Mid-West, *et al.*'' Although Foremost Farms was a proponent of Proposal 2, no testimony was offered on their behalf. At the hearing, Plainview Milk Products Cooperative and Westby Cooperative Creamery also supported the testimony of Mid-West, *et al.* The proponents of Proposal 2 are qualified cooperatives representing producers whose milk supplies the milk needs of the marketing area and is pooled on the UMW order.

Proposal 6, offered by Dean Foods Company (Dean), which also addresses the pooling of distant milk, should not be adopted. Proposal 6 sought to increase the number of days that a dairy farmer's milk production would need to be delivered to a UMW pool plant from the current 1 day to 2 days before the milk of the dairy farmer would be eligible for diversion to a nonpool plant and have such diverted milk pooled on the order. This is commonly referred to by the industry as a ''touch-base'' standard. If this standard was not met for each of the months of July through November, Proposal 6 would have required that the touch-base standard be increased to 2 days for each of the months of December though June. If the July through November touch-base standard of Proposal 6 was met, there would be no touch-base standard applicable for the months of December through June. Additionally, Proposal 6 would also specify that if a producer lost association with the UMW order, except as caused by a loss in Grade A status, the producer would need to meet the 2-day touch-base standard in the intended month for qualifying as a producer on the order and for pooling eligibility.

During the hearing, Dean's witnesses made many modifications to their proposals which were further clarified in a post-hearing brief. In their brief, Dean explained that Proposal 6, as modified, intended that a dairy farmer's qualifying shipment could be made anytime during the month.

Currently, the UMW order provides that a supply plant can qualify as a pool plant of the order by delivering 10 percent of its total monthly milk receipts to a pool distributing plant, a producer-handler, a partially regulated distributing plant, or a distributing plant regulated by another Federal order. Additionally, producer milk can be diverted to any nonpool plant, without regard to location, as long as the producer met the touch-base standard during the first qualifying month.

A witness appearing on behalf of AMPI, *et al.*, testified in support of Proposal 1. The witness stated that since Federal order reform, and as a result of other Federal order hearings over the last several years, the UMW pooling provisions have allowed milk to be pooled on the order from as far as California, Idaho, Utah, Oregon, Colorado, Montana, Nebraska, Ohio, Indiana, and Georgia. The witness explained that a previous UMW decision, which became effective May 1, 2002, only resulted in prohibiting the ability to simultaneously pool the same milk on the UMW order and on a State-operated milk order that had marketwide pooling. The witness noted that during the same time period, however, amendments to the pooling standards of the Central and Mideast milk marketing orders resulted in a tightening of their pooling standards, moving milk formerly pooled on those two orders onto the UMW marketwide pool which reduced the blend price and producer price differential (PPD) received by UMW dairy farmers.

The AMPI, *et al.*, witness testified that in December 2003, 263 million pounds, or 12.3 percent of producer milk, pooled on the UMW order was located in Idaho. The witness also noted that for the same month, Jerome County, Idaho, had the most producer milk of any county pooled on the UMW order. The witness was of the opinion that milk seeks to be pooled on the UMW order when it cannot qualify for pooling in its own geographic area. The witness explained that milk located far from the UMW area seeks to be pooled on the UMW order because the pooling provisions of the UMW order are so liberal and because it is economically advantageous to do so.

The AMPI, *et al.*, witness stated that current order provisions allow any handler whose producers have touched base at a UMW pool plant, to pool 10 times the amount of milk shipped to a distributing plant and divert up to 90 percent of its milk supply to any nonpool plant. The witness stressed that this has resulted in Idaho producers pooling their milk on the UMW order by simply meeting the one-day touch-base standard and then diverting future milk production to a nonpool plant nearer to their farms in Idaho.

The AMPI, *et al.*, witness compared the actual PPD versus a scenario in which a PPD was computed without Idaho milk. The witness noted that in 2003 the actual PPD was a negative 5 cents while under their scenario the estimated PPD without Idaho milk would have been a positive $0.19, a $0.24 total difference. Under this scenario, it was demonstrated that UMW dairy farmers lost $36.5 million due to the $0.24 average difference in the actual versus estimated PPD, contended the witness. The witness asserted that Idaho milk was not physically supplying the market and was never intended to supply the market. The witness also added that additional Idaho milk could be pooled on the UMW order because of the termination of the Western milk marketing order on April 1, 2004.

The AMPI, *et al.*, witness stressed that Proposal 1 is not intended to prohibit the pooling of milk based on its distance from the UMW marketing area. The witness explained that any supply plant, regardless of its location, that delivers 10 percent of its producer receipts to a UMW distributing plant in the order would qualify their total receipts for pooling. The witness also explained that Proposal 1 would lessen the incentive to pool milk that does not demonstrate a consistent servicing of the UMW market's Class I needs.

A post-hearing brief submitted by AMPI asserted that $3 million per month is being siphoned off of the UMW marketwide pool by producers located long distances from the UMW and whose milk demonstrates no service to the UMW's fluid market. Their brief also reiterated that the termination of the Western order has resulted in a further lowering of blend prices

received by UMW dairy farmers as more unpooled milk seeks easy and profitable pooling opportunities. The brief explained that the loss of income to UMW dairy farmers merits the need for an emergency action.

A witness appearing on behalf of Mid-West, *et al.*, testified in support of Proposal 2. The witness stated that milk located within the 7-state milkshed is already more than adequate to serve the fluid needs of the market. The witness asserted that Idaho milk is located too far from the market, in excess of 1,000 miles, to serve as a reliable reserve supply. The witness concluded that such milk should not be considered a consistent supply for the UMW marketing area. The Mid-West, *et al.*, witness explained that often when Idaho milk makes a pool qualifying one-day touch-base delivery to a distributing plant, milk produced and located within the marketing area has to be diverted from the distributing plant to accommodate the one-time physical receipt. The witness was of the opinion that this is tantamount to the local milk supply balancing the Idaho milk supply, rather than Idaho milk balancing the local milk supplies of the UMW market. Furthermore, the witness was of the opinion that if not for inadequate pooling provisions, milk located far from the market would not seek to be pooled because the cost of servicing the market would be prohibitive.

The Mid-West, *et al.*, witness said that typically the milk in Idaho pays a fee to a UMW handler for pooling and that these fees have become a significant revenue stream for some UMW handlers who seek to offset lower PPD's and increase their financial returns to producer members. The witness stated that in this way, milk located in the UMW marketing area is essentially used to qualify plants located in Idaho as UMW pool plants. Because Idaho milk is reported as a receipt by UMW handlers, it receives the benefit of the UMW PPD although it is never actually delivered to the UMW market except for the initial association. The witness said that in December 2003, more milk was pooled on the UMW order from Jerome County, Idaho, than from any other county in the country. The witness was of the opinion that the Idaho milk would not seek to be pooled if it had to meet the order's performance standards on its own merit because the cost of transporting it to a UMW distributing plant would exceed the monetary benefit of being pooled on the order. The witness insisted that the only way that milk located far from the market could be considered a reliable supplier to the UMW market is if it consistently provided service to the UMW fluid market on its own merit.

The Mid-West, *et al.*, witness stated that the impact on the PPD from the growing amount of Idaho milk pooled on the order has become significant. For example, the witness estimated that in September 2003, the PPD was reduced by $0.73. The witness stressed that while some entities were benefitting from the pooling of such milk by collecting pooling fees, all of the market's participants were being negatively affected because of the reduction in the PPD. The witness also noted that the termination of the Western order has only compounded the problem because milk once pooled and priced on the former Western order is seeking the price protection offered by another Federal milk order.

The Mid-West, *et al.*, witness maintained that it is the UMW's lenient performance standards that have enabled milk to participate and benefit from the UMW marketwide pool without demonstrating consistent and reliable service to the market. The witness also stressed that Proposal 2 does not treat in-area and out-of-area milk of a supply plant differently. The witness explained that both must ship 10 percent of its total milk receipts to a distributing plant to qualify as a pool plant for the order. Requiring this as a pooling standard for all supply plants, the witness said, will end the practice of using local milk supplies to qualify milk for pooling that has no physical tie to the marketing area.

A brief submitted by Mid-West, *et al.*, noted that less than one tenth of one percent of Idaho milk pooled on the UMW order was delivered to a pool distributing plant from April 2001 through May 2004 as evidence of such milk's lack of reasonable and consistent service to the UMW market. Furthermore, the brief noted that only 0.21 percent of the pooled Idaho milk pooled was delivered to a UMW pool plant of any type during the same time period. The brief contended that statistics prepared by the Market Administrator's office indicated that the UMW order's blend price had been reduced approximately 25 cents per hundredweight continuously since 2003 by pooling Idaho milk. The Mid-West, *et al.*, brief reiterated that Proposal 2 does not prevent milk located far from the marketing area from being pooled. Rather, explained the brief, it would establish an appropriate performance standard so that milk which does not consistently service the Class I needs of the UMW market could not be pooled on the order.

A witness appearing on behalf of LOL testified in support of Proposal 2. The witness asserted that milk located in Idaho and pooled on the UMW market is lowering the UMW PPD, thereby negatively impacting LOL's local producers. However, as a supporter of performance-based pooling, the witness was of the opinion that Proposal 2 places additional standards on milk produced outside the 7-state milkshed. While the LOL witness was of the opinion that such pooling issues should be addressed at a national hearing, the witness nevertheless supported Proposal 2 because it addresses the low PPD's being received by UMW producers.

A witness appearing on behalf of MMPC testified in support of Proposal 2. The witness stated that MMPC has a small group of members located in Idaho that represent a significant amount of pooled milk on the UMW order. The witness explained that all members of MMPC pay a 2-cent per hundredweight checkoff on their milk for services provided by MMPC, and their Idaho members checkoff payment provides significant additional revenue to the cooperative. However, the witness said that all of the producer members of MMPC who pool their milk on the UMW order would be better off without pooling the milk from Idaho. According to the witness, the reduction in the PPD is greater than the 2-cent per hundredweight checkoff payment they receive for pooling Idaho milk.

A witness appearing on behalf of DFA testified in support of Proposal 2. The DFA witness stated that the performance standards of the UMW order should limit the amount of milk pooled on the order to only that milk which can be reasonably considered a regular and consistent supply of the market.

The DFA witness offered various pooling scenarios to illustrate that milk located in Idaho would not seek to be pooled on the UMW order if such milk were expected to make regular and consistent deliveries to pool plants. For all the scenarios, the witness assumed a hauling rate of $2.10 per loaded mile, a $1.60 Class I differential, and a transportation credit of 400 miles. The witness said that under these assumptions, milk would likely not seek to be pooled on the UMW order because the costs incurred would exceed the revenue received by being pooled on the UMW order. Additionally, the witness said that if the pooling standards are not amended to establish an appropriate level of consistent service, more milk will seek to be pooled on the order and

would result in a continued lowering of the order's blend price.

The DFA witness stressed that the order's performance standards must more clearly define what milk can reasonably be considered a consistent supply to the market. According to the witness, the underpinning logic of Federal order pricing is that milk supplies located closer to the market have a higher value than those further away. Predecessor orders had location adjustments that were a mechanism for assigning differing values to milk depending on its distance to the market, explained the witness. Milk located further from the marketing area was less valuable to the market, thus recognizing that more local milk supplies had a higher value because it cost much less to transport local milk supplies to the market, the witness said. The witness stated that location adjustments were once an important method of achieving pooling discipline. While there were no proposals regarding location adjustments under consideration, the witness explained, adoption of Proposal 2 would achieve a similar economic result—establishing a relationship between the value of milk and its distance from the market. The witness stressed that Proposal 2 would provide the framework to more accurately identify the milk of those producers which can reasonably be considered as reliable suppliers to the UMW fluid market.

A witness appearing on behalf of Cass-Clay testified in support of Proposal 2. Cass-Clay is a dairy farmer-owned cooperative located in the UMW marketing order that processes 45 percent of its total milk receipts into Class I products. The witness explained that Cass-Clay does pool distant milk for a fee which generates revenue to offset some of the negative PPD's received by UMW dairy farmers. According to the witness, the revenue generated from pooling fees has enabled Cass-Clay to support their members' mailbox price and retain membership in a highly competitive market. The witness also stated that Cass-Clay does not favor pooling Idaho milk and supports Proposal 2 because it would limit the ability to pool milk that is located far from the UMW marketing area.

A witness appearing on behalf of MCMP testified in support of Proposal 2. The witness was of the opinion that if distant producers want to collect money from the UMW marketwide pool, they should be regularly and consistently serving the UMW market. It was MCMP's position that Proposal 2 is fair and right for the market as a whole.

A witness appearing on behalf of the Galloway Company testified in support of Proposal 2. Galloway Company owns and operates a Class II manufacturing plant regulated by the UMW order. The witness was of the opinion that Proposal 2 would reduce the amount of milk pooled on the UMW order that is not actually serving the fluid market.

A witness appearing on behalf of the Wisconsin, North Dakota, and Minnesota Farmers Unions (Farmers Unions) testified in support of limiting the ability of milk to pool on the UMW order that is located far from the marketing area. However, the witness did not express support for any particular proposal. The witness said that pooling milk from far outside the UMW marketing area has had an adverse economic effect on producers who do regularly supply the UMW market. The witness was of the opinion that pooling such milk was placing an undue hardship on UMW dairy producers who regularly and consistently serve the Class I needs of the UMW market by reducing their revenue.

A dairy farmer, who is a Director on the DFA Central Area Council, testified in support of Proposal 2. The witness was of the opinion that milk produced far from the marketing area, such as Idaho, cannot regularly service the UMW market while still returning a profit to those dairy farmers. The witness was of the opinion that the UMW order should be modified to ensure that producer milk receiving the UMW blend price is actually serving the UMW market.

A witness appearing on behalf of Dean testified in opposition to Proposals 1 and 2. Dean owns and operates distributing plants regulated by the UMW order as well as UMW nonpool plants. The witness explained that Dean opposed the proposals because of the limitation on the transportation credit to 400 miles. Dean's post-hearing brief maintained its opposition to Proposal 1 stating that the proponents only want to address the problem of distant milk, not the issue of depooling. Furthermore, Dean's brief stressed its opposition to Proposal 2, insisting that it is a compromise position among the proponents and does not go far enough to ensure that all milk pooled on the order is consistently servicing the order's Class I market.

A Dean witness also testified in support of Proposal 6. The witness said the proposal would increase the current one time 1-day touch-base provision to 2 days in each of the months of July through November and if that standard was not met, the producer must deliver 2 days milk production in each of the months of December through June. Furthermore, the witness said that Proposal 6 also would establish a 2-day touch-base provision for a dairy farmer who lost producer status with the UMW order, except as a result of loss of Grade A status for less than 21 days, or became a dairy farmer for other markets. The Dean witness asserted that increasing the touch-base standard to 2 days would ensure that more milk would be consistently available at pool plants to serve the fluid market. A second Dean witness also testified in support of Proposal 6. The witness asserted that the intent of the Federal order system is to ensure a sufficient supply of milk for fluid use and provide for uniform payments to producers who stand ready, willing, and able to serve the fluid market, regardless of how the milk of any individual is utilized. While some entities are of the opinion that the order system should ensure a sufficient milk supply to all plants, the Dean witness was of the opinion that the order system addresses only the need for ensuring a milk supply to distributing plants. The witness elaborated on this opinion by citing examples of order language that stress providing for a regular supply of milk to distributing plants as a priority of the Federal milk order program.

The Dean witness was of the opinion that for the Federal milk order system to ensure orderly marketing, orders need to provide adequate economic incentives that will attract milk to fluid plants and need to properly define regulations to determine the milk of those producers who can participate in the marketwide pool. In Dean's opinion both features are missing from the terms of the UMW order. In this regard, the witness said, current pooling standards have allowed milk to become pooled on the order without demonstrating regular service to the Class I needs of the market.

Dean explained further in their post-hearing brief that when distant milk attaches to the UMW pool and dilutes the blend price, Class I handlers have to increase their premiums in an effort to offset the negative PPD so that they can retain their producers. This, argued Dean, results in inconsistent product costs between handlers. In conclusion, the Dean brief stressed that Proposal 6 does not establish different standards for in-area and out-of-area milk. Rather, the brief explained, it ensures that all milk will demonstrate regular and consistent service to the fluid market as a criterion for being pooled on the UMW order.

Dean's brief also emphasized the need for the Department to act on an emergency basis. The brief stressed that

the financial impact on UMW entities is substantial and a recommended decision should be omitted.

A witness appearing on behalf of AMPI, *et al.*, testified in opposition to Proposal 6. According to the witness, the 2-day touch base provision contained in Proposal 6 would only result in additional and unwarranted expense to UMW producers and promote the uneconomic movement of milk for the sole purpose of meeting an unneeded standard. Furthermore, the witness asserted, in a low Class I utilization order like the UMW, a 2-day touch-base standard is unreasonable.

The AMPI, *et al.*, witness also testified that much of AMPI's Grade A milk is commingled with Grade B milk when it is picked up from the farm. Proposal 6 would require AMPI to pick up their Grade A and Grade B milk separately, explained the witness, and thus would be extremely costly and inefficient. The witness was of the opinion that the current order's one-time touch-base provision is sufficient for ensuring an adequate supply of milk for fluid use. Additionally, the witness said that the Market Administrator already has the authority to adjust supply plant shipping standards in the event that distributing plants have difficulty in obtaining adequate milk supplies to meet the market's Class I demands.

A post-hearing brief submitted by AMPI, *et al.*, reiterated their opposition to Proposal 6. The brief contended that if Proposal 6 were adopted, select handlers would face increased handling and transportation costs to meet the new performance standard. The brief further argued that Proposal 6 would necessitate that supply plants invest more capital to build additional silo capacity used only to accommodate the increased volumes of producer milk needing to touch base.

A witness appearing on behalf of Wisconsin Cheesemakers Association (WCMA), also testified in opposition to Proposal 6. WCMA represents a group of dairy manufacturers and marketers in Wisconsin. According to the witness, 32 of WCMA's members operate 42 dairy facilities pooled on the UMW order. The witness was of the opinion that the implementation of Proposal 6 would not result in orderly marketing within the UMW order because the 2-day touch-base standard would cause uneconomic and inefficient shipments of milk solely for the purpose of meeting the new higher standard. Furthermore, the witness said the additional milk needed to be shipped to a pool supply plant would necessitate that additional silo capacity be built at plants to receive the additional milk volumes arising from establishing a higher touch-base standard.

A witness appearing on behalf of the National Family Farm Coalition, an organization which represents family farms located in 32 states, including those states comprising the UMW marketing area, testified in opposition to all proposals at the hearing. The witness was of the opinion that the entire Federal order system was in need of complete reform. The witness asserted that proponents of the proposals being heard were entities whose actions have lowered prices received by family farmers.

A post-hearing brief submitted by Alto Dairy (Alto), a cooperative with 580 members in Wisconsin and Michigan, expressed their opposition to Proposals 1, 2, and 6. The brief argued that the pooling of milk located far from the marketing area serves to equalize the blend prices between Federal orders and contended that a ban on such pooling in the UWM order would lead to similar bans in other Federal orders. The brief concluded that this would widen blend price differences among all Federal orders.

A brief submitted on behalf of Family Dairies USA (Family Dairies), expressed their opposition to Proposals 1, 2, and 6. Family Dairies is a cooperative handler regulated by the UMW order that operates a pool supply plant located in the marketing area. The brief expressed the opinion that these proposals essentially establish performance standards for out-of-area milk that are different from performance standards for in-area milk. The brief contended that establishing different standards based on location is discriminatory, is designed to erect trade barriers to distant milk, and is illegal. In their brief they argued that producers who bear large transportation costs to supply the fluid market, in effect, are not receiving uniform prices. In this regard, the brief asserted that Proposals 1, 2, and 6 violated uniform producer prices because of the transportation cost burden on distant producers.

2. Transportation Credits

Two proposals seeking an identical mileage limit applicable for a handler receiving a transportation credit for moving milk for Class I uses should be adopted immediately. While no handler is currently receiving a transportation credit on milk from distances of greater than 400 miles, the proposed 400-mile limit is reasonable to ensure that milk used in fluid products will be acquired from sources nearest to the distributing plants. Specifically, receipt of the transportation credit for milk delivered to distributing plants on the first 400 miles between the transferring and receiving plant should be adopted immediately. These identical changes were included in Proposals 1 and 2.

Currently, the UMW order provides for a transportation credit on bulk milk transferred from a pool plant to a pool distributing plant. The transportation credit is calculated by multiplying $0.0028 times the number of miles between the transferring plant and the receiving plant and is applied on a per hundredweight basis. An adjustment is made for the different Class I prices between the transferring and receiving plants. The transportation credit is paid to the receiving distributing plant to partially offset the cost of transporting milk.

A witness appearing on behalf of AMPI, *et al.*, testified in support of the transportation credit limit contained in Proposal 1. The witness said that in 2003 no pooled milk received a transportation credit that was transported over 400 miles. The AMPI, *et al.*, witness also testified that very little milk which did receive a transportation credit was shipped between 300 and 399 miles to the receiving distributing plant. The witness stressed that limiting the transportation credit to 400 miles would not disadvantage any handler currently delivering milk to a distributing plant.

A witness appearing on behalf of Mid-West, *et al.*, testified in support of the transportation credit limit contained in Proposal 2. The witness was of the opinion that milk located within the marketing area is more than adequate to supply the order's distributing plants. The witness said that adopting the proposed limit of 400 miles would not affect any current pool handlers receiving the credit. However, noted the witness, a mileage limit on the transportation credit would prevent any new supply plants that were located great distances from distributing plants from draining money from the producer settlement fund (PSF) in the future.

A brief submitted on behalf of Mid-West, *et al.*, maintained their position that placing a mileage limitation on receiving a transportation credit would avoid the potential of the UMW pool subsidizing the delivery of milk to UMW distributing plants from unneeded areas.

The witness appearing on behalf of LOL also expressed their support for establishing a transportation credit limit.

A witness appearing on behalf of Dean testified in opposition to limiting receipt of the transportation credit. The

witness was of the opinion that the purpose of limiting receipt of the transportation credit was only to prevent distant milk from pooling on the UMW order. If milk is needed to supply distributing plants, the witness argued, then it should be pooled without regard to the distance it needs to be transported.

The record of this proceeding finds that several amendments to the pooling standards of the UMW order should be adopted immediately to more properly identify the milk of those producers that should share in the order's marketwide pool proceeds. Currently, milk located far from the UMW marketing area that demonstrates no consistent service to the Class I needs of the market is able to qualify for pooling on the UMW order. The addition of this milk to the order at lower classified use-values results in a lower blend price returned to those producers who consistently supply the Class I needs of the UMW market. Such milk does not demonstrate a reasonable level of performance in servicing the Class I milk needs of the UMW marketing area and therefore should not be pooled.

The pooling standards of all Federal milk marketing orders, including the UMW order, are intended to ensure that an adequate supply of milk is available to meet the Class I needs of the market and to provide the criteria for identifying the milk of those producers who are reasonably associated with the market as a condition for receiving the order's blend price. The pooling standards of the UMW order are represented in the *Pool Plant*, *Producer*, and the *Producer milk* provisions of the order and are performance based. Taken as a whole, these provisions are intended to ensure that an adequate supply of milk is available to meet the Class I needs of the market and provide the criteria for determining the producer milk that has demonstrated service to the Class I market and thereby should share in the marketwide distribution of pool proceeds.

Pooling standards that are performance based provide the only viable method for determining those eligible to share in the marketwide pool. It is primarily the additional revenue generated from the higher-valued Class I use of milk that adds additional income, and it is reasonable to expect that only those producers who consistently bear the costs of supplying the market's fluid needs should be the ones to share in the returns arising from higher-valued Class I sales so that costs can be recovered.

Pooling standards are needed to identify the milk of those producers who are providing service in meeting the Class I needs of the market. If a pooling provision does not reasonably accomplish this end, the proceeds that accrue to the marketwide pool from fluid milk sales are not properly shared with the appropriate producers. The result is the unwarranted lowering of returns to those producers who actually incur the costs of servicing and supplying the fluid needs of the market.

Pool plant standards, specifically standards that provide for the pooling of milk through supply plants, need to reflect the supply and demand conditions of the marketing area. This is important because producers whose milk, regardless of utilization, is pooled receive the market's blend price. When a pooling feature's use deviates from its intended purpose, and its use results in pooling milk that cannot reasonably be considered as serving the fluid needs of the market, it is appropriate to re-examine the standard in light of current marketing conditions.

Unlike other consolidated orders established as a part of Federal milk order reform on the basis of the area in which Class I handlers compete with each other for the majority of their sales, the current consolidated UMW marketing area also was based on a common procurement area. In this regard, it would be unreasonable to conclude that areas far from the UMW area, such as Idaho, share a common procurement area with those states that comprise the current UMW marketing area. While it is the Class I use of milk by regulated handlers in the marketing area that provides additional revenue to the pool and not the procurement area, the procurement area was nevertheless envisioned to be the primary area relied upon by the order's distributing plants for a supply of milk.

The geographic boundaries of the UMW order were not intended to limit or define which producers, which milk of those producers, or which handlers could enjoy the benefits of being pooled on the order. What is important and fundamental to all Federal orders, including the UMW order, is the proper identification of those producers, the milk of those producers, and handlers that should share in the proceeds arising from Class I sales. The UMW order's current pooling standards do not reasonably accomplish this.

The hearing record clearly indicates that the milk of producers located in areas distant from the marketing area is pooled on and receives the UMW order's blend price. Current inadequate supply plant performance standards enable milk which has deminimus physical association with the market and which demonstrates no consistent service to the Class I needs to be pooled on the UMW order. The inappropriate pooling of milk occurs because the order has inadequate diversion provisions that allow for milk to be diverted to a manufacturing plant located far from the marketing area. The avenue for such milk to pool on the UMW order is made possible by distant handlers working out an arrangement with pooled handlers located within the UMW to pool the milk of the distant handler, often for a fee. The milk is included as part of the total receipts of the pooled handler even though such milk is diverted to plants located far from the marketing area.

Requiring milk originating outside of the 7-state milkshed to qualify for pooling separately by delivering milk to an UMW distributing plant or distributing plant unit is not needed to ensure that such milk is actually servicing the Class I needs of the market. The adopted changes of limiting diversions to plants physically located within the 7-state milkshed in conjunction with not permitting handlers to use in-area milk to qualify milk located outside the 7-state milkshed essentially accomplishes the intent of ensuring the proper identification of milk that services the Class I needs of the market.

Some entities on brief argued that requiring out-of-area milk to perform separately is a form of location discrimination and is a means of erecting trade barriers. This argument is without merit. Separate pooling standards for plants located outside the 7-state milkshed will not prohibit milk from being pooled if it meets the UMW's order pooling standards. The amended pooling provisions provide identical pooling standards to both in-area and out-of-area supply plants as both must ship 10 percent to the Class I market. Nevertheless, for the reasons stated above, other changes to the pooling standards negate the need to provide for separate pooling standards for out-of-area milk.

The Federal milk order system has consistently recognized that there is a cost incurred by producers in servicing an order's Class I market, and the primary reward to producers for performing such service is receiving the order's blend price. The amended pooling provisions will ensure that milk seeking to be pooled and receive the order's blend price is consistently servicing the order's Class I needs. Consequently, the adopted pooling provisions will ensure the more equitable sharing of revenue generated

from Class I sales among producers who bear the costs.

Changes to the order's diversion provisions are needed to ensure that milk pooled on the order not used for Class I purposes is part of the legitimate reserve supply of Class I handlers. Providing for the diversion of milk is a desirable and needed feature of an order because it facilitates the orderly and efficient disposition of milk when not needed for fluid use. However, it is necessary to safeguard against excessive milk supplies becoming associated with the market through the diversion process. Associating more milk than is actually part of the legitimate reserve supply of the diverting plant unnecessarily reduces the potential blend price paid to dairy farmers who service the market's Class I needs. Without reasonable diversion provisions, the order's performance standards are weakened and give rise to disorderly marketing conditions.

The hearing record clearly indicates that milk located far from the marketing area can be reported as diverted milk by a pooled handler and receive the order's blend price. Under the current pooling provisions, this can occur after a one-time delivery to an UMW pool plant. After the initial delivery, such milk need never again be delivered to an UMW pool plant. The record evidence confirms that usually this milk is delivered to a nonpool plant located as far from the marketing area as the diverted milk. This milk is never again physically associated with a plant in the marketing area nor does it serve the Class I needs of the market.

It is appropriate to amend the order's diversion provisions so that diversions can be made only to plants physically located within the 7-state milkshed. Milk diverted to such plants better ensures that this milk is a legitimate reserve supply of the diverting handler and is readily available to service the Class I market when needed.

The Agricultural Marketing Agreement Act of 1937 (the Act) was amended by the Food Security Act of 1985 to provide authority for the establishment of marketwide service payments. Under the Act, as amended, marketwide service payments can be established to partially reimburse handlers for services provided of marketwide benefit by using money out of the PSF before a blend price is computed.

Class I sales add additional revenue to the marketwide pool, so ensuring an adequate supply of milk to distributing plants benefits, in general, all market participants. Consequently, a transportation credit was established in the pre-reform Chicago Regional order to reimburse a portion of the cost of transporting milk to a distributing plant for use in Class I products. The transportation credit provision was carried into the consolidated UMW order as part of Federal order reform.

Transportation credits in the current UMW order assist plants in obtaining a milk supply to fulfill Class I demand and promote the orderly marketing of milk. However, it is important that the transportation credit provision not be used as a method of circumventing the intent of other performance-based pooling standards. Establishing a mileage limit on the transportation credit will encourage distributing plants to use milk located in the nearby procurement area. The UMW has an abundance of milk within the marketing area beyond Class I demands and there should be no incentive given to attract milk for Class I use beyond that available within 400 miles of a distributing plant, a reasonable proxy for describing the common procurement area of the order's distributing plants. A handler may acquire a milk supply from far distances, however, the transportation credit would apply only to the first 400 miles of milk movement.

Evidence presented at the hearing revealed that currently no distributing plant is receiving a transportation credit for milk located farther than 400 miles from their plant. Therefore, the proposed amendment should not alter any current UMW handler's business practices. The ability of distant milk to use the transportation credit as a means of meeting the performance standards of the order will be limited. This is consistent with other changes adopted in this decision that stress meeting performance-based standards as a condition for receiving the order's blend price.

A proposal seeking to increase the order's touch-base standard as a means of ensuring that the Class I needs of the market are met should not be adopted. While the touch-base standard is an important feature of an order's pooling standards, increasing the standard is not appropriate given the marketing conditions of the UMW marketing area. The UMW marketing area has an abundance of milk located within the marketing area and as a result, its Class I utilization is relatively low. For example, during 2003, the order's Class I utilization averaged 24.2 percent. Increasing the touch-base standard is unwarranted because it would likely cause the uneconomic movement of milk for the sole purpose of meeting a higher standard without adequately addressing pooling provisions in a manner that would ensure a consistent servicing of the market's Class I needs.

3. Determination of Emergency Marketing Conditions

Record evidence establishes that current pooling standards of the UMW order are inadequate and result in the erosion of the blend price received by producers who are serving the Class I needs of the market and should be changed on an emergency basis. The unwarranted erosion of such producer blend prices stem from improper supply plant standards and the lack of appropriate limits on diversions of milk to only plants located within the 7-state milkshed.

It is also appropriate to establish a mileage limit on the transportation credit on an emergency basis to prevent the credit from being used to circumvent the amended pooling provisions contained in this decision regarding supply plant performance standards and diverted milk. Establishing a mileage limit will ensure that other changes made to ensure consistent performance to the Class I market before milk is eligible to be pooled and receive the order's blend price are not weakened.

Consequently, it is determined that emergency marketing conditions exist and the issuance of a recommended decision is therefore being omitted. The record clearly establishes a basis as noted above for amending the order on an interim basis and the opportunity to file written exceptions to the proposed amended order remains.

In view of these findings, an interim final rule amending the order will be issued as soon as the procedures are completed to determine the approval of producers.

Rulings on Proposed Findings and Conclusions

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

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Upper

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

The following findings are hereby made with respect to the aforesaid marketing agreement and order:

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

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

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

Interim Marketing Agreement and Interim Order Amending the Order

Annexed hereto and made a part hereof are two documents—an Interim Marketing Agreement regulating the handling of milk and an Interim Order amending the order regulating the handling of milk in the Upper Midwest marketing area, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, that this entire tentative partial decision and the interim order and the interim marketing agreement annexed hereto be published in the **Federal Register**.

Determination of Producer Approval and Representative Period

The month of July 2004 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Upper Midwest marketing area is approved or favored by producers, as defined under the terms of the order as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

List of Subjects in 7 CFR Part 1030

Milk Marketing order.

Dated: April 8, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

Interim Order Amending the Order Regulating the Handling of Milk in the Upper Midwest Marketing Area

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

Findings and Determinations

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

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

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

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

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

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

Order Relative to Handling

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

The authority citation for 7 CFR Part 1030 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 1030—MILK IN THE UPPER MIDWEST AREA

1. In § 1030.7, paragraph (c)(2) is revised to read as follows:

§ 1030.7 Pool plant.

* * * * *

(c) * * *

(2) The operator of a supply plant located within the States of Illinois, Iowa, Minnesota, North Dakota, South Dakota, and Wisconsin, and the Upper Peninsula of Michigan may include as qualifying shipments under this paragraph milk delivered directly from producers' farms pursuant to §§ 1000.9(c) or 1030.13(c) to plants described in paragraphs (a), (b) and (e) of this section. Handlers may not use shipments pursuant to § 1000.9(c) or § 1030.13(c) to qualify plants located outside the area described above.

* * * * *

2. In § 1030.13, paragraph (d) introductory text is revised to read as follows:

§ 1030.13 Producer milk.

* * * * *

(d) Diverted by the operator of a pool plant or a cooperative association described in § 1000.9(c) to a nonpool plant located in the States of Illinois, Iowa, Minnesota, North Dakota, South Dakota, and Wisconsin, and the Upper Peninsula of Michigan, subject to the following conditions:

* * * * *

3. In § 1030.55, paragraph (a)(2) is revised to read as follows:

§ 1030.55 Transportation credits and assembly credits.

(a) * * *

(2) Multiply the hundredweight of milk eligible for the credit by .28 cents times the number of miles, not to exceed 400 miles, between the transferor plant and the transferee plant;

* * * * *

Marketing Agreement Regulating the Handling of Milk in the Upper Midwest Marketing Area

The parties hereto, in order to effectuate the declared policy of the Act,

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

I. The findings and determinations, order relative to handling, and the provisions of §§ 1030.1 to 1030.86 all inclusive, of the order regulating the handling of milk in the Upper Midwest marketing area (7 CFR Part 1030) which is annexed hereto; and

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

(a) Record of milk handled. The undersigned certifies that he/she handled during the month of July 2004, _____hundredweight of milk covered by this marketing agreement.

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

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

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

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

[FR Doc. 05–7462 Filed 4–13–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20947; Directorate Identifier 2004–NM–245–AD]

RIN 2120–AA64

Airworthiness Directives; Learjet Model 23, 24, 24A, 24B, 24B–A, 24D, 24D–A, 24E, 24F, 25, 25A, 25B, 25C, 25D, and 25F Airplanes Modified by Supplemental Type Certificate SA1731SW, SA1669SW, or SA1670SW

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Learjet Model 23, 24, 24A, 24B, 24B–A, 24D, 24D–A, 24E, 24F, 25, 25A, 25B, 25C, 25D, and 25F airplanes. This proposed AD would require removing the thrust reverser accumulator, and making the thrust reverser hydraulic system and the thrust reversers inoperable. This proposed AD is prompted by reports of the failure of two thrust reverser accumulators. We are proposing this AD to prevent failure of the thrust reverser accumulators, due to fatigue cracking on the female threads, which could result in the loss of hydraulic power and damage to the surrounding airplane structure.

DATES: We must receive comments on this proposed AD by May 31, 2005.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- By fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact The Nordam Group, Nacelle/Thrust Reverser Systems Division, 6911 North Whirlpool Drive, Tulsa, OK 74117.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–20947; the directorate identifier for this docket is 2004–NM–245–AD.

FOR FURTHER INFORMATION CONTACT: Jim Rankin, Aerospace Engineer, Special Certification Office, ASW–190, FAA, Rotorcraft Directorate, 2601 Meacham Boulevard, Fort Worth, Texas, 76137–4298; telephone (817) 222–5138; fax (817) 222–5785.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2005–20947; Directorate Identifier 2004–NM–245–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov*.

Examining the Docket

You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

We have received reports indicating the failure of two thrust reverser accumulators, part number (P/N) 25–0570–127–7. One of the failures occurred in flight during final approach of an airplane and resulted in the loss of hydraulic power and damage to the airplane tailcone. The other failure occurred when a repair facility was proof testing an accumulator at 2,250 psig (the accumulator is rated for 1,500 psig). Inspection of both of these thrust reverser accumulators found suspected fatigue cracking on the female threads where the halves are joined. This condition, if not corrected, could result in the loss of hydraulic power and damage to the surrounding airplane structure.

The thrust reverser accumulators having P/N 25–0570–127–1, –3, –13, or –17 on certain Learjet Model 23, 24, 24A, 24B, 24B–A, 24D, 24D–A, 24E, 24F, 25, 25A, 25B, 25C, 25D, and 25F airplanes are identical to those on the affected airplanes having P/N 25–0570–127–7. Therefore, all of these models with any of these part numbers may be subject to the same unsafe condition.

Relevant Service Information

We have reviewed The Nordam Group Alert Service Bulletin A3000 78–21, dated November 25, 2002. The service bulletin describes procedures for removing the thrust reverser accumulator, and making the thrust reverser hydraulic system and the thrust reversers inoperable.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under ''Difference Between the Proposed AD and Service Bulletin.''

Differences Between the Proposed AD and Service Bulletin

Operators should note that, although the service bulletin specifies the compliance time as ''not later than 10 flight-hours from receipt of this alert service bulletin,'' this proposed AD specifies a compliance time of ''within 60 days after the effective date of this AD.'' In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the actions required by the proposed AD. In light of all of these factors, the FAA finds a compliance time of 60 days for completing the required actions to be warranted, in that it represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety. This difference has been coordinated with the manufacturer.

Operators should note that, although the Accomplishment Instructions of the referenced service bulletin describe procedures for submitting a comment sheet recording compliance with the service bulletin, this proposed AD would not require that action. We do not need this information from operators.

Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will address the unsafe condition addressed by this proposed AD. Once this modification is developed, approved, and available, we may consider additional rulemaking.

Costs of Compliance

There are about 321 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 255 airplanes of U.S. registry. The proposed actions would take about 2 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $33,150, or $130 per airplane.

Authority for this Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. 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.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA 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 rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. *See* the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Learjet: Docket No. FAA–2005–20947; Directorate Identifier 2004–NM–245–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by May 31, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Learjet Model 23, 24, 24A, 24B, 24B–A, 24D, 24D–A, 24E, 24F, 25, 25A, 25B, 25C, 25D, and 25F airplanes; certificated in any category; modified by Supplemental Type Certificate SA1731SW, SA1669SW, or SA1670SW; equipped with Nordam (formerly Dee Howard Company) thrust reversers having part number (P/N) 25–0570–127–1, –3, –7, –13, or –17.

Unsafe Condition

(d) This AD was prompted by reports of the failure of two thrust reverser accumulators. We are issuing this AD to prevent failure of the thrust reverser accumulators, due to fatigue cracking on the female threads, which could result in the loss of hydraulic power and damage to the surrounding airplane structure.

Compliance

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

Remove Thrust Reverser Accumulator

(f) Within 60 days after the effective date of this AD, remove the thrust reverser accumulator, and make the thrust reverser hydraulic system and the thrust reversers inoperable, by doing all of the actions specified in the Accomplishment Instructions of The Nordam Group Alert Service Bulletin A3000 78–21, dated November 25, 2002. Where there are differences between the Master Minimum Equipment List and the AD, the AD prevails. Although the service bulletin referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Parts Installation

(g) As of the effective date of this AD, no person may install a thrust reverser accumulator having P/N 25–0570–127–1, –3, –7, –13, or –17 on any airplane.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, Special Certification Office, Rotorcraft Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Issued in Renton, Washington, on April 5, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–7484 Filed 4–13–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 413, 415, and 417

[Docket No. FAA–2000–7953; Notice No. 05–05]

RIN 2120–AG37

Licensing and Safety Requirements for Launch

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Availability of draft regulatory language; extension of comment period.

SUMMARY: The FAA is extending for an additional 30 days the comment period on the draft regulatory language that is the subject of a document published on March 1, 2005. The comment period now extends until June 1, 2005. The draft describes changes to the commercial space transportation regulations governing licensing and safety requirements for launch.

DATES: Send your comments to reach us by June 1, 2005.

ADDRESSES: Persons who wish to file written comments may send comments identified by Docket Number FAA–2000–7953 using any of the following methods:

DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.

Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.

Fax: 1–202–493–2251.

Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: To read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. Written comments to the docket will receive the same consideration as statements made at the public meeting.

FOR FURTHER INFORMATION CONTACT: For technical information: René Rey, (202) 267–7538. For legal information: Laura Montgomery, (202) 267–3150.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 2005, the FAA published a notice in the **Federal Register** announcing the availability of draft changes to the proposed commercial space transportation regulations governing licensing and safety requirements for launch (70 FR 9885). The deadline for comments was May 2, 2005. In a letter dated March 18, 2005, Lockheed Martin Corporation requested a 30-day extension of the comment period. The request is based on the size and complexity of the draft regulatory language and accompanying documents. An extension of time would allow for a more thorough review and meaningful and constructive comments. Several participants at a public meeting held on March 29 and 30, 2005, expressed support for the extension request. In the interest of full and meaningful public participation, we have decided to grant the request. The comment period now extends through June 1, 2005.

Comments Invited

You may comment on the draft regulatory language by sending written data, views, or arguments. We also invite comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the draft regulatory language. Substantive comments should be accompanied by cost estimates. The most helpful comments are those that include a rationale or data. Comments must identify the regulatory docket number and be sent to one of the addresses listed above.

We will file in the docket all comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this draft regulatory language. You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The DOT Rules Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. We will consider all comments received on or before the closing date before taking action on the draft regulatory language. We will consider late-filed comments to the extent practicable, and consistent with statutory deadlines. We may change the draft regulatory language in light of the comments we receive.

Commenters who file comments by mail will receive an acknowledgement of receipt of their comments by including a pre-addressed, stamped postcard with those comments on which the following statement is made: ''Comments to Docket No. FAA–2000–7953.'' The postcard will be date stamped and mailed to the commenter.

Privacy Act

Using the search function of our docket web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

Proprietary or Confidential Business Information

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. You must mark the information that you consider proprietary or confidential. If you send the information on a disk or CD ROM, mark the outside of the disk or CD ROM and also identify electronically within the disk or CD ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when we are aware of proprietary information filed with a comment, we do not place it in the docket. We hold it in a separate file to which the public does not have access, and place a note in the docket that we have received it. If we receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). We process such a request under the DOT procedures found in 49 CFR part 7.

Availability of the Draft Regulatory Language and Other Documents

You can get an electronic copy of the draft regulatory language, the draft regulatory evaluation, a section-by-section response to comments on the 2000 NPRM and the 2002 SNPRM, and the Independent Economic Assessment performed by SAIC using the Internet through the Department of Transportation Docket Management System at *http://dms.dot.gov.* Use the search feature of the Web site by entering the docket number for this rulemaking (7953). We have also established a Web site containing a cross-referencing tool that correlates the text of the draft regulatory language with Air Force launch requirements documents. The Web address is *http://ast.faa.gov/um/.*

You can also get a copy of the draft regulatory language by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number of this rulemaking.

Issued in Washington, DC, on April 8, 2005.

Patricia G. Smith,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 05–7521 Filed 4–13–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[REG–162813–04]

RIN 1545–BE20

Withholding Exemptions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations providing guidance under section 3402(f) of the Internal Revenue Code (Code) for employers and employees relating to the Form W–4, ''Employee's Withholding Allowance Certificate.'' The temporary regulations provide rules for the submission of copies of certain withholding exemption certificates to the IRS, the notification provided to the employer and the employee of the maximum number of withholding exemptions permitted, and the use of substitute forms. The text of the temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by July 5, 2005. Requests to speak (with outlines of topics to be discussed) at the public hearing scheduled for July 26, 2005, must be received by July 5, 2005.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–162813–04), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–162813–04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the IRS Internet site at *www.irs.gov/regs* or via the Federal eRulemaking Portal at *www.regulations.gov* (IRS–REG–162813–04). The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Margaret A. Owens, (202) 622–0047; concerning submission of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Guy Traynor, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These proposed regulations do not impose any new information collection. The Office of Management and Budget (OMB) previously approved the information collection requirements concerning Form W–4 contained in the regulation under section 6001 (§ 31.6001–5; OMB Control No. 1545–0798) and in the regulation under section 3402 (§ 31.3402(f)(2)–1; OMB Control No.1545–0010) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Employment Tax Regulations (26 CFR part 31) relating to the Form W–4, ''Employee's Withholding Allowance Certificate.'' These temporary regulations provide rules for the submission of copies of certain withholding exemption certificates to the IRS, the notification provided to the employer and the employee of the maximum number of withholding exemptions permitted, and the use of substitute forms. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a

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

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and the IRS request comments on the clarity of the proposed rules and how they can be made easier to understand. The Treasury Department and the IRS are considering additional amendments to the regulations under section 3402 to address other issues including, but not limited to, the criteria for identifying a valid withholding exemption certificate. The Treasury Department and the IRS specifically welcome comments on this issue. All comments will be available for public inspection and copying. A public hearing has been scheduled for July 26, 2005, at 10 a.m., in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit comments and an outline of the topics to be discussed and the time to be devoted to each topic by July 5, 2005.

A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Margaret A. Owens, Office of the Division Counsel/ Associate Chief Counsel (Tax Exempt and Government Entities), IRS. However, other personnel from the IRS and the Treasury Department participated in the development of these proposed regulations.

List of Subjects in 26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 31 is proposed to be amended as follows:

PART 31—EMPLOYMENT TAXES

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

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

Par 2. Section 31.3402(f)(2)–1 is amended by revising paragraph (g) to read as follows:

§ 31.3402(f)(2)–1 Withholding exemption certificates.

[The text of proposed § 31.3402(f)(2)–1(g) is the same as the text of § 31.3402(f)(2)–1T(g) published elsewhere in this issue of the **FEDERAL REGISTER**].

Par. 3. Section 31.3402(f)(5)–1 is amended by revising paragraph (a) to read as follows:

§ 31.3402(f)(5)–1 Form and contents of withholding exemption certificates.

[The text of proposed § 31.3402(f)(5)–1(a) is the same as the text of § 31.3402(f)(5)–1T(a) published elsewhere in this issue of the **FEDERAL REGISTER**].

* * * * *

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 05–6719 Filed 4–13–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–148521–04]

RIN 1545–BD77

Classification of Certain Foreign Entities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: This issue of the **Federal Register** contains temporary and final regulations relating to certain business entities included on the list of foreign business entities that are always classified as corporations for Federal tax purposes. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides a notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by July 13, 2005. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for July 27, 2005, must be received by July 6, 2005.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–148521–04), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may also be hand-delivered Monday through Friday (excluding Federal holidays) between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–148521–04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC or sent electronically, via either the IRS Internet site at *www.irs.gov/regs* or the Federal eRulemaking Portal at *www.regulations.gov* (IRS and REG–148521–04). The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Ronald M. Gootzeit, (202) 622–3860; concerning submissions of comments or the public hearing, Jacqueline B. Turner, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in this issue of the **Federal Register** amend and revise

26 CFR part 301 relating to section 7701 of the Internal Revenue Code of 1986 (Code). The temporary regulations add certain business entities to the list of foreign business entities that are always classified as corporations for Federal tax purposes. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains both the temporary regulations and these proposed regulations.

Special Analyses

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

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for July 27, 2005 at 10:00 a.m. in the Auditorium of the Internal Revenue building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area earlier than 30 minutes prior to the start of the hearing. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to this hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the topics to be discussed and the time devoted to each topic (signed original and eight (8) copies) by July 6, 2005. A period of ten minutes will be allotted to each person for making comments. An agenda showing the scheduling of speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Proposed Effective Date

Except as otherwise specified, these regulations are proposed to apply as of October 7, 2004.

Drafting Information

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

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and Recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read, in part, as follows:

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

Par. 2. Section 301.7701–2 is amended by:

1. Adding paragraph (b)(8)(vi)

2. Revising the heading for paragraph (e)

3. Adding paragraph (e)(3)

The additions and revisions read as follows:

§ 301.7701–2 Business entities; definitions.

* * * * *

(b) * * *

(8) * * *

(vi) [The text of the proposed amendment adding § 301.7701–2(b)(8)(vi) is the same as the text of § 301.7701–2T(b)(8)(vi) published elsewhere in this issue of the **Federal Register**.]

(e) [The text of the proposed amendment is the same as the text of § 301.7701–2T(e)(3) published elsewhere in this issue of the **Federal Register**.]

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 05–6855 Filed 4–13–05; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R06–OAR–2005–NM–0001; FRL–7897–5]

Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Albuquerque/Bernalillo County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the Governor of New Mexico on September 7, 2004. The submittal revises the second ten-year carbon monoxide (CO) maintenance plan for the Albuquerque/Bernalillo County, New Mexico area. The submittal also revises the relevant parts of the New Mexico Administrative Code including revisions to the General Provisions, Inspection and Maintenance Program, and the contingency measures. We are proposing to approve these revisions in accordance with the requirements of the Federal Clean Air Act.

DATES: Written comments must be received on or before May 16, 2005.

ADDRESSES: Comments may be mailed to Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the Addresses section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Alan Shar, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–6691; e-mail address *shar.alan@epa.gov*.

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial

submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action rule, no further activity is contemplated. If EPA receives relevant 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. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives relevant 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 which is located in the rules section of this **Federal Register**.

Dated: March 31, 2005.

Richard Greene,

Regional Administrator, Region 6.

[FR Doc. 05–7335 Filed 4–13–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.050331089–5089–01; I.D. 031005A]

RIN 0648–AS74

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Total Allowable Catches for Georges Bank Cod, Haddock, and Yellowtail Flounder in the U.S./Canada Management Area for Fishing Year 2005

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes 2005 fishing year (FY) Total Allowable Catches (TACs) for Georges Bank (GB) cod, haddock, and yellowtail flounder in the U.S./Canada Management Area, and provides notice that these TACs may be adjusted during FY 2005, if NMFS determines that the harvest of these stocks in FY 2004 exceeded the TACs specified for FY 2004. The intent of this action is to provide for the conservation and management of those three stocks of fish.

DATES: Comments must be received by May 16, 2005.

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

- E-mail: *USCATAC@NOAA.gov*. Include in the subject line the following: Comments on the proposed TACs for the U.S./Canada Management Area.
- Federal e-rulemaking Portal: *http://www.regulations.gov*.
- Mail: Paper, disk, or CD ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on the proposed TACs for the U.S./Canada Management Area.''
- Fax: (978) 281–9135.

Copies of the Transboundary Management Guidance Committee's 2004 Guidance Document and copies of the Environmental Assessment of the 2005 TACs (including the Regulatory Impact Review and Regulatory Flexibility Analysis (IRFA) may be obtained from the National Marine Fisheries Service at the mailing address specified above; telephone (978) 281–9315. NMFS prepared a summary of the IRFA, which is contained in the Classification section of this proposed rule.

FOR FURTHER INFORMATION CONTACT: Thomas Warren, Fishery Policy Analyst, (978) 281–9347, fax (978) 281–9135, e-mail *Thomas.Warren@NOAA.gov*.

SUPPLEMENTARY INFORMATION: The Northeast Multispecies Fishery Management Plan (FMP) specifies a procedure for setting annual hard (i.e., the fishery or area closes when a TAC is reached) TAC levels for GB cod, haddock, and yellowtail flounder. The regulations governing the annual development of TACs (§ 648.85(a)(2)) were implemented by Amendment 13 to the FMP (69 FR 22906; April 27, 2004) in order to be consistent with the U.S./Canada Resource Sharing Understanding (Understanding), which is an informal understanding between the United States and Canada that outlines a process for the management of the shared GB groundfish resources. The Understanding specifies an allocation of TAC for these three stocks for each country, based on a formula that considers historical catch percentages and current resource distribution.

Annual TACs are determined through a process involving the New England Fishery Management Council (Council), the Transboundary Management Guidance Committee (TMGC), and the U.S./Canada Transboundary Resources Steering Committee (§ 648.85(a)(2)(i)). On August 31, 2004, the TMGC approved the 2004 Guidance Document for GB cod, GB haddock, and GB yellowtail flounder, which included recommended U.S. TACs for these stocks. The recommended 2005 TACs were based upon the most recent stock assessments (Transboundary Resource Assessment Committee (TRAC) Status Reports for 2004), and the fishing mortality strategy shared by both the United States and Canada. The strategy is to maintain a low to neutral risk of exceeding the fishing mortality limit reference (F_{ref} = 0.18, 0.26, and 0.25 for cod, haddock, and yellowtail flounder, respectively). When stock conditions are poor, fishing mortality rates (F) should be further reduced to promote rebuilding.

For GB cod, the TMGC concluded that the most appropriate combined U.S./Canada TAC for FY 2005 is 1,000 mt. This corresponds to an F less than the Fref of 0.18 in 2005 and represents a low risk of exceeding the F_{ref}. At this level of harvest there is a neutral or 50 percent chance, that stock biomass will decrease from 2005 to 2006. The annual allocation shares for FY 2005 between the U.S. and Canada are based on a combination of historical catches (35 percent weighting) and resource distribution based on trawl surveys (65 percent weighting). Combining these factors entitles the United States to 26 percent and Canada to 74 percent, resulting in a national quota of 260 mt for the United States and 740 mt for Canada.

For GB haddock, the TMGC concluded that the most appropriate combined U.S./Canada TAC for FY 2005 is 23,000 mt. This corresponds to an F of less than the Fref of 0.26 in 2005 and represents a low risk of exceeding the Fref. Adult biomass will increase substantially from 2005 to 2006 due to recruitment of the exceptional 2003 year class. The annual allocation shares for 2005 between countries are based on a combination of historical catches (35 percent weighting) and resource distribution based on trawl surveys (65 percent weighting). Combining these factors entitles the United States to 33 percent and Canada to 67 percent, resulting in a national quota of 7,590 mt for the United States and 15,410 mt for Canada.

For GB yellowtail flounder, the TMGC concluded that the most appropriate combined U.S./Canada TAC for FY 2005 is 6,000 mt. A catch of about 4,000 mt in 2005 corresponds to an F equal to the

F_{ref} of 0.25. Alternative analyses, which make different assumptions about selectivity, indicate higher projected catch at F_{ref} in 2005, but still lower than the 2004 quota of 7,900 mt. The trend in stock biomass is increasing and recent recruitment has improved, but fishing mortality remains substantially above F_{ref}. A reduced catch of 6,000 mt in 2005 should result in moving toward F_{ref}. The annual allocation shares for 2005 between countries are based on a combination of historical catches (35 percent weighting) and resource distribution based on trawl surveys (65 percent weighting). Combining these factors entitles the United States to 71 percent and Canada to 29 percent, resulting in a national quota of 4,260 mt for the United States and 1,740 mt for Canada.

On September 1, 2004, the 2004 Guidance Document was presented to the U.S./Canada Transboundary Resources Steering Committee. On September 16, 2004, the Council approved the following U.S. TACs recommended by the TMGC: 260 mt of GB cod, 7,590 mt of GB haddock, and 4,260 mt of GB yellowtail flounder. The 2005 cod and yellowtail flounder TACs represent a decrease from 2004 TAC levels, and the 2005 haddock TAC represents an increase from the 2004 TAC.

2005 U.S./CANADA TACS (MT) AND PERCENTAGE SHARES (IN PARENTHESES)

	GB Cod	GB Haddock	GB Yellowtail flounder
Total Shared TAC	1,000	23,000	6,00
U.S. TAC	260 (26)	7,590 (33)	4,260 (71)
Canada TAC	740 (74)	15,410 (67)	1,740 (29)

2004 U.S./CANADA TACS (MT) AND PERCENTAGE SHARES (IN PARENTHESES)

	GB Cod	GB Haddock	GB Yellowtail flounder
Total Shared TAC	1,300	15,000	7,900
U.S. TAC	300 (23)	5,100 (34)	6,000 (76)
Canada TAC	1,000 (77)	9,900 (66)	1,900 (24)

The 2005 TACs are based upon stock assessments conducted in June 2004 by the TRAC. The proposed TACs are consistent with the results of the TRAC and the TMGC's harvest strategy.

The regulations implemented by Amendment 13, at § 648.85(a)(2)(ii), state the following: ''Any overages of the GB cod, haddock, or yellowtail flounder TACs that occur in a given fishing year will be subtracted from the respective TAC in the following fishing year.≥

Therefore, should an analysis of the catch of the shared stocks by U.S. vessels indicate that an overage occurred during FY 2004 the pertinent TACs will be adjusted downward in order to be consistent with the FMP and the Understanding. Although it is very unlikely, it is possible that a very large overage could result in an adjusted TAC of zero. If an adjustment to one of the 2005 TACs for cod, haddock, or yellowtail flounder is necessary, the public will be notified through a **Federal Register** notice and through a letter to permit holders.

Classification

This action is required by 50 CFR part 648 and has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an IRFA that describes the economic impact this proposed rule, if adopted, would have on small entities.

The specification of hard TACs is necessary in order to ensure that the agreed upon U.S./Canada fishing mortality levels for these shared stocks of fish are achieved in the U.S./Canada Management Area (the geographic area on GB defined to facilitate management of stocks of cod, haddock, and yellowtail flounder that are shared with Canada). A description of the objectives and legal basis for the proposed TACs is contained in the SUMMARY of this proposed rule.

Under the Small Business Administration (SBA) size standards for small fishing entities ($3.5 million), all permitted and participating vessels in the groundfish fishery are considered to be small entities. Gross sales by any one entity (vessel) do not exceed this threshold. The maximum number of small entities that could be affected by the proposed TACs are approximately 1,000 vessels, i.e., those with limited access Northeast multispecies days-at-sea permits, that have an allocation of Category A or B days-at-sea. Realistically, however, the number of vessels that choose to fish in the U.S./Canada Management Area, and that therefore would be subject to the associated restrictions, including hard TACs, would be substantially less.

From May 2004, through February 2005, 141 individual vessels fished in the U.S./Canada Management Area. Because the regulatory regime in FY 2005 will be similar to that in place in FY 2004, it is likely that the number of vessels that choose to fish in the area during FY 2005 will be similar to the number of vessels that fished in the area during FY 2004 (141 vessels).

The economic impacts of the proposed TACs are difficult to predict due to several factors that affect the amount of catch, as well as the price of the fish. Furthermore, the economic impacts are difficult to predict due to the newness of these regulations (May 2004; Amendment 13 to the FMP). Therefore, there is relatively little historic data, and little is known about the specific fishing patterns or market impacts that may be caused by this hard TAC management system.

The amount of GB cod, haddock, and yellowtail flounder landed and sold will not be equal to the sum of the TACs, but will be reduced as a result of discards (discards are counted against the hard TAC), and may be further reduced by limitations on access to stocks that may result from the associated rules. Reductions to the value of the fish may result from fishing derby behavior and the potential impact on markets. The overall economic impact of the proposed 2005 U.S./Canada TACs will likely be similar to the economic impacts of the TACs specified for the 2004 fishing year.

Although unlikely, a downward adjustment to the TACs specified for FY 2005 fishing year could occur after the start of the fishing year, if it is determined that the U.S. catch of one or more of the shared stocks during the 2004 fishing year exceeded the relevant TACs specified for FY 2004.

Three alternatives were considered for FY 2005: the proposed TACs, the status quo TACs, and the no action alternative. No additional set of TACs are proposed because the process involving the TMGC and NEFMC yields only one proposed set of TACs. The proposed TACs would have a similar economic impact as the status quo TACs. Adoption of the status quo TACs, however, would not be consistent with the FMP because the status quo TACs do not represent the best available scientific information. Although the no action alternative (no TACs) would not constrain catch in the U.S./Canada Area, and therefore would likely provide some additional fishing opportunity, the no action alternative is not a reasonable alternative because it is inconsistent with the FMP in both the short and long term. The FMP requires specification of hard TACs in order to limit catch of shared stocks to the appropriate level (i.e., consistent with the U.S./Canada Resource Sharing Understanding and the FMP). As such, the no action alternative would likely provide less economic benefits to the industry in the long term than the proposed alternative.

Two of the three proposed TACs would be reduced (cod and yellowtail flounder), and could, under certain circumstances, constrain fishing opportunity on haddock (for which the TAC is increasing). The proposed TACs do not modify any collection of information, reporting, or recordkeeping requirements. The proposed TACs do not duplicate, overlap, or conflict with any other Federal rules.

Dated:April 8, 2005.

John Oliver,

Deputy Assisitant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 05–7514 Filed 4–13–05; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 70, No. 71
Thursday, April 14, 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

Forest Service

Proposal by Alpha Calcit Arizona, Limited, To Operate a Marble Mine; Coronado National Forest, Douglas Ranger District, Cochise County, AZ

AGENCY: Forest Service, USDA.

ACTION: Cancellation of notice of intent.

SUMMARY: The Department of Agriculture, Forest Service, hereby cancels a Notice of Intent (NOI) to prepare an environmental impact statement (EIS) for the proposed operation of a marble mine by Alpha Calcit Arizona, Limited. The NOI was published in the **Federal Register** on January 27, 2003 (Vol. 68, No. 17, FR 3856–3858). Preparation of this EIS is being terminated because there is presently insufficient data and information to characterize the mineral deposit in terms of quality and quantity and to sufficiently evaluate the proposed Plan of Operation.

FOR FURTHER INFORMATION CONTACT: Teresa Ann Ciapusci, Program Leader, Ecosystem Management and Planning, Coronado National Forest, 300 West Congress Street, Tucson, AZ 85701, (520) 388–8350.

SUPPLEMENTARY INFORMATION: On August 31, 2001, the project proponent, Alpha Calcit Arizona, Limited, submitted a Plan of Operation to the Coronado National Forest requesting approval, under the Mining Law of 1872, to reopen, expand, and operate an existing, non-operational marble quarry on the Tapia-Bliss mining claims in the Dragoon Mountain Range of southeastern Arizona. The Forest Service subsequently published a Notice of Intent to prepare an environmental impact statement (EIS) to evaluate the proposal on January 27, 2003 (68 FR 3856–3858).

In general, the Plan of Operation proposed the (1) expansion of the existing quarry to obtain 100,000 short tons of marble, limestone, and related products annually for a period of 20 years; (2) construction of a crushing facility on private land approximately 2300 feet north of the center of the mine; (3) use of blasting material and heavy equipment to transport the product to the crushing facility; (4) construction of approximately 0.5 mile of new road to access the top of the exposed Escabrosa Limestone Formation and top bench of the mine; and (5) reconstruction (widening to about 30 feet) of approximately 0.5 mile of existing access road from the Forest boundary to the mine. Because new road construction would be located in an area designated by the Forest Service as an Inventoried Roadless Area (*http://roadless.fs.fed.us/states/az/coro.pdf*), the project may be subject to regulations in Title 36 Code of Federal Regulations 294.12, and policy direction in Interim Directive Forest Service Manual 1925.

Abel M. Camarena,

Deputy Regional Forester, Southwestern Region.

[FR Doc. 05–7480 Filed 4–13–05; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Mendocino Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Mendocino County Resource Advisory Committee will meet April 29, 2005, (RAC), in Willits, California. Agenda items to be covered include: (1) Approval of minutes, (2) Public comment, (3) Sub-committees (4) Discussion/Approval of projects (5) Matters before the group-discussion/action (6) Next agenda and meeting date.

DATES: The meeting will be held on April 29, 2005 from 9 a.m. to 12 noon.

ADDRESSES: The meeting will be held at the Mendocino County Museum, located at 400 E. Commercial St., Willits, California.

FOR FURTHER INFORMATION CONTACT: Roberta Hurt, Committee Coordinator, USDA, Mendocino National Forest, Covelo Ranger District, 78150 Covelo Road, Covelo CA 95428. (707) 983–8503; e-mail, *rhurt@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Persons who wish to bring matters to the attention of the committee may file written statements with the Committee staff by April 15, 2005. Public comments will have the opportunity to address the committee at the meeting.

Dated: April 6, 2005.

Blaine Baker,

Designated Federal Official.

[FR Doc. 05–7457 Filed 4–13–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596–AC23

Maximum Term for Outfitter and Guide Special Use Permits on National Forest System Lands

AGENCY: Forest Service, USDA.

ACTION: Final directive.

SUMMARY: The Forest Service is revising direction governing special use permits for outfitting and guiding conducted on National Forest System lands by increasing the maximum term for these permits from five to ten years. The revised directive would provide for greater business continuity for outfitters and guides who furnish services to visitors on National Forest System lands and would make the Forest Service's policy on the maximum permit term for outfitting and guiding permits consistent with the policy of the National Park Service and the Bureau of Land Management.

DATES: This directive is effective April 14, 2005.

ADDRESSES: The administrative record for this final directive is available for inspection and copying at the office of the Director, Recreation and Heritage Resources Staff, USDA Forest Service, 4th Floor Central, Sidney R. Yates Federal Building, 1400 Independence Avenue, SW., Washington, DC, from 8:30 a.m. to 4 p.m., Monday through Friday, except holidays. Those wishing to inspect the administrative record are encouraged to call Carolyn Holbrook at (202) 205–1399 beforehand to facilitate access to the building.

A copy of the directive (Amendment 2709.11–2005–1) is available from the Forest Service via the World Wide Web at *http://www.fs.fed.us/im/directives.*

FOR FURTHER INFORMATION CONTACT: Carolyn Holbrook, Recreation, and Heritage Resources Staff, (202) 205–1399.

SUPPLEMENTARY INFORMATION:

1. Background and Need for the Directive

• *Supporting Small Businesses.*

The Forest Service regulates occupancy and use of National Forest System (NFS) lands by outfitters and guides through issuance of special use permits. Outfitters and guides provide the knowledge, skills, and equipment for recreating on NFS lands to those who might not otherwise have them, as well as information and education to the public about the National Forests. Outfitters and guides thus play an important role in meeting the Forest Service's recreational and educational objectives.

Currently, special use permits for outfitters and guides are issued for a period of up to five years. The maximum five-year term has been a concern in recent years to outfitters and guides who perceive this timeframe as a barrier to building and maintaining a sustainable small business. For example, the five-year term may hamper outfitters' and guides' ability to secure financing from lenders if business equipment cannot be fully amortized within the permit term. The five-year term also is not conducive to long-term business planning. Customer service suffers when outfitters and guides cannot invest in needed equipment or conduct long-term business planning. Revising the maximum term of their special use permit from five to ten years will provide outfitters and guides with the potential for greater business continuity for planning and investing.

• *Special Uses Streamlining.*

This directive will decrease administrative costs to the Forest Service and outfitters and guides by reducing the analysis and processing required by more frequent permit issuance. This practice supports the Department's special uses streamlining regulations promulgated November 30, 1998, at 36 CFR part 251, subpart B (63 FR 65949).

• *Interagency Consistency.*

This directive will make Forest Service policy on permit terms for outfitters and guides consistent with the policy of the Bureau of Land Management, adopted on February 6, 2004 (69 FR 5702), and the National Park Service as provided for in Title IV of the National Parks Omnibus Management Act of 1998 (16 U.S.C. 5953). Consistency in the permitting process is important, since many outfitters and guides operate on lands administered by all three agencies.

2. Public Comments on the Proposed Directive To Increase the Maximum Term for Outfitter and Guide Special Use Permits and the Forest Service's Responses

• *Overview.*

On August 13, 2004, the Forest Service published a proposed directive in the **Federal Register** (69 FR 50160) asking for public comment on a proposal to increase the maximum term for an outfitter and guide permit from five to ten years. Comments could be submitted by either mail, facsimile, or electronically. During the 60-day comment period (ending on October 12, 2004), the agency received 46 responses. Of those 46 responses, 8 responses were identical, and counted as one response; and 6 responses had two signatories, and were handled as a single response with two separate comments. Each response was identified as coming from one of the following entities:

Outfitter/Guide Permit Holder: 38 (83%).

Individual (unaffiliated or unidentifiable): 4 (9%).

Outfitter/Guide Organization: 2 (4%).

State Government: 2 (4%).

The majority of respondents were holders of Forest Service outfitter and guide special use permits or were from an outfitter and guide organization. All 40 respondents represented by this grouping supported the directive; 30 of these respondents recommended additional language.

Two States that regulate outfitting and guiding, Idaho and New Mexico, commented on the proposed directive. Idaho supported the directive, while New Mexico opposed it. New Mexico is concerned that increasing the permit term for outfitting and guiding from five to ten years will reduce competition in the industry and may stifle the ability of small businesses to engage in outfitting and guiding.

Along with New Mexico, two individuals opposed the proposed directive. One believes a longer term allows for more abuse by the permit holder. The second believes that commercial operators on NFS lands are profiteers and therefore should not be given longer periods to operate.

• *Response to Comments.*

Comment. Several respondents suggested allowing for permittee initiated administrative review after five years that would allow reasonable revisions to permit terms and conditions deemed necessary to enable the outfitter to make adjustments to improve service to the outfitted public.

Response. Current Forest Service policy allows for a holder of a special use authorization to request an amendment to the authorization at any time. This amendment can contain proposed changes to authorized operations that would benefit the outfitted public. The agency does not see a need to amend current policy in response to this comment. No changes were made to the proposed policy in response to this comment.

Comment. Many respondents believed that the language in section 41.53h, paragraph 2(a), of the proposed directive represents a change in current agency policy as reflected in the Outfitter and Guide Permit Administration Guidebook. They also believed that this language negatively affects many businesses that have had a downturn in travel during the economic recession and wars overseas and would like it changed to allow for more flexibility in the allocation of use.

Response. This directive does not alter agency policy with respect to allocation of use. Current policy in Forest Service Handbook (FSH) 2709.11, section 41.53h, paragraph 2(a), states: ''Use may be based on the average of the highest two years of actual use authorized, which was actually used during the previous five years.'' This directive merely changes the period of use from ''the previous five years'' to ''the previous permit term'' to accommodate the increase to a ten-year term and five-year permits that exist, but will be phased out over time. The referenced guidebook is not agency direction as defined at 36 CFR 200.4, but rather a compendium of agency direction, with examples for administration of outfitter and guide permits. To the extent there is any inconsistency between the directive and the Guidebook, the directive, which was adopted through public notice and comment, takes precedence over the Guidebook, which was not.

The request to amend current direction on allocation of use for outfitting and guiding is outside the scope of this directive and would require additional public notice and comment. The Forest Service has discussed this issue with the outfitter and guide industry and plans to address this concern at a future date. No changes were made to the proposed directive in response to this comment.

Comment. Two respondents were concerned that extending the permit

term would prevent healthy competition for allocation of use for outfitted and guided hunting on NFS lands in New Mexico and probably elsewhere. These respondents believed that a longer permit term would severely restrict the ability of outfitters and guides licensed by the State to conduct their activities on NFS lands. One respondent requested that the Forest Service remove the implication in the agency's directives that outfitting and guiding permits may be held for long periods and transferred.

Response. The Forest Service disagrees with the assertion that competition will be severely restricted by this directive. In 2004, almost 4,700 Forest Service outfitter and guide special use permits were in effect, authorizing a broad range of recreational and educational opportunities. New applications for outfitting and guiding may be granted, provided the proposed services further the mission of the Forest Service, there is public demand for them, and there is capacity in the area requested. Current policy provides that outfitter and guide permits may be issued when (1) an increased allocation, capacity, or public need is identified through the forest planning process; (2) an existing permit is revoked; (3) a reduction of service days for an existing holder or holders makes additional service days available; (4) competitive interest in an area, unit, or activity arises where no previously authorized use exists and where the proposed use is compatible with objectives in land management plans; (5) an application has been submitted to provide outfitter and guide services for an area or activity that has not previously been authorized and for which there is no competitive interest; or (6) an existing permit terminates. In the first four scenarios, the agency solicits applicants by issuing a prospectus and contacting all parties who have expressed an interest. In the fifth scenario, the agency documents the determination of no competitive interest and issues a permit to qualified applicants (FSH 2709.11, sec. 41.53f, para. 2). This directive does not change this policy. In addition, outfitter and guide businesses change ownership regularly, thereby providing outfitting and guiding business opportunities to more people. There is no implication in current policy that outfitting and guiding permits may be held for long periods and transferred. Under current policy, the maximum term is five years, and permits are not transferable (FSH 2709.11, sec. 41.53c and 41.53f). No changes were made to the proposed policy in response to this comment.

Comment. One respondent proposed that any allocation of use for outfitting and guiding in any State be made only after consultation with and specific recommendation from the State agency that licenses outfitters and guides. These respondents believed that to do otherwise would run counter to the joint authority of States and the Forest Service to regulate outfitting and guiding.

Response. The National Forest Management Act (NFMA) and the National Environmental Policy Act (NEPA) require the Forest Service to seek public input, including input from State and local governments, when making land use decisions, especially when the Forest Service is developing a land management plan or wilderness management plan. Within these plans, the agency may establish criteria and capacities for the issuance of outfitter and guide permits. To determine these criteria and capacities, the agency must confer with State agencies, such as departments of game and fish, to understand the effects these decisions may have on the program of a particular State.

The agency disagrees that consultation with and a recommendation from the State agency that licenses outfitters and guides should be required before allocation of use for outfitting and guiding on NFS lands within that State. There is no requirement for this type of consultation and recommendation under Federal law. The States and the Forest Service have concurrent jurisdiction to regulate outfitting and guiding on NFS lands. The regulatory authority of the Forest Service is separate and distinct from the authority of the States. No changes were made to the proposed policy in response to this comment.

Comment. Respondents were concerned that there would be less monitoring under a longer-term permit, and noted that monitoring occurs infrequently.

Response. The agency disagrees with this comment. Current policy requires annual performance reviews, and this directive does not change that requirement. No changes were made to the proposed policy in response to this comment.

Comment. One respondent believed that the maximum term for outfitter and guide permits should be five years. This respondent stated that outfitters and guides would take lifelong permits if they could get them.

Response. The agency disagrees with this comment based on the reasons provided in the section, ''Background and Need for this Directive.'' No changes were made to the proposed policy in response to this comment.

3. Regulatory Requirements

• *Environmental Impact.*

This directive will revise national policy governing administration of special use permits for outfitting and guiding. Section 31b of Forest Service Handbook 1909.15 (57 FR 43180, September 18, 1992) excludes from documentation in an environmental assessment or environmental impact statement ''rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.'' The agency's conclusion is that this directive falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

• *Regulatory Impact.*

This directive has been reviewed under USDA procedures and Executive Order 12866 on regulatory planning and review. It has been determined that this is not a significant directive. This directive will not have an annual effect of $100 million or more on the economy, nor will it adversely affect productivity, competition, jobs, the environment, public health and safety, or State or local governments. This directive will not interfere with an action taken or planned by another agency, nor will it raise new legal or policy issues. Finally, this directive will not alter the budgetary impact of entitlement, grant, user fee, or loan programs or the rights and obligations of beneficiaries of such programs. Accordingly, this directive is not subject to Office of Management and Budget review under Executive Order 12866.

Moreover, this directive has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). It has been determined that this directive will not have a significant economic impact on a substantial number of small entities as defined by the act because the directive will not impose record-keeping requirements on them; it will not affect their competitive position in relation to large entities; and it will not significantly affect their cash flow, liquidity, or ability to remain in the market. To the contrary, the efficiencies and consistency to be achieved by this directive should benefit small businesses that seek to use and occupy NFS lands by providing the potential for greater business continuity for outfitters and guides and by reducing the frequency of time-consuming and sometimes costly processing of special use applications. The benefits cannot be

quantified and are not likely substantially to alter costs to small businesses.

• *No Takings Implications.*

This directive has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the directive will not pose the risk of a taking of private property.

• *Civil Justice Reform.*

This directive has been reviewed under Executive Order 12988 on civil justice reform. If this directive were adopted, (1) all State and local laws and regulations that are in conflict with this directive or that would impede its full implementation will be preempted; (2) no retroactive effect will be given to this directive; and (3) it will not require administrative proceedings before parties may file suit in court challenging its provisions.

• *Federalism and Consultation and Coordination with Indian Tribal Governments.*

The agency has considered this directive under the requirements of Executive Order 13132 on federalism, and has made an assessment that the directive conforms with the federalism principles set out in this executive order; will not impose any compliance costs on the States; and will not have substantial direct effects on the States, the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the agency has determined that no further assessment of federalism implications is necessary at this time.

Moreover, this directive does not have tribal implications as defined by Executive Order 13175, entitled ''Consultation and Coordination With Indian Tribal Governments,'' and therefore advance consultation with Tribes is not required.

• *Energy Effects.*

This directive has been reviewed under Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.'' It has been determined that this directive does not constitute a significant energy action as defined in the executive order.

• *Unfunded Mandates.*

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the agency has assessed the effects of this directive on State, local, and Tribal governments and the private sector. This directive will not compel the expenditure of $100 million or more by any State, local, or Tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

• *Controlling Paperwork Burdens on the Public.*

This directive does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 U.S.C. part 1320 that are not already required by law or not already approved for use. Any information collected from the public as a result of this action has been approved by the Office of Management and Budget under control number 0596–0082. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

Dated: March 31, 2005.

Dale N. Bosworth,

Chief.

4. Directive Changes for Outfitter and Guides

Note: The Forest Service organizes its directive system by alphanumeric codes and subject headings. Only those sections of the Forest Service Handbook that are the subject of this notice are set out here. The intended audience for this direction is Forest Service employees charged with issuing and administrating outfitter and guide special use permits.

Forest Service Handbook

2709.11–Special Uses Handbook

Chapter 40–Special Uses Administration

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41.53 Outfitters and Guides

* * * * *

41.53c Definitions

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Priority Use. Authorization of use for a period not to exceed ten years. The amount of use is based on the holder's past use and performance and on land management plan allocations. Except as provided for in Title 36, Code of Federal Regulations, part 251, subpart E, authorizations providing for priority use are subject to renewal (sec. 41.53f).

* * * * *

41.53h—Assignment and Management of Priority Use

* * * * *

2. * * *

a. Use may be based on the average of the highest two years of actual use during the previous permit term.

* * * * *

41.53j—Permit Terms and Conditions

1. For new applicants, authorize use for up to one year. For holders assigned priority use, use may be authorized for up to ten years.

* * * * *

[FR Doc. 05–7488 Filed 4–13–05; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Notice of Extension of Time Limit for Final Results of Antidumping Duty Administrative Review: Honey from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 14, 2005.

FOR FURTHER INFORMATION CONTACT: Anya Naschak or Kristina Boughton, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone; (202) 482–6375 and (202) 482–8173, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) published the preliminary results of the antidumping duty administrative review on honey from the People's Republic of China on December 27, 2004, which included a decision to extend the final results deadline by 30 days until May 26, 2005. *See Honey From the People's Republic of China: Preliminary Results, Partial Rescission, and Extension of Final Results of Second Antidumping Duty Administrative Review*, 69 FR 77184.

Extension of Time Limits for Final Results

Pursuant to Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and section 351.213(h)(1) of the Department's regulations, the Department shall issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides that the Department shall issue the final results of review within 120 days after the date on which the notice of the preliminary results was published in the **Federal Register**. However, if the Department determines that it is not

practicable to complete the review within this time period, section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations allow the Department to extend the 245–day period to 365 days and the 120–day period to 180 days. Due to the fact that in this case the Department is conducting verifications subsequent to the preliminary results of the administrative review, although verifications are normally conducted prior to issuing the preliminary results, and therefore requires additional time to complete the verifications and issue its findings, the Department determines that it is not practicable to complete this administrative review within the current time limit.

Section 751(a)(3)(A) of the Act and section 351.213(h) of the Department's regulations allow the Department to extend the deadline for the final results of a review to a maximum of 180 days from the date on which the notice of the preliminary results was published. For the reasons noted above, the Department is extending the time limit for the completion of these final results until no later than Monday, June 27, 2005, which is the next business day after 180 days from the date on which the notice of the preliminary results was published.

This notice is issued and published in accordance with Section 751(a)(3)(A) of the Act.

Dated: April 8, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–1761 Filed 4–13–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Proposed Information Collection; Comment Request; Manufacturing Extension Partnership (MEP) Program Evaluation Survey

AGENCY: National Institute of Standards and Technology (NIST), DOC.

ACTION: Notice.

SUMMARY: The Department of Commerce (DoC), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506 (2)(A)).

DATES: Written comments must be submitted on or before June 13, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, 1401 Constitution Avenue, NW., Room 6625, Washington, DC 20230 (or via the Internet at (*dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Romain Tweedy, National Institute of Standards and Technology, Manufacturing Extension Partnership, 100 Bureau Drive, Stop 4800, Gaithersburg, MD 20899–4800, (301) 975–8824 (phone) (301) 963–6556 (fax), *romain.tweedy@nist.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Institute of Standards and Technology (NIST) sponsors the Manufacturing Extension Partnership (MEP), a national network of locally based manufacturing extension centers working with small manufacturers to help them improve their productivity, improve profitability and enhance their economic competitiveness.

The specific information obtained from clients about the impact of MEP services is essential for NIST officials to evaluate program strengths and weaknesses and plan improvements in program effectiveness and efficiency. This information is not available from existing programs or other sources. The collection of information is currently conducted by Synovate, Inc. This submission under the Paperwork Reduction Act represents a request for an extension of a currently approved collection.

II. Method of Collection

Clients have three options for completing the survey, Computer Assisted Telephone Interviewing (CATI), Interactive Voice Response (IVR), or via the Internet.

III. Data

OMB Number: 0693–0021.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 6,500.

Estimated Time Per Response: 10 minutes.

Estimated Total Annual Burden Hours: 1,083.

Estimated Annual Cost to the Public: $0.

IV. Requests for Comments

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 (including hours and costs) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: April 8, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–7473 Filed 4–13–05; 8:45 am]

BILLING CODE 3510–CN–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Public Forum on Urban Search and Rescue Robot Performance Standards

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Meeting notice.

SUMMARY: The National Institute of Standards and Technology (NIST) will host, in conjunction with the Department of Homeland Security (DHS), a public meeting from 9 a.m. to 4 p.m. on May 13, 2005 at the NIST campus in Gaithersburg, MD. This meeting pertains to a new DHS Program to develop comprehensive standards related to the development, testing, and certification of effective technologies for Urban Search and Rescue (US&R) robotics. These US&R robotic performance standards cover sensing, mobility, navigation, planning, integration, and operator control in order to ensure that the robots can meet operational requirements under the extremely challenging conditions that rescuers are faced with, including long endurance missions. The standards will also address issues of robotic component interoperability to reduce costs. The US&R robotic standards effort focuses on fostering collaboration between first responders, robot vendors, and technology developers to advance consensus standards for task specific

robot capabilities and interoperability of components. These standards will allow DHS to provide guidance to local, state, and federal homeland security entities regarding the purchase, deployment and use of US&R robotic systems. The meeting is intended as a method of disseminating information pertaining to this newly initiated program. Attendees at the May 13 forum are expected to include: robot platform vendors, robot peripherals and software providers, sensor (chemical, biological, radiological, nuclear, environmental) providers, researchers working on robotic components, platforms, and algorithms, government agencies working on applicable robotic technologies and sensors, federal, state, and local responders and response agencies, and testing and evaluation sites and laboratories. There will be an $80 charge for this meeting and pre-registration is required. An electronic registration site will be available at *http://www.isd.mel.nist.gov/US&R_Robot_Standards.*

DATES: The forum will begin on May 13, 2005 at 9 a.m. and conclude at 4:00 p.m.

ADDRESSES: The workshop will be held at the National Institute of Standards and Technology, Gaithersburg, MD. Directions and instructions for registration in order to gain admittance to the site are available at *http://www.isd.mel.nist.gov/US&R_Robot_Standards.*

FOR FURTHER INFORMATION CONTACT: Elena Messina, Leader, Knowledge Systems Group, 100 Bureau Drive/MS 8230, Gaithersburg, MD 20899–8230. Telephone (301) 975–3235 or e-mail *usar.robots@nist.gov.*

Dated: April 7, 2005.

Hratch G. Semerjian,

Acting Director.

[FR Doc. 05–7502 Filed 4–13–05; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; U.S. Fishermen Fishing in Russian Waters

AGENCY: National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before June 13, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Robert A. Dickinson, (301) 713–2276 or *Bob.Dickinson@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The regulations at 50 CFR part 300, subpart J, govern U.S. fishing in the economic zone of the Russian Federation. Russian authorities may permit U.S. fishermen to fish for allocations of surplus stocks in the Russian Economic Zone. The permit application information is sent to the National Marine Fisheries Service (NMFS) for transmission to Russia. If Russian authorities issue a permit, the vessel owner or operator must submit a permit abstract report to NMFS, and also report 24 hours before leaving the U.S. Exclusive Economic Zone (EEZ) for the Russian Economic Zone and 24 hours before re-entering the EEZ after being in the Russian Economic Zone.

The permit application information is used by Russian authorities to determine whether to issue a permit. NMFS uses the other information to help ensure compliance with Russian and U.S. fishery management regulations.

II. Method of Collection

Applications are in paper format. Submission of copies of permits, vessel abstract reports, and depart and return messages are provided by fax.

III. Data

OMB Number: 0648–0228.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profits organizations.

Estimated Number of Respondents: 1.

Estimated Time Per Response: 30 minutes.

Estimated Total Annual Burden Hours: 1.

Estimated Total Annual Cost to Public: 0.

IV. Request for Comments

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 (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 8, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–7471 Filed 4–13–05; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; List of Gear by Fisheries and Fishery Management Council

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before June 13, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be

directed to Mark R. Millikin, Department of Commerce, F/SF3, Room 13357, 1315 East-West Highway, Silver Spring, Maryland 20910–3282 (phone 301–713–2341, ext.153) or via the Internet at *Mark.Millikin@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), as amended by the Sustainable Fisheries Act (Pub. L. 104–297), the Secretary of Commerce is required to publish a list of all fisheries under authority of each Regional Fishery Management Council (Council) and all fishing gear used in such fisheries. The list has been published. Any person wishing to use gear not on the list, or engage in a fishery not on the list, must provide the appropriate Council or the Secretary, in the case of Atlantic highly migratory species, with 90 days of advance notice. If the Secretary takes no action to prohibit such a fishery or use of such gear, the person may proceed.

II. Method of Collection

The respondent provides written notice. No form is used.

III. Data

OMB Number: 0648–0346.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profits organizations.

Estimated Number of Respondents: 20.

Estimated Time Per Response: 90 minutes.

Estimated Total Annual Burden Hours: 30 hours.

Estimated Total Annual Cost to Public: $200.

IV. Request for Comments

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 (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 8, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–7472 Filed 4–13–05; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040805D]

Receipt of an Application for Incidental Take Permit (1529)

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

ACTION: Notice of availability.

SUMMARY: NMFS has received an application for an incidental take permit (Permit) from David N. Hata, Ph.D., Virginia Polytechnic Institute and State University (Virginia Tech) pursuant to the Endangered Species Act of 1973, as amended (ESA). As required by the ESA, the application includes a conservation plan designed to minimize and mitigate any such take of endangered or threatened species. The Permit application is for the incidental take of ESA-listed sea turtles, shortnose sturgeon, smalltooth sawfish, and Atlantic salmon associated with otherwise lawful research to assess horseshoe crab abundance from Cape Cod, Massachusetts south to the Georgia-Florida border. The duration of the proposed Permit is for 6 years. NMFS is furnishing this notice in order to allow other agencies and the public an opportunity to review and comment on this document. All comments received will become part of the public record and will be available for review.

DATES: Written comments from interested parties on the Permit application and Plan must be received at the appropriate address or fax number (see ADDRESSES) no later than 5 p.m. Eastern daylight time on May 16, 2005.

ADDRESSES: Requests for copies of the application, cited literature, and written comments on this action should be addressed to Therese Conant, Marine Mammal and Turtle Division, NMFS Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD, 20910; or by fax (301) 427–2522, or by e-mail at: *NMFS.1529@noaa.gov*. The application is available for download and review at *http://www.nmfs.noaa.gov/pr/permits/review.htm*.

FOR FURTHER INFORMATION CONTACT: Therese Conant (ph. 301–713–1401, fax 301–427–2522, e-mail *Therese.Conant@noaa.gov*). Comments received will also be available for public inspection, by appointment, during normal business hours by calling 301–713–1401.

SUPPLEMENTARY INFORMATION: Section 9 of the ESA and Federal regulations prohibit the ''taking'' of a species listed as endangered or threatened. The term ''take'' is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may issue permits, under limited circumstances, to take listed species incidental to, and not the purpose of, otherwise lawful activities. Section 10(a)(1)(B) of the ESA provides for authorizing incidental take of listed species. NMFS regulations governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.

Species Covered in This Notice

The following species are included in the conservation plan and Permit application: Loggerhead (*Caretta caretta*), green (*Chelonia mydas*), leatherback (*Dermochelys coriacea*), hawksbill (*Eretmochelys imbricata*), and Kemp's ridley (*Lepidochelys kempii*) sea turtles. Other species that may be affected are: Shortnose sturgeon (*Acipenser brevirostrum*), smalltooth sawfish (*Pristis pectinata*), and Atlantic salmon (*Salmo salar*).

Background

NMFS received an application from Dr. Hata on April 2, 2004. Based on a review of the application, NMFS determined that the application was incomplete and requested further information. The applicant submitted a revised application on January 10, 2005. The application is for incidental take of ESA-listed species that may result from proposed research. The proposed research activity will consist of annual horseshoe crab abundance monitoring surveys and associated studies to evaluate survey methodology. The annual trawl surveys will provide abundance, distribution and demographic information in support of the horseshoe crab Fishery Management Plan of the Atlantic States Marine Fisheries Commission. The surveys will be conducted from Cape Cod, Massachusetts to the Georgia-Florida

border. Sampling consists of approximately 48 days at sea for a total of 250 tows deploying flounder and whelk trawls intended to capture horseshoe crabs for examination and enumeration. Tows will be no longer than 15 minutes of bottom time and will be conducted at night from mid-August through mid-November. Turtle excluder devices will not be installed in the trawl gear because these devices may hinder capture of horseshoe crabs. Thus, it is anticipated that fish and sea turtles will be captured by the unmodified gears. The application anticipates the annual capture of one lethal or non-lethal leatherback, one lethal or non-lethal green, 12 lethal and 28 non-lethal loggerheads, 4 lethal and 9 non-lethal Kemp's ridley sea turtles in 48 days of sampling. The lethal take numbers are based on a 29 percent mortality rate which is the higher rate published for trawl fisheries (Henwood and Stuntz, 1987; Epperly et al., 1995). However, those rates are based on commercial fishing conditions where trawl tow times often exceed 60 minutes. The tow times described in the application will not exceed a 15 minute bottom time—a submergence period that sea turtles are able to survive. Thus, the mortality rate is likely much lower then 29 percent.

Conservation Plan

The conservation plan prepared by the applicant describes measures designed to monitor, minimize, and mitigate the incidental takes of ESA-listed sea turtles. The conservation plan includes limiting sampling effort in areas and times where sea turtles are likely to be present; avoiding coral and rock habitats associated with hawksbills and areas of submerged aquatic vegetation associated with green turtles; using minimal tow durations; avoiding areas of high fishing vessel activity which may attract foraging sea turtles and may increase the chance of multiple captures.

All activities will be conducted under the direct supervision of scientific parties from Virginia Tech. Sampling will not be conducted when sea turtles are observed in the area. If a sea turtle is captured, all efforts will be made to release the turtle as quickly as possible with minimal trauma. If necessary, resuscitation will be attempted as proscribed by 50 CFR 223.206. Scientific parties will be familiarized with resuscitation techniques prior to surveys, and a copy of the resuscitation guidelines will be carried aboard the vessel during survey activities. In the event resuscitation is unsuccessful, the sea turtle will be transferred to the sea turtle stranding network of the appropriate jurisdiction. Other monitoring or mitigation actions will be undertaken as required.

The applicant considered and rejected three other alternatives, not applying for a permit, conducting the research in an area where ESA-listed species do not occur, or using different sampling gear when developing their conservation plan.

This notice is provided pursuant to section 10(c) of the ESA and the National Environmental Policy Act (NEPA) regulations (40 CFR 1506.6). NMFS will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of the NEPA regulations and section 10(a) of the ESA. If it is determined that the requirements are met, a permit will be issued for incidental takes of ESA-listed sea turtles under the jurisdiction of NMFS. The final NEPA and permit determinations will not be completed until after the end of the 30–day comment period and will fully consider all public comments received during the comment period. NMFS will publish a record of its final action in the **Federal Register**.

Dated: April 11, 2005.

P. Michael Payne,

Chief, Marine Mammal and Turtle Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–7516 Filed 4–13–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041105C]

Mid-Atlantic Fishery Management Council; Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) and its Atlantic Mackerel Committee; its Research Set-Aside Committee; its Surfclam and Ocean Quahog Committee; its Ecosystems Committee; and, its Executive Committee will hold public meetings.

DATES: The meetings will be held Monday, May 2, 2005 through Thursday, May 5, 2005. See **SUPPLEMENTARY INFORMATION** for specific dates and times of the meetings.

ADDRESSES: This meeting will be at the Princess Royale Oceanfront Hotel and Conference Center, 9100 Coastal Highway, Ocean City, MD 21842 telephone 410–524–2544.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904, telephone 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION:

Dates and Times for the Meetings

On Monday, May 2, the Atlantic Mackerel Committee with its Advisory Panel will meet from 1–5 p.m. On Tuesday, May 3, the Atlantic Mackerel Committee will meet from 8a.m.-5 p.m.; the Research Set-Aside Committee will meet from 1–2 p.m.; and, the Surfclam and Ocean Quahog Committee with its Advisory Panel will meet from 2–4 p.m. On Wednesday, May 4, the Ecosystems Committee will meet from 8–10 a.m., and the Council will convene at 10 a.m. From 10 a.m. through 12 noon, Council will approve the March Council meeting minutes and action items from the March Council meeting, hear organizational and liaison reports, hear the Executive Director's Report, and hear a report on the status of the Council's Fishery Management Plans (FMP). From 1–5 p.m., Council will address Amendment 14 and Framework 6 to the Summer Flounder, Scup, and Black Sea Bass FMP; address Amendment 9 to the Atlantic Mackerel, Squid, Butterfish FMP; and, discuss Framework 1 to the Spiny Dogfish FMP. On Thursday, May 5, the Executive Committee will meet from 8–9 a.m. Council will convene at 9 a.m., and from 9–11 a.m., Council will receive presentations from individuals affiliated with NMFS and the University of Rhode Island (URI). At 11 a.m. the Council will receive committee reports and entertain any new and/or continuing business.

Agenda items for the Council's committees and the Council itself are: on Monday, May 2, the Atlantic Mackerel Committee and its advisors will review and discuss comments received regarding a controlled/limited access system for mackerel. On Tuesday, May 3, the Atlantic Mackerel Committee will continue to review and discuss comments regarding a controlled/limited access system for mackerel. The Research Set-Aside Committee will review 2006 Request for Proposals (RFP), and review and comment on changes to NOAA's grant

process. The Surfclam and Ocean Quahog Committee and its advisors will review the status of clams/quahogs and assess quota management outcomes including the need, if any, to implement a VMS for the surflcam fleet. On Wednesday, May 4, the Ecosystems Committee will develop a draft questionnaire for state public hearings. Following this committee meeting, the Council will convene to approve the March Council meeting minutes and approve action items from the March Council meeting. The Council will also hear organizational and liaison reports, the Executive Director's report and a report on the status of the MAFMC's FMPs. Council will receive an update on Amendment 14 and Framework 6 to the Summer Flounder, Scup, and Black Sea Bass FMP and address the issue of quota transfers; receive an update on Amendment 9 to the Atlantic Mackerel, Squid, Butterfish FMP; and, Council will review options regarding multi-year setting of specifications for spiny dogfish as proposed in Framework 1 to the Spiny Dogfish FMP and adopt a preferred option for submission to the Secretary. On Thursday, May 5, the Executive Committee will receive reports regarding outcomes from the Council Chairmen's meeting. The Council will convene and hear presentations on NMFS Recreational Fisheries Strategic Plan, and URI's view of the use of property rights in fishery management; hear Committee reports, and entertain any new and/or continuing business.

Although non-emergency issues not contained in this agenda may come before the Council for discussion, these issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council=s intent to take final actions to address such emergencies.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Collins (302–674–2331) at least 5 days prior to the meeting date.

Dated: April 11, 2005.

Emily Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E5–1756 Filed 4–13–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041105B]

Fisheries of the South Atlantic; Scientific and Statistical Committee, Biological Assessment Subcommittee, Socio-economic Subcommittee

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

ACTION: Notice of meeting of the Scientific and Statistical Committee, Biological Subcommittee and Socio-economic Subcommittee.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of its Scientific and Statistical Committee (SSC) and SSC Biological Subcommittee and Socio-economic Subcommittee in Charleston, SC.

DATES: The meetings will take place May 10-12, 2005.

ADDRESSES: The meetings will be held at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC 29407; phone 800/334-6660 or 843/571–1000, FAX 843/766–9444.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, S.C., 29407–4699; phone 843/571–4366 or toll free 866/SAFMC-10; FAX 843/769–4520; email: *kim.iverson@safmc.net*.

SUPPLEMENTARY INFORMATION: Under the Magnuson-Stevens Act, the SSC is the body responsible for reviewing the Council's scientific materials. The Council will hold a joint meeting of its SSC Biological Subcommittee and Socio-economic Subcommittee on May 10, 2005 from 1:30 p.m. until 6 p.m. During the joint meeting the subcommittees will receive the black sea bass stock assessment for the South Atlantic and stock rebuilding projections and also Snapper Grouper Amendment 13B.

On May 11, 2005, the SSC Biological Subcommittee and SSC Socio-economic Subcommittee will meet in separate consecutive sessions from 8:30 a.m. –12:00 noon. The Subcommittees will develop recommendations for the full SSC regarding black sea bass and Snapper Grouper 13B. From 1:30 p.m. until 6 p.m., there will be a meeting of the full SSC.

On May 12, 2005, the full SSC will continue its meeting from 8:30 a.m. until 5 p.m. During the meeting, the SSC will review the Black Sea Bass Stock Assessment, data and projections and discuss issues relevant to Amendment 13B to the Snapper Grouper Fishery Management Plan. Items for discussion include: (1) species groupings for management units, (2) years of data to be used for determining Stock Status Determination Criteria for data poor species, (3) years of data to be used to calculate percentage reductions in fishing mortality, and (4) release mortality rates.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the council office (see **ADDRESSES**) 5 days prior to the meetings.

Note: The times and sequence specified in this agenda are subject to change.

Dated: April 11, 2005.

Emily Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E5–1757 Filed 4–13–05; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Commercial Availability Petition under the United States - Caribbean Basin Trade Partnership Act (CBTPA)

April 11, 2005.

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

ACTION: Request for public comments concerning a petition for a determination that certain 100 percent cotton, 2 x 2 twill weave, flannel fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA.

SUMMARY: On April 8, 2005, the Chairman of CITA received a petition from Oxford Industries alleging that certain 100 percent cotton, 2 x 2 twill weave, flannel fabrics, of ring spun and combed 2 ply yarns, of the specifications detailed below, classified in subheading 5208.43.0000 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 men's and boys' woven cotton shirts and women's and girls woven cotton blouses of such fabrics assembled in one or more CBTPA beneficiary countries be eligible for preferential treatment under the CBTPA. CITA hereby solicits public comments on this petition, in particular with regard to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by April 29, 2005 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, 14th and Constitution, NW., Washington, DC 20230.

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

SUPPLEMENTARY INFORMATION:

Authority: Section 213(b)(2)(A)(v)(II) of the CBERA, as added by Section 211(a) of the CBTPA; Section 6 of Executive Order No. 13191 of January 17, 2001.

Background

The CBTPA provides for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns or fabrics formed in the United States. The CBTPA also provides for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabric or yarn that is not formed in the United States, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191, the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA and directed CITA to establish procedures to ensure appropriate public participation in any such determination. On March 6, 2001, CITA published procedures that it will follow in considering requests. (66 FR 13502).

On April 8, 2005, the Chairman of CITA received a petition from Oxford Industries alleging that certain 100 percent cotton, 2 x 2 twill weave, flannel fabrics, of ring spun and combed 2 ply yarns, of the specifications detailed below, classified HTSUS subheading 5208.43.0000, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting quota- and duty-free treatment under the CBTPA for men's and boys' woven cotton shirts and women's and girls' woven cotton blouses that are cut and sewn in one or more CBTPA beneficiary countries from such fabrics.

Specifications:

Petitioner Style No:	1662
Fiber Content:	100% Cotton
Weight:	150 - 160 g/m2
Width:	148 - 152 centimeters
Thread Count:	50 - 52 ends per cm (25-26 x two plies) 42 - 46 filling picks per cm (21-23 x two plies) 92 - 98 thread per square cm (46-49 x two plies)
Yarn Number:	34 metric warp and filling, ring spun combed, two ply average yarn number 60-62.
Weave:	2 x 2 twill
Finish:	Yarns of different colors; napped

The petitioner emphasizes that the construction of the fabric must be exactly or nearly exactly as specified or the fabric will not be suitable for its intended uses.

CITA is soliciting public comments regarding this request, particularly with respect to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Also relevant is whether other fabrics that are supplied by the domestic industry in commercial quantities in a timely manner are substitutable for the fabric for purposes of the intended use. Comments must be received no later than April 29, 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 these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the fabric stating that it produces the fabric that is the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked ''business confidential'' from disclosure to the full extent permitted by law. CITA generally considers specific details, such as quantities and lead times for providing the subject product as business confidential. However, information such as the names of domestic manufacturers who were contacted, questions concerning the capability to manufacture the subject product, and the responses thereto should be available for public review to ensure proper public participation in the process. If this is not possible, an explanation of the necessity for treating such information as business confidential must be provided. 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, NW., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 05–7586 Filed 4–12–05; 2:33 pm]

BILLING CODE 3510–DS–S

DEPARTMENT OF EDUCATION

Emergency Response and Crisis Management Grant Program

AGENCY: Office of Safe and Drug-Free Schools, Department of Education.

ACTION: Notice of proposed priority and other application requirements.

SUMMARY: We propose a priority and other application requirements under the Emergency Response and Crisis Management Grant program. We may use this priority and the application requirements for competitions in Fiscal Year (FY) 2005 and in later years. We take this action to focus Federal financial assistance on supporting grants to local educational agencies (LEAs) in improving and strengthening emergency response and crisis management plans that address the four phases of crisis planning: Prevention/Mitigation, Preparedness, Response, and Recovery.

DATES: We must receive your comments on or before May 16, 2005.

ADDRESSES: Address all comments about this proposed priority and other application requirements to Sara Strizzi, 400 Maryland Avenue, SW., room 3E320, Washington, DC 20202–6450. If you prefer to send your comments

through the Internet, use the following address: *sara.strizzi@ed.gov*.

FOR FURTHER INFORMATION CONTACT: Sara Strizzi. Telephone: (202) 708–4850 or via Internet: *sara.strizzi@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–888–877–8339.

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

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding this proposed priority and other application requirements.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from this proposed priority and other application requirements. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this proposed priority and other application requirements in 400 Maryland Ave, SW., room 3E320, Washington, DC, between the hours of 8:30 a.m. and 4 p.m., eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed priority and other application requirements. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Background: The events of September 11, 2001, made schools and communities aware that, in addition to planning for traditional crises and emergencies, schools must now plan to respond to possible terrorist attacks on campus or in the community. We propose this priority and other application requirements under the Safe and Drug-Free Schools and Communities National Programs to focus on the important need of LEAs to strengthen and improve school crisis plans in coordination with community-based partners.

We will announce the final priority and other application requirements in a notice in the **Federal Register**. We will determine the final priority and other application requirements after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or using additional priorities or other application requirements, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this proposed priority and other application requirements, we invite applications through a notice in the **Federal Register**. When inviting applications we designate the priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priority: Improvement and Strengthening of School Emergency Response and Crisis Management Plans. This proposed priority supports local educational agency (LEA) projects to improve and strengthen emergency response and crisis management plans, at the district and school-building level, addressing the four phases of crisis planning: Prevention/Mitigation, Preparedness, Response, and Recovery. Plans must include: (1) training for school personnel and students in emergency response procedures; (2) coordination with local law enforcement, public safety, health, and mental health agencies; and (3) a method for communicating school emergency response policies and reunification procedures to parents and guardians.

Other Application Requirements: We propose establishing the following application requirements:

1. *Partner Agreements.* To be considered for a grant award, an applicant must include in its application an agreement that details the participation of each of the following five community-based partners: law enforcement, public safety, health, mental health, and the head of the applicant's local government (for example the mayor, city manager, or county executive). The agreement must include a description of each partner's roles and responsibilities in improving and strengthening emergency response plans at the district and school-building level, a description of each partner's commitment to the continuation and continuous improvement of emergency response plans at the district and school-building level, and an authorized signature representing the LEA and each partner acknowledging the agreement. If one or more of the five partners listed is not present in the applicant's community, or cannot feasibly participate, the agreement must explain the absence of each missing partner. To be considered eligible for funding, however, an application must include a signed agreement between the LEA, a law enforcement partner, and at least one of the other required partners (public safety, health, mental health, or head of local government).

Applications that fail to include the required agreement, including information on partners' roles and responsibilities and on their commitment to continuation and continuous improvement (with signatures and explanations for missing signatures as specified above), will not be read.

Although this program requires partnerships with other parties, administrative direction and fiscal control for the project must reside with the LEA.

2. *Coordination with State or Local Homeland Security Plan.* All emergency response and crisis management plans must be coordinated with the Homeland Security Plan of the State or locality in which the LEA is located. All States submitted such a plan to the Department of Homeland Security on January 30, 2004. To ensure that emergency services are coordinated, and to avoid duplication of effort within States and localities, applicants must include in their applications an assurance that the LEA will coordinate with and follow the requirements of

their State or local Homeland Security Plan for emergency services and initiatives.

3. *Support of the National Incident Management System.* Applicants also must also agree to support the implementation of the National Incident Management System (NIMS). In accordance with Homeland Security Presidential Directive/HSPD–5, the NIMS provides a consistent approach for Federal, State, and local governments to work effectively and efficiently together to prepare for, prevent, respond to, and recover from domestic incidents, regardless of cause, size, or complexity.

Specifically, applicants must include in their applications an assurance that, by September 30, 2005, they will complete, to the maximum extent possible, the following steps to support NIMS implementation:

• Administer the NIMS Awareness Course: ''National Incident Management System (NIMS), An Introduction'' (IS 700) to key district and school staff. This independent study course, developed by the Emergency Management Institute (EMI), explains the purpose, principles, key components, and benefits of the NIMS. The course is available online and will take between forty-five minutes to three hours to complete. The course is available on the EMI Web site at: *http://training.fema.gov/EMIWeb/IS/is700.asp*.

• Formally recognize the NIMS and adopt NIMS principles and policies. Districts and/or their local government should establish an executive order, resolution, or ordinance to formally adopt the NIMS.

• Establish a NIMS baseline to determine which NIMS requirements have been met by the LEA. Districts should coordinate with their community partners to assess the district's overall compliance with the NIMS, and determine gaps in compliance that need to be closed in order to reach full implementation of the NIMS.

• Establish a timeframe and strategy for full NIMS implementation. States, territories, tribes, and local entities are encouraged to achieve full NIMS implementation by September 30, 2005, to the maximum extent possible.

• Establish the use of the Incident Command System (ICS). The ICS has been established by the NIMS as the standardized incident organizational structure for the management of all incidents. Districts should coordinate with community partners listed above in institutionalizing the use of the ICS in a manner that is consistent with the concepts and principles in the NIMS.

Note: Since LEAs are integral to local governments, an LEA's NIMS compliance must be achieved in close coordination with the local government and with recognition of the first responder capabilities held by the LEA and the local government. As LEAs are not traditional response organizations, first responder services will typically be provided to LEAs by local fire and rescue departments, emergency medical service providers, and law enforcement agencies. This traditional relationship must be acknowledged in achieving NIMS compliance in an integrated NIMS compliance plan for the local government and the LEA. LEA participation in the NIMS preparedness program of the local government is essential to ensure that first responder services are delivered to schools in a timely and effective manner. Additional information about NIMS implementation is available at *http://www.fema.gov/nims*.)

4. *Individuals with Disabilities.* The applicant's plan must demonstrate that the applicant has taken into consideration the communication, transportation, and medical needs of individuals with disabilities within the school district.

Executive Order 12866

This notice of proposed priority and other application requirements has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of proposed priority and other application requirements are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of proposed priority and other application requirements, we have determined that the benefits of the proposed priority and other application requirements justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of potential costs and benefits: The potential cost associated with this proposed priority and other application requirements is minimal while the benefits are significant. Grantees may anticipate costs with completing the application process in terms of staff and partner time, copying, and mailing or delivery. The use of E-Application technology reduces mailing and copying costs significantly.

Grantees may also anticipate costs in achieving NIMS compliance. However, these costs may be included in the grant budget and, therefore, will have little financial impact on the applicant.

The benefit of this proposed priority and other application requirements is that grantees that develop a comprehensive emergency response and crisis management plan that includes training and that is implemented in coordination with community partners may mitigate the financial and human impact of a crisis in their district.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about 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*.

(Catalog of Federal Domestic Assistance Number 84.184.E—Emergency Response and Crisis Management Grant program)

Program Authority: 20 U.S.C. 7131.

Dated: April 11, 2005.

Deborah A. Price,

Assistant Deputy Secretary for Safe and Drug-Free Schools.

[FR Doc. 05–7531 Filed 4–13–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Tech-Prep Demonstration Program

AGENCY: Office of Vocational and Adult Education, Department of Education.

ACTION: Notice of final requirements and selection criteria.

SUMMARY: The Assistant Secretary for Vocational and Adult Education announces requirements and selection criteria under the Tech-Prep Demonstration Program (TPDP). The Assistant Secretary may use these requirements and selection criteria for competitions in fiscal year (FY) 2005 and later years. We take this action to clarify the Department's expectations regarding this program, so that TPDP-funded projects will help students, schools, and teachers in their efforts to improve student achievement, meet high standards for high school graduation, and increase enrollment and persistence rates in postsecondary education.

DATES: These requirements and selection criteria are effective May 16, 2005.

FOR FURTHER INFORMATION CONTACT: Laura Karl Messenger, U.S. Department of Education, 400 Maryland Avenue, SW., room 11028, Potomac Center Plaza, Washington DC 20202–7241. Telephone: (202) 245–7840 or via Internet: *Laura.messenger@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 contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: This final notice establishes program requirements and selection criteria for the TPDP, which is authorized by section 207 of the Carl D. Perkins Vocational and Technical Education Act of 1998 (Perkins III). TPDP provides grants to consortia to carry out tech-prep education projects that involve the location of a secondary school on the site of a community college, a business as a member of the consortium, and the voluntary participation of secondary school students. We intend to fund projects that, following an initial recruitment period, will enroll a new student cohort in each year of the project, in addition to continuing support for each previous TPDP student cohort.

We published a notice of proposed requirements and selection criteria in the **Federal Register** on February 10, 2005 (70 FR 7085). In that notice, we discussed (on pages 7085 though 7088) the proposed requirements and selection criteria for the TPDP competition to be conducted in FY 2005 and TPDP competitions in subsequent years.

Analysis of Comments and Changes

In response to our invitation in the notice of proposed requirements and selection criteria, two parties submitted comments. An analysis of those comments and our responses follows. Specifically, we have made a change to requirement 3 to clarify our intent regarding virtual school participation in eligible TPDP projects. In addition, based on our internal review of the requirements and selection criteria since publication of the notice of proposed requirements and selection criteria, we have made a change to the performance indicators requirement regarding mathematics course taking. A description of that change also follows.

We discuss substantive issues under the title of the requirement or selection criteria to which they pertain. Generally, we do not address technical and other minor changes—and suggested changes the law does not authorize us to make under the applicable statutory authority.

Eligibility Requirements

Comment: One commenter recommended that older, established schools be allowed to apply for TPDP funding.

Discussion: Section 207 of Perkins III requires that a TPDP project ''involve the location of a secondary school on the site of a community college.'' This statutory requirement does not preclude older, established schools from applying for TPDP funding, as long as any such school is a member of an eligible consortium, is located on the campus of a community college, and would carry out a tech-prep education project.

Changes: None.

Comment: One commenter stated that virtual schools should be allowed to apply for funding under the TPDP as long as they collaborate with secondary and postsecondary schools.

Discussion: The requirements for membership in a TPDP consortium are taken from the statutory language in section 204(a) and section 207(b) of Perkins III. While section 207 does not identify a virtual school as a required member of an eligible consortium, it does not preclude participation by a virtual school. Thus, a virtual school is eligible for consortium membership if an applicant chooses to include it, or may serve some function in a TPDP project, as long as the project satisfies the statutory requirement that a TPDP project ''involve the location of a secondary school on the site of a community college.'' As it was not the Department's intent to exclude a virtual school from participation in an eligible TPDP project, the wording of requirement 3 has been revised.

Changes: A change has been made. Under requirement 3 as revised, the reference to the ''virtual location'' of a secondary school has been deleted, and a statement has been added regarding allowable modes of instruction.

Performance Indicators Requirement

Comment: None.

Discussion: We have reviewed the requirements and selection criteria since publication of the notice of proposed requirements and selection criteria and have made a change to the performance indicators requirement regarding mathematics course taking. In the notice of proposed requirements and selection criteria, we proposed the following performance indicator: completion of one or more mathematics courses in addition to Algebra I, Algebra II, and Geometry by the time of high school graduation. In order to comply with the Department's Principles for Regulating, which includes ensuring consistency among performance indicators used across Federally-funded education programs, we have elected to change this performance indicator so that it is consistent with the performance indicator concerning mathematics course taking used in other Federally-funded education programs.

Changes: As revised, the performance indicator in paragraph (6)(b) provides for completion of Algebra I, Geometry, and Algebra II by the time of high school graduation.

Note: This notice does *not* solicit applications. In any year in which we choose to use one or more of these requirements and selection criteria, we invite applications through a notice in the **Federal Register**.

Requirements

To achieve the purposes of section 207 of Perkins III, we establish the following requirements. We may apply these requirements to any TPDP competition and to any projects funded in the future.

(1) Each applicant must submit a signed consortium agreement (Agreement), providing evidence that each of the categories of membership required under section 207 of Perkins III

has been satisfied and that each of the required members is eligible for membership under the provisions of Perkins III. The Agreement must contain a signature of commitment from each participating secondary school, community college, and business member, affirming that those entities have formed a consortium to develop, implement, and sustain a TPDP project as described under section 207 of Perkins III. The Agreement also must describe the roles and responsibilities of each consortium member within the proposed TPDP project. The format for the Agreement will be included in the application package.

(2) Each applicant must submit a complete proposed project course sequence plan (Plan), for each program of study within the proposed TPDP project, to demonstrate how the proposed instructional program represents a sequential, four-year program of study that meets the specific criteria set forth in sections 202(a)(3) and 204(c) of Perkins III. The Plan must list the course sequence for each program of study within the proposed TPDP project, describing the specific academic and technical coursework required for all four years of the program. The Plan also must summarize program entrance requirements and specify the associate degree or postsecondary certificate to be earned upon completion of the program. The format for the Plan will be included in the application package.

(3) Each applicant must provide evidence that a secondary school will be located on the site of a community college and will provide a complete program of academic and technical coursework at the community college that, at a minimum, meets State requirements for high school graduation. Students must be enrolled full-time in the high school on the community college campus; however, this requirement allows for the delivery of instruction through distance education programs. Enrolled students may participate in extracurricular activities at their original high school. Proposed projects that involve only satellite community college sites located on the premises of secondary schools are not eligible for support under this program.

(4) Each applicant must provide an assurance that it will enroll its first student cohort and begin classes by September of the calendar year following the calendar year in which the grant award is made, and enroll its second, third, and fourth student cohorts by September of each subsequent year of the proposed TPDP project.

(5) Each applicant must submit enrollment goals for the number of students in each student cohort to be enrolled in each year of the proposed TPDP project.

(6) Each applicant must submit annual performance goals for each of the performance indicators discussed below. Successful applicants must reach agreement with us on their annual performance goals for each performance indicator. TPDP-funded projects will be required to use the following performance indicators to measure the progress of students in the TPDP-funded project—

(a) Retention of high school juniors for their senior year in the TPDP-funded program of study;

(b) Completion of Algebra I, Geometry, and Algebra II by the time of high school graduation;

(c) Completion of one or more science courses in addition to high school biology and chemistry by the time of high school graduation;

(d) High school graduation;

(e) Attainment of nine or more postsecondary credits by the time of high school graduation;

(f) Enrollment in postsecondary education following high school graduation;

(g) Reduction in the need for remediation in postsecondary education following high school; and

(h) Attainment of a postsecondary degree or certificate.

(7) Each applicant must submit a plan for annual project evaluations. Each evaluation must be conducted by an independent evaluator and must provide information to the members of the consortium and project staff that will be useful in gauging progress and identifying areas for improvement, particularly with regard to the required performance indicators.

(8) Each applicant must provide an assurance that it will submit annual reports of anticipated enrollment that include the number of students in each cohort who will be enrolled for the subsequent year and, if that number differs from the enrollment goals for that year stated in the approved application, the reasons for such a difference. Each annual report of anticipated enrollment will be due at the end of April of each project year.

(9) Each applicant must provide an assurance that it will submit annual project performance reports and a final project performance report, that: Summarize the TPDP project's progress and significant accomplishments and provide data on the agreed-upon performance indicators and goals; identify barriers to continued progress and outline solutions; include the annual evaluation report that was prepared by the independent evaluator; and review plans for or progress towards sustained operations after the cessation of Federal support. Each annual performance report will be due within 90 days of the end of each project year and the final performance report will be due 90 days after the end of the project.

Funded projects will be required to comply with all requirements adopted in this notice. Failure to comply with any applicable program requirement may subject a grantee to special conditions, withholding, or termination.

Selection Criteria

We establish the following selection criteria to evaluate applications for new grants under this program. We may apply these selection criteria in any year in which this program is in effect.

Note: The maximum score for all of these criteria will be 100 points. We inform applicants of the points or weights assigned to each criterion and sub-criterion in the application package and in a notice published in the **Federal Register**. In addition to the points to be awarded to applicants based on the selection criteria adopted in this notice, we will award additional points to applications that satisfy the criteria for special consideration under section 207(d)(3) of Perkins III and will inform applicants of the points assigned to the special consideration under section 207(d)(3) of Perkins III in a notice published in the **Federal Register**.

(1) *Quality of the project design.*

In determining the quality of the design of the proposed project, we consider the following factors:

(a) The extent to which the applicant demonstrates its readiness to implement a complete, career-oriented, four-year program of study, as evidenced by a formal articulation agreement concerning the structure, content, and sequence of all academic and technical courses to be offered in the proposed tech-prep program and, if applicable, the conditions under which dual credit will be awarded.

(b) The extent to which the applicant's proposed secondary academic and technical course offerings and graduation requirements prepare students to enter postsecondary education without the need for remediation and are aligned with the entrance requirements for postsecondary degree and certificate programs.

(c) The extent to which the proposed instructional program incorporates high

academic standards that equal or exceed those established by the State and reflects industry-recognized skills and knowledge.

(d) The extent to which the applicant demonstrates that consortium efforts will align the ninth-grade and tenth-grade curricula with proposed TPDP program entrance requirements, to ensure a sizable, qualified applicant pool for the proposed TPDP program.

(e) The extent to which the applicant presents a detailed student recruitment plan that is likely to be effective in fulfilling the project's enrollment goals for each year of the project.

(f) The extent to which the applicant demonstrates that it has designed a comprehensive academic and career counseling program for participating students at both the secondary and postsecondary levels and will provide specific support services to ensure students' persistence in the program to the attainment of a postsecondary degree or certificate.

(g) The extent to which the applicant demonstrates that the business member(s) of the consortium and other area employers have agreed to provide structured work-based learning opportunities to TPDP students that are directly related to the proposed technical program(s) of study.

(h) The extent to which the proposed project will provide intensive professional development, specifically designed to help achieve the goals of the program, for secondary and postsecondary instructors, counselors, and administrators involved in the program.

(2) *Quality of the management plan.*

In determining the quality of the management plan for the proposed project, we consider the following factors:

(a) The extent to which the management plan outlines specific, measurable goals, objectives, and outcomes to be achieved by the proposed project.

(b) The extent to which the management plan assigns responsibility for the accomplishment of project tasks to specific project personnel and provides timelines for the accomplishment of project tasks.

(c) The extent to which the time commitments of the project director and other key personnel are appropriate and adequate to achieve the objectives of the proposed project.

(3) *Quality of project personnel.*

In determining the quality of project personnel, we consider the following factors:

(a) The extent to which the applicant encourages applications for employment from members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(b) The qualifications, including relevant training and experience, of the project director.

(c) The qualifications, including relevant training and experience, of key project personnel, including teachers, counselors, administrators, and project consultants.

(4) *Adequacy of resources.*

In determining the adequacy of resources for the proposed project, we consider the following factors:

(a) The adequacy of support, including facilities, equipment, supplies, and other resources, from the participating institutions.

(b) The extent to which the budget is adequate and costs are reasonable in relation to the objectives and design of the proposed project.

(5) *Quality of the project evaluation.*

In determining the quality of the evaluation, we consider the following factors:

(a) The extent to which the methods of evaluation are thorough, feasible, and appropriate, will solicit input from all consortium members regarding program effectiveness, and will yield accurate and reliable data for each of the required performance indicators.

(b) The extent to which the evaluation will produce reports or other documents at appropriate intervals to enable consortium members to use the data for planning and decision making for continuous program improvement.

(c) The extent to which the independent evaluator possesses the necessary background and expertise to carry out the evaluation.

Executive Order 12866

This notice of final requirements and selection criteria has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of final requirements and selection criteria are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of final requirements and selection criteria, we have determined that the benefits of the final requirements and selection criteria justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We summarized the costs and benefits in the notice of proposed requirements and selection criteria.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Electronic Access to This Document

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

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

(Catalog of Federal Domestic Assistance Number 84.353 Tech-Prep Demonstration Program)

Program Authority: 20 U.S.C. 2376.

Dated: April 11, 2005.

Susan Sclafani,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 05–7526 Filed 4–13–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education; Overview Information; Tech-Prep Demonstration Program (TPDP); Notice Inviting Applications For New Awards in Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA) Number: 84.353.

Dates: Applications Available: April 14, 2005.

Deadline for Transmittal of Applications: May 24, 2005.

Deadline for Intergovernmental Review: July 28, 2005.

Eligible Applicants: To be eligible for funding under the TPDP, a consortium must include at least one member in each of the following three categories:

(1) A local educational agency (LEA), an intermediate educational agency, an area vocational and technical education school serving secondary school students, or a secondary school funded by the Bureau of Indian Affairs;

(2)(a) A nonprofit institution of higher education that offers a two-year associate degree, two-year certificate, or two-year postsecondary apprenticeship program, or (b) a proprietary institution of higher education that offers a two-year associate degree program; and

(3) A business.

Under the provisions of section 204(a)(1) of the Carl D. Perkins Vocational and Technical Education Act of 1998 (Perkins III), to be eligible for consortium membership both nonprofit and proprietary institutions of higher education must be qualified as institutions of higher education pursuant to section 102 of the Higher Education Act of 1965, as amended (HEA), including institutions receiving assistance under the Tribally Controlled College or University Assistance Act of 1978 (25 U.S.C. 1801 *et seq.*) and tribally controlled postsecondary vocational and technical institutions.

In addition, nonprofit institutions of higher education are eligible only if they are not prohibited from receiving assistance under HEA, title IV, part B (20 U.S.C. 1071 *et seq.*), pursuant to the provisions of section 435(a)(3) of HEA (20 U.S.C. 1083(a)). Proprietary institutions of higher education are eligible only if they are not subject to a default management plan required by the Secretary.

Under the provisions of section 204(a)(2) of Perkins III, consortia also may include one or more: (1) Institutions of higher education that award baccalaureate degrees; (2) Employer organizations; or (3) Labor organizations.

Note: Eligible consortia seeking to apply for funds should read and follow the regulations in 34 CFR 75.127 through 75.129, which apply to group applications.

Estimated Available Funds: $9,838,177.

Estimated Range of Awards: $700,000 to $800,000 for the 60-month project period.

Estimated Average Size of Awards: $759,000.

Estimated Number of Awards: 13.

Note: The Department is not bound by any estimates in this Notice.

Project Period: 60 months. Additional information concerning length of awards, available funds, and award amounts is included in Section II (Award Information) of this notice.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The TPDP provides grants to enable consortia described in section 204(a) of Perkins III to carry out tech-prep education projects authorized by section 207 of Perkins III that involve the location of a secondary school on the site of a community college, a business as a member of the consortium, and the voluntary participation of secondary school students. Following an initial recruitment period, funded projects will enroll a new student cohort in each year of the project and will continue to support each previous TPDP student cohort.

Priority: Under this competition we are particularly interested in applications that address the following priority.

Invitational Priority: For this competition, this priority is an invitational priority. Under 34 CFR 75.105(c)(1), we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Student Choice: This priority encourages applications that propose to implement a TPDP project in a geographic area in which a large proportion or number of public high schools have been identified for improvement, corrective action, or restructuring under Title I, Part A of the Elementary and Secondary Education Act of 1965, as amended (ESEA), to provide an opportunity for students to attend a school that is not in need of improvement.

Requirements: Additional requirements for all projects funded under this competition are in the notice of final requirements and selection criteria, published elsewhere in this issue of the **Federal Register**.

Program Authority: 20 U.S.C. 2376.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99. (b) the requirements and selection criteria in the notice of final requirements and selection criteria published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grant.

Estimated Available Funds: $9,838,177.

Estimated Range of Awards: $700,000 to $800,000 for the 60-month project period.

Estimated Average Size of Awards: $759,000

Estimated Number of Awards: 13.

Note: The Department is not bound by any estimates in this Notice.

Project Period: 60 months. Applicants under this competition are required to provide detailed budget information for each year of the proposed project and for the total grant. The Department will negotiate funding levels for each 12-month period of the grant at the time of the award. Grants under this competition will be made from both the FY 2004 and the FY 2005 TPDP appropriations. The FY 2005 appropriation for TPDP, although already enacted, will not be available to the Secretary for obligation until July 1, 2005. Therefore, partial TPDP grant awards will be made with funds from the FY 2004 TPDP appropriation, following the selection of grantees. The remainder of the TPDP grant awards will be made as supplemental awards to grantees on or soon after July 1, 2005, when funds from the FY 2005 TPDP appropriation become available for obligation by the Secretary.

Note: The Secretary has concluded that five-year awards are necessary for TPDP grantees to fully meet the statutory purposes of section 207 of Perkins III and the requirements of this notice. By definition, tech-prep programs combine at least two years of secondary education with a minimum of two years of postsecondary education in a nonduplicative, sequential course of study, and result in the attainment of a postsecondary degree or certificate. As outlined in this notice, five-year funding will: (a) Allow funded projects to engage in a lengthy recruitment effort and meet their enrollment goals; (b) enable the first cohort of students to complete the full four years of the tech-prep program and attain the necessary postsecondary degree or certificate; and (c) enable subsequent cohorts of students to complete a significant portion of the tech-prep program, thus increasing the likelihood that they will persist in their efforts to attain the necessary postsecondary degree or certificate. In addition, by enabling funded projects to conduct the full four-year tech-prep program, five-year funding will allow grantees and the Department to evaluate the

effectiveness of the funded programs more thoroughly.

III. Eligibility Information

1. *Eligible Applicants:* To be eligible for funding under the TPDP, a consortium must include at least one member in each of the following three categories:

(1) An LEA, an intermediate educational agency, an area vocational and technical education school serving secondary school students, or a secondary school funded by the Bureau of Indian Affairs;

(2) (a) A nonprofit institution of higher education that offers a two-year associate degree, two-year certificate, or two-year postsecondary apprenticeship program, or (b) a proprietary institution of higher education that offers a two-year associate degree program; and

(3) A business.

Under the provisions of section 204(a)(1) of Perkins III, to be eligible for consortium membership both nonprofit and proprietary institutions of higher education must be qualified as institutions of higher education pursuant to section 102 of HEA, including institutions receiving assistance under the Tribally Controlled College or University Assistance Act of 1978 (25 U.S.C. 1801 *et seq.*) and tribally controlled postsecondary vocational and technical institutions.

In addition, nonprofit institutions of higher education are eligible only if they are not prohibited from receiving assistance under HEA, title IV, part B (20 U.S.C. 1071 *et seq.*), pursuant to the provisions of section 435(a)(3) of HEA (20 U.S.C. 1083(a)). Proprietary institutions of higher education are eligible only if they are not subject to a default management plan required by the Secretary.

Under the provisions of section 204(a)(2) of Perkins III, consortia also may include one or more: (1) Institutions of higher education that award baccalaureate degrees; (2) employer organizations; or (3) labor organizations.

Note: Eligible consortia seeking to apply for funds should read and follow the regulations in 34 CFR 75.127 through 75.129, which apply to group applications.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching but does involve supplement-not-supplant funding provisions.

IV. Application and Submission Information

1. *Address to Request Application Package:* Laura Messenger, U.S. Department of Education, 400 Maryland Avenue, SW., room 11028, Potomac Center Plaza, Washington, DC 20202–7241. Telephone: (202) 245–7840. Fax: (202) 245–7170. You may also obtain an application package via Internet from the following address: *http://www.ed.gov/GrantApps/*

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 notice in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of the application, together with the forms you must submit, are in the application package for this competition.

3. *Submission Dates and Times:*

Applications Available: April 14, 2005.

Deadline for Transmittal of Applications: May 31, 2005.

Applications for grants under this competition may be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants system, or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements in this notice.*

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: July 28, 2005.

4. *Intergovernmental Review:* This program is subject to Executive order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice. In addition, some specific categories of allowable TPDP spending and some specific funding restrictions apply to TPDP projects:

Allowable Costs

Allowable activities and expenditures for TPDP projects include, but are not limited to: Recruitment and enrollment of students; staff hiring; updating of articulation agreements; curriculum revision; professional development for secondary and postsecondary faculty, counselors, and administrators; and development and maintenance of business and industry partnerships. In addition, section 207(b)(2) of Perkins III specifies that TPDP projects may provide summer internships at a business for students or teachers.

Section 207 of Perkins III gives applicants latitude for innovation. Subject to applicable funding restrictions, section 204(c)(3)(B) of Perkins III authorizes tech-prep programs that allow students to concurrently complete both secondary and postsecondary courses, and simultaneously satisfy requirements for a high school diploma and an associate degree or other postsecondary credential.

Unallowable Costs

(1) *Supplanting.* In accordance with section 311(a) of Perkins III, funds under this program may not be used to supplant non-Federal funds used to carry out vocational and technical education activities and tech-prep activities. Further, the prohibition against supplanting also means that grantees are required to use their negotiated restricted indirect cost rate under this program. (34 CFR 75.563.)

Because of the statutory prohibition against supplanting, we caution applicants not to plan to use Federal funds awarded under section 207 of Perkins III to replace non-Federal funding that is already, or that otherwise would be, available for support of the TPDP projects to be assisted. Further, we are concerned that TPDP funds may be used to replace Federal student financial aid. We wish to highlight the fact that the statute does not authorize us to fund projects that serve primarily as entities through which students may apply for and receive tuition and other financial assistance.

(2) *Construction.* Under § 75.533 of EDGAR (34 CFR 75.533), TPDP grants cannot be used for the acquisition of real property or construction because Perkins III does not specifically permit use of TPDP funds for these purposes.

(3) *Articulation Agreements with Four-Year Institutions.* Under the provisions of section 207(d) of Perkins III, tech-prep articulation agreements with four-year institutions cannot be supported with TPDP funds awarded under section 207 of Perkins III. However, articulation agreements with four-year institutions can be developed using other resources by applicants who wish to establish ''open-ended'' tech-

prep career pathways. Also, the inclusion in TPDP consortia of institutions of higher education that award baccalaureate degrees is allowable under section 204(a)(2)(A) of Perkins III.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.* If you choose to submit your application to us electronically, you must use e-Application available through the Department's e-Grants system, accessible through the e-Grants portal page at: *http://e-grants.ed.gov*.

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- Your participation in e-Application is voluntary.
- You must complete the electronic submission of your grant application by 4:30 p.m., Washington, DC time, on the application deadline date. The e-Application system will not accept an application for this competition after 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The regular hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until midnight Saturday, Washington, DC time. Please note that the system is unavailable on Sundays, and between 7 p.m. on Wednesdays and 6 a.m. on Thursdays, Washington, DC time, for maintenance. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Any narrative sections of your application should be attached as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format.
- Your electronic application must comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgement that will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the ED 424 to the Application Control Center after following these steps:

(1) Print the ED 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 245–6272.

- We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under *FOR FURTHER INFORMATION CONTACT* (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If the system is down and therefore the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application.

Extensions referred to in this section apply only to the unavailability of the Department's e-Application system. If the e-Application system is available, and, for any reason, you are unable to submit your application electronically or you do not receive an automatic acknowledgement of your submission, you may submit your application in paper format by mail or hand delivery in accordance with the instructions in this notice.

b. *Submission of Paper Applications by Mail.* If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.353), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.353), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.* If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention:

(CFDA Number 84.353), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are as follows:

(1) *Quality of the project design.* (40 points)

In determining the quality of the design of the proposed project, we consider the following factors:

(a) The extent to which the applicant demonstrates its readiness to implement a complete, career-oriented, four-year program of study, as evidenced by a formal articulation agreement concerning the structure, content, and sequence of all academic and technical courses to be offered in the proposed tech-prep program and, if applicable, the conditions under which dual credit will be awarded. (5 points)

(b) The extent to which the applicant's proposed secondary academic and technical course offerings and graduation requirements prepare students to enter postsecondary education without the need for remediation and are aligned with the entrance requirements for postsecondary degree and certificate programs. (5 points)

(c) The extent to which the proposed instructional program incorporates high academic standards that equal or exceed those established by the State and reflects industry-recognized skills and knowledge. (5 points)

(d) The extent to which the applicant demonstrates that consortium efforts will align the ninth-grade and tenth-grade curricula with proposed TPDP program entrance requirements, to ensure a sizable, qualified applicant pool for the proposed TPDP program. (5 points)

(e) The extent to which the applicant presents a detailed student recruitment plan that is likely to be effective in fulfilling the project's enrollment goals for each year of the project. (5 points)

(f) The extent to which the applicant demonstrates that it has designed a comprehensive academic and career counseling program for participating students at both the secondary and postsecondary levels and will provide specific support services to ensure students' persistence in the program to the attainment of a postsecondary degree or certificate. (5 points)

(g) The extent to which the applicant demonstrates that the business member(s) of the consortium and other area employers have agreed to provide structured work-based learning opportunities to TPDP students that are directly related to the proposed technical program(s) of study. (5 points)

(h) The extent to which the proposed project will provide intensive professional development, specifically designed to help achieve the goals of the program, for secondary and postsecondary instructors, counselors, and administrators involved in the program. (5 points)

(2) *Quality of the management plan.* (15 points)

In determining the quality of the management plan for the proposed project, we consider the following factors:

(a) The extent to which the management plan outlines specific, measurable goals, objectives, and outcomes to be achieved by the proposed project. (5 points)

(b) The extent to which the management plan assigns responsibility for the accomplishment of project tasks to specific project personnel and provides timelines for the accomplishment of project tasks. (5 points)

(c) The extent to which the time commitments of the project director and other key personnel are appropriate and adequate to achieve the objectives of the proposed project. (5 points)

(3) *Quality of project personnel.* (15 points)

In determining the quality of project personnel, we consider the following factors:

(a) The extent to which the applicant encourages applications for employment from members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (5 points)

(b) The qualifications, including relevant training and experience, of the project director. (5 points)

(c) The qualifications, including relevant training and experience, of key project personnel, including teachers, counselors, administrators, and project consultants. (5 points)

(4) *Adequacy of resources.* (10 points)

In determining the adequacy of resources for the proposed project, we consider the following factors:

(a) The adequacy of support, including facilities, equipment, supplies, and other resources, from the participating institutions. (5 points)

(b) The extent to which the budget is adequate and costs are reasonable in relation to the objectives and design of the proposed project. (5 points)

(5) *Quality of the project evaluation.* (20 points)

In determining the quality of the evaluation, we consider the following factors:

(a) The extent to which the methods of evaluation are thorough, feasible, and appropriate, will solicit input from all consortium members regarding program effectiveness, and will yield accurate and reliable data for each of the required performance indicators. (10 points)

(b) The extent to which the evaluation will produce reports or other documents at appropriate intervals to enable consortium members to use the data for planning and decision making for continuous program improvement. (5 points)

(c) The extent to which the independent evaluator possesses the necessary background and expertise to carry out the evaluation. (5 points)

2. *Special Considerations.* In addition to the points to be awarded to applicants based on the selection criteria in this notice, under section 207(d)(3) of Perkins III, we will award five additional points to applications that:

(1) Provide for effective employment placement activities;

(2) Effectively address the issues of school dropout prevention and reentry, as well as the needs of special populations;

(3) Provide education and training in career areas or skills in which there are significant workforce shortages, including the information technology industry; and

(4) Demonstrate how tech-prep programs will help students meet high academic and employability competencies.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S.

Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118. For specific requirements on grantee reporting, please review the Grant Performance Report forms and instructions (ED 524–B) at *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* We describe the requirement for each applicant to submit specific annual performance goals for the required specific performance indicators identified in paragraph (6) of the *Requirements* section of the notice of final requirements and selection criteria, published elsewhere in this issue of the **Federal Register**.

VII. Agency Contact

For Further Information Contact: Laura Messenger, U.S. Department of Education, 400 Maryland Avenue, SW., room 11028, Potomac Center Plaza, Washington, DC 20202–7241. telephone: (202) 245–7840 or by e-mail: *laura.messenger@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.

VIII. Other Information

Electronic Access to this Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have the 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.*

Dated: April 11, 2005.

Susan Sclafani,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 05–7527 Filed 4–13–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC05–54–000, et al.]

Dynegy, Inc., et al.; Electric Rate and Corporate Filings

April 5, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Dynegy Inc.

[Docket No. EC05–64–000]

Take notice that on March 30, 2005, Dynegy Inc. (Applicant), on behalf of its public utility subsidiaries, submitted an application pursuant to section 203 of the Federal Power Act for authorization of a transfer of indirect control of its jurisdictional facilities, arising from the proposed change in the state of incorporation of Applicant from Illinois to Delaware.

Comment Date: 5 p.m. Eastern Time on April 20, 2005.

2. Bear Swamp Power Company LLC

[Docket No. EG05–54–000]

Take notice that on March 17, 2005, Bear Swamp Power Company LLC (BSPC) filed an application for a determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended, 15 U.S.C. 79z–5a, and Part 365 of the Commission's regulations. BSPC states that it is a Delaware limited liability company that will operate and subsequently acquire and operate the Bear Swamp Pumped Storage Hydroelectric Facility and the Fife Brook Hydroelectric Facility.

Comment Date: 5 p.m. Eastern Time on April 27, 2005.

3. Michigan Electric Transmission Company, LLC

[Docket No. ER03–1341–002]

Take notice that on March 30, 2005, Michigan Electric Transmission Company, LLC, (Michigan Electric) in compliance with the Commission's order issued November 17, 2003, 105 FERC ¶ 61,214, submitted schedules showing its actual weighted average cost of long-term debt for calendar year 2004.

Michigan Electric states that copies of this filing were served on all parties included on the Commission's official service list established in this proceeding.

Comment Date: 5 p.m. Eastern Time on April 20, 2005.

4. Public Service Company of New Mexico

[Docket No. ER05–741–000]

Take notice that on March 30, 2005, Public Service Company of New Mexico (PNM) tendered for filing a notice of change in rates and the provision for compensation for line losses for firm point-to-point and network integration transmission services under its FERC Electric Tariff, Second Revised Volume No. 4 (OATT), and for firm point-to-point transmission services under non-OATT bilateral contracts between PNM and its firm transmission service customers. PNM requests an effective date of June 1, 2005, for the proposed rate changes.

PNM states that copies of the filing have been served on all affected customers, the New Mexico Public Regulation Commission, and the New Mexico Attorney General. Copies of the filing are available for public inspection at PNM's offices in Albuquerque, New Mexico.

Comment Date: 5 p.m. Eastern Time April 20, 2005.

5. Cambridge Electric Light Company; Commonwealth Electric Company

[Docket No. ER05–742–000]

Take notice that on March 30, 2005, Cambridge Electric Light Company and Commonwealth Electric Company

(collectively, Companies) submitted revisions to Schedule 21–CEL and Schedule 21–CEC of Section II of the Transmission, Markets and Services Tariff of ISO New England Inc., FERC Electric Tariff, No. 3 (ISO–NE Tariff). The Companies request an effective date of June 1, 2005

Comment Date: 5 p.m. Eastern Time on April 20, 2005.

6. Pacific Summit Energy LLC

[Docket No. ER05–743–000]

Take notice that on March 30, 2005, Pacific Summit Energy LLC (PSE) tendered for filing with the Commission, pursuant to 18 CFR 35.13 (2004), a petition to accept for filing its initial market-based rate tariff to sell electric power and ancillary services; waive certain of the Commission's regulations promulgated under the Federal Power Act; and grant certain blanket approvals under other such Commission regulations.

Comment Date: 5 p.m. Eastern Time on April 20, 2005.

7. Major Lending, LLC

[Docket No. ER05–744–000]

Take notice that on March 30, 2005, Major Lending, LLC (Major Lending) petitioned the Commission for acceptance of its Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market based rates; and waiver of certain Commission regulations. Major Lending states that it intends to engage in wholesale electric power and energy purchases and sales as a marketer. Major Lending further states it is not in the business of generating or transmitting electric power.

Comment Date: 5 p.m. Eastern Time on April 20, 2005.

8. Northeast Utilities Company

[Docket No. ER05–745–000]

Take notice that on March 30, 2005, Northeast Utilities Service Company (NUSCO), on behalf of its operating companies, filed a service agreement with Unitil Energy Systems, Inc. NUSCO requests that the service agreement be made effective June 1, 2005.

NUSCO states that copies of the filing were served on the customer and the Connecticut, Massachusetts and New Hampshire state regulatory commissions.

Comment Date: 5 p.m. Eastern Time on April 20, 2005.

9. PSI Energy, Inc.

[Docket No. ER05–746–000]

Take notice that on March 30, 2005, PSI Energy, Inc., (PSI) tendered for filing the Transmission and Local Facilities (T&LF) Agreement for Calendar Year 2003 Reconciliation between PSI and Wabash Valley Power Association, Inc., and between PSI and Indiana Municipal Power Agency, designated as PSI's Rate Schedule FERC No. 253.

Comment Date: 5 p.m. Eastern Time on April 12, 2005.

10. ISO New England Inc. and New England Power Pool

[Docket No. ER05–747–000]

Take notice that on March 30, 2005, ISO New England Inc., joined by the New England Power Pool (NEPOOL) Participants Committee, filed amendments to Section III of the Transmission, Markets and Services Tariff of ISO New England Inc., FERC Electric Tariff No. 3. NEPOOL states that the amendments make clarifying changes to provisions governing the Forward Reserve Market and partial de-listing of Resources.

The ISO and NEPOOL state that paper copies of the filing were sent to the New England state governors and regulatory agencies, and electronic copies were sent to the Governance Participants.

Comment Date: 5 p.m. Eastern Time on April 20, 2005.

11. California Independent System Operator Corporation

[Docket No. ER05–748–000]

Take notice that on March 30, 2005, the California Independent System Operator Corporation (ISO), tendered for filing a Notice of Cancellation of the letter agreement between the ISO and Reliant Energy Services (RES) and the letter agreement between the ISO and Sempra Energy Resources (SER), both dated and effective as of December 4, 2003. ISO states that the purpose of this filing is to accommodate a planned change in the dynamic scheduling of the El Dorado Energy Merchant Power Plant planned for April 1, 2005.

The ISO states that this filing has been served on RES, SER, the California Public Utilities Commission, the California Electricity Oversight Board, and all entities that are on the official service list.

Comment Date: 5 p.m. Eastern Time on April 20, 2005.

12. California Independent System Operator Corporation

[Docket No. ER05–749–000]

Take notice that on March 30, 2005the California Independent System Operator Corporation (ISO), tendered for filing a Dynamic Scheduling Agreement for Scheduling Coordinators (DSA) between the ISO and Reliant Energy Services, Inc. (RES) for acceptance by the Commission. The ISO requests an effective date of April 1, 2005.

The ISO states that this filing has been served on RES, Sempra Energy Resources, the California Public Utilities Commission, and the California Electricity Oversight Board.

Comment Date: 5 p.m. Eastern Time on April 20, 2005.

Standard Paragraph

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

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

Magalie R. Salas,

Secretary.

[FR Doc. E5–1753 Filed 4–13–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG05–57–000, et al.]

Bellows Falls Power Company, LLC, et al.; Electric Rate and Corporate Filings

April 7, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Bellows Falls Power Company, LLC

[Docket No. EG05–57–000]

Take notice that on April 4, 2005, Bellows Falls Power Company, LLC (BFPC) filed an application for a determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended, 15 U.S.C. 79z–5a, and Part 365 of the Commission's Regulations, 18 CFR Part 365. BFPC states that it is a Delaware limited liability company that will lease and operate the Bellows Falls Hydroelectric Project from the Town of Rockingham, Vermont.

Comment Date: 5 p.m. Eastern Standard Time on April 25, 2005.

2. San Diego Gas & Electric Company, Complainants v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents; Investigation of Practices of the California Independent System Operator and the California Power Exchange

[Docket Nos. EL00–95–127 and EL00–98–114]

On March 21, 2005, the City of Los Angeles Department of Water and Power (LADWP) submitted its compliance filing containing recalculations of emission cost offsets to be included in the financial reruns of the California Independent System Operator Corporation, pursuant to the Commission's Order issued November 23, 2004 in Docket Nos. EL00–95–100 and EL00–98–088, 109 FERC ¶ 61,218 (2004).

Comment Date: 5 p.m. Eastern Time on April 14, 2005.

3. The Empire District Electric Company

[Docket No. ER99–1757–008]

Take notice that on March 31, 2005, The Empire District Electric Company (Empire) submitted a compliance filing, pursuant to the Commission's order issued March 3, 2005 in Docket No. ER99–1757–002, 110 FERC ¶ 61,214 (2005).

Empire states that copies of the filing have been served on all parties on the official service list in this proceeding.

Comment Date: 5 p.m. Eastern Time on April 21, 2005.

4. Indeck-Oswego Limited Partnership

[Docket No. ER02–1081–002]

Take notice that on April 1, 2005, Indeck-Oswego Limited Partnership (Indeck Oswego) submitted an updated market power analysis and an amendment to its market-based rate tariff to incorporate the reporting requirements adopted by the Commission in Order No. 652, *Reporting Requirements for Changes in Status for Public Utilities with Market-Based Rate Authority,* 110 FERC ¶ 61,097 (2005).

Comment Date: 5 p.m. Eastern Time on April 22, 2005.

5. Cobb Electric Membership Corp.

[Docket No. ER01–1860–002]

Take notice that on April 1, 2005, Cobb Electric Membership Corp. (Cobb) submitted an amendment to its Triennial Updated Market Analysis originally filed on July 12, 2004 in Docket No. ER01–1860–001. In addition, Cobb submitted revised tariff sheets incorporating the market behavior rules adopted by the Commission in *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations,* 105 FERC ¶ 61,218 (2003). Cobb's revised tariff sheets also incorporate the reporting requirements adopted by the Commission in Order No. 652, *Reporting Requirements for Changes in Status for Public Utilities with Market-Based Rate Authority,* 110 FERC ¶ 61,097 (2005) and includes language indicating that Cobb will not make any sales to affiliates without prior Commission authorization pursuant to section 205 of the Federal Power Act.

Comment Date: 5 p.m. Eastern Time on April 22, 2005.

6. Marina Energy, L.L.C.

[Docket No. ER03–715–002]

Take notice that on April 1, 2005, Marina Energy, L.L.C. submitted an amendment to its market-based rate tariff to incorporate the market behavior rules adopted by the Commission in *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations,* 105 FERC ¶ 61,218 (2003) and to incorporate the reporting requirements adopted by the Commission in Order No. 652, *Reporting Requirements for Changes in Status for Public Utilities with Market-Based Rate Authority,* 110 FERC ¶ 61,097 (2005).

Comment Date: 5 p.m. Eastern Time on April 22, 2005.

7. New York Independent System Operator, Inc.

[Docket No. ER04–1138–002]

Take notice that on April 1, 2005, the New York Independent System Operator, Inc. (NYISO) filed a compliance filing pursuant to the Commission's letter order issued March 9, 2005 in Docket No. ER04–1138–001.

Comment Date: 5 p.m. Eastern Time on April 22, 2005.

8. North American Electric Reliability Council

[Docket No. ER05–580–001]

Take notice that on April 1, 2005, the North American Electric Reliability Council submitted a compliance filing pursuant to the Commission's order issued March 30, 2005 in Docket No. ER05–580–000, 110 FERC ¶ 61,388 (2005).

Comment Date: 5 p.m. Eastern Time on April 22, 2005.

9. San Joaquin Cogen, L.L.C.

[Docket No. ER05–698–001]

Take notice that on April 1, 2005, San Joaquin Cogen, L.L.C. (San Joaquin) filed revisions to sections 6 and 10 of the proposed market-based rate tariff sheets initially filed in Docket No. ER05–698–000 on March 11, 2005. San Joaquin requests an effective date of April 15, 2005.

Comment Date: 5 p.m. Eastern Time on April 14, 2005.

10. ISO New England Inc.

[Docket No. ER05–762–000]

Take notice that on April 1, 2005, ISO New England Inc. (the ISO) submitted revised tariff sheets for its Transmission, Markets and Services Tariff, FERC Electric Tariff No. 3 (ISO Tariff). The ISO states that its filing seeks to conform its financial assurance policies (Exhibits IA and IC to Section I of the ISO Tariff) and its Market Rule 1 (Section III of the ISO Tariff) to the provisions filed by the New England Power Pool (NEPOOL) Participants Committee in Docket Nos. ER05–361–000 and ER05–403–000 and accepted by the Commission on February 10, 2005 in *ISO New England Inc.,* 110 FERC ¶ 61,111 (2005) and by letter order issued on February 22, 2005 in *New England Power Pool,* 110 FERC ¶ 61,180 (2005).

The ISO states that paper copies of the filing were sent to the New England

state governors and regulatory agencies, and electronic copies were sent to the ISO's Governance Participants.

Comment Date: 5 p.m. Eastern Time on April 22, 2005.

11. Southern California Edison Company

[Docket No. ER05–763–000]

Take notice that on April 1, 2005, Southern California Edison Company (SCE) submitted proposed revisions to SCE's Transmission Owner Tariff, Second Revised Volume No. 6, Appendix VI, to reflect the incurrence by SCE of reliability services costs associated with the California Independent System Operator's M–438 Operating Procedure through contractual means.

Comment Date: 5 p.m. Eastern Time on April 22, 2005.

12. Montana Alberta Tie Ltd.

[Docket No. ER05–764–000]

Take notice that on April 1, 2005, Montana Alberta Tie Ltd. (MATL) filed an application for authority to sell transmission rights at market-based rates. MATL states that is proposes to develop a 230kV AC power transmission line running from Lethbridge, Alberta, Canada to Great Falls, Montana. MATL requests certain limited waivers of the Commission's regulations.

MATL states that the filing has been served on the Alberta Electric System Operator, Alberta Energy and Utilities Board, National Energy Board, NorthWestern Energy and regulators in the State of Montana. MATL also states that the filing has been posted on its Web site at *http://www.matl.ca.*

Comment Date: 5 p.m. Eastern Time on April 22, 2005.

13. New England Power Pool

[Docket No. ER05–765–000]

Take notice that on April 1, 2005, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance materials to permit NEPOOL (1) to expand its membership in include Dennis Beverage Company Inc. (Dennis Beverage), Dennis Energy Company (Dennis Energy) and LP&T Energy LLC (LP&T); and (2) to terminate the membership of Entergy-Koch Trading, LP (Entergy-Koch). The Participants Committee requests an effective date of April 1, 2005 for the NEPOOL membership of Dennis Beverage, Dennis Energy and LP&T Energy and a March 1, 2005 effective date for the termination of Entergy-Koch.

The Participants Committee states that copies of the filing were sent to the New England state governors and regulatory commissions and the participants in NEPOOL.

Comment Date: 5 p.m. Eastern Time on April 22, 2005.

14. Soyland Power Cooperative, Inc.

[Docket No. ER05–766–000]

Take notice that on April 1, 2005, Soyland Power Cooperative, Inc. (Soyland) tendered for filing a proposed clarification to its formulary rate—Rate Schedule A. Soyland states that Rate Schedule A is the formulary rate under which Soyland recovers the costs associated with its service to its members pursuant to the wholesale power contract that Soyland has with each member. Soyland requests an effective date of June 1, 2005.

Comment Date: 5 p.m. Eastern Time on April 22, 2005.

15. ISO New England Inc.; New England Power Pool Participants Committee

[Docket No. ER05–767–000]

Take notice that on April 1, 2005, ISO New England Inc. (the ISO) and the New England Power Pool (NEPOOL) Participants Committee submitted an application to revise Market Rule 1 to modify the eligibility criteria for offer-based Reference Levels.

The ISO and NEPOOL state that copies of the filing have been served electronically on all NEPOOL Participants, and paper copies have been provided to the Governors and utility regulatory agencies of the New England states.

Comment Date: 5 p.m. Eastern Time on April 22, 2005.

16. Central Maine Power Company

[Docket No. ER05–768–000]

Take notice that on April 1, 2005, Central Maine Power Company (CMP) submitted an executed Large Generator Interconnection Agreement between CMP and Miller Hydro Group, designated as ISO New England, Inc., FERC Electric Tariff No. 3, Service Agreement No. IA–CMP–3. CMP requests an effective date of March 1, 2005.

Comment Date: 5 p.m. Eastern Time on April 22, 2005.

17. Central Maine Power Company

[Docket No. ER05–769–000]

Take notice that on April 1, 2005, Central Maine Power Company (CMP) submitted an unexecuted Small Generator Interconnection Agreement between CMP and the City of Lewiston, Maine, designated as ISO New England, Inc., FERC Electric Tariff No. 3, Service Agreement No. IA–CMP–2. CMP has requested an effective date of March 1, 2005.

Comment Date: 5 p.m. Eastern Time on April 22, 2005.

18. Central Maine Power Company

[Docket No. ER05–770–000]

Take notice that on April 1, 2005, Central Maine Power Company (CMP) submitted an unexecuted Large Generator Interconnection Agreement between CMP and the International Paper Company designated as ISO New England, Inc., FERC Electric Tariff No. 3, Service Agreement No. IA–CMP–1. CMP has requested an effective date of March 1, 2005.

Comment Date: 5 p.m. Eastern Time on April 22, 2005.

19. Cinergy Services, Inc.

[Docket No. ER05–771–000]

Take notice that on April 1, 2005, Cinergy Services, Inc. (Cinergy), acting as agent for and on behalf of The Cincinnati Gas & Electric Company, and Ohio Valley Electric Corporation tendered for filing an amendment to a Facility Agreement by and between The Cincinnati Gas & Electric Company and Ohio Valley Electric Corporation.

Cinergy states that copies of the filing have been served on the Indiana Utility Regulatory Commission, Kentucky Public Service Commission, Public Utilities Commission of Ohio, Midwest Independent Transmission System Operator, Inc., and PJM Interconnection, L.L.C.

Comment Date: 5 p.m. Eastern Time on April 22, 2005.

20. Reliant Energy Aurora, LP

[Docket No. ER05–772–000]

Take notice that on April 1, 2005, Reliant Energy Aurora, LP (Aurora) submitted for filing a notice of cancellation of its FERC Electric Rate Schedule No. 1. Aurora requests an effective date of April 1, 2005.

Comment Date: 5 p.m. Eastern Time on April 22, 2005.

21. Reliant Energy Shelby County, LP

[Docket No. ER05–773–000]

Take notice that on April 1, 2005, Reliant Energy Shelby County, LP (Shelby County) submitted for filing a notice of cancellation of its FERC Electric Rate Schedule No. 1. Shelby County requests an effective date of April 1, 2005.

Comment Date: 5 p.m. Eastern Time on April 22, 2005.

22. Northwest Regional Transmission Association

[Docket No. ER05–774–000]

Take notice that on April 1, 2005, Northwest Regional Transmission Association (NRTA) submitted for filing a notice of termination of NRTA.

Comment Date: 5 p.m. Eastern Time on April 22, 2005.

23. Hawi Renewable Development, LLC

[Docket No. QF05–88–000]

Take notice that on April 1, 2005, Hawi Renewable Development, LLC, 63–655 19th Avenue, P.O. Box 58–1043, North Palm Springs, CA 92258, filed with an application for certification of a facility as a qualifying small power production facility pursuant to 18 CFR 292.207(b) of the Commission's regulations. Applicant seeks Commission certification of a 10.56 MW wind-powered small power production facility (the ''Facility'') located near the town of Hawi on the Island of Hawaii in Hawaii. The primary energy source to be used by the Facility is wind. Applicant will interconnect and sell electric energy to Hawaii Electric Light Company, Inc.

Comment Date: 5 p.m. Eastern Time on April 22, 2005.

Standard Paragraph

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

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

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

Magalie R. Salas,

Secretary.

[FR Doc. E5–1754 Filed 4–13–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER95–1007–018, et al.]

Logan Generating Company, L.P., et al.; Electric Rate and Corporate Filings

April 6, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Logan Generating Company, L.P., Madison Windpower, LLC, Plains End, LLC

[Docket Nos. ER95–1007–018, ER00–1742–002, ER01–2741–003]

Take notice that on March 31, 2005, Logan Generating Company, L.P. (Logan), Madison Windpower, LLC (Madison) and Plains End, LLC (Plains End) (collectively, Applicants) filed a consolidated triennial updated market analysis. Applicants also filed amended market-based rate tariffs that (1) update the issuing officer as a result of changes in the upstream ownership of Applicants; (2) incorporate the Commission's reporting requirement for changes in status set forth in Order No. 652, *Reporting Requirements for Changes in Status for Public Utilities with Market-Based Rate Authority*, 110 FERC 61,097 (2005); and (3) with respect to the tariffs of Madison and Plains End, incorporate the market behavior rules adopted by the Commission in *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003). Further, Madison has requested authorization to resell firm transmission rights and Madison and Plains End have requested termination of the codes of conduct on file as part of the market-based rate tariffs, because they are no longer affiliated with Pacific Gas and Electric Company.

Applicants state that copies of the filing were served on the parties on the official service lists in these proceedings.

Comment Date: 5 p.m. eastern time on April 21, 2005.

2. Snapping Shoals Electric Membership Corp.

[Docket No. ER01–1994–002]

Take notice that on March 31, 2005, Snapping Shoals Electric Membership Corp. (Snapping Shoals) submitted an amendment to its Triennial Updated Market Analysis originally filed on July 12, 2004, as corrected on July 13, 2004, in Docket No. ER01–1994–002. In addition, Snapping Shoals submitted revised tariff sheets incorporating the market behavior rules adopted by the Commission in *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003). Snapping Shoals' revised tariff sheets also incorporate the reporting requirements adopted by the Commission in Order No. 652, *Reporting Requirements for Changes in Status for Public Utilities with Market-Based Rate Authority*, 110 FERC ¶ 61,097 (2005) and include language indicating that Snapping Shoals will not make any sales to affiliates without prior Commission authorization pursuant to section 205 of the Federal Power Act.

Comment Date: 5 p.m. eastern time on April 21, 2005.

3. Great Lakes Hydro America, LLC

[Docket No. ER02–2397–003]

Take notice that on March 30, 2005, Great Lakes Hydro America, LLC (GLHA) submitted revised tariff sheets to incorporate the change in status reporting requirement adopted by the Commission in Order No. 652, *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, 110 FERC ¶ 61,097 (2005). GLHA requests an effective date of March 21, 2005.

GLHA states that copies of the filing have been served on the parties on the official service list for this proceeding.

Comment Date: 5 p.m. eastern time on April 20, 2005.

4. Devon Power LLC, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC, NRG Power Marketing Inc.

[Docket No. ER04–23–012]

Take notice that on March 31, 2005, Devon Power LLC, Middletown Power LLC, Montville Power LLC, and Norwalk Power LLC (collectively NRG) submitted a refund report showing the refunds made to ISO New England as the result of the Commission's Order

Approving Uncontested Settlement issued January 27, 2005, in *ISO New England Inc., et al.*, 110 FERC ¶ 61,079 (2005).

Comment Date: 5 p.m. eastern time on April 21, 2005.

5. Southern California Edison Company

[Docket No. ER04–316–005]

Take notice that on March 31, 2005, Southern California Edison Company (SCE), on behalf of its affiliate, Mountainview Power Company, LLC, submitted a compliance filing pursuant to the Commission's order issued February 25, 2004, in Docket No. ER04–316–000, 106 FERC ¶ 61,813 (2004).

SCE states that copies of the filing were served on the parties on the official service list in this proceeding.

Comment Date: 5 p.m. eastern time on April 21, 2005.

6. Midwest Independent Transmission, System Operator, Inc., Ameren Services, Company, et al.

[Docket Nos. ER05–6–017, EL04–135–019, EL02–111–037, and EL03–212–033]

Take notice that on March 31, 2005, the Midwest Independent Transmission Operator, Inc. (Midwest ISO) and Midwest ISO Transmission Owners (collectively, Applicants) jointly submitted a compliance filing pursuant to the Commission's order issued November 18, 2004, in Docket No. ER05–6–000, *et al.*, 109 FERC ¶ 61,168 (2004).

Applicants state that copies of the filing were served on parties on the official service lists in these proceedings.

Comment Date: 5 p.m. eastern time on April 21, 2005.

7. Virginia Electric and Power Company

[Docket No. ER05–197–002]

Take notice that on March 31, 2005, Virginia Electric and Power Company submitted a compliance filing, pursuant to the Commission's letter order issued March 4, 2005, in Docket Nos. ER05–197–000 and 001.

Virginia Electric and Power Company states that copies of the filing have been served on CPV Warren, LLC and the Virginia State Corporation Commission.

Comment Date: 5 p.m. eastern time on April 21, 2005.

8. Pinelawn Power LLC

[Docket No. ER05–305–003]

Take notice that on March 31, 2005, Pinelawn Power LLC submitted an amendment to its March 16, 2005, filing in Docket No. ER05–305–002 submitted in compliance with the Commission's order issued February 15, 2005, in Docket Nos. ER05–305–000 and 001, 110 FERC ¶ 61,160 (2005).

Comment Date: 5 p.m. eastern time on April 21, 2005.

9. Alabama Power Company

[Docket No. ER05–398–001]

Take notice that on March 30, 2005, Southern Company Services, Inc. (SCS), as agent for Alabama Power Company (Alabama Power) and Georgia Power Company (Georgia Power), submitted a response to the Commission's deficiency letter issued February 28, 2005, in Docket No. ER05–398–000. The response constitutes an amendment to SCS's December 30, 2004, filing of an executed transmission facilities agreement by and between Alabama Power and Georgia Power.

Comment Date: 5 p.m. eastern time on April 20, 2005.

10. Savannah Electric and Power Company

[Docket No. ER05–399–001]

Take notice that on March 30, 2005, Southern Company Services, Inc. (SCS), on behalf of Savannah Electric and Power Company (Savannah Electric) and Georgia Power Company (Georgia Power), submitted a response to the Commission's deficiency letter issued February 28, 2005, in Docket No. ER05–399–000. The response constitutes an amendment to SCS's December 30, 2004, filing of an executed transmission facilities agreement by and between Alabama Power and Georgia Power.

SCS states that a copy of the filing was served on the Georgia Public Service Commission.

Comment Date: 5 p.m. eastern time on April 20, 2005.

11. California Independent System Operator Corporation

[Docket No. ER05–405–001]

Take notice that on March 30, 2005, the California Independent System Operator Corporation (ISO) submitted a compliance filing pursuant to the Commission's order issued February 28, 2005, in Docket Nos. ER05–405–000 and ER05–407–000, 110 FERC ¶ 61,196 (2005).

The ISO states that this filing has been served on all parties on the official service list in this proceeding. In addition, the ISO states that the filing has been posted on the ISO home page.

Comment Date: 5 p.m. eastern time on April 20, 2005.

12. California Independent System Operator Corporation

[Docket No. ER05–407–001]

Take notice that on March 30, 2005, the California Independent System Operator Corporation (ISO) submitted a compliance filing pursuant to the Commission's order issued February 28, 2005, in Docket Nos. ER05–405–000 and ER05–407–000, 110 FERC ¶ 61,196 (2005).

The ISO states that this filing has been served on all parties on the official service list in this proceeding. In addition, the ISO states that the filing has been posted on the ISO home page.

Comment Date: 5 p.m. eastern time on April 20, 2005.

13. Southern Company Services, Inc.

[Docket No. ER05–413–002]

Take notice that on March 30, 2005, Southern Company Services, Inc., acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (collectively, Southern Companies) submitted a compliance filing, under protest, pursuant to the Commission's order issued February 28, 2005, in Docket No. ER05–413–000, 110 FERC ¶ 61,191 (2005).

Southern Companies state that copies of the filing have been served on all parties on the official service list in this proceeding.

Comment Date: 5 p.m. eastern time on April 20, 2005.

14. Big Swamp Power Company LLC

[Docket No. ER05–454–001]

Take notice that on March 30, 2005, Bear Swamp Power Company LLC (BSPC) submitted a compliance filing, pursuant to the Commission's order issued March 3, 2005, in Docket No. ER05–454–000, 110 FERC ¶ 61,208 (2005).

BSPC states that copies of the filing have been served on all parties on the official service list in this proceeding.

Comment Date: 5 p.m. eastern time on April 20, 2005.

15. Bellows Falls Power Company, LLC

[Docket No. ER05–455–001]

Take notice that on March 30, 2005, Bellows Falls Power Company, LLC (BFPC) submitted a compliance filing, pursuant to the Commission's order issued March 3, 2005, in Docket No. ER05–455–000, 110 FERC ¶ 61,221 (2005).

BFPC states that copies of the filing have been served on all parties on the official service list in this proceeding.

Comment Date: 5 p.m. eastern time on April 20, 2005.

16. Eastern Desert Power LLC

[Docket No. ER05–534–001]

Take notice that on March 31, 2005, Eastern Desert Power LLC submitted a compliance filing pursuant to the Commission's letter order issued March 23, 2005 in *Eastern Desert Power LLC*, 110 FERC ¶ 61,311 (2005).

Comment Date: 5 p.m. eastern time on April 21, 2005.

17. PSI Energy, Inc., Northern Indiana Public Service Company

[Docket No. ER05–538–001]

Take notice that on March 31, 2005, PSI Energy, Inc. (PSI) and Northern Indiana Public Service Company (NIPSCO) submitted NIPSCO's First Revised Rate Schedule No. 10 and PSI's First Revised Rate Schedule No. 227, reflecting changes to an Amended and Restated Facilities Agreement originally filed on February 2, 2005, in Docket No. ER05–538–000.

PSI and NIPSCO state that copies of the filing were served on the Indiana Utility Regulatory Commission.

Comment Date: 5 p.m. eastern time on April 21, 2005.

18. American Electric Power Service Corporation

[Docket No. ER05–751–000]

Take notice that on March 31, 2005, American Electric Power Service Corporation (AEPSC), on behalf of Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company (collectively, AEP), submitted for filing proposed electric transmission rates to be included in the Open Access Transmission Tariff of PJM. AEPSC requested an effective date of June 1, 2005.

AEPSC states that copies of the filing were served on the Indiana Utility Regulatory Commission, Kentucky Public Service Commission, Michigan Public Service Commission, Public Utilities Commission of Ohio, Public Service Commission of West Virginia, Tennessee Regulatory Authority and Virginia State Corporation Commission. AEPSC also states that a copy of the transmittal letter was served on AEP's transmission customers and that the filings has been posed on its Web site at *http://www.aep.com/go/oat.*

Comment Date: 5 p.m. eastern time on April 21, 2005.

19. Midwest Independent Transmission, System Operator, Inc., PJM Interconnection, L.L.C.

[Docket No. ER05–752–000]

Take notice that on March 31, 2005, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and PJM Interconnection, L.L.C. (PJM) submitted revisions to the Joint Operating Agreement (JOA) between Midwest ISO and PJM. PJM and the Midwest ISO state that the filed sheets revise the Congestion Management Process (CMP) in Attachment 2 to the JOA to: (1) Clarify the term ''market area'' as used in CMP's market flow determination; (2) change the treatment of capacity benefit margin (CBM) in the CMP's calculation of firm allocation; and (3) amend the freeze date used for purposes of calculating historic firm flow. The Midwest ISO and PJM request that the clarification concerning the ''market area'' become effective April 1, 2005, and that the changes concerning CBM and the freeze date become effective on August 1, 2005.

The Midwest ISO and PJM state that the filing was served electronically on all PJM members and each state electric utility regulatory commission in the PJM region, and on all Midwest ISO members and other stakeholders.

Comment Date: 5 p.m. eastern time on April 21, 2005.

20. Oklahoma Gas and Electric Company

[Docket No. ER05–753–000]

Take notice that on March 31, 2005, Oklahoma Gas and Electric Company (OG&E) submitted five agreements with Oklahoma Municipal Power Authority and a certificate of concurrence.

OG&E states that copies of the filing were served on Oklahoma Municipal Authority, the Arkansas Public Utility Commission and the Oklahoma Corporation Commission.

Comment Date: 5 p.m. eastern time on April 21, 2005.

21. ISO New England Inc., IRH Management Committee, New England Hydro-Transmission, Electric Company, Inc., New England Hydro-Transmission Corporation, New England Electric Transmission Corporation, Vermont Electric Transmission Company, Bangor Hydro-Electric Company, Central Maine Power Company, NSTAR Electric & Gas Corporation, on behalf of its affiliates Boston Edison Company, Commonwealth Electric Company, Cambridge Electric Light Company, and Canal Electric Company, New England Power Company, Northeast Utilities Service Company, on behalf of its operating company affiliates, The Connecticut Light and Power Company, Western Massachusetts Electric Company, Public Service Company of New Hampshire, and Holyoke Water Power Company, The United Illuminating Company, Vermont Electric Power Company, Central Vermont Public Service Corporation, Green Mountain Power Corporation, Vermont Electric Cooperative

[Docket No. ER05–754–000]

Take notice that on March 31, 2005, ISO New England Inc. (ISO–NE) and the companies listed in the caption (collectively, Filing Parties) tendered for filing a complete package of new contractual and tariff rate schedule arrangements for the United States portion of the 2000 MW (nominal) high-voltage direct-current transmission facilities interconnecting the transmission systems operated by ISO–NE and Hydro-Québec TransÉnergie (the ''PhaseI/II HVDC–TF''), including proposed conforming changes to the ISO–NE FERC Electric Transmission, Markets and Services Tariff No. 3.

The Filing Parties state that copies of the filing were sent to the New England state governors and regulatory commissions and all Participants and Indirect Participants.

Comment Date: 5 p.m. eastern time on April 21, 2005.

22. Oklahoma Gas and Electric Company

[Docket No. ER05–755–000]

Take notice that on March 31, 2005, Oklahoma Gas and Electric Company (OG&E) submitted an agreement for scheduling exchange service with Oklahoma Municipal Power Authority.

OG&E states that copies of the filing were served on Oklahoma Municipal Authority, the Arkansas Public Utility Commission and the Oklahoma Corporation Commission.

Comment Date: 5 p.m. eastern time on April 21, 2005.

23. Dayton Power and Light Company

[Docket No. ER05–756–000]

Take notice that on March 31, 2005, Dayton Power and Light Company (DP&L) submitted a Notice of Cancellation of DP&L's FERC Electric Rate Schedule No. 48 with the City of Celina, Ohio. DP&L requested an effective date of May 31, 2005.

DP&L states that the filing was served on the City of Celina, Ohio and the Public Utilities Commission of Ohio.

Comment Date: 5 p.m. eastern time on April 21, 2005.

24. Victoria International LTD

[Docket No. ER05–757–000]

Take notice that on March 31, 2005, Victoria International LTD. (VIL) petitioned the Commission for acceptance of its Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations. VIL states that it intends to engage in wholesale electric power and energy purchases and sales as a marketer. VIL further states that it is not in the business of generating or transmitting electric power. VIL states that it is a Washington, DC corporation, which, through its affiliates, engages in wholesale natural gas marketing and energy transactions as a marketer.

Comment Date: 5 p.m. eastern time on April 21, 2005.

25. American Electric Power Service Corporation

[Docket No. ER05–758–000]

Take notice that on March 31, 2005, American Electric Power Service Corporation (AEPSC) tendered for filing an Interconnection and Local Delivery Service Agreement No. 1253 for Hoosier Energy Rural Electric Cooperative, Inc. and a Facilities, Operations, Maintenance and Repair Agreement No. 1254, for the establishment of a new Deliver Point between the City of Columbus, Ohio and AEP. AEPSC request an effective date of March 1, 2005, for Agreement No. 1253 and August 1, 2004, for Agreement No. 1254.

AEPSC states that a copy of the filing was served on the parties and the Indiana and Ohio Public Service Commission.

Comment Date: 5 p.m. eastern time on April 21, 2005.

26. Wisconsin Electric Power Company

[Docket No. ER05–759–000]

Take notice that on March 31, 2005, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing an amended and restated Dynamic Interconnection Operations Coordination Agreement, designated as FERC Electric Rate Schedule No. 111, between Wisconsin Electric and the Board of Light and Power, City of Marquette. Wisconsin Electric requested an effective date of April 1, 2005.

Comment Date: 5 p.m. eastern time on April 21, 2005.

27. Wisconsin Electric Power Company

[Docket No. ER05–760–000]

Take notice that on March 31, 2005, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing Amendment No. 2 to the Joint Operating Agreement between Wisconsin Electric and Edison Sault Electric Company. Wisconsin Electric requested an effective date of April 1, 2005.

Comment Date: 5 p.m. eastern time on April 21, 2005.

28. Oklahoma Gas and Electric Company

[Docket No. ER05–761–000]

Take notice that on March 31, 2005, Oklahoma Gas and Electric Company (OG&E) submitted a proposed revision to its Open Access Transmission Tariff (OATT) to add a standard form of service agreement for customers to secure ancillary services under the OG&E OATT or to self-supply such services in conjunction with transmission service taken under the OATT of the Southwest Power Pool.

OG&E states that copies of the filing were served on all customers under OG&E's OATT , the Oklahoma Corporation Commission, the Arkansas Public Service Commission and the Southwest Power Pool.

Comment Date: 5 p.m. eastern time on April 21, 2005.

Standard Paragraph

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

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

Magalie R. Salas,

Secretary.

[FR Doc. E5–1755 Filed 4–13–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Notice

April 6, 2005.

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: April 13, 2005. 10 a.m.

PLACE: Room 2C, 888 First Street NE., Washington DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

***Note**—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, Telephone (202) 502–8400. For a recorded listing of items stricken from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

886th—Meeting; April 13, 2005; Regular Meeting; 10 a.m.

Administrative Agenda

A–1.

Docket# AD02–1–000, Agency Administrative Matters

A–2.

Docket# AD02–7–000, Customer Matters, Reliability, Security and Market Operations

A–3.
M005–2–000, State of Market Presentations

A–4.
Long Term Transmission Rights in Organized Electricity Markets

A–5.
Report on Information Technology Guidelines for Power System Operations Organizations

Markets, Tariffs, and Rates—Electric

E–1.
Omitted

E–2.
Omitted

E–3.
Omitted

E–4.
Docket# RM05–10–000, Imbalance Provisions for Intermittent Resources
Docket# AD04–13–000, Assessing the State of Wind Energy in Wholesale Electricity Markets

E–5.
Docket# TX05–1–001, TX05–1–002, TX05–1–000, East Kentucky Power Cooperative, Inc.

E–6.
Docket# ER03–753–000, ER03–753–003, Entergy Services, Inc

E–7.
Docket# ER02–2458–002, Midwest Independent Transmission System Operator, Inc.

E–8.
Omitted

E–9.
Docket# EL00–95–000, *et al., San Diego Gas and Electric Company* v. *Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange*
Docket# EL00–98–000, *et al.,* Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange
Docket# ER01–889–000, ER01–3013–000, ER03–746–000, California Independent System Operator Corporation
Docket# ER01–1455–000, Mirant California, LLC, Mirant Delta, LLC and Mirant Potrero, LLC
Docket# EL02–60–000, *Public Utilities Commission of the State of California* v. *Sellers of Long Term Contracts to the California Department of Water Resources*
Docket# EL02–62–000, *California Electricity Oversight Board* v. *Sellers of Energy and Capacity Under Long-Term Contracts with the California Department of Water Resources*
Docket# EL03–158–000, Mirant Americas Energy Marketing, LP, Mirant California, LLC, Mirant Delta, LLC and Mirant Potrero, LLC
Docket# EL03–180–000, Enron Power Marketing, Inc., and Enron Energy Services Inc., *et al.*
Docket# ER98–495–000, ER98–1614–000, ER98–2145–000, ER99–3603–000, Pacific Gas and Electric Company
Docket# ER03–215–000, ER04–227–000, ER05–343–000, Mirant Delta, LLC and Mirant Potrero, LLC
Docket# ER07–4166–000, Southern Company Energy Marketing, Inc., and Southern Company Services, Inc.
Docket# ER99–1841–000, Southern Energy California, L.L.C.
Docket# ER99–1842–000, Southern Energy Delta, L.L.C.
Docket# ER99–1833–000, Southern Energy Potrero, L.L.C.
Docket# ER01–1265–000, Mirant Americas Energy Marketing, LP
Docket# ER01–1267–000, Mirant California, LLC
Docket# ER01–1270–000, Mirant Delta, LLC
Docket# ER01–1278–000, Mirant Potrero, LLC
Docket# EL02–71–000, State of California *ex rel.* Bill Lockyer, *Attorney General of the State of California* v. *British Columbia Power Exchange Corp., Coral Power, LLC, Dynegy Power Marketing, Inc., Enron Power Marketing, Inc., Mirant Americas Energy Marketing, Inc., Reliant Energy Services, Inc., Williams Energy Marketing & Trading Co.*
Docket# EL01–10–000, *Puget Sound Energy, Inc.,* v. *All Jurisdictional Sellers of Energy and/or Capacity in the Pacific Northwest*
Docket# PA02–2–000, Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices
Docket# PA03–8–000, Mirant Americas Energy Marketing, Inc.
Docket# IN03–10–000, Investigation of Anomalous Bidding Behavior and Practices in the Western Markets

E–10.
Docket# ER05–572–000, Niagara Mohawk Power Corporation
Docket# EL05–84–000, New York Independent System Operator, Inc.

E–11.
Docket# ER05–598–000, Dartmouth PPA Holdings LLC
Docket# ER05–599–000, Dartmouth Power Associates L.P.

E–12.
Docket# ER05–595–000, California Independent System Operator Corporation

E–13.
Docket# ER05–597–000, Wayne-White Counties Electric Cooperative

E–14.
Omitted

E–15.
Docket# ER05–617–000, El Segundo Power, LLC

E–16.
Docket# ER05–416–000, ER05–416–001, ER05–416–002, ER05–416–003, California Independent System Operator Corporation

E–17.
Docket# ER02–600–003, Delta Energy Center, LLC

E–18.
Omitted

E–19.
Docket# ER05–613–000, Southern Company Services, Inc.

E–20.
Docket# ER05–581–000, ER05–581–001, Virginia Electric and Power Company

E–21.
Docket# ER01–174–002, ER05–655–000, Lighthouse Energy Trading Company, Inc.

E–22.
Docket# ER01–2636–002, ER01–2636–001, ALLETE, Inc., dba Minnesota Power
Docket# ER00–2177–001, Rainy River Energy Corporation

E–23.
Docket# ER01–2262–005, Frederickson Power L.P.
Docket# ER02–783–003, EPCOR Merchant and Capital (US) Inc.
Docket# ER02–852–003, EPCOR Power Development, Inc.
Docket# ER02–855–003, EPDC, Inc.

E–24.
Docket# ER01–1403–002, FirstEnergy Operating Companies
Docket# ER01–2968–003, ER01–2968–002, FirstEnergy Solutions Corporation
Docket# ER01–845–002, ER01–845–001, FirstEnergy Generation Corporation
Docket# ER04–366–002, Jersey Central Power & Light Company
Docket# ER04–372–002, Metropolitan Edison Company and Pennsylvania Electric Company
Docket# ER99–2330–001, ER99–2330–002, ER99–2330–004, FirstEnergy Corporation

E–25.
Omitted

E–26.
Docket# ER97–324–007, ER97–324–004, ER97–324–008, Detroit Edison Company.
Docket# ER97–3834–010, ER97–3834–012, ER97–3834–013, ER97–3834–014, DTE Energy Trading, Inc.
Docket# ER98–3026–007, ER98–3026–008, ER98–3026–009, DTE Edison America, Inc.
Docket# ER99–3368–004, ER99–3368–003, ER99–3368–005, DTE Energy Marketing, Inc.
Docket# ER00–1746–001, ER00–1746–002, ER00–1746–003, DTE Georgetown, L.P.
Docket# ER00–1816–002, ER00–1816–003, ER00–1816–004, DTE River Rouge No. 1, L.L.C.
Docket# ER02–963–002, ER02–963–004, ER02–963–005, Crete Energy Venture, L.L.C.

E–27.
Docket# ER01–1302–004, American Ref-Fuel Company of Niagara, L.P.

E–28.
Docket# ER00–2173–003, ER00–2173–002, ER00–2173–004, Northern Indiana Public Service Company
Docket# ER00–3219–003, ER00–3219–002, ER00–3219–004, EnergyUSA—TPC Corporation
Docket# ER01–1300–004, ER01–1300–003, ER01–1300–005, Whiting Clean Energy, Inc.

E–29.
Omitted

E–30.
Docket# ER04–1255–001, New England Power Pool and ISO New England Inc.

E–31.
Docket# ER04–539–005, ER04–539–006, ER04–539–007, EL04–121–001, EL04–121–002, EL04–121–000, PJM Interconnection, L.L.C.
E–32.
Omitted
E–33.
Docket# ER02–2595–006, ER02–2595–007, Midwest Independent Transmission System Operator, Inc.
E–34.
Docket# ER02–237–002, ER02–237–003, J. Aron & Company
Docket# ER95–1739–022, Cogentrix Energy Power Marketing, Inc.
Docket# ER03–1151–002, ER03–1151–003, Power Receivable Finance, LLC
Docket# ER01–1819–003, ER01–1819–004, ER05–630–000, Cogentrix Lawrence County, LLC
Docket# ER99–2984–004, Green Country Energy, LLC
Docket# ER02–2026–002, Quachita Power, LLC
Docket# ER99–3320–002, Rathdrum Power, LLC
Docket# ER03–922–003, Southaven Power, LLC
E–35.
Docket# ER04–106–005, Midwest Independent Transmission System Operator, Inc.
E–36.
Docket# ER03–1079–002, ER03–1079–003, Aquila, Inc.
Docket# ER02–47–003, Aquila Long Term, Inc.
Docket# ER95–216–021, ER95–216–022, ER95–216–023, Aquila Merchant Services, Inc.
Docket# ER03–725–003, Aquila Piatt County L.L.C.
Docket# ER02–309–003, MEP Clarksdale Power, LLC
Docket# ER02–1016–001, MEP Flora Power, LLC
ER99–2322–001, ER99–2322–002, ER99–2322–003, MEP Investments, LLC
Docket# ER01–905–001, ER01–905–002, ER01–905–003, MEP Pleasant Hill Operating, LLC
Docket# ER00–1851–001, ER00–1851–002, ER00–1851–003, Pleasant Hill Marketing, LLC
Docket# EL05–83–000 Aquila, Inc., Aquila Long Term, Inc., Aquila Merchant Services, Inc., Aquila Piatt County L.L.C., MEP Clarksdale Power, LLC, MEP Flora Power, LLC, MEP Investments, LLC, MEP Pleasant Hill Operating, LLC, and Pleasant Hill Marketing, LLC
E–37.
Docket# ER99–3693–002, ER99–3693–001, Midwest Generation, LLC
Docket# ER99–666–003, ER99–666–002, EME Homer City Generation, L.P.
Docket# ER99–852–007, ER99–852–006, Edison Mission Marketing & Trading, Inc.
Docket# ER03–30–001, Midwest Generation Energy Services, LLC
Docket# ER99–893–008, ER99–893–007, CP Power Sales Twelve, L.L.C.
Docket# ER99–4229–006, ER99–4229–005, CP Power Sales Seventeen, L.L.C.
Docket# ER99–4228–006, ER99–4228–005, CP Power Sales Nineteen, L.L.C
Docket# ER99–4231–005, ER99–4231–004, CP Power Sales Twenty, L.L.C.
E–38.
Docket# ER98–1150–003, ER98–1150–002, EL05–87–000, Tucson Electric Power Company
E–39.
Docket# ER98–2184–007, AES Huntington Beach, LLC
Docket# ER98–2185–007, AES Alamitos, LLC
Docket# ER98–2186–007, AES Redondo Beach, LLC
Docket# ER00–33–005, AES Placerita, Inc.
Docket# ER00–1026–008, ER00–1026–006, ER00–1026–010, Indianapolis Power & Light Company
Docket# ER02–305–004, Condon Wind Power, LLC
Docket# ER01–2401–002, AES Red Oak, L.L.C.
E–40.
Docket# ER99–830–009, Merrill Lynch Capital Services, Inc.
E–41.
Docket# ER99–845–008 ER99–845–007, ER99–845–006, ER99–845–005, ER99–845–004, EL05–37–001, EL05–37–000, Puget Sound Energy, Inc.
E–42.
Docket# EC04–121–000, American Electric Power Services Corporation and AEP Texas Central Company
E–43.
Docket# TX04–4–000, PacifiCorp
E–44.
Docket# EF04–3031–000, United States Department of Energy—Southeastern Power Administration
E–45.
Omitted
E–46.
Docket# EL05–49–000, *Exelon Corporation* v. *PPL Electric Utilities Corporation and PJM Interconnection, L.L.C.*
E–47.
Docket# EL05–65–000, *ExxonMobil Chemical Company and ExxonMobil Refining & Supply Company* v. *Entergy Services, Inc., and Entergy Operating Companies*
E–48.
Docket# EL05–55–000, *City of Holland, Michigan* v. *Midwest Independent Transmission System Operator, Inc.*
E–49.
Docket# EL05–63–000, *DTE Energy Trading, Inc.* v. *Midwest Independent Transmission System Operator, Inc.*
E–50.
Docket# EL00–105–007, City of Vernon, California
Docket# ER00–2019–007, California Independent System Operator Corporation
E–51.
Docket# ER04–810–000, Transalta Centralia Generating, L.L.C.
E–52.
Docket# ER05–123–000, Duke Energy Vermillion, LLC
E–53.
Docket# ER04–377–006, ER04–743–004, Pacific Gas and Electric Company
E–54.
Omitted
E–55.
Omitted
E–56.
Docket# ER99–230–007 Docket# ER03–762–007
Docket# EL05–5–001, Alliant Energy Corporate Services, Inc.
E–57.
Omitted
E–58.
Docket# RM00–7–011, Revision of Annual Charges to Public Utilities (Westar Energy, Inc., and Kansas Gas and Electric Company)
E–59.
Docket# ER05–167–001, California Power Exchange Corporation
Docket# ER02–2234–011, California Power Exchange Corporation
Docket# ER03–139–007, California Power Exchange Corporation
Docket# ER03–791–004, California Power Exchange Corporation
Docket# ER04–111–004, California Power Exchange Corporation
Docket# ER04–785–003, California Power Exchange Corporation
E–60.
Docket# ER05–134–002 Docket# ER05–134–001, ISO New England Inc.
E–61.
Docket# ER96–1551–010
Docket# ER96–1551–011
Docket# ER96–1551–009
Docket# ER96–1551–008
Docket# ER96–1551–007
Docket# ER96–1551–006
Docket# ER01–615–003
Docket# ER01–615–004
Docket# ER01–615–005
Docket# ER01–615–006
Docket# ER01–615–007
Docket# ER01–615–008
Docket# EL05–2–001
Docket# EL05–2–002, Public Service Company of New Mexico
E–62.
Omitted
E–63.
Omitted
E–64.
Omitted
E–65.
Omitted
E–66.
Docket# EL05–20–002, Buckeye Power, Inc.
E–67.
Docket# EL04–135–002, Midwest Independent Transmission System Operator, Inc., PJM Interconnection, L.L.C., and All Transmission Owners Providing Access to Their Transmission Facilities under Midwest Independent Transmission System Operator, Inc. or PJM Interconnection, L.L.C. Tariffs and All Other Public Utility Transmission Owners in These Regions
E–68.
Docket# EL02–45–001, California Independent System Operator Corporation
E–69.
Docket# EC04–81–001, Ameren Corporation, Dynegy Inc., Illinova

Corporation and Illinova Generating Company
Docket# ER04–673–001, Dynegy Midwest Generation, Inc. and Dynegy Power Marketing, Inc.
Docket# ER04–711–001, Dynegy Power Marketing, Inc.

E–70.
Docket# EC03–131–001, Docket# EC03–131–002, Oklahoma Gas and Electric Company and NRG McClain LLC

E–71.
Docket# EL00–66–003, *Louisiana Public Service Commission and the Council of the City of New Orleans* v. *Entergy Corporation*
Docket# ER00–2854–004, Entergy Services, Inc.
Docket# EL95–33–005, *Louisiana Public Service Commission* v. *Entergy Services Inc.*

E–72.
Docket# EL02–115–009, Avista Corporation, Avista Energy, Inc., Enron Power Marketing, Inc., and Portland General Electric Company

E–73.
Omitted

E–74.
Omitted

E–75.
Omitted
Docket# E–76 ER04–691–001
Docket# # ER04–691–006
Docket# ER04–691–009
Docket# ER04–691–010
Docket# ER04–691–019
Docket# ER04–106–003
Docket# ER04–106–004
Docket# ER04–106–005, Midwest Independent Transmission System Operator, Inc.
Docket# EL04–104–001
Docket# EL04–104–005
Docket# EL04–104–008 Docket# EL04–104–009
Docket# EL04–104–018, Public Utilities With Grandfathered Agreements in the Midwest ISO Region

E–77.
Docket# ER04–691–012
Docket# ER04–691–016
Docket# ER04–691–017, Midwest Independent Transmission System Operator, Inc.
Docket# EL04–104–011
Docket# EL04–104–015 Docket# EL04–104–016, Public Utilities With Grandfathered Agreements in the Midwest ISO Region

E–78.
Docket# ER04–691–018
Docket# ER04–691–019, Midwest Independent Transmission System Operator, Inc.
Docket# EL04–104–017
Docket# EL04–104–018, Public Utilities With Grandfathered Agreements in the Midwest ISO Region

E–79.
Omitted

E–80.
Omitted

E–81.
Docket# ER02–2595–005, Midwest Independent Transmission System Inc.

E–82.
Docket# ER04–1165–003, Midwest Independent Transmission System Operator, Inc.
Docket# EL04–43–004, *Tenaska Power Services Company* v. *Midwest Independent Transmission System Operator, Inc.*
Docket# EL04–46–004, *Cargill Power Markets, LLC* v. *Midwest Independent Transmission System Operator, Inc.*

E–83.
Docket# ER03–683–006, ER03–683–007, California Independent System Operator Corporation

E–84.
Omitted

E–85.
Docket# ER04–458–004, ER04–458–006, Midwest Independent Transmission System Operator, Inc.

E–86.
Docket# ER98–4400–008, ER98–4400–003, ER05–685–000, Pittsfield Generating Company

E–87.
Docket# ER97–2846–003, ER97–2846–004, Progress Energy, Inc.
Docket# ER99–2311–005, Progress Energy Carolina
Docket# ER03–1383–002, DeSoto County Generating Co. LLC
Docket# ER01–2928–005, Progress Ventures Inc.
Docket# ER01–1418–002, Effingham County Power, LLC
Docket# ER02–1238–002, MPC Generating, LLC
Docket# ER01–1419–002, Rowan County Power, LLC
Docket# ER01–1310–003, Walton County Power, LLC
Docket# ER03–398–003, Washington County Power, LLC

E–88.
Docket# PA04–10–000 Florida Power Corporation
Docket# PA04–12–000, Carolina Power & Light Company

Miscellaneous Agenda

M–1.
Docket# RM04–9–001, Electronic Notification of Commission Issuances

Markets, Tariffs, and Rates—Gas

G–1.
Omitted

G–2.
Docket# PR05–3–000, Enogex, Inc.

G–3.
Docket# RP03–604–003, RP03–604–002, RP05–70–001, RP05–70–002, *LSP-Cottage Grove, L.P. and LSP-Whitewater Limited Partnership* v. *Northern Natural Gas Company*

G–4.
Docket# RP05–25–001, RP05–25–002, North Baja Pipeline, LLC

G–5.
Docket# RP04–51–001, RP04–51–002, Paiute Pipeline Company

G–6.
Omitted

G–7.
Docket# RP00–107–005, RP00–107–006, Williston Basin Interstate Pipeline Company

G–8.
Docket# RP03–64–003, RP03–64–004, Gulf South Pipeline Company, LP

G–9.
Docket# RP05–105–001, RP04–97–006, RP04–203–003, Equitrans, L.P.

G–10.
Docket# RP02–114–007, Tennessee Gas Pipeline Company

G–11.
Docket# TS05–1–000, Florida Power & Light Company
Docket# TS04–207–001, Guardian Pipeline, Company
Docket# TS04–257–001, Honeoye Storage Corporation
Docket# TS04–209–001, MidWestern Gas Transmission Company
Docket# TS04–62–000, NewCorp Resources Electric Cooperative, Inc.
Docket# TS04–208–001, Northern Border Pipeline Company
Docket# TS04–212–001, Viking Gas Transmission Company
Docket# TS04–253–001, Texas Gas Transmission, L.L.C.
Docket# TS04–249–001, Kinder Morgan Pipelines
Docket# TS04–271–001, Kinder Morgan Pipelines
Docket# TS04–272–001, Kinder Morgan Pipelines
Docket# TS04–107–001, Algonquin Gas Transmission, L.L.C.
Docket# TS04–242–002, Dauphin Island Gathering Partners
Docket# TS04–106–001, East Tennessee Natural Gas, L.L.C.
Docket# TS04–05–001, Egan Hub Storage, L.L.C.
Docket# TS04–161–001, Gulfstream Natural Gas System, L.L.C.
Docket# TS04–159–001, Maritimes & Northeast Pipeline, L.L.C.
Docket# TS04–259–001, Missouri Interstate Gas, LLC
Docket# TS04–154–001, Texas Eastern Transmission, L.P.
Docket# TS04–279–000, Union Gas Limited

G–12.
Docket# IS05–117–000, Enterprise Lou-Tex Propylene Pipeline L.P.

G–13.
Docket# RP04–276–000, Southern Star Central Gas Pipeline, Inc.

G–14.
Omitted

G–15.
Docket# RP02–335–003, RP02–335–004, ANR Pipeline Company

Energy Projects—Hydro

H–1.
Docket# P–10371–008, CPS Products, Inc.

H–2.
Omitted

H–3.
Docket# P–2232–479, Duke Energy Corporation

H–4.
Docket# P–2004–075, Holyoke Gas and Electric Department

Docket# P–11607–002, Holyoke Gas and Electric Department, Ashburnham Municipal Light Plant, and Massachusetts Municipal Wholesale Electric Company

H–5.
Docket# P–12454–002, Energie Group LLC

H–6.
Docket# P–12178–001, Verdant Power, LLC

H–7.
Docket# P–2177–056, Georgia Power Company

H–8.
Docket# P–2612–019, FPL Energy Maine Hydro, LLC

H–9.
Docket# P–10482–065, Mirant NY–GEN LLC.

Energy Projects—Certificates

C–1.
Docket# CP05–8–000, CP05–9–000, CP05–10–000, Starks Gas Storage LLC.

C–2.
Docket# CP01–368–004, Transcontinental Gas Pipe Line Corporation
Docket# CP01–369–002, Williams Gas Processing—Gulf Coast Company, LP.

C–3.
Docket# CP05–37–000, Transcontinental Gas Pipe Line Corporation

C–4.
Docket# CP05–29–000, CP05–30–000, CP05–31–000, Freebird Gas Storage, LLC

C–5.
Docket# CP05–15–000, CP05–16–000, CP05–17–000, Caledonia Energy Partners, L.L.C.

C–6.
Docket# CP02–378–002, Cameron LNG, LLC

C–7.
Docket# CP04–37–000, Corpus Christi LNG, L.P.
Docket# CP04–44–000, CP04–45–000, CP04–46–000, Cheniere Corpus Christi Pipeline Company

C–8.
Docket# CP04–76–001, Equitrans, L.P.

C–9.
Docket# CP04–396–001, Transcontinental Gas Pipe Line Corporation

C–10.
Docket# CP04–121–001, El Paso Natural Gas Company

C–11.
Docket# CP04–60–001, Tennessee Gas Pipeline Company

The Capitol Connection offers the opportunity for remote listening and viewing of the meeting. It is available for a fee, live over the Internet, via C-Band Satellite. Persons interested in receiving the broadcast, or who need information on making arrangements should contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.gmu.edu and click on ''FERC''*

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in Hearing Room 2. Members of the public may view this briefing in the Commission Meeting overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

Magalie R. Salas,

Secretary.

[FR Doc. 05–7554 Filed 4–12–05; 11:15 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[RCRA–2005–0006, FRL–7899–6]

Agency Information Collection Activities: Proposed Collection; Comment Request; Hazardous Remediation Waste Management Requirements (HWIR Contaminated Media), EPA ICR Number 1775.04, OMB Control Number 2050–0161

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 for an existing approved collection. This ICR is scheduled to expire on September 30, 2005. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before June 13, 2005.

ADDRESSES: Submit your comments, referencing docket ID number RCRA–2005–0006, to EPA online using EDOCKET (our preferred method), by e-mail to *RCRA-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, RCRA Docket, mail code 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mike Fitzpatrick, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8411; fax number: (703) 308–8617; e-mail address: *fitzpatrick.mike@epamail.epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number RCRA–2005–0006, which is available for public viewing at the RCRA 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 RCRA Docket is (202) 566–0270. 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 within 60 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.*

Affected entities: Entities potentially affected by this action are Facility Owners and Operators.

Title: Hazardous Remediation Waste Management Requirements (HWIR-Media)

Abstract: The Resource Conservation and Recovery Act of 1976 (RCRA), as amended, requires EPA to establish a national regulatory program to ensure that hazardous wastes are managed in a manner protective of human health and the environment. Under this program (known as the RCRA Subtitle C

program), EPA regulates newly generated hazardous wastes, as well as hazardous remediation wastes (*i.e.*, hazardous wastes managed during cleanup).

To facilitate prompt and protective treatment, storage, and disposal of hazardous remediation wastes, EPA established three requirements for remediation waste management sites that are different from those for facilities managing newly generated hazardous waste:

1. Performance standards for remediation waste management sites (40 CFR 264.1(j));

2. A provision excluding remediation waste management sites from requirements for facility-wide corrective action; and

3. A new form of RCRA permit for treating, storing, and disposing of hazardous remediation wastes (40 CFR part 270, subpart H). The new permit, a Remedial Action Plan (RAP), streamlines the permitting process for remediation waste management sites to allow cleanups to take place more quickly.

In addition, EPA created a new kind of unit called a ''staging pile'' (40 CFR 264.554) that allows more flexibility in storing remediation waste during cleanup.

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.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 28.18 hours per response.

Estimated Number of Respondents: 176.

Frequency of Response: Once.

Estimated Total Annual Hour Burden: 4,959 hours.

Estimated Total Annualized Capital, Operating/Maintenance Cost Burden: $334.

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

Dated: April 7, 2005.

Matt Hale,

Director, Office of Solid Waste.

[FR Doc. 05–7506 Filed 4–13–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7899–8]

Science Advisory Board Staff Office Clean Air Scientific Advisory Committee (CASAC) Notification of Advisory Committee Meeting of the CASAC Ozone Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency, Science Advisory Board (SAB) Staff Office announces a public meeting of the Clean Air Scientific Advisory Committee's (CASAC) Ozone Review Panel (Panel) to conduct a peer review of the *Air Quality Criteria for Ozone and Related Photochemical Oxidants (First External Review Draft), Volumes I, II, and III,* (EPA/600/R–05/004aA, bA, and cA, January 2005).

DATES: May 4–5, 2005. The meeting will be held Wednesday, May 4, 2005, from 9 a.m. to 5:30 p.m. (eastern time), and Thursday, May 5, 2005, from 8:30 a.m. to 3 p.m (eastern time).

ADDRESSES: The meeting will take place at the Hilton Raleigh-Durham Airport at Research Triangle Park, 4810 Page Road, Research Triangle Park, NC 27709. A publicly-accessible teleconference line will be available for the entire meeting.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wishes to obtain the teleconference call-in numbers and access codes; would like to submit written or brief oral comments (five minutes or less); or wants further information concerning this meeting, must contact Mr. Fred Butterfield, Designated Federal Officer (DFO), EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via telephone/voice mail: (202) 343–9994; fax: (202) 233–0643; or e-mail at: *butterfield.fred@epa.gov.* General information concerning the CASAC or the EPA Science Advisory Board can be found on the EPA Web site at: *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

Background: EPA is in the process of updating, and revising where appropriate, the air quality criteria document (AQCD) for ozone and related photochemical oxidants published in 1996. Section 109(d)(1) of the Clean Air Act (CAA) requires that EPA carry out a periodic review and revision, as appropriate, of the air quality criteria and the national ambient air quality standards (NAAQS) for the six ''criteria'' air pollutants such as ozone. On January 31, 2005, EPA's National Center for Environmental Assessment, Research Triangle Park, NC (NCEA–RTP), within the Agency's Office of Research and Development (ORD), made available for public review and comment a First External Review Draft of a revised document, *Air Quality Criteria for Ozone and Related Photochemical Oxidants (First External Review Draft), Volumes I, II, and III,* (first draft Ozone AQCD, January 2005). Under CAA sections 108 and 109, the purpose of the revised Ozone AQCD is to provide an assessment of the latest scientific information on the effects of ambient ozone on the public health and welfare, for use in EPA's current review of the NAAQS for ozone. Detailed summary information on EPA's first draft Ozone AQCD is contained in a previous EPA **Federal Register** notice (70 FR 4850, January 31, 2005).

EPA is soliciting advice and recommendations from the CASAC by means of a peer review of the first draft Ozone AQCD. The CASAC, which is comprised of seven members appointed by the EPA Administrator, was

established under section 109(d)(2) of the Clean Air Act (CAA or Act) (42 U.S.C. 7409) as an independent scientific advisory committee, in part to provide advice, information and recommendations on the scientific and technical aspects of issues related to air quality criteria and NAAQS under sections 108 and 109 of the Act. The CASAC is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The CASAC Ozone Review Panel will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. This meeting is the CASAC Ozone Review Panel's initial peer review of first draft Ozone AQCD.

Technical Contact: Any questions concerning the first draft Ozone AQCD should be directed to Dr. Lori White, NCEA–RTP, at phone: (919) 541–3146, or e-mail: *white.lori@epa.gov*.

Availability of Meeting Materials: The *Air Quality Criteria for Ozone and Related Photochemical Oxidants (First External Review Draft), Volumes I, II, and III,* (EPA 600/R–05/004aA, bA, and cA, January 2005) can be accessed via the Agency's NCEA Web site at: *http://cfpub.epa.gov/ncea/* under ''Risk Assessments (Ozone).'' In addition, a copy of the draft agenda for this meeting will be posted on the SAB Web site at: *http://www.epa.gov/sab* (under the ''Agendas'' subheading) in advance of this CASAC Ozone Review Panel meeting. Other meeting materials, including the charge to the CASAC Ozone Review Panel, will be posted on the SAB Web site at: *http://www.epa.gov/sab/panels/casacorpanel.html* prior to this meeting.

Providing Oral or Written Comments at SAB Meetings: It is the policy of the SAB Staff Office to accept written public comments of any length, and to accommodate oral public comments whenever possible. The SAB Staff Office expects that public statements presented at its face-to-face meetings and teleconferences will not be repetitive of previously-submitted oral or written statements.

Oral Comments: In general, each individual or group requesting an oral presentation at a meeting or teleconference will be limited to a total time of five minutes (unless otherwise indicated). For scheduling purposes, requests to provide oral comments must be in writing (e-mail, fax or mail) and received by Mr. Butterfield no later than noon eastern time five business days prior to the meeting in order to reserve time on the meeting agenda. Speakers should bring at least 75 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting.

Written Comments: Although the SAB Staff Office accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office no later than noon eastern time five business days prior to the meeting so that the comments may be made available to the CASAC Ozone Review Panel for their consideration. Comments should be supplied to Mr. Butterfield (preferably via e-mail) at the address/contact information noted above, as follows: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files (in IBM–PC/Windows 98/2000/XP format)). Those providing written comments and who attend the meeting in person are also asked to bring 75 copies of their comments for public distribution.

Meeting Access: Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Mr. Butterfield at the phone number or an e-mail address noted above at least at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: April 8, 2005.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 05–7508 Filed 4–13–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7899–5]

National and Governmental Advisory Committees to the U.S. Representative to the Commission for Environmental Cooperation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), the U.S. Environmental Protection Agency (EPA) gives notice of a meeting of the National Advisory Committee (NAC) and Governmental Advisory Committee (GAC) to the U.S. Representative to the North American Commission for Environmental Cooperation (CEC).

The National and Governmental Advisory Committees advise the Administrator of the EPA in his capacity as the U.S. Representative to the Council of the North American Commission for Environmental Cooperation. The Committees are authorized under Articles 17 and 18 of the North American Agreement on Environmental Cooperation (NAAEC), North American Free Trade Agreement Implementation Act, Pub. L. 103–182 and as directed by Executive Order 12915, entitled ''Federal Implementation of the North American Agreement on Environmental Cooperation.'' The Committees are responsible for providing advice to the U.S. Representative on a wide range of strategic, scientific, technological, regulatory and economic issues related to implementation and further elaboration of the NAAEC. The National Advisory Committee consists of 12 representatives of environmental groups and non-governmental organizations, business and industry, and educational institutions. The Governmental Advisory Committee consists of 12 representatives from state, local and tribal governments.

Purpose: The Committees are meeting to review and comment on the deliverables for the Commission for Environmental Cooperation June 22–23, 2005 Council Session. In addition, the committees will organize a one-day Business Roundtable on Wednesday, April 27th to examine successful environmental capacity building partnerships and their application in North America.

DATES: The Committees will meet on Wednesday, April 27, 2005 from 9 a.m. to 6 p.m., for the Business Roundtable and on Thursday April 28 from 9 a.m. to 6 p.m., and on Friday, April 29, 2005 from 8:30 a.m. to 3 p.m for their 24th Regular Meeting Session.

ADDRESSES: The meeting will be held at the Washington Terrace Hotel, 1515 Rhode Island Ave., NW. Washington, DC 20005; Tel. 202–232–7000. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Mr. Oscar Carrillo Designated Federal Officer, U.S. EPA, Office of Cooperative Environmental Management, at (202) 233–0072.

Meeting Access: Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Oscar Carrillo at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: March 31, 2005.

Oscar Carrillo,

Designated Federal Officer.

[FR Doc. 05–7505 Filed 4–13–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7899–7]

Clean Water Act Section 303(d): Availability of Total Maximum Daily Loads (TMDL)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability for comment of the administrative record files for 6 TMDLs and the calculations for these TMDLs prepared by EPA Region 6 for waters listed in the Atchafalaya River, Barataria, Lake Pontchartrain, Mississippi River, Sabine River, and Terrebonne Basins of Louisiana, under section 303(d) of the Clean Water Act (CWA). These TMDLs were completed in response to a court order in the lawsuit styled *Sierra Club,* et al. v. *Clifford,* et al., No. 96–0527, (E.D. La.). EPA originally proposed draft TMDLs for these segments on December 2, 2004. EPA has decided to withdraw the December 2, 2004, draft TMDLs, and now proposes new draft TMDLs for these segments. Thus, EPA is not responding to those comments on the December 2, 2004, proposed draft TMDLs. EPA will be responding to comments on the new proposed draft TMDLs available herein after public notice.

DATES: Comments must be submitted in writing to EPA on or before May 16, 2005.

ADDRESSES: Comments on the 6 TMDLs should be sent to Diane Smith, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733, or by email to the following address: *Smith.Diane@epa.gov.* For further information, contact Diane Smith at (214) 665–2145 or fax (214) 665–7373. TMDL documents from the administrative record files may be viewed at *http://www.epa.gov/region6/water/tmdl.htm,* or obtained by calling, writing or emailing Ms. Smith at the above addresses. The administrative record files for the 6 TMDLs are available for public inspection at the above address as well. Please contact Ms. Smith to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Diane Smith at (214) 665–2145.

SUPPLEMENTARY INFORMATION: In 1996, two Louisiana environmental groups, the Sierra Club and Louisiana Environmental Action Network (plaintiffs), filed a lawsuit in Federal Court against EPA, styled *Sierra Club,* et al. v. *Clifford,* et al., No. 96–0527, (E.D. La.). Among other claims, plaintiffs alleged that EPA failed to establish Louisiana TMDLs in a timely manner. EPA proposes these TMDLs pursuant to a consent decree entered in this lawsuit.

EPA Seeks Comment on 6 TMDLs

By this notice, EPA is seeking comment on the following 6 TMDLs for waters located within Louisiana basins:

Subsegment	Waterbody name	Pollutant
010901	Atchafalaya Bay and Delta and Gulf Waters to the State 3-mile Limit	Mercury.
021102	Barataria Basin Coastal Bays and Gulf Waters to the State 3-mile Limit	Mercury.
042209	Lake Pontchartrain Basin Coastal Bays and Gulf Waters to the State 3-mile Limit	Mercury.
070601	Mississippi River Basin Coastal Bays and Gulf Waters to the State 3-mile Limit	Mercury.
110701	Sabine River Basin Coastal Bays and Gulf Waters to the State 3-mile Limit	Mercury.
120806	Terrebonne Basin Coastal Bays and Gulf Waters to the State 3-mile Limit	Mercury.

EPA requests that the public provide to EPA any water quality-related data and information that may be relevant to the calculations for the 6 TMDLs. EPA will review all data and information submitted during the public comment period and revise the TMDLs where appropriate. EPA will then forward the TMDLs to the Louisiana Department of Environmental Quality (LDEQ). LDEQ will incorporate the TMDLs into its current water quality management plan.

Dated: April 7, 2005.

Miguel I. Flores,

Director, Water Quality Protection Division, Region 6.

[FR Doc. 05–7507 Filed 4–13–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7897–4]

Public Water System Supervision Program Revision for the State of Georgia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval.

SUMMARY: Notice is hereby given that the State of Georgia is revising its approved Public Water System Supervision Program. Georgia has adopted drinking water regulations for Long Term 1 Enhanced Surface Water Treatment Rule and Filter Backwash Rule. EPA has determined that these revisions are no less stringent than the corresponding federal regulations. Therefore, EPA intends on approving this State program revision.

All interested parties may request a public hearing. A request for a public hearing must be submitted by May 16, 2005 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by May 16, 2005, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on May 16, 2005. Any request for a public hearing shall include the following information: (1) The name, address, and telephone number of the individual organization, or other entity requesting a hearing; (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; (3) The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Georgia Department of Natural Resources, Drinking Water Compliance Program, 2 MLK Jr. Drive, SE., Suite 1362, Atlanta, GA 30334 or at the Environmental Protection Agency, Region 4, Drinking Water Section, 61 Forsyth Street Southwest, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Jennifer Gardner, EPA Region 4, Drinking Water Section at the Atlanta address given above or at telephone (404) 562–9436.

(**Authority:** Section 1420 of the Safe Drinking Water Act, as amended (1996), and 40 CFR Part 142 of the National Primary Drinking Water Regulations)

J. I. Palmer, Jr.,

Regional Administrator, Region 4.

[FR Doc. 05–7504 Filed 4–13–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 6, 2005.

A. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Family Merchants Bancorporation, Inc.,* Cedar Rapids, Iowa; to acquire 100 percent of the voting shares of Family Merchants Bank, Cedar Rapids, Iowa.

Board of Governors of the Federal Reserve System, April 8, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–7454 Filed 4–13–05; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in ''225.28'' of Regulation Y (12 CFR 225.28)'' or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 6, 2005.

A. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414

1. *First Suburban Bancorp Corporation,* Maywood, Illinois; to acquire 100 percent of the voting shares of Water Street Capital Markets LLC, Glendale Heights, Illinois, and thereby engage in securities brokerage activities, pursuant to section 225.28(b)(7)(i).

Board of Governors of the Federal Reserve System, April 8, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–7455 Filed 4–13–05; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Contract Review Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), announcement is made of an Agency for Healthcare Research and Quality (AHRQ) Technical Review Committee (TRC) meeting. This TRC's charge is to review contract proposals and provide recommendations to the Director, AHRQ, with respect to the technical merit of proposals submitted in response to a Request for Proposals (RFP) regarding ''AHRQ Development Services''. The RFP which pertained to information technology development needs to the Agency, was published January 26, 2005.

The upcoming TRC meeting will be closed to the public in accordance with the Federal Advisory Committee Act (FACA), section 10(d) of 5 U.S.C., Appendix 2, FACA regulations, 41 CFR 101–6.1023 and procurement regulations, 48 CFR 315.604(d). The discussions at this meeting of contract proposals submitted in response to the above-referenced RFP are likely to reveal proprietary information and personal information concerning individuals associated with the proposals. Such information is exempt from disclosure under the above-cited FACA provision and procurement rules that protect the free exchange of candid views and facilitate Department and Committee operations.

Name of TRC: The Agency for Healthcare Research and Quality—''AHRQ Development Services''.

Date: April 14 and 15, 2005 (Closed to the public).

Place: Agency for Healthcare Research & Quality, 540 Gaither Road, Conference Center, Rockville, Maryland 20850.

Contact Person: Anyone wishing to obtain information regarding this meeting should contact Thomas Boyce, Office of Performance Accountability, Resources and Technology, Agency for Healthcare Research and Quality, 540 Gaither Road, Rockville, Maryland 20850, (301) 427–1796.

Dated: April 4, 2005.

Carolyn M. Clancy,

Director.

[FR Doc. 05–7474 Filed 4–13–05; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Compassion Capital Fund Evaluation.

OMB No.: New Collection.

Description: This proposed information collection activity is for two rounds of surveys to be completed by faith-based and community organizations participating in the Compassion Capital Fund (CCF) evaluation project. The first survey will be conducted as a baseline survey and the second will be a follow-up survey conducted several months later.

The CCF evaluation is an important opportunity to examine the effectiveness of the Compassion Capital Fund in meeting its objective of improving the capacity of faith-based and community organizations. The evaluation will involve up to 1,000 faith-based and community organizations that seek services from CCF-funded intermediary organizations. Information will be collected from these faith-based and community-based organizations to assess change and improvement in various areas of capacity. The study design includes the random assignment of faith-based and community organizations to either a treatment group that receives capacity-building services from a CCF intermediary grantee or to a control group that does not. The impact of the services provided by intermediaries, primarily through sub-awards and/or technical assistance (TA), will be determined by comparing the changes in organizational and service capacity of the recipient organizations with those of the control group.

Respondents: The respondents for both the baseline and follow-up data collection will be faith-based and community organizations that seek sub-awards or TA from selected CCF intermediary grantees. The baseline survey will be primarily self-administered and is expected to be completed as part of the intermediary's sub-award application or TA request process. The follow-up survey also will be primarily self-administered and contain questions similar to those in the baseline survey as well as additional questions related to services received from the intermediary or other organizations. It is expected that the follow-up survey will be administered approximately 9–12 months after random assignment. As needed to increase response rates, the survey will be administered by telephone to organizations that do not initially return a completed survey.

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Baseline Survey	1,000		1.33 hours (20 minutes)	330
Follow-up Survey	1,000		1.42 hours (25 minutes)	420
Estimated Total Annual Burden Hours				750

Annual Burden Estimates

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447. Attn: ACF Reports Clearance Officer. E-mail address: *grjohnson@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: April 11, 2005.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 05–7517 Filed 4–13–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 1979N–0113 (formerly Docket No. 79N–0113); DESI 2847]

Drugs for Human Use; Drug Efficacy Study Implementation; Parenteral Multivitamin Drug Products; Announcement of Unlawful Formulations

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is declaring unlawful the unapproved marketing of certain parenteral multivitamin drug products for which a hearing was requested, but for which the sponsors have withdrawn the hearing requests. FDA is taking this action because the products lack substantial evidence of effectiveness as fixed combination drug products.

DATES: This notice is effective May 16, 2005.

ADDRESSES: Requests for an opinion of the applicability of this notice to a specific product should be identified with Docket No. 1979N–0113 and reference number DESI 2847 and directed to the Division of New Drugs and Labeling Compliance (HFD–310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mary Catchings, Center for Drug Research and Evaluation (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of September 17, 1984 (49 FR 36446) (the September 1984 notice), FDA announced the conditions for marketing an effective parenteral multivitamin drug product. The effective 12-vitamin formulation set forth in the notice was based on the clinical evaluation of a guideline formulation recommended by the American Medical Association. (In the **Federal Register** of April 20, 2000 (65 FR 21200), FDA amended the September 1984 notice by increasing the dosage of certain vitamins and by adding vitamin K to the formulation.) The September 1984 notice, published as part of the Drug Efficacy Study Implementation, also revoked the temporary exemption (paragraph XIV, category XI) for three original formulation products that had been allowed to remain on the market while guideline formulations were studied. The notice stated that FDA was unaware of any adequate and well-controlled clinical trials meeting the requirements of section 505(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(e)), 21 CFR 300.50, and 21 CFR 314.111(a)(5) (now 21 CFR 314.125(b)(5)) and demonstrating the effectiveness of these products; therefore, FDA proposed to withdraw approval of the portions of the new drug applications (NDAs) pertaining to the original formulations. The notice offered affected parties an opportunity for a hearing on the proposal.

In response to the September 1984 notice, Hoffmann-LaRoche, Inc., USV Pharmaceutical Corp., LyphoMed, Inc. (subsequently acquired by American Pharmaceutical Partners, Inc.), and Carter-Glogau Laboratories, Inc. (subsequently acquired by Schein Pharmaceutical, Inc.), submitted hearing requests. Hoffmann-LaRoche and USV voluntarily withdrew their hearing requests shortly after they were submitted; therefore, FDA withdrew approval of the NDAs for the Hoffmann-LaRoche and USV products in **Federal Register** notices of February 28, 1985 (50 FR 8193), and December 27, 1985 (50 FR 53014). The following hearing requests were still pending:

1. MultiVitamin Concentrate; No NDA; American Pharmaceutical Partners, Inc. (APP), 2045 North Cornell Ave., Melrose Park, IL 60160–1002. Each 5-milliliter vial of MultiVitamin Concentrate contained ascorbic acid (vitamin C) 500 milligrams (mg), vitamin A (retinol) 3 mg (10,000 International Units (I.U.)), vitamin D (ergocalciferol) 25 micrograms (1,000 I.U.), thiamine (B1) 50 mg, riboflavin (B2) 10 mg, pyridoxine (B6) 15 mg, niacin (B3) 100 mg, pantothenic acid 25 mg, and vitamin E 3 mg (5 I.U.).

2. The hearing request, which named no specific product, referenced products named in the September 1984 notice; No NDA; Schein Pharmaceutical, Inc. (Schein), 100 Campus Dr., Florham Park, NJ 07932.

In letters dated May 27, 1999, and April 8, 2003, Schein and APP, respectively, withdrew the hearing requests previously submitted regarding parenteral multivitamin products. The letter from APP noted that it had discontinued marketing MultiVitamin Concentrate. Accordingly, there are no pending hearing requests submitted in response to the September 1984 notice of opportunity for hearing. No parenteral multivitamin product remains exempt under the paragraph XIV, category XI exemption.

This notice applies to any drug product that is identical, related, or similar to the products specified and referenced previously in this document and is not the subject of an approved NDA (21 CFR 310.6). Any person who wishes to determine whether a specific product is covered by this notice should write to the Division of New Drugs and Labeling Compliance (see **ADDRESSES**).

Based on the information presented in the September 1984 and April 20, 2000, **Federal Register** notices, the Acting Director of the Center for Drug Evaluation and Research, under the act (section 505(e)) and under authority delegated to him (21 CFR 5.100), finds that, on the basis of new information on these drugs, evaluated with the evidence available previously, there is a lack of substantial evidence that the products named and referenced previously will have the effects they are purported or represented to have under the conditions of use prescribed, recommended, or suggested in their labeling.

Therefore, based on the foregoing finding, MultiVitamin Concentrate and the original formulation parenteral multivitamin product(s), for which Schein requested a hearing, are declared unlawful, effective May 16, 2005.

Shipment in interstate commerce of these drug products or any identical, related, or similar product that is not the subject of an approved NDA will then be unlawful.

Dated: April 5, 2005.

Steven Galson,

Acting Director, Center for Drug Evaluation and Research.

[FR Doc. 05–7532 Filed 4–13–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Drug Safety and Risk Management 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: Drug Safety and Risk Management Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will held on May 18 and 19, 2005, from 8:30 a.m. to 5 p.m.

Location: Holiday Inn, The Ballrooms, 8777 Georgia Ave., Silver Spring, MD.

Contact Person: Shalini Jain, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, e-mail: *jains@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512535. Please call the Information Line for up-to-date information on this meeting.

Agenda: This is the first in a series of meetings related to the issues in drug safety and FDA. This 2-day meeting will explore issues related to FDA's risk assessment program for marketed drugs. There are a number of methods that FDA uses in risk assessment of marketed drugs, including review and analysis of spontaneous reports of

adverse events, drug use data, healthcare administrative data, epidemiologic and observational studies, clinical trials, and active surveillance systems. Considerations will include the advantages and disadvantages of the current system for safety signal detection, and proposals for short-term and long-term ways to improve the current system. The background materials for this meeting will be posted 1 business day before the meeting on the FDA Web site at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*. (Click on the year 2005 and scroll down to the Drug Safety and Risk Management Advisory Committee.)

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 May 9, 2005. Oral presentations from the public will be scheduled between approximately 11 a.m. and 12 noon on May 18, 2005, and between approximately 11:10 a.m. and 11:40 a.m. on May 19, 2005. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before May 9, 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 contact Shalini Jain 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: April 7, 2005.

Sheila Dearybury Walcoff,

Associate Commissioner for External Relations.

[FR Doc. 05–7458 Filed 4–13–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005D–0122]

Draft Guidance for Industry on Exploratory Investigational New Drugs Studies; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Exploratory IND Studies.'' This draft guidance clarifies what preclinical and clinical issues (including chemistry, manufacturing, and controls issues) should be considered when planning exploratory studies in humans, including studies of closely related drugs or biologics, under an investigational new drug (IND) application. This draft guidance emphasizes the concept that limited investigations in humans can be initiated with more limited preclinical support because such studies present fewer potential risks than do traditional phase 1 studies that look for dose-limiting toxicities.

DATES: Submit written or electronic comments on the draft guidance by July 13, 2005. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: David Jacobson-Kram, Center for Drug Evaluation and Research (HFD–24), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5346.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Exploratory IND Studies.'' In its March 2004 Critical Path Report, the agency explained that to reduce the time and resources expended during early drug development on candidates that are unlikely to succeed, tools are needed to allow developers to distinguish earlier in the process those candidates that hold promise from those that do not. This guidance describes some exploratory approaches that will protect human subjects while providing early information about candidate performance in humans.

Exploratory IND studies have a number of different goals. In some cases, an exploratory study can help developers gain an understanding of the relationship between a specific mechanism of action and the treatment of a disease. In other cases, a study can provide important information on pharmacokinetics, including, for example, biodistribution of a candidate drug. Whatever the goal of the study, exploratory IND studies can help sponsors identify, early in the process, promising candidates for continued development.

Existing regulations allow a great deal of flexibility in terms of the amount of data that need to be submitted in an IND application, depending on the goals of an investigation, the specific human testing being proposed, and the expected risks. Nevertheless, sponsors have not always taken advantage of that flexibility and limited, early phase 1 studies, such as those described in this document, are often supported by a more extensive preclinical database than is needed. In many cases, a more extensive workup is done because sponsors intend to move immediately into a more traditional phase 1 trial if the screening results are favorable. Because exploratory studies will typically involve administering either subtherapeutic doses of a product, or doses expected to produce a pharmacological, but not a toxic effect, the potential risk to human subjects is less than for a traditional phase 1 study that, for example, seeks to establish a maximally tolerated dose.

This guidance applies to exploratory studies (i.e., early phase 1 clinical studies), involving investigational new drug and biological products, that assess feasibility for further development of a drug or biological product. For the purposes of this guidance the phrase ''exploratory study'' is intended to describe clinical trials that occur very early in phase 1, involve very limited human exposure, and often have no therapeutic intent.

Typically, these exploratory studies are conducted prior to the traditional

dose evaluation, safety, and tolerance studies that ordinarily initiate a clinical drug development program. Thus, FDA believes that, typically, the duration of dosing would be limited (e.g., 7 days). The agency is, however, interested in soliciting comment from the public on the appropriate duration of dosing for such exploratory studies.

The amount and type of preclinical information necessary to support an exploratory study will depend on the planned nature and extent of human exposure relative to the toxicity (or lack thereof) at the planned dose. Thus, this guidance emphasizes the concept that limited investigations in humans can be initiated with more limited preclinical support because such studies present fewer potential risks than do traditional phase 1 studies that look for dose-limiting toxicities. The studies discussed here ordinarily do not have therapeutic intent. They are designed to evaluate whether a particular candidate should be entered into a drug development program.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on exploratory IND studies. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This draft guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collection of information in this guidance has been approved under OMB control number 0910–0014 and expires on January 31, 2006.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the draft guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: April 8, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–7485 Filed 4–13–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Injury Prevention Program Announcement Type: New

Funding Opportunity Number: HHS–2005–IHS–IPP–0001.

CFDA Number: 93.284.

Key Dates:

Application Deadline: May 20, 2005.

Application Review: June 27–28, 2005.

Anticipated Award Start Date: September 1, 2005.

Application Notification: September 30, 2005.

I. Funding Opportunity Description

Legislative Authority

The Indian Health Service (IHS) announces competitive cooperative agreement applications for Injury Prevention Program for American Indians and Alaska Natives (AI/AN):

(A) Part I Basic Five-year projects (minimum population required 2,500)

(B) Part I Advanced Five-year projects (minimum population required 2,500)

Part I Advanced applicants include Tribes and organizations who are current recipients of the 2000–2005 IHS Injury Prevention Cooperative Agreements (applies only to 2000–2005 Tribal Injury Prevention Cooperative Agreement recipients).

(C) Part II Intervention Three-year projects (no population requirement)

These cooperative agreements are established under the authority of section 301(a), Public Health Service Act, as amended. This program is described at 93.284 in the Catalog of Federal Domestic Assistance, the Indian Health Care Improvement Act, U.S.C. 1602 (b)(17); and Urbans (25 U.S.C. 1652).

II. Award Information

Type of Instrument: Cooperative Agreement (CA)

A cooperative agreement will have substantial oversight to ensure best practices and high quality performance in sustaining capacity of the Injury Prevention projects. The estimated amount of funds available is $1.475 million for Fiscal Year 2005 to fund up to approximately 33 awards.

Types of Cooperative Agreement (CA) covered under this announcement:

Part I—Basic: Approximately 47% of funds are available to fund up to 14 new awards for the Basic Injury Prevention Program. Individual awards will range from $25,000 up to $50,000.

Part I—Advanced: Approximately 46% of funds are available to fund up to 9 Injury Prevention Program considered ''experienced'' in Injury Prevention. Part I Advanced applicants are Tribes and organizations who are current recipients of the 2000–2005 IHS Injury Prevention Cooperative Agreements (applies only to 2000–2005 Tribal Injury Prevention Cooperative Agreement recipients). Individual awards will range from $25,000 up to $75,000.

Part II—Intervention: Approximately 7% of funds are available to fund up to 10 awards to implement proven or promising injury intervention projects that are based on addressing local injury problems. Individual awards will be $10,000. Injury Prevention applicants may apply for new funding under Part I Basic or Part I Advanced or Part II—Intervention, but only one award will be funded to each applicant. A separate application is required for each type of project.

Project Period: The Cooperative Agreement (CA) will be a 12-month budget period within a project year:

- Part I—Basic—5 years beginning on or about Sept 1, 2005.
- Part I—Advanced—5 years beginning on or about Sept 1, 2005.
- Part II—Intervention—3 years beginning on or about Sept 1, 2005.

Future continuation awards within the project period will be based on satisfactory performance, availability of funding, and continuing needs of the Indian Health Service.

Estimated Range of Awards: $10,000 to $75,000.

Substantial Involvement Description for Cooperative Agreement Activities for Part I

The cooperative agreement Part I awardee (Tribe or Tribal/urban/non-profit Indian organization) will be responsible for activities listed under A. IHS will be responsible for activities listed under B. A contractor will be hired to assist in the oversight in the Part I CA projects. Oversight includes assurances to promote best practices and high quality performance in

sustaining the Injury Prevention programs. The contractor will be responsible in reporting to the IHS Injury Prevention Manager on the progress and issues of the cooperative agreement awardee.

A. Cooperative Agreement Awardee Activities for Part I Projects

(1) When possible, to locate the Injury Prevention Program in the recipient's urban organization, Tribal health department or community-based program to enhance opportunities for the injury prevention program to collaborate with other Tribal public health or community programs.

(2) Provide a full-time Injury Prevention coordinator who has the authority, responsibility, and expertise to conduct and manage the Tribal-level, multi-Tribal, urban, or non-profit injury prevention program. Coordinator must be solely dedicated to injury prevention. Positions can not be part-time or split duties.

(3) Review secondary injury and health data (*i.e.,* Trends in Indian Health 2000–2001, etc.) to assist to define the magnitude of the injury problem within the target American Indian/Alaska Native population, including those at greatest risk and the specific causes of injury.

(4) Develop an action plan based on data and prioritized for the prevention and control of injuries. This would include specific process and impact objectives and action steps to accomplish each.

(5) Implement community-based projects to reduce injuries and gain visibility and acceptance in the communities for the injury control program.

(6) Evaluate the effect of these projects.

(7) The program coordinator or director will budget for and attend a start-up orientation meeting with other new Injury Prevention program coordinators, IHS Injury Prevention Program staff, and IHS consultants. An annual regional project coordinator/IHS project officer meeting will be held for each subsequent year of the project cycle, and should be budgeted.

(8) The injury prevention program coordinator director will collaborate with the IHS Injury Prevention Specialists (Area and/or District).

B. Indian Health Service's Cooperative Agreement Activities for Part I Projects

(1) An identified IHS Injury Prevention Specialist (Area or District) will serve as project officer for the injury prevention project and will be responsible at the local level in providing technical assistance and consultation to the recipient on program planning, injury data collection (*i.e.,* safety belt use surveys, etc.) and analysis to assist in evaluation of program interventions. Technical assistance also includes assistance in program implementation, marketing, reporting, and evaluation.

(2) IHS contractor will be responsible for technical assistance oversight, monitoring reporting of projects, conference calls, a newsletter, and site visits. The IHS contractor serves as a liaison to the IHS Injury Prevention Manager and the Injury Prevention Cooperative Agreement Awardee.

(3) IHS and the Contractor will coordinate an annual training workshop for the Injury Prevention project coordinators and their IHS project officers to share lessons learned, successes, and new state-of-the-art strategies to reducing injuries in Indian communities.

Substantial Involvement for Activities for Cooperative Agreement for Part II

Part II Intervention—The Part II Intervention projects funds are to develop, implement, and evaluate proven or promising injury prevention intervention programs. These types of interventions are those that have been tested and accepted widely to prevent injury morbidity and mortality. Projects include, but are not limited to, programs designed to reduce alcohol-related injuries, *i.e.,* supporting initiatives to reduce drinking and driving, etc. Other projects include seat belt promotion campaigns, pedestrian safety, child passenger safety, smoke alarm distribution programs, domestic violence programs, suicide prevention, youth violence prevention, elder fall prevention, home safety, drowning prevention and Emergency Medical Services for Children (EMSC) projects. Police salaries, police weapon supplies, uniforms, safety-bulletproofed vests are unallowable costs for this funding. Purchases must be aligned with the completion of the goals and objectives of the project (Equipment to support DWI initiatives are acceptable purchase, *i.e.,* breath analyzer testing equipment, etc.). Purchases will be scrutinized on how they relate to project's objectives.

Part II Intervention—Cooperative Agreement Activities—In conducting activities to achieve the purpose of this program under Part II, the recipient will be responsible for the activities listed under A, and the IHS will be responsible for activities listed under B.

A. Part II Intervention—Cooperative Agreement Awardee Activities

Provide the Injury Prevention awardee with the authority, responsibility, and expertise to conduct and manage the injury intervention project. The Injury Prevention Intervention awardee must collaborate with the Tribe(s), IHS Area and/or District Injury Prevention Specialists in planning and designing the intervention project. Develop a plan based on local data and utilizes proven or promising intervention strategies to reduce injuries. Implement and evaluate the injury prevention intervention project that promotes visibility and acceptance by the community.

B. Indian Health Service's Cooperative Agreement Activities for Part II Intervention Projects

IHS Area or District Injury Prevention Specialists will provide technical assistance and consultation to the recipient on program planning, data collection (*i.e.,* safety belt surveys, child safety seat surveys, etc.) and analysis to effectively evaluate interventions initiatives. Technical assistance also includes program implementation and reports. This goal is to promote high quality performance and success in completing the project. Contact will be through conference calls and site visits.

III. Eligibility Information

1. Eligible Applicants

The AI/AN applicant must be one of the following:

A. A federally recognized Indian Tribe; or
B. A Tribally sanctioned non-profit Tribal organization; or
C. A non-profit national or area Indian health board; or
D. Consortium of two or more of those Tribes, Tribal organizations, or health boards
E. Urban Indian Organizations (Urbans—25 U.S.C. 1652)
F. Non-profit Tribal organizations on or near a Federally-recognized Indian Tribe community

Part I Basic and Part I Advanced Injury Prevention Cooperative Agreement applicants must serve a minimum population size of 2,500 American Indian/Alaska Native people. IHS user population data is the only acceptable population source for this cooperative agreement application. There is no requirement for minimum population size for Part II—Intervention applicants.

2. Cost Sharing or Matching

Not applicable.

IV. Application and Submission Information

1. Address to Request Application Package

Division of Grants Operation, Indian Health Service, 801 Thompson Ave, Suite 100, Rockville, Maryland 20852. (301) 443–5204.

The entire application kit is available at: *www.ihs.gov/MedicalPrograms/InjuryPrevention/index.cfm.*

2. Content and Form for paper Application Submission

- An original and two copies of the completed application
- Be doubled-spaced
- Be typewritten
- Have consecutively numbered pages
- Use black type not smaller than 12 characters per one inch
- Have one-inch border margins
- Printed on one side only of standard size 8½″ × 11″ paper that can be photocopied
- Not be tabbed, glued, or placed in a plastic holder

The application narrative (not including the abstract, workplan, Tribal resolutions, letters of support, standard forms, table of contents, budget, budget justification, multi-year budget, multi-year budget justification, appendix items) must not exceed 15 typed pages.

A. Abstract
B. Background, Need for Assistance, Capacity Building
C. Goals & Objectives
D. Methods and Staffing
E. Evaluation
F. Collaboration
G. Budget and Accompanying Justification
H. Appendix

For paper application submission, the following documents in the order presented.

Application Receipt Record, Checklist, General Information Page, Standard Forms Certifications, and Disclosure of Lobbying Activities documents will be available in the appendix of application kit.

- Application Receipt Record, IHS–815 A (Rev.2/04)
- Narrative
- Tribal Resolution (final signed or draft unsigned)
- Standard Form 424, Application for Federal Assistance
- Standard Form 424A, Budget Information-Non-Construction Programs (pages 1–2)
- Standard Form 424B, Assurances—Non-Construction Programs (front and back). The application shall contain assurances to the Secretary that the applicant will comply with program regulations, 42 CFR Part 136 Subpart H.
- Certifications (pages 25–26)
- PHS 5161 checklist (pages 25–26)
- Disclosure of Lobbying Activities
- Table of Contents with corresponding numbered pages
- Categorical Budget and Budget Justification
- Multi-year Objectives and work plans with multi-year Categorical Budgets and Multi-year Budget justifications. (Not part of the 15 page narrative)
- Appendix items

3. Submission Dates and Times

Applications are due by close of business May 20, 2005, 5 PM Eastern Time. Applications shall be considered as meeting the deadline if they are either: (1) Received on or before the deadline with hand-carried applications received by close of business 5 p.m. or postmarked on or before the deadline date at: Indian Health Service, Division of Grants Operation, Attention Lois Hodge, 801 Thompson Avenue, Suite 120, Rockville, MD 20852. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. Applicants are cautioned that express/overnight mail services do not always deliver as agreed. IHS cannot accommodate transmission of applications by fax or e-mail.

Applications which do not meet the criteria above will be considered late. Late applications will be returned to the applicant and will not be considered for funding. Extension of deadlines: IHS may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of mail service, or in other rare cases. Determination to extend or waive deadline requirements rests with the Chief Grants Management Officer.

Acknowledgment of Receipt: Acknowledgment of receipt of applications will be via the Application Receipt Card, IHS 815–1A (Rev, 2/04).

Electronic Transmission—You may submit your application to us in either electronic or paper format. To submit an application electronically, please use the *http://www.Grants.gov* apply site. If you use Grants.gov, you will be able to download a copy of the application package, complete it offline and then upload and submit the application via the Grants.gov site. You may not e-mail an electronic copy of a grant application to us.

Please note the following if you plan to submit your application electronically via Grants.gov:

- Electronic submission is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation. We strongly recommend that you do not wait until the deadline date to begin the application process through Grants.gov.
- To use Grants.gov, you, as the applicant, must have a DUNS Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five days to complete CCR registration. See Section 6 on how to apply.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including all information typically included on the SF 424 and all necessary assurances and certifications.
- Your application must comply with any page limitation requirements described in the program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Indian Health Service will retrieve your application from Grants.gov.
- You may access the electronic application for this program on *http://www.Grants.gov.*
- You must search for the downloadable application package by CFDA number. Email applications will not be accepted under this announcement.

4. Intergovernmental Review—Executive Order 12372 Requiring Intergovernmental Review is not Applicable to This Program

5. Funding Restrictions

- Maximum Award is $50,000 for Part I Basic per year (5 years)
- Maximum Award is $75,000 for Part I Advanced per year (5 years)
- Maximum Award is $10,000 for Part II Intervention per year (3 years)

Ineligible Project Activities

- Federal Housing Projects that are requesting funds for repairs or construction (Repairs or construction items are the responsibility of the local housing authority)
- Bureau of Indian Affairs' school playground equipment
- Bureau of Indian Affairs' Law Enforcement supplies involving

purchase of uniforms, weapons or construction and repairs of detention centers

- Projects related to water, sanitation and waste management
- Projects that include design and planning of construction of facilities

Other Limitations

An applicant may not be awarded a Part I Basic or Part I Advanced CA for any of the following reasons:

1. Current awardee is not progressing in a satisfactory manner; or

2. Did not comply with program progress and financial reporting requirements.

Delinquent Federal Debts. No Award shall be made to an applicant who has an outstanding delinquent Federal debt until either:

1. The delinquent account is paid in full, or

2. A negotiated repayment schedule is established and at least one payment is received.

A Tribe, Tribal organization, urban Indian, or nonprofit organization is eligible to apply for one or both of those types of awards, but only one Cooperative Agreement will be funded. If an applicant chooses to submit dual proposals, the cover letter should rank the proposals in the order that the applicant would like them to be funded. For example, if an applicant submits a Part I Basic and Part II Intervention (and all scored well during the review process), IHS will need to know how to determine which application to fund.

Pre-award costs are not allowable charges under this program grant.

6. Other Submission Requirements

Beginning October 1, 2003, applicants are required to have a DUN and Bradstreet (DUNS) number to apply for a cooperative agreement from the Federal Government. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal *(www.grants.gov).* A DUNS number will be required for every application for a new or renewal/continuation of an award submitted on or after October 1, 2003. Please ensure that your organization has a DUNS number. The DUNS number is a nine-digit identification number which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge.

To obtain a DUNS number, access www.dunandbradstreet.com at *http://www.dunandbradstreet.com* or call 1–866–705–5711. Internet application for a DUNS number can take up to 30 days to process. Interested parties may wish to obtain one by phone to expedite the process. The following information is needed when requesting a DUNS number:

- Organization name
- Organization address
- Organization telephone number
- Name of CEO, Executive, President, etc.
- Legal structure of the organization
- Year organization started
- Primary business (activity) line
- Total number of employees

Electronic Submission: The IHS will accept complete applications in electronic format submitted through the *www.grants.gov* Web site only.

An interim electronic website is available for those who want to submit electronically at *www.grants.gov*. E-mail applications will not be accepted under announcement. Evidence of Tribal/Urban/Tribal organizations and Non-profit organizations must submit:

1. Copies of their 501(C) (3) Certificate (required).

2. A signed and dated resolution from the Tribal/Urban/Tribal organization's governing Board of Directors of the non-profit organization (required).

3. Letters of support from the AI/AN community served (required).

4. Letter of support from IHS Area and/or District Injury Prevention Specialist (required).

5. Letters of support from the Tribal chairperson/president, the Tribal council, or the Tribal health director in support of the application (required).

Evidence of Proof of non-profit status of Tribal organization on or near a Federally recognized Tribe:

(a) A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of the tax-exempt organization described in the IRS Code.

(b) A copy of a currently valid IRS tax exemption certificate.

(c) A statement from a State or Tribal taxing body, State attorney general, or other appropriate State or Tribal Official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals.

(d) A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status.

(e) Any of the items in the subparagraphs immediately above for a State, Tribe or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

Evidence of (Urban) Support

A signed and dated resolution from the governing Board of Directors for the Injury Prevention program and a letter from the Chairman of the Board (Required).

1. A letter of commitment showing in-kind (dollar) participation, if applicable.

2. If applicant is unable to obtain a signed letter in time to meet the deadline, they should submit a draft of the letter in the appendix. A final signed letter from the board will be required prior to award if applicant is selected for a cooperative agreement.

3. Letters of support from within the community served.

Evidence of (Tribal) Support:

Examples of Tribal support include but are not limited to resolutions. Signed and dated resolution(s) for the Tribal Injury Prevention Program from the Indian Tribe or Tribes served by the project (Required). If applicant is unable to obtain a signed resolution in time to meet the deadline, they should submit a final draft of the resolution and state the date the proposed final resolution will be obtained. A signed resolution from the Tribe will be required prior to award if the Tribe is selected for a cooperative agreement. For the Navajo Nation, a signed Tribal resolution (by the Tribal council) is required unless a local governing body, such as incorporated 501(1) (3) Chapter House or township will be acceptable for the intent to participate. A final signed resolution from the Navajo Nation council or official governing body of the 501(1) (3) Chapter House or township will be required prior to award if selected for a Cooperative Agreement. Applications that propose projects affecting more than one Indian Tribe: Applications involving more than one Tribe must include a resolution from all affected Tribes to be served. A statement of proof or a copy of the current operational resolution must accompany the application. If a resolution or a statement is not submitted, the application will be considered incomplete and will be returned without consideration. Other supporting documents:

- A description of Tribal in-kind contributions for the injury prevention program (office space, administrative support, telephone service, employee fringe benefits, etc., or any other contribution to the proposed program).
- Letters of Support/Collaboration from potential project collaborators or partners. Support from potential partners such as the police department, Tribal health department, health boards,

Tribal council, local schools, community groups, the Indian Health Service, State agencies, and others are important for a program to be successful.

V. Application Review Information

The instructions for preparing the application narrative also constitute the evaluation criteria for reviewing and scoring the application (Part I Basic, Part I Advanced, Part II Intervention). Total weights are assigned to each major section noted in parentheses. Weights are further identified per item under each specific criteria. Total possible points per application is 100.

1. Criteria

Application narrative instructions, and application standards (evaluation criteria) and weights in parentheses.

Multi-Year Program Requirement—Part I Basic is a five-year project. Applicants must include a detailed program narrative, itemized categorical budget, and a detailed budget justification for the first year activities. An outline of program objectives, time line, and a budget summary should be included for each subsequent year (Year 2–Year 5).

Part I Basic: Part I Basic awards are for new applicants seeking to build their local capacity to establish an injury prevention program.

Abstract—A one page summary of the five-year proposed program request. Include information on applicant, purpose of request, problem or need to be met, objectives to be achieved through the funding, proposed activities and total amount of request of program.

Program Narrative—Introduction, Need and Capacity (Total 30 Points)

1. A statement of the injury problem. Describe the extent of the injury problem in the community or target area. (3)

2. A description of the geographic location of the proposed program. (2)

3. A description of organizational structure (chart) and staff (resumes and position descriptions) who will be managing of the injury prevention program. (10)

4. A description of the Tribe's or Tribal organization's support for the proposed injury prevention program. (5)

5. A description of the population to be served by the proposed program. Provide documentation that the target population is at least 2,500 people. (IHS User population is the ONLY acceptable source). (5)

6. A description of how the proposed program will build capacity to plan, develop, implement and evaluate an injury prevention program. (5)

Program Goals and Objectives (Total 10 Points)

1. Goals and objectives that are clear and concise.(4)

2. Feasible and attainable to accomplish during the 5 year project period (3)

3. Are specific, time-framed, measurable and realistic. (3)

Methods and Staffing (Total 30 Points)

The application will be evaluated on the extent to which the applicant provides:

1. A detailed description of proposed activities that are likely to achieve each objective and overall program goals, and which includes designation of responsibility for each action undertaken. (10)

2. A reasonable and complete time line for implementing all objectives and activities with the responsible person listed for each task. (2)

3. A description of the roles of the Tribal involvement, organization, or agency and evidence of coordination, supervision, and degree of commitment (*e.g.,* time in-kind, financial) of staff, organizations, and agencies involved in activities. (4)

4. The extent to which proposed interventions are either proven or promising to be effective and based on a documented need in the target communities. (2)

5. Resumes of existing staff, detailed position descriptions and duties included for projected staff. (2)

6. Job description of proposed Injury Prevention Coordinator. Job description to include work experience in injury prevention, or training in injury prevention and working with partners or coalitions in the local community. (10)

Evaluation (Total 10 Points)

1. Describe type of evaluation methods that will be utilized to evaluate the goals and objectives. This includes but is not limited to how the progress of the proposed program objective(s) will be tracked (*i.e.,* reports, training, car seat distributions, seat belt surveys, etc.). (4)

2. Describe how program will be evaluated to show process, effectiveness, and impact. This includes but is not limited to what data will be collected to evaluate the success of the proposed project objectives. (4)

3. Document staff availability, expertise, experience, and capacity to perform the evaluation. (2)

Collaboration (Total 10 Points)

Describe the extent to which relationships between the program, the Tribe or urban community, the Indian Health Service and other organizations will relate to the program or conduct related activities. This includes the scope to which an advisory committee or partners' roles are clear and appropriate.

Categorical Budget and Budget Justification (Total 10 Points)

Provide a detailed and justification of budget for the first 12-month budget periods. A budget summary should be included for each subsequent year (Year 2—Year 5).

1. If indirect costs are claimed, indicate and apply the current negotiated rate to the budget. Include a copy of the current rate agreement in the appendix. (2)

2. Provide a narrative justification explaining why each line item is necessary/relevant to the proposed project. Include sufficient cost and other details to facilitate the determination of cost allowability (*i.e.,* equipment specifications, etc.). (6)

3. Include travel expenses for annual workshop (required participation) at a major city location to be determined by IHS (Washington DC, Albuquerque, Denver, etc.). Include airfare, per diem, mileage, etc. (2)

Appendix Items

- Work plan for proposed 5-year objectives and activities in a time line format with persons responsible
- Position descriptions for key staff
- Resumes of IP Coordinator and key staff
- Current Indirect Cost Agreement
- Organizational chart
- Resolutions
- Letters of support
- Injury Prevention training certificate verification (see page 33)
- Documentation specifically related to injury prevention
- Application Receipt Card, IHS 815–1A (Rev. 2/04)

Part I Advanced: Part I Advanced applicants are Tribes and organizations who are current recipients of the 2000–2005 IHS Injury Prevention Cooperative Agreements (applies only to 2000–2005 Tribal Injury Prevention Cooperative Agreement recipients).

Abstract—A one page summary of the five-year proposed project request. Include information on applicant, purpose of request, problem or need to be met, objectives to be achieved through the funding, proposed activities and total amount of request of project.

Program Narrative—Introduction, Need and Capacity (Total 40 Points)

1. Describe the need for the existing injury prevention program in the community. (2)

2. Describe your accomplishments as a recipient of the 2000–2005 Indian Health Service Injury Prevention Cooperative Agreement. Accomplishments must show documentation of meeting program goals and objectives, compliance in reporting (quarterly progress and financial reporting), coalition building, training, Injury Prevention coordinator (FTE) continuity, sustaining Tribal capacity building and securing Tribal support. (20)

3. Describe and show documentation of successes at reducing injury risk factors (such as increase child passenger safety restraints or seat belt use; smoke alarm installation, safe home interventions, etc.) or any positive changes in the target population. Provide supporting data to demonstrate process, impact or outcome. (5)

4. Describe the applicant's partnership with Tribal, IHS, community groups, law enforcement, and others in implementing injury prevention policy or programs to reduce injuries. (3)

5. Describe how the proposed program will build the local capacity to provide, improve, and expand services that address the injury problem of the target population. This includes but not limited to sustaining capacity in strategic planning, developing, implementing and evaluating an injury prevention program. (8)

6. Describe and provide documentation of the target population (2,500 people to be served by the proposed program and geographic location of the proposed program. (IHS User population is the ONLY acceptable source). (2)

Program Goals and Objectives (Total 10 Points)

1. Goals and objectives that are relevant to the purpose of the proposal. (4)

2. Feasible to accomplish during the 5 year project period. (3)

3. Are specific, time-framed, measurable and realistic. (3)

Methods and Staffing (Total 20 Points)

The application will be evaluated on the extent to which the applicant provides:

1. A detailed description of proposed activities that are likely to achieve each objective and overall program goals, and which includes designation of responsibility for each action undertaken. (7)

2. A reasonable and complete time line for implementing all objectives and activities with the person(s) responsible listed for each activity. (2)

3. A description of the roles of Tribal involvement, organization, or agency and evidence of coordination, supervision, and degree of commitment (*e.g.*, time, in-kind, financial) of staff, organizations, and agencies involved in activities. (2)

4. Description of how proposed interventions are either proven or promising to be effective and based on a documented need in the target communities. (2)

5. The extent to which resumes are included for existing staff, and detailed position descriptions and duties are included for projected staff. (2)

6. Description of the proposed staff's work or training experiences in injury prevention. (5)

Evaluation (Total 10 Points)

Describe how it will be determined if the proposed project's objectives were achieved and how proposed evaluation measures will measure success in implementing injury prevention programs.

1. Describe type of evaluation methods that will be utilized to evaluate the goals and objectives. This includes but is not limited to how the program's progress will be tracked (*i.e.,* reports, training, number of car seat distributions, conducting seat belt surveys, etc.). (2)

2. Describe how the program will be evaluated to show program process, effectiveness, and impact. This includes but is not limited to what data will be collected to evaluate the success of the proposed program objectives. (2)

3. Describe the potential data sources for evaluation purposes and methods to evaluate the data sources. (2)

4. Documents staff availability, expertise, experience, and capacity to perform the evaluation. (2)

5. Includes a feasible plan for reporting evaluation results and using evaluation information for programmatic decisions. (2)

Collaboration (Total 10 Points)

Describe the extent to which relationships between the programs, the Tribe or urban community, the Indian Health Service and other organizations will relate to the program or conduct related activities. This includes the scope to which an advisory committee or partners' roles are clear and appropriate. Letters of support should be provided in the Appendix.

Categorical Budget and Budget Justification (Total 10 Points)

Provide a categorical budget for each of the 12-month budget periods requested. A budget summary should be included for each subsequent year (Year 2–Year 5).

1. If indirect costs are claimed, indicate and apply the current negotiated rate to the budget. Include a copy of the current rate agreement in the appendix. (3)

2. Provide a narrative justification explaining why each line item is necessary/relevant to the proposed project. Include sufficient cost and other details to facilitate the determination of cost allowability (*i.e.,* equipment specifications, etc.). (5)

3. Include travel expenses for annual workshop (required participation) at a major city location to be determined by IHS (Washington, DC, Albuquerque, Denver, etc.). Include airfare, per diem, mileage, etc. (2)

Appendix Items

- Work plan/time line for 5 year objectives
- Position descriptions for key staff
- Resume of IP Coordinator and key staff
- Current Indirect Cost Agreement
- Organizational chart
- Resolutions
- Letter of support
- IP training certificate verification (see page 33)
- Documentation specifically related to injury prevention
- Application Receipt Card, IHS 815–1A (Rev. 2/04)

Part II—Intervention:

Abstract—A one page summary of the three-year proposed project request. Include information on applicant, purpose of request, problem or need to be met, objectives to be achieved through the funding, proposed activities and total amount of request of project.

Criteria Rating

Program Narrative—Introduction, Need and Capacity (Total 30 Points)

1. Describe the injury problem in the community or target area. (5)

2. Describe geographic location of the proposed project. (5)

3. Describe the Tribe's/Tribal organization's support for the proposed project. (5)

4. Describe the population to be served by the proposed project (no minimum population requirement). (5)

5. Describe how the proposed project will support capacity to plan, develop, implement and evaluate an injury prevention program. (10)

Goals and Objectives (Total 15 Points)

1. Goals and objectives that are relevant to the purpose of the proposal. (5)

2. Feasible to accomplish during the 3-year project period. (5)

3. Are specific, time-framed, measurable and realistic. (5)

Methods (Total 25 Points)

1. A detailed description of proposed activities that are likely to achieve each goal and objective, and which includes designation of responsibility for each action undertaken. (15)

2. A reasonable and complete schedule for implementing all activities. (2)

3. A description of the roles of Tribal involvement, organization, or agency and evidence of coordination, supervision, and degree of commitment (*e.g.*, time, in-kind, financial) of staff, organizations, and agencies involved in activities. (3)

4. The extent to which proposed interventions are either proven or promising to be effective and based on a documented need in the target communities. (5)

Evaluation (Total 10 Points)

1. Describe type of evaluation methods that will be utilized to evaluate the goals and objectives. This includes but is not limited to how the progress of the proposed project objective (s) will be tracked (*i.e.*, reports, training, car seat distributions, seat belt surveys, etc.). (5)

2. Describe how project will be evaluated to show program process, effectiveness, and impact. This includes but is not limited to what data will be collected to evaluate the success of the proposed program objectives. (5)

Collaboration (Total 10 Points)

Describe the extent to which relationships between the programs, the Tribe or urban community, the Indian Health Service and other organizations will relate to the project or conduct related activities. This includes the scope to which an advisory committee or partners' roles are clear and appropriate.

Categorical Budget and Budget Justification (Total 10 Points)

Multi-Year Project Requirement

Three-year intervention projects must include a program narrative, categorical budget, and budget justification for each year of funding requested.

1. Provide a categorical budget for each of the 12-month budget periods requested. (3)

2. If indirect costs are claimed, indicate and apply the current negotiated rate to the budget. Include a copy of the current rate agreement in the appendix. (3)

3. Provide a narrative justification consistent with stated objectives and planned project activities. Include cost and other details to facilitate the determination of cost allowability (*i.e.*, equipment specifications, etc.). (4)

Appendix Items

- Work plan for proposed objectives
- Indirect Cost Agreement
- Organizational chart
- Resolutions
- Letter of support
- Application Receipt Card, IHS 815–1A (Rev. 2/04)

2. Review and Selection Process

Applications meeting eligibility requirements that are complete, responsive, and conform to this program announcement will be reviewed by an Objective Review Committee (ORC) in accordance with IHS Objective review procedures. The objective review process ensures a nationwide competition for limited funding. The ORC will be comprised of federal and non-federal individuals with appropriate expertise. The ORC will review each application against established criteria. Based on the evaluation criteria, the reviewer will assign a numerical score to each application, which will be used in making the final decision. Approved applications scoring less than 60 points will not be considered for funding.

3. Anticipated Announcement and Award Dates

Successful applicants can expect notification no later that September 30, 2005. A notice of award signed by the Grants Management Officer will be mailed to the authorized representative. IHS will mail notification to the authorized representative of unsuccessful applicants.

VI. Award Administration Information

1. Award Notices

Proposed Start Date: September 1, 2005. Grants Management will not award a grant without an approved application in conformance with regulatory and policy requirements which describes the purpose and scope of the project to be funded. When the application is approved for funding, the Grants Management Office will prepare a Notice of Grant Award (NGA) with special terms and conditions binding upon the award and refer to all general terms applicable to the award. The NGA will serve as the official notification of the grant award and will state the amount of Federal funds awarded.

2. Administrative and National Policy Requirements

- 45 CFR Part 92, ''Department of Health and Human Services, Uniform Administrative Requirements for State and Local Governments Including Indian Tribes,'' or 45 CFR Part 74, ''Administrative Requirements for Non-Profit Recipients''
- Appropriate Cost Principles: OMB Circular A–87, ''State and Local Governments, ''or OMB Circular A–122, ''Non-Profit Organizations''
- OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations'''

3. Reporting Requirements

Part I Basic and Advanced

Program Narrative Progress Reports and Financial Status Reports (FSR) are due 30 days after the end of each three-month period (quarter) of the project period. The final quarterly report for both are due 90 days after the expiration of the project period. Standard Form (SF) 269 Financial Status Report (Long Form) is recommended for use in financial reporting.

Part II Intervention

Program Narrative Progress Reports and the Financial Status Reports (FSR) are due 30 days after the end of each six-month period (semi-annual report) of the project period. The final semi-annual reports for both are due 90 days after the project period. Standard Form (SF) 269 Financial Status Report (Long Form) is recommended for use in financial reporting.

VII. Agency Contacts

For Grants administrative and business questions, contract Ms. Patricia Spotted Horse, Grants Management Specialist, Division of Grants Operation, Indian Health Service, 801 Thompson, Suite 120, Rockville, Maryland 20852, telephone (301) 443–5204. Programmatic technical assistance regarding the Injury Prevention Cooperative Agreement Program contact Ms. Nancy Bill, IHS, Injury Prevention Program Manager, telephone (301) 443–0105.

VIII. Other Background Information

Indian Health Service Injury Prevention Program is the lead federal agency in the development and implementation of American Indian and Alaska Native injury prevention programs. IHS is directed to develop, implement, and evaluate injury prevention programs that would be

successful in reducing American Indian and Alaskan Native morbidity and mortality related to injuries. The purpose of the IHS Cooperative Agreement funding is to promote the capacity of Tribes and Tribal/urban/non-profit Indian organizations to build and sustain their own community-based injury prevention programs.

Injury Prevention Training Opportunities

The Indian Health Service offers three short courses in injury prevention training. The courses are designed specifically for community-based practitioners to learn the basics of preventing injuries specific to American Indian/Alaska Native communities. The three short courses are: (1) Introduction to Injury Prevention; (2) Intermediate Injury Prevention; and (3) Advanced Injury Prevention. Each of these courses are approximately one week in length.

Indian Health Service Injury Prevention Program offers a one-year Fellowship training with two separate training tracks: (1) Epidemiology and (2) Program Development. For more information on the IHS Injury Prevention training courses, contact an IHS Area Injury Prevention Specialist at the IHS Injury Prevention website: *http://www.ihs.gov/MedicalPrograms/InjuryPrevention/index.cfm.*

United Tribes Technical College at Bismarck, North Dakota is the only college that offers a degree in injury prevention. Courses including online courses are available. Contact Mr. Dennis Renville, Director, Injury Prevention Department, United Tribes Technical College at (701) 255–3285 ext. 374. Or e-mail: *drenville@uttc.edu* Web site: *http://www.uttc.edu/injuryprevention.*

The Public Health Service (PHS) strongly encourages all contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children. This is consistent with the IHS mission to protect and advance the physical and mental health of the American Indian/Alaska Native people.

Dated: April 6, 2005.

Charles W. Grim,

Assistant Surgeon General, Director, Indian Health Service.

[FR Doc. 05–7459 Filed 4–13–05; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Health Promotion and Disease Prevention

Funding Opportunity Number: HHS–2005–IHS–0001.

Announcement Type: New.

CFDA Number: 93.193 and 93.284.

Key Dates:

Application Deadline: June 1, 2005.

Application Review: July 15, 2005.

Application Notification: August 31, 2005.

Earliest Anticipated Start Date: October 1, 2005.

I. Funding Opportunity Description

The Indian Health Service (IHS), announces the availability of Fiscal Year (FY) 2005 grants to implement the IHS Health Promotion/Disease Prevention (HP/DP) Initiative to create healthier American Indian/Alaska Native (AI/AN) communities through innovative and effective community, school, clinic, and work site health promotion and chronic disease prevention programs.

The IHS HP/DP Initiative is focusing on enhancing and expanding health promotion and chronic disease prevention to reduce health disparities among AI/AN populations. The plan is fully integrated with the Department of Health and Human Services (HHS) Initiative such as *Healthy People 2010* and Steps to a HealthierUS *http://www.healthierus.gov/.*

The initiative focuses on cardiovascular disease, diabetes, cancer, obesity, and unintentional injury prevention and intervention efforts in AI/AN communities. Focus efforts include enhancing and maintaining personal and behavioral factors that support healthy lifestyles such as making healthier food choices, avoiding the use of tobacco, alcohol, and other harmful substances, being physically active, and demonstrating other positive behaviors to achieve and maintain good health.

Major focus areas include preventing and controlling obesity by developing and implementing science-based nutrition and physical activity interventions (*i.e.,* increased consumption of fruits and vegetables, reduced consumption of foods that are high in fat, increased breastfeeding, reduced television time, and increased opportunities for physical activity). Other focus areas include preventing consumption of alcohol and tobacco use among youth, reducing unintentional injury, increasing accessibility to tobacco cessation programs, and reducing exposure to second-hand smoke.

The purpose of this initiative is to enable American Indian/Alaska Native (AI/AN) communities to enhance and expand health promotion and reduce chronic disease by: increasing physical activity; avoiding the use of tobacco, alcohol, and other unhealthy addictive substances; and improving nutrition to support healthier AI/AN communities through innovative and effective community, school, clinic and work site health promotion and chronic disease prevention programs.

The initiative encourages Tribal applicants to fully engage their local schools, communities, health care providers, health centers, faith-based/spiritual communities, senior centers, youth programs, local governments, academia, non-profit organizations, and many other community sectors to work together to enhance and promote health and prevent chronic disease in their communities.

This initiative is described in the Catalog of Federal Domestic Assistance Nos. 93.193 and 93.284 at: *http:/www.cfda.gov/* and is not subject to the intergovernmental review requirements of Executive Order 12372 or Health Systems Agency review. Awards are made under the authorization of the Indian Health Care Improvement Act, Title V, Sections 503 and 511, Public Law 94–437 as amended, Public Law 100–713, 101–630, and 102–572 also, the Public Health Service Act 203 and 301(a), as amended. The grant will be administered under the Public Health Service Grants Policy Statement an dother applicable agency policies.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of *Healthy People 2010,* a PHS-led activity for setting priority areas. This program announcement is related to the priority area of Education and Community-Based Programs. Potential applicants may obtain a copy of *Healthy People 2000,* (Full Report; Stock No. 017–001–00474–0) or *Healthy People 2010* (Summary report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

Background

Heart disease, cancer and unintentional injuries are the leading cause of morbidity and mortality among AI/AN. Many of these diseases and injuries are impacted by modifiable

behavioral risk factors such as physical inactivity, unhealthy diet, tobacco, and alcohol abuse. Concerted efforts to increase efficacious public health, prevention, and intervention strategies are necessary to reduce tobacco/alcohol use, poor diet, and insufficient physical activity to reduce the burden of diseases and disabilities to AI/AN communities.

Although the National 2010 objective recommends that adults engage in 30 minutes of regular, moderate physical activity each day, only 15 percent of adults performed the recommended amount of physical activity. Despite the well known benefits of physical activity, many adults and children remain sedentary. A health diet and regular physical activity are both important for maintaining a healthy weight. Regular physical activity, fitness, and exercise are extremely important for the health and well being of all people. A profound change from a ''traditional'' low fat diet of largely unprocessed plant foods to an ''affluent'' high fat diet of more animal fats, simple carbohydrates, and less fiber is accompanied by an increasing prevalence of obesity and chronic diseases. Historically, American Indians consumed a diet that was high in complex carbohydrates, high in fiber, and low in fat. Today, their diet is replaced by food high in refined carbohydrates, fat, and a low consumption of fruits and vegetables. A proliferation of fast food restaurants and convenience stores selling foods that are high in fat and sugar, as well as sedentary lifestyles have translated into weight gain and obesity. There are also epidemiological studies indicating that increased intake of fruits and vegetables decreases the risk of many types of cancer.

Many of the medical and health problems of AI/AN are associated with obesity. There is limited data on the prevalence of obesity among AI/AN, although it is estimated that 40 percent of American Indian children and one-third of adults are overweight. Tobacco use is the largest preventable cause of disease and premature death in the United States. More than 400,000 Americans die each year from illnesses related to smoking. Cardiovascular disease and lung cancer are the leading causes of death among AI/AN, and tobacco use is one of the risk factors for these diseases. Non-ceremonial tobacco use varies amongst AI/AN regions and states.

Interventions may include environmental and policy changes in the community, school, clinic or work sites to increase physical activity, increase healthier food items at school fund raising, vending machines, school food service, senior centers, shopping centers, food vendors, work sites, Tribal colleges and other community settings. Other strategies include no smoking policies in the workplace and clinics, safe walking trails for community access, improving access to tobacco cessation programs, utilize social marketing to promote change and prevent disease, reduce underage drinking, increasing effective self management of chronic disease and associated risk factors, and increasing evidence-based clinical preventive care practices. Programs are expected to utilize evidence-based public health strategies that may include system improvement, public education and information, media campaigns to support healthier behaviors, policy and environmental changes, community capacity building and training, school classroom curricula, and health care provider education.

Activities

All recipient activities funded under this program announcement are required to coordinate with existing federal, local public health agencies. Tribal programs, and/or local coalitions/task forces to enhance joint efforts to strengthen health promotion and disease prevention programs in the community, school and/or work site. All recipients are required to address one of the following or a combination of all three components; school, work site, clinic, or community-based.

a. Community Engagement

Create and build on current alliances by identifying key coalitions, task forces, and partners that focus on health promotion and chronic disease prevention and its associated risk factors. The key to success is to engage partners and stakeholders that demonstrate commitment to the initiative by their willingness to invest leadership, personnel, expertise, and other resources.

Partners may include local public health agencies, local health programs, local and state education agencies (*i.e.,* Bureau of Indian Affairs and public), Indian Health Service, health care hospitals/clinics, local businesses, academia, spiritual and faith-based organizations, community coalitions/task forces youth-focused organizations, and elderly-focused organizations.

b. Community Action Plan, Community, Work Site, Clinic-Based, and/or School-Based Interventions

Identify and implement high priority, effective strategies proven to prevent, reduce and control chronic diseases or reduce injuries. The communities must examine their chronic disease burden, identify behavioral risk factors, at-risk populations, current services and resources, Tribal and IHS strategic plans, and partnership capabilities in order to develop a comprehensive community action plan. Applicants are encouraged to identify and examine local data sources to describe the extent of the health problem. Data sources include IHS Resource Patient Management System (RPMS), Government Performance and Results Act (GPRA), diabetes registry, hospital/clinic data, Women Infant Children (WIC) data, school data, behavioral risk surveys, injury data and other sources of information about individual, group, or community health status, needs, and resources.

Communities can address behavioral risk factors contributing to chronic, conditions and diseases such as cardiovascular disease, diabetes, obesity, cancer, and unintentional injury. These factors include physical activity, nutrition, tobacco, alcohol and substance use. Applicants are encouraged to apply effective and innovative strategies to reduce chronic disease and unintentional injuries. Current evidence-based and promising public health strategies can be found at the IHS Best Practices database at *http://www.ihs.gov/nonmedicalprograms/hpdp/bptr/* Guide to Clinical Preventive Services at *http://www.odphp.osophs.dhhs.gov /pubs/guidecps/* and *http://www.ahrq.gov* and the National Registry for Effective Programs at *http://modelprograms.samhsa.gov/template.cfm?page=nrepbutton.*

II. Award Information

1. *Type of Funding Instrument:* Grant.

It is expected that $1,290,000 will be available in FY 2005 to fund Tribal and Urban programs. The maximum amount for each award is $64,500 for 12-month budget period. Approximately 20 awards will be made. If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive, and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

III. Eligibility Information

1. Eligible Applicants

Federally Recognized Tribes and Tribal Organizations, Urban Indians Organizations and Non-profit Organizations.

Non-profit organizations must submit:

1. Copies of their 501(C)(3) Certificate (required).

2. The following document is required if applicable.

Tribal Resolution—A resolution of the Indian Tribe served by the project must accompany the application submission. An Indian Tribe that is proposing a project affecting another Indian Tribe must include resolutions from all affected Tribes to be served. Applications by Tribal organizations will not require a specific Tribal resolution if the current Tribal resolution(s) under which they operate would encompass the proposed grant activities. Draft resolutions are acceptable in lieu of an official resolution. However, an official signed Tribal resolution must be received by the Division of Grants Operations prior to the beginning of the Objective Review (July 14–15 or July 20–21, 2005). If an officially signed resolution is not submitted by the date referenced, the application will be considered incomplete and will be returned without consideration. Documentation of Consortium Participation—If an Indian Tribe submitting an application is a member of a consortium, the Tribe must:

- Identify the consortium.
- Indicate if the consortium intends to submit a Tribal Management Grant (TMG) application.
- Demonstrate that the Tribe's application does not duplicate or overlap any objectives of the consortium's application.

If a consortium is submitting an application it must:

- Identify all the consortium member Tribes.
- Identify if any of the member Tribes intends to submit a TMG application of their own.
- Demonstrate that the consortium's application does not duplicate or overlap any objectives of the other consortium members who may be submitting their own TMG application.

3. Letters of support from the AI/AN community served (required).

4. Letters of support from the Tribal chairperson/president, the Tribal council, or the Tribal health director in support of the application (required).

5. Evidence of Proof of non-profit status of Tribal organization on or near a Federally recognized Tribe:

(a) A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of the tax-exempt organization described in the IRS Code.

(b) A copy of a currently valid IRS tax exemption certificate.

(c) A statement from a State or Tribal taxing body, State attorney general, or other appropriate State or Tribal Official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals.

(d) A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status.

(e) Any of the items in the subparagraphs immediately above for a State, Tribe or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

The applicant must provide documentation of: (1) Non-profit status, and (2) provide Tribal or health board resolution. If the required documents are not submitted, the application will be considered non-responsive and will not be entered into the review process.

2. Cost Sharing or Matching

Cost sharing or matching is not required.

3. Other Requirements

If a funding amount is requested greater than the ceiling of the award, the application will be considered non-responsive, and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

Late applications will be considered non-responsive. See Section ''IV.3. Submission Dates and Times'' for more information on deadlines.

IV. Application and Submission Information

1. Address To Request Application Package

To apply for this funding opportunity use application form SF–424. Application forms and instructions are available on the Web site at the following internet address: *http://www.grants.gov*. If you do not have access to the Internet, or if you have difficulty accessing the forms online, you may contact the IHS—Division of Grants Operation staff at: (301) 443–5204. Application forms can be mailed to you. If you have questions, you may contact:

Ms. Alberta Becenti, Division of Clinical & Community Services, Indian Health Service, 801 Thompson Avenue, Suite 320, Rockville, Maryland 20852. Phone (301) 443–4305.

Ms. Patricia Spottedhorse, Division of Grants Operations, Indian Health Service, 801 Thompson Avenue, Suite 120, Rockville, Maryland 20852. Phone (301) 443–5204.

2. Content and Form of Application Submission

The program announcement title and number must appear in the application. Use the information in the Activities Section, Review Criteria Section, and this section to develop the application content. Your application will be evaluated on the criteria listed, consequently, it is important to follow this guide carefully.

- Font size: 12 point unreduced
- Double-spaced
- Paper size: 8.5 by 11 inches
- Page margin size: one inch
- Printed only on one side of page
- Held together only by rubber bands or metal clips; not bound in any other way.
- Contain a narrative that does not exceed 20 typed pages that includes the below listed sections. (The 20-page narrative does not include standard forms, Tribal Resolution(s), budget and other appendix items).

—Abstract (1 page)
—Background and needs
—Intervention Plan
—Plans for Monitoring and Program Evaluation
—Organizational Capabilities and Qualifications
—Communication and Information Sharing

- Include in the application the following documents in the order presented.

—Application Receipt Record, IHS–815–1A
—FY 2006 Application Checklist
—Standard Form 424, Application for Federal Assistance
—Standard Form 424A, Budget Information—Non-Construction Programs (1–2)
—Standard Form 424B, Assurances—Non-Construction Programs (front and back). The application shall contain assurances to the Secretary that the applicant will comply with program regulations, 42, CFR Part 136 Subpart H.
—Certifications (pages 17–19)
—PHS–5161 Checklist (pages 25–26)
—Disclosure of Lobbying Activities
—Abstract
—Table of Contents
—Application Narrative
—Budget
—Appendix Items

Other Format Requirements:

(a) Please number pages consecutively from beginning to end so that information can be located easily during review of the application. The abstract

page should be page 1, and the table of contents page should be page 2. Appendices should be labeled and separated from the Project Narrative and Budget Section, and the pages should be numbered to continue the sequence.

(b) Abstract

Abstract describing the overall project, intervention area and population size, partnerships, intervention strategies, and major outcomes. The abstract is limited to 1 page.

(c) Table of Contents

Table of Contents with page numbers for each of the following sections.

(d) Application Narrative

The application narrative (excluding the appendices) must be no more than 20 pages, double-spaced, printed on one side, with one-inch margins, and unreduced 12-point font. If your narrative exceeds the page limit, only the first 20 pages will be reviewed. The narrative should include background and needs; intervention plan; plan for monitoring and evaluation; organizational capabilities and qualifications; communication and information sharing.

(e) Budget

Detail budget by line item along with detailed narrative justification explaining why each line item is necessary/relevant to the proposed project (personnel, supplies, equipment, training etc.,). You may include in-kind services to carry out proposed plans.

(f) Letters of Support

The narrative should include a summary of the organizations that have submitted letters of support, resolution, and Memorandum of Understanding (as appropriate) from the local key partners specifying their roles, responsibilities, and resources. Actual letters, resolution, and Memorandum of Understanding should be placed in the appendix.

(g) Appendix

The following additional information may be included in appendix. The appendices will not be counted toward the narrative page limit. Appendices are limited to the following items:

- Tribal Resolution or Health Board Resolution
- Organizational Charts
- Letters of Support, Resolution, or Memorandum of Understanding
- Resumes of key staff that reflect current duties

Any material submitted in the appendices that is not listed here will not be reviewed. All information included in the appendices should be clearly referenced within the 20 page narrative to aid reviewers in connecting information in the appendices to that provided in the narrative.

3. Submission Dates and Times

Applications are due by close of business June 1, 2005, 5 p.m. eastern time. Applications shall be considered as meeting the deadline if they are either: (1) Received on or before the deadline with hand-carried applications received by close of business 5 p.m. or postmarked on or before the deadline date at: Indian Health Service, Division of Grants Operation, Attention: Lois Hodge, 801 Thompson Avenue, Suite 120, Rockville, MD 20852. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. Applicants are cautioned that express/overnight mail services do not always deliver as agreed. IHS cannot accommodate transmission of applications by fax or e-mail.

Applications which do not meet the criteria above will be considered late. Late applications will be returned to the applicant and will not be considered for funding. IHS will not notify applicants upon receipt of application.

4. Intergovernmental Review

This funding opportunity is not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' A State approval is not required.

5. Funding Restrictions

Funds may be used to expand or enhance existing activities to accomplish the objectives of this program announcement. Funds may be used to pay for consultants, contractors, materials, resources, travel and associated expenses to implement and evaluate intervention activities such as those described under the ''Activities'' section of this announcement. Funds may not be used for direct patient care, diagnostic medical testing, patient rehabilitation, pharmaceutical purchases, facilities construction, or lobbying.

Electronic Submission Information

Electronic Transmission—You may submit your application to us in either electronic or paper format. To submit an application electronically, please use the *http://www.Grants.gov* Web site. If you use Grants.gov, you will be able to download a copy of the application package, complete it offline and then upload and submit the application via the Grants.gov site. You may not e-mail an electronic copy of a grant application to us.

Please note the following if you plan to submit your application electronically via Grants.gov:

(a) Electronic submission is voluntary.

(b) When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation. We strongly recommend that you do not wait until the deadline date to begin the application process through Grants.gov.

(c) To use Grants.gov, you, as the applicant, must have a DUNS Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five days to complete CCR registration.

(d) You will not receive additional point value because you submit a grant application in electronic format, nor will you be penalized if you submit an application in paper format.

(e) You may submit all documents electronically, including all information typically included on the SF 424 and all necessary assurances and certifications.

(f) Your application must comply with any page limitation requirements described in the program announcement.

(g) After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The Indian Health Service will retrieve your application from Grants.gov.

(h) You may access the electronic application for this program on *http://www.Grants.gov.*

(i) You must search for the downloadable application package by CFDA number.

6. Other Submission Requirements

DUNS Number—As of October 1, 2003, applications must have a DUNS and Bradstreet (D&B) Data Universal Numbering System (DUNS) number as the Universal Identifier when apply for Federal Grants or cooperative agreements. The DUNS number may be obtained by calling (866) 705–5711 or through the Web site at *http://www.dunandbroadstreet.com/.* The DUNS number should be entered on the SF 424 face page. Internet applications for a DUNS number can take up to 30 days and this could cause organizations to lose opportunities to apply, or delay them. It is significantly faster to obtain one by phone. You will need the

following information to request a DUNS number:

- Organization name.
- Organization address.
- Organization telephone number.
- Name of CEO, Executive Director, President, etc. (the person in charge).
- Legal structure of the organization.
- Year organization started.
- Primary business (activity) line.
- Total number of employees.

V. Application Review Information

1. Criteria

You are required to provide measurable objectives related to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation. Applicants will be evaluated and rated according to weights assigned to each section as noted in parentheses.

- Abstract (no points).
- Background and Needs (Total 20 points).

a. Is the proposed intervention clearly and the extend of the problem thoroughly described, including targeted population served and geographic location of the proposed project?

b. Area data provided that substantiate the existing burden and/or disparities of chronic diseases and conditions in the target population to be served?

c. Are assets and barriers to successful program implementation identified?

d. How well are existing resources used to complement or contribute to the effort planned in the proposal?

- Intervention Plan (Total 40 points).

a. Does the plan include objectives, strategies, and activities that are specific, realistic, measurable, and time-phased related to identified needs and gaps in existing programs?

b. Does the proposed plan include intervention strategies to address risk factors contributing to chronic conditions and diseases?

c. How well does the plan reflect local capacity to provide, improve, or expand services that address the needs of the target population?

d. Does the proposed plan include the action steps on a timeline, identify who will perform the action steps, identify who will coordinate the project, and identify who will develop and collect the evaluation, and include any training that will take place during the proposed project?

e. If the plan includes consultants or contractors, does the plan include educational requirements, work experience and qualifications, expected work products to be delivered and includes a timeline? If potential consultant/contractor has already been identified, please include a resume in the appendix.

- Plan for Monitoring and Program Evaluation (Total 15 points).

a. Does the plan describe appropriate data sources to monitor and track changes in community capacity; the extent to which interventions reach populations at risk; changes in risk factors; and changes in program efficiency?

b. Does the application demonstrate the capability to conduct surveillance and program evaluation, access and analyze data sources, and use evaluation to strengthen the program?

c. Does the applicant describe how the project is anticipated to improve specific performance measures and outcomes compared to baseline performance?

- Organizational Capabilities and Qualifications (Total 10 points).

a. Does the plan include the organizational structure of the Tribe/Tribal organization?

b. Does the applicant describe plans to share experiences, strategies, and results with other interested communities and partners?

c. Does the plan include the ability of the organization to manage the proposed plans, including information on similar sized projects in scope s well as other grants and projects successfully completed?

d. Does the applicant include key personnel who will work on the project? Position descriptions should clearly describe each position and duties, qualifications and experiences related to the proposed plan. Résumés must indicate the staff qualifications to carry out the proposed plan and activities.

e. How will the plan be sustained after the grant ends?

- Communication and Information Sharing (Total 5 points).

a. Does the application describe plans to share experiences, strategies, and results with other interested communities and partners?

b. Does the applicant describe plans to ensure effective and timely communication and exchange of information, experiences and results through mechanisms such as the Internet, workshops, and other methods?

- Budget Justification (Total 10 points).

a. Is the budget reasonable and consistent with the proposed activities and intent of the program?

b. Does the budget narrative justification explain each line item and the relevancy to the proposed plan?

c. Does the budget include in-kind services?

2. Review and Selection Process

Applications will be reviewed for timeless and completeness by the Division of Grants Operation and for responsiveness by the Health Promotion/Disease Prevention staff. Late and incomplete applications (those that do not include all required forms and all elements as described in Section IV.2. of this program announcement) will not be entered into the review process. Applications will be evaluated and rated on the basis of the evaluation criteria listed in Section V.1. Applicants will be notified that their application did not meet submission requirements.

Proposals will be reviewed for merit by the Objective Review Committee consisting of three federal and three non-federal reviewers appointed by the IHS. The technical review process ensures the selection of quality projects in a national competition for limited funding. After review of the applications, rating scores will be compared, and the application with the highest rating score are selected to receiving funding. Applications scoring below 60 points will be disapproved and returned to the applicant.

3. Anticipated Announcement and Award Dates

Successful applicants can expect notification no later that August 31, 2005. A notice of award signed by the Grants Management Officer will be mailed to the authorized representative. IHS will mail notification to the authorized representative of unsuccessful applicants.

VI. Award Administration Information

1. Award Notices

Successful applicants will receive a Notice of Grant Award from the IHS Headquarters, Division of Grants Operation. The Division of Grants Operation will not award a grant without an approved application in conformance with regulatory and policy requirements which describes the purpose and scope of the project to be funded. When the application is approved for funding, the Grants Management Office will prepare a Notice of Grant Award (NGA) with special terms and conditions binding upon the award and refer to all general

terms applicable to the award. The NGA will serve as the official notification of a grant award and will state the amount of Federal funds awarded.

Applicants whose applications are declared ineligible will receive written notification of the eligibility determination and their original grant application via postal mail. The ineligible notification will include information regarding the rationale for the ineligible decision citing specific information from the original grant application. Applicants who are approved but unfunded and disapproved will receive a copy of the Executive Summary which identifies the weaknesses and strengths of the application submitted.

2. Administrative and National Policy Requirements

- 45 CFR Part 92, ''Department of Health and Human Services, Uniform Administrative Requirements for State and Local Governments Including Indian Tribes,'' or 45 CFR Part 74, ''Administrative of Non-Profit Recipients''
- Appropriate Cost Principals: OMB Circular 87, ''State and local governments,'' or OMB Circular A–122, ''None-Profit Organizations''
- OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations''

3. Reporting

Grantees are responsible and accountable for accurate reporting of the Progress Reports and Financial Status Reports which are required semi-annually. These report will include a brief comparison of actual accomplishments to the goals established for the period, reasons for slippage (if applicable), and other pertinent information as required. Financial Status Reports (SF 269)—Semi annual financial reports must be submitted within 30 of the end of the half year. A Final Financial Status Reports (SF 269) are due within 90 days of expiration of the budget/project period and must be verified from the grantee records on how the value was derived. Grantees are allowed a reasonable period of time in which to submit required financial and performance reports.

Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in the imposition of special award provisions, or cause other eligible projects or activities involving that grantee organization, or the individual responsible for the delinquency to not be funded.

VII. Agency Contact(s)

1. Questions on the programmatic and technical issues may be directed to: Alberta Becenti, Health Promotion/Disease Prevention Consultant, (301) 443–4305, (301) 443–8170, *abecenti@hqe.ihs.gov.*

2. Question on grants management and fiscal matters may be directed to: Patricia Spottedhorse, Grants Management Specialist, (301) 443–5204, (301) 443–9602, *PSpotted@hqe.ihs.gov.*

The Public Health Service strongly encourages all grant and contact recipients to provide a smoke-free workplace and promote the non-use of tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children.

This is consistent with the Public Health Service mission to protect and advance the physical and mental health of the American people.

Dated: April 7, 2005.

Charles W. Grim,

Assistant Surgeon General, Director, Indian Health Service.

[FR Doc. 05–7460 Filed 4–13–05; 8:45 am]

BILLING CODE 4165–16–M

DEPARTMENT OF HOMELAND SECURITY

Federal Law Enforcement Training Center

Meeting of the National Center for State and Local Law Enforcement Training Advisory Committee

AGENCY: Federal Law Enforcement Training Center, Department of Homeland Security.

ACTION: Notice of meeting.

SUMMARY: The Advisory Committee to the National Center for State and Local Law Enforcement Training (National Center) at the Federal Law Enforcement Training Center will meet on May 18, 2005, beginning at 8 a.m.

ADDRESSES: Federal Law Enforcement Training Center, 1131 Chapel Crossing Road, Glynco, GA 31524.

FOR FURTHER INFORMATION CONTACT: Reba Fischer, Designated Federal Officer, National Center for State and Local Law Enforcement Training, Federal Law Enforcement Training Center, Glynco, GA 31524, (912) 267–2343, *reba.fischer@dhs.gov*.

SUPPLEMENTARY INFORMATION: The agenda for this meeting includes briefings from FLETC staff on National Center activities and discussion on strategic goals. This meeting is open to the public. Anyone desiring to attend must contact Reba Fischer, the Designated Federal Officer, no later than May 9, 2005, at (912) 267–2343, to arrange clearance.

Dated: April 7, 2005.

Stanley Moran,

Director, National Center for State and Local Law Enforcement Training.

[FR Doc. 05–7481 Filed 4–11–05; 11:10 am]

BILLING CODE 4810–32–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: New Information Collection; Comment Request

ACTION: 30-day notice of information collection under review: Notice of appeal to the Administrative Appeals Office, Form 1–290B.

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 USCIS published a Federal Register notice on February 9, 2004 at 69 FR 5994, allowed for a 60-day period public comment period. The USCIS did not receive any comments on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until [Insert date of 30th day from the date that this notice is published in the Federal Register]. 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:* New information collection.

(2) *Title of the Form/Collection:* Notice of Appeal to the Administrative Appeals Unit.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* I–290B, 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. The information collection required on the Form I–290B is necessary in order for USCIS to make a determination that the appeal or motion to reopen or reconsider meet eligibility requirements, and for the Administrative Appeals Office to adjudicate the merits of the appeal or motion to reopen or reconsider.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 30,000 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 15,000 annual burden hours.

If you have comments, suggestions, or need a copy of the information collection, please contact Richard A. Sloan (202) 272–8380, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., Washington, DC 20592; (202) 272–8377.

Dated: April 8, 2005.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05–7456 Filed 4–13–05; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by May 16, 2005.

ADDRESSES: 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: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone (703) 358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: John D. Erkmann, Anchorage, AK, PRT–099521

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361, *et seq.*), and the regulations governing marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Rick L. Hunt, Elizabeth, CO, PRT–099532

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Southern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Dated: April 1, 2005.

Lisa J. Lierheimer,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 05–7515 Filed 4–13–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by May 16, 2005.

ADDRESSES: 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: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone (703) 358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Centers for Disease Control and Prevention, Atlanta, GA, PRT–097796

The applicant requests a permit to import biological samples from two captive-held chimpanzees (*Pan troglodytes*) collected by the Biomedical Primate Research Center, Rijswijk, the Netherlands, for scientific research. This notification covers activities to be conducted by the applicant over a five year period.

Applicant: Stephen H. Miller, Plano, TX, PRT–099829

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Bret D. Overturf, Cody, WY, PRT–100281

The applicant requests a permit to import the sport-hunted trophies of two male bonteboks (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Marine Mammals

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361, *et seq.*), and the regulations governing marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Don L. Coffman, St. Ignatius, MT, PRT–099846

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Southern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Dated: March 25, 2005.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 05–7518 Filed 4–13–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for endangered species and/or marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: 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 to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*), and/or the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361, *et seq.*), the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in Section 2 of the Endangered Species Act of 1973, as amended.

Endangered Species

Permit number	Applicant	Receipt of application Federal Register notice	Permit issuance date
094969, 101128*, 100939* ..	Henry Doorly Zoo *These permits were issued from the master file, 094969.	70 FR 3222; January 21, 2005	March 24, 2005.
095598	St. Louis Zoo	70 FR 3222; January 21, 2005	March 21, 2005.
097864	Oklahoma City Zoo	70 FR 7295, February 11, 2005	March 23, 2005.

Marine Mammals

Permit number	Applicant	Receipt of application Federal Register notice	Permit issuance date
097957	San Francisco Zoological Garden	70 FR 7294; February 11, 2005	March 22, 2005.

Dated: April 1, 2005.

Lisa J. Lierheimer,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 05–7519 Filed 4–13–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Initiation of a 5-Year Review of the Florida Manatee (*Trichechus manatus latirostris)*

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 5-year review of the Florida manatee (*Trichechus manatus latirostris* under section 4(c)(2)(A) of the Endangered Species Act of 1973 (Act) (16 U.S.C. 1531 *et seq.*). A 5-year review is conducted to ensure that the listing classification of a species is accurate. A 5-year review is based on the best scientific and commercial data available at the time of the review; therefore, we are requesting submission of any such information on the Florida manatee that has become available since its original listing as an endangered species in 1967 (32 FR 4061), under the Endangered Species Preservation Act of 1966 80 Stat. 926; 16 U.S.C. 668aa(c). The manatee (*Trichechus manatus*) was listed again in December, 1970 by amending Appendix A of 50 CFR 17 to include additional names to the list of foreign endangered species (35 FR 18319). Based on the results of this 5-year review, we will make the requisite determination under section 4(c)(2)(B) of the ESA.

DATES: To allow us adequate time to conduct this review, we must receive your information no later than June 13, 2005. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: Submit information to the U.S. Fish and Wildlife Service, Jacksonville Ecological Services Office, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216. Information received in response to this notice and review will be available for public inspection, by appointment, during normal business hours, at the above address. Information may also be sent via e-mail to *manatee@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Dawn Jennings at the above address, or at (904) 232–2580, Ext. 114.

SUPPLEMENTARY INFORMATION: Under the Act, the Service maintains a list of endangered and threatened wildlife and plant species at 50 CFR 17.11 (for animals) and 17.12 (for plants). Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every five years. On the basis of such reviews under section 4(c)(2)(B), we determine whether or not any species should be removed from the List (delisted), or reclassified from endangered to threatened or from threatened to endangered. If we determine that a change in classification is not warranted, the Florida manatee will remain on the List under its current status. Delisting a species must be supported by the best scientific and commercial data available and only considered if such data substantiates that the species is neither endangered nor threatened for one or more of the following reasons: (1) The species is considered extinct; (2) the species is considered to be recovered; and/or (3) the original data available when the species was listed, or the interpretation of such data, were in error. Any change in Federal classification would require a separate rulemaking process. The regulations in 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. This notice announces our active review of the Florida manatee currently listed as endangered.

Public Solicitation of New Information

To ensure that the 5-year review is complete and based on the best available scientific and commercial information, we are soliciting information from the public, concerned governmental agencies, Tribes, the scientific community, industry, environmental entities, and any other interested parties concerning the status of the Florida manatee.

The 5-year review considers the best scientific and commercial data and all new information that has become available since the listing determination or most recent status review. For this review, we are particularly interested in any information since publication of the third revision of the Florida manatee recovery plan in 2001. Categories of requested information include (A) species biology, including but not limited to, population trends, distribution, abundance, demographics, and genetics; (B) habitat conditions, including but not limited to, amount, distribution, and suitability; (C) conservation measures that have been implemented that benefit the species; (D) threat status and trends; and (E) other new information, data, or corrections, including but not limited to, taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods. Information submitted should be supported by documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources.

If you wish to provide information for this 5-year review, you may submit your comments and materials to the U.S. Fish and Wildlife Service's Jacksonville, Florida Ecological Services Office (*see* **ADDRESSES** section). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold a respondent's identity, as allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comment. We will not, however, consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours (*see* **ADDRESSES** section).

Authority: This document is published under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 5, 2005.

Jacquelyn B. Parrish,

Acting Regional Director, Southeast Region.

[FR Doc. 05–7477 Filed 4–13–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Information Collection Activities; Extension of a Currently Approved Collection; Comment Request

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces that the Bureau of Reclamation (Reclamation) intends to

extend a current information collection approved by the Office of Management and Budget's (OMB). The collection is entitled Summary of Water Requirements for Crops Grown on Eligible Land, OMB No. 1006–0024. Before submitting the information collection request to the Office of Management and Budget for approval, Reclamation is soliciting comments on specific aspects of that form.

DATES: Comments on this notice must be received by June 13, 2005.

ADDRESSES: Address all comments concerning this notice to Bureau of Reclamation, Northern California Area Office, Attention: Donald A. Bultema, PO Box 988, Willows, California 95988.

FOR FURTHER INFORMATION CONTACT: For further information or a copy of the proposed collection of information form, contact Richard Robertson at (530) 934–1383.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of Reclamation's functions, including whether the information will have practical use; (b) the accuracy of Reclamation's estimated time and cost burdens of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, use, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including increased use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Title: Summary of Water Requirements for Crops Grown on Eligible Land.

Abstract: Reclamation developed Form LS–924, Summary of Water Requirements for Crops Grown on Eligible Land, to facilitate and standardize the submission of data from the Sacramento River settlement contractors that divert water from Sacramento River sources. The information requested is required to ensure the proper implementation of 43 CFR 426.15 and the commingling provisions in the Sacramento River settlement contracts.

Description of respondents: There are approximately 44 Sacramento River settlement contractors (individuals/districts) that are required to file Form LS–924 for the purpose of contract administration.

Frequency: Annually.

Estimated completion time: An average of 60 minutes per respondent.

Annual responses: 44 respondents.

Annual burden hours: 44.

Public Comments

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: March 29, 2005.

Donald A. Bultema,

Chief, Water and Lands Division, Northern California Area Office, Mid-Pacific Region.

[FR Doc. 05–7479 Filed 4–13–05; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0055 and 1029–0091

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection requests for the titles described below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection requests describe the nature of the information collections and the expected burden and cost for 30 CFR parts 750 and 877.

DATES: OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by May 16, 2005, in order to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of either information collection request, explanatory information and related form, contact John A. Trelease at (202) 208–2783, or electronically to *jtreleas@osmre.gov.*

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, by telefax at (202) 395–6566 or via e-mail to *OIRA__Docket@omb.eop.gov.* Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 202—SIB, Washington, DC 202240, or electronically to *jtreleas@osmre.gov.*

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted two requests to OMB to renew its approval of the collections of information contained in: 30 CFR part 750, Requirements for surface coal mining and reclamation operations on Indian Lands; and 30 CFR part 877, Rights of entry. OSM is requesting a 3-year term of approval for each information collection activity.

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 these collections of information are 1029–0091 for Part 750, and 1029–055 for Part 877.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments for these collections of information was published on December 21, 2004 (69 FR 76477). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activities:

Title: Requirements for surface coal mining and reclamation operations on Indian Lands—30 CFR part 750.

OMB Control Number: 1029–0091.

Summary: Operators who conduct or propose to conduct surface coal mining and reclamation operations on Indian lands must comply with the requirements of 30 CFR 750 pursuant to Section 710 of SMCRA.

Bureau Form Number: None.

Frequency of Collection: One new permit every other year. 75 permit revisions annually.

Description of Respondents: Applicants for coal mining permits.

Total Annual Responses: One new permit and 75 revisions annually.

Total Annual Burden Hours: 500 hours for new permits annually. 900 hours for permit revisions annually.

Total Annual Non-wage Costs: $15,000 for filings fees annually for new permits.

Title: Rights of Entry—30 CFR Part 877.

OMB Control Number: 1029–0055.

Summary: This regulation establishes procedures for non-consensual entry upon private lands for the purpose of abandoned mine land reclamation activities or exploratory studies when the landowner refuses consent or is not available.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: State abandoned mine land reclamation agencies.

Total Annual Responses: 103.

Total Annual Burden Hours: 103.

Total Annual Non-wage Costs: $4,120 for publication costs.

Send comments on the need for the collections of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collections; and ways to minimize the information collection burdens on respondents, such as use of automated means of collections of the information, to the following addresses. Please refer to the appropriate OMB control numbers in all correspondence.

Dated: April 8, 2005.

John R. Craynon,

Chief, Division of Regulatory Support.

[FR Doc. 05–7499 Filed 4–13–05; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–516]

In the Matter of Certain Disc Drives, Components Thereof, and Products Containing Same; Notice of a Commission Determination Not To Review an Initial Determination Granting a Motion To Amend the Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ's'') initial determination (''ID'') granting complainants' motion to amend the notice of investigation in the above-captioned investigation to add claims 2–4 and 23–26 and to remove claims 5–7 and 28–31 from one of the asserted patents at issue in the investigation, U.S. Patent No. 5,600,506.

FOR FURTHER INFORMATION CONTACT: Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3152. Copies of the ID and all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. 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: The Commission instituted this investigation on August 5, 2004, based on a complaint filed on behalf of Seagate Technology, LLC (''Seagate''). 69 FR 47460 (Aug. 5, 2004). The complaint, as supplemented, alleged violations of section 337 in the importation into the United States, sale for importation, and sale within the United States after importation of certain disc drives, components thereof, and products containing same by reason of infringement of certain claims of seven U.S. patents, including U.S. Patent Nos. 6,744,606 (''the '606 patent''); 5,596,461 (''the '461 patent''); and 5,600,506 (''the '506 patent''). The notice of investigation named Cornice, Inc. (''Cornice'') of Longmont, Colorado as the sole respondent.

On December 28, 2004, the ALJ issued Order No. 6, an ID granting in part a motion for summary determination of invalidity of the asserted claims of the '606 patent. On January 28, 2005, the Commission determined to review and reverse Order No. 6.

On March 7, 2005, the ALJ issued Order No. 8 granting Cornice's motion for summary determination of noninfringement of the '461 patent, and denying Seagate's cross-motion for summary determination of infringement of the '461 patent. No petitions for review of Order No. 8 were filed, and on March 29, 2005, the Commission determined not to review the ID.

On February 24, 2005, complainant Seagate moved to amend the notice of investigation. Seagate requested that the notice of investigation be amended to add claims 2–4 and 23–26 of the '506 patent, and to remove claims 5–7 and 28–31 of the '506 patent.

On March 21, 2005, the ALJ issued the subject ID, Order No. 10, granting complainants' motion to amend the notice of the investigation. No party filed a petition to review the subject ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and section 210.42 of Rules of Practice and Procedure, 19 CFR 210.42.

By order of the Commission.

Issued: April 11, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–7500 Filed 4–13–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA'')

Consistent with Section 122(i) of CERCLA, 42 U.S.C. 9622(i), and 28 CFR 50.7, a Partial Consent Decree with Lucent Technologies, Inc., was lodged with the United States District Court for the Middle District of Georgia on March 23, 2005, in the matter of *United States* v. *American Cyanamid, et al.,* No. 1:02–CV–109–1 (M.D. Ga.) (Docket No. 141). In that action, the United States seeks to recover from various Defendants, pursuant to Sections 107 and 113(b)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (''CERCLA''), 42 U.S.C. 9607 and 9613(g)(2), the costs incurred and to be incurred by the United States in responding to the release and/or threatened release of hazardous substances at and from the Stoller Chemical Company/Pelham Site (''Site'') in Pelham, Mitchell County, Georgia. Under the proposed Partial Consent Decree, Defendant Lucent Technologies, Inc., will pay $70,000 to the Hazardous Substances Superfund in reimbursement of the costs incurred by the United States at the Site. The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should

be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *American Cyanamid, et al.,* (M.D. Ga.) (Partial Consent Decree with Lucent Technologies, Inc., DOJ Ref. No. 90–11–3–07602). The Consent Decree may be examined at the Office of the United States Attorney, Middle District of Georgia, Cherry St. Galleria, 4th Floor, 433 Cherry St., Macon, GA 31201 ((478) 752–3511), and at EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303 (contact Bonnie Sawyer, Esq. (404) 562–9539). During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Partial Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please refer to *United States* v. *American Cyanamid, et al.,* (M.D. Ga.) (Partial Consent Decree with Lucent Technologies, Inc., DOJ Ref. No. 90–11–3–07602), and enclose a check in the amount of $5.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ellen Mahan,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–7469 Filed 4–13–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Crossing Dev., LLC & Matthew David Congdon,* Case No. 3:05–989–CMC, was lodged with the United States District Court for the District of South Carolina on March 30, 2005. This proposed Consent Decree concerns a complaint filed by the United States against the Defendants pursuant to Section 301(a) of the Clean Water Act (''CWA''), 33 U.S.C. 1311(a), to obtain injunctive relief from and impose civil penalties against the Defendants for filling wetlands without a permit.

The proposed Consent Decree resolves these allegations by requiring the Defendants to restore the impacted areas, perform mitigation and to pay a civil penalty. The Department of Justice will accept written comments relating to this proposal Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to Emergy Clark, Assistant United States Attorney, United States Attorney's Office, Wachovia Building Suite 500, 1441 Main Street, Columbia, South Carolina 29201 and refer to *United States* v. *Crossing Dev., LLC, & Matthew David Congdon,* Case No. 3:05–989–CMC.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the District of South Carolina, 901 Richland Lane, Columbia, South Carolina.

In addition, the proposed Consent Decree may be viewed on the World Wide Web at *http://www.usdoj.gov/enrd/open.html.*

Stephen Samuels,

Assistant Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. 05–7465 Filed 4–13–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Pursuant to 28 CFR 50.7, notice is hereby given that on April 1, 2005, a proposed Consent Decree in *United States* v. *Diamond State Salvage Company, Inc., Estate of Herbert Sherr, Nancy A. Sherr, Executrix of the Estate of Herbert Sherr, Barbara Sherr Kleger, and Delmarva Power & Light Company,* Civil Action No. 05–76, was lodged with the United States District Court for the District of Delaware.

In this civil action under the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), the United States seeks recovery of response costs from Diamond State Salvage Company, Inc., the Estate of Herbert Sherr, Barbara Sherr Kleger, and Delmarva Power & Light Company in connection with the Diamond State Salvage Superfund Site in Wilmington, New Castle County, Delaware (''the Diamond State Salvage Site''). The Consent Decree requires the Estate of Herbert Sherr, Barbara Sherr Kleger, and Delmarva Power & Light Company to pay a total of $324,000 in reimbursement of response costs relating to the Diamond State Salvage Site. Diamond State Salvage Company, the current owner of the Diamond State Salvage Site, is not a party to the Consent Decree.

The Department of Justice will receive comments relating to the Consent Decree for a period of thirty (30) days from the date of this publication. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and refer to *United States* v. *Diamond State Salvage Company, Inc., Estate of Herbert Sherr, Nancy A. Sherr, Executrix of the Estate of Herbert Sherr, Barbara Sherr Kleger, and Delmarva Power & Light Company,* D.J. Ref. 90–11–2–1275.

The Consent Decree may be examined at the Office of the United States Attorney for the District of Delaware, 1201 Market Street, Suite 1100, Wilmington, DE 19899–2046 and at U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. When requesting a copy from the Consent Decree Library, please enclose a check in the amount of $7.75 for the Consent Decree only or $15.50 for the Consent Decree and attachments thereto (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–7467 Filed 4–13–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Fenestration Rating Council, Inc.

Notice is hereby given that, on September 20, 2004, pursuant to section

6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Fenestration Rating Council, Inc. (''NFRC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: National Fenestration Rating Council, Inc., Silver Spring, MD. The nature and scope of NFRC's standards development activities are: Development and publication of product performance standards for window, door and skylight products.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–7463 Filed 4–13–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on March 30, 2005, a proposed Consent Decree in *United States* v. *City of New Orleans,* et al., Civil Action No. 02–3618, Section ''E'', was lodged with the United States District Court for the Eastern District of Louisiana.

In this action the United States, on behalf of the United States Environmental Protection Agency (''EPA''), sought to recover response costs from certain parties, including CFI Industries, Inc. (''CFI''). EPA incurred such costs in response to releases and threatened releases of hazardous substances from the Agriculture Street Landfill (the ''Site'') located in New Orleans, Louisiana. The proposed Consent Decree require CFI to pay $1.75 million towards the response costs incurred by EPA. The proposed Consent Decree resolves CFI's liability under Section 107(a) of CERCLA, 42 U.S.C. 9607(a), for costs already incurred to the site by EPA or by the Department of Justice on behalf of EPA.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, NW., Washington, DC 20044–7611, and should refer to *United States* v. *City of New Orleans,* et al., D.J. Ref. 90–11–3–1638/2.

The Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Louisiana, 501 Magazine Street, Suite 210, New Orleans, LA 70130, and at the offices of EPA, Region 6, 1455 Ross Ave., Dallas, TX 75202–2733. During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@ usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $5.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

W. Benjamin Fisherow,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–7466 Filed 4–13–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act and Resource Conservation and Recovery Act

Notice is hereby given that on March 31, 2005, a proposed Supplemental Consent Decree, in *United States, et al.,* v. *Outboard Marine Corp., et al.,* Civil No. 88–C–8571 (N.D. Ill.), was lodged with the United States District Court for the Northern District of Illinois, pertaining to the Outboard Marine Corporation (''OMC'') Superfund Site (the ''Site''), located in Waukegan, Lake County, Illinois.

The Supplemental Consent Decree among the United States on behalf of the U.S. EPA, the State of Illinois (the ''State'') (collectively, ''Government Plaintiffs'') and the City of Waukegan, Illinois (the ''City'') under the Comprehensive Environmental Response, Compensation and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9601–9675; the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6901–6992k; the Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq.*; and other authorities, resolves the potential liability of the City, which has petitioned for leave of Court to intervene as Defendant, and its successors, assigns and transferees, for Existing Contamination at a portion (the ''Property'') of the Site, located in Waukegan, Lake County, Illinois. The proposed settlement, incorporating aspects of a prospective purchaser agreement, is captioned as a Supplemental Consent Decree in this case brought in 1988 against OMC, which is currently in Chapter 7 bankruptcy proceedings initiated in December 2000 in Bankruptcy Court for the Northern District of Illinois.

This civil action was initially brought by the United States and the State of Illinois in 1988 against OMC under CERCLA and other authorities, in connection with releases and threatened releases of hazardous substances at the OMC Site, including the Property. On or about May 1, 1989, the Court entered a Consent Decree and Order resolving the Government Plaintiffs' claims against OMC. Under that Consent Decree, OMC completed design, remediation and restoration activities in 1995 to address polychlorinated biphenyl compounds (''PCB'') contamination in the Waukegan Harbor, lagoons, ditches and other areas around portions of the OMC Site, including the Property, pursuant to a Record of Decision issued by U.S. EPA under CERCLA. OMC performed operation and maintenance (''O&M'') of the Waukegan Harbor PCB remedy under the 1989 Consent Decree until January 2001, shortly after filing for bankruptcy.

Under the Supplemental Consent Decree, the City, after acquiring the Property, will finance and perform major aspects of the O&M of the Waukegan Harbor PCB Remedy, perform certain maintenance measures for Plant 2, a building structure on the Property, and implement institutional controls relating to the Property. The City will receive a covenant not to sue under Sections 106 and 107(a) CERCLA, 42 U.S.C. 9606 and 9607(a)—excluding natural resource damages—and certain provisions of RCRA, the Toxic Substances Control Act, 15 U.S.C. 2601–2692, the Clean Water Act, 33 U.S.C. 1251–1387, the Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq.*, Section 13 of the River and Harbors Act of 1899, 33 U.S.C. 407, the Illinois Public Nuisance Act, 415 ILCS 5/47–5 *et*

seq. and common law nuisance with respect to the Existing Contamination at the property.

The United States and the State reserve their rights against the City for, among other things, failure to meet requirements of the Supplemental Consent Decree, exacerbation of Existing Contamination, and claims relating to any lien provisions of Section 107 of CERCLA, 42 U.S.C. 9607. The Supplemental Consent Decree terms anticipate that the City intends to develop the Property as part of a multi-parcel Brownfields initiative for the Waukegan Harbor area.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Supplemental Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Washington, DC 20044–7611, and should refer to *United States et al.,* v. *Outboard Marine Corp. et al.,* Civil No. 88–C–8571 (N.D. Ill.), and DOJ Reference No. 90–11–3–07051/3. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The proposed Supplemental Consent Decree may be examined at: (1) The Office of the United States Attorney for the Northern District of Illinois, U.S. Courthouse, 1500 South, Everett McKinley Dirksen Bldg., 219 South Dearborn St., Chicago, IL 60604 (312–353–1994); and (2) the United States Environmental Protection Agency (Region 5), 77 West Jackson Blvd., Chicago, IL 60604–3507 (contact: Thomas Martin (312–886–4273)).

During the public comment period, the proposed Supplemental Consent Decree may also be examined on the following U.S. Department of Justice Web site, *http://usdoj.gov/enrd/open.html.* A copy of the porposed Supplemental Consent Decree may also be obtained by mail from the Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation no. (202) 514–1547. In requesting a copy, please refer to the referenced case and DOJ reference Number and enclose a check in the amount of $10.50 for the Supplemental Consent Decree only (42 pages, at 25 cents per page reproduction cost), or $76.50 for the Supplemental Consent Decree and all appendices (306 pages), made payable to the U.S. Treasury.

W. Benjamin Fisherow,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–7468 Filed 4–13–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that an amended consent decree in *United States* v. *Pneumo Abex Corporation,* et al., Civil Action No. 2–96–CV–27 (E.D. Va.) was lodged with the court on March 15, 2005.

The proposed amended consent decree modifies the remedy to be performed at the Abex Superfund Site Portsmouth, Virginia to conform that remedy to the future land use of a portion of the site, which will be commercial/industrial, rather than residential. The modified remedy is called for in an Explanation of Significant Differences issued by the United States Environmental Protection Agency under Section 117 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9617.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 2004, and should refer to *United States* v. *Pneumo Abex Corporation, et al.,* DOJ Ref. #90–11–3–255A.

The proposed consent decree may be examined and copied at the Office of the United States Attorney, Main Street Centre, 600 E. Main Street, Richmond, VA 23219; or at the Region III Office of the Environmental Protection Agency, c/o Marcia P. Everett, Senior Assistant Regional Counsel, 1650 Arch Street, Philadelphia, PA 19103. During the public comment period, the amended consent decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the amended decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood *tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $41.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–7470 Filed 4–13–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day notice of information collection under review: Application and permit for importation of firearms and ammunition and implements of war.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until June 13, 2005. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Derek Ball, Firearms and Explosives Imports Branch, Room 5100, 650 Massachusetts Avenue, NW., Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application and Permit for Importation of Firearms, Ammunition and Implements of War.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 6, Part 1 (5330.3A) Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Other: Business or other for-profit, Federal Government, State, local or tribal government. The form is used to determine whether firearms, ammunition and implements of war are eligible for importation into the United States. It is also used to secure authorization to import such articles and serves as authorization to the U.S. Customs Service to allow these articles entry into the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 11,000 respondents will complete a 30 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are 5,500 estimated annual total burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: April 8, 2005.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 05–7476 Filed 4–13–05; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Institute of Electrical and Electronics Engineers

Notice is hereby given that, on March 29, 2005, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Institute of Electrical and Electronics Engineers (''IEEE'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, six new standards have been initiated and nine existing standards are being revised. More detail regarding these changes can be found at *http://standards.ieee.org/bearer/sba/03-20-05.html.*

On September 17, 2004, IEEE filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on November 3, 2004 (69 FR 64105).

The last notification was filed with the Department on March 8, 2005. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on April 1, 2005 (70 FR 16843).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–7464 Filed 4–13–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Administration and Management; Agency Information Collection Activities: Proposed collection; Comment request; Applicant Background Questionnaire

AGENCY: Office of the Assistant Secretary for Administration and Management (OASAM), Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Department of Labor is soliciting comments concerning the proposed extension of the Applicant Background Questionnaire. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before June 13, 2005.

ADDRESSES: William Glasgow, U.S. Department of Labor, Human Resources Center, 200 Constitution Ave. NW., Room N–5464, Washington, DC 20210; Phone: (202) 693–7738; Written comments limited to 10 pages or fewer may also be transmitted by facsimile to: (202) 693–7814; Internet: *glasgow.william@dol.gov*

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its obligation to provide equal employment opportunities, is charged with ensuring that qualified individuals in groups that are under-represented in various occupations, are included in applicant pools for the Department's positions. *See* 5 U.S.C. 7201(c); 29 U.S.C. 791; 29 U.S.C. 2000e–16; 5 CFR 720.204; 29 CFR 1614.101(a). To achieve this goal, DOL employment offices have conducted targeted outreach to a variety of sources, including educational institutions, professional organizations, newspapers and magazines. DOL has also participated in career fairs and conferences that reach high concentrations of Hispanics, African Americans, Native Americans, Asians, and persons with disabilities.

Without the data provided by this collection, DOL does not have the ability to evaluate the effectiveness of any of these targeted recruiting strategies because collection of racial and national origin information only occurs at the point of hiring. DOL needs to collect data on the pools of applicants which result from the various targeted recruitment strategies listed above. After the certification and selection process has been completed, it is necessary to cross-reference the data collected with the outcome of the qualifications review in order to evaluate the quality of applicants from various recruitment sources. With the information from this collection, DOL can adjust and redirect its targeted recruitment to achieve the best result. DOL will also be able to respond to requests for information received from the Office of Personnel Management (OPM) in the course of OPM evaluation and oversight activities.

II. Desired Focus of Comments

The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• enhance the quality, utility, and clarity of the information to be collected; and

• minimize the burden of the collection of information on those who are to respond, for example, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

This notice requests an extension of the current Office of Management and Budget approval of the Applicant Background Questionnaire. Extension is necessary to continue to evaluate the effectiveness of agency recruitment programs in attracting applicants from under-represented sectors of the population.

Type of Review: Extension of a currently approved collection.

Agency: U.S. Department of Labor.

Title: Applicant Background Questionnaire.

OMB Number: 1225–0072.

Affected Public: Applicants for positions recruited in the Department of Labor.

Total Respondents: 3000.

Frequency: one time per respondent.

Total Responses: 3000.

Average Time per Response: 3 minutes.

Estimated Total Burden Hours: 150 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $78.82.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: April 6, 2005.

Daliza Salas,

Director of Human Resources.

[FR Doc. 05–7490 Filed 4–13–05; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

April 8, 2005.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Ira Mills on 202–693–4122 (this is not a toll-free number) or e-mail: *mills.ira@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL, Office of Management and Budget, Room 10235, Washington, DC 20503; 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration.

Type of Review: Extension of a currently approved collection.

Title: Workforce Flexibility (Work-Flex) Program.

OMB Number: 1205–0432.

Frequency: Quarterly; and annually.

Affected Public: State, local, or tribal government.

Number of Respondents: 5.

Number of Annual Responses: 25.

Burden Estimates:

Form/activity	Total respondents	Frequency	Total responses	Average time per response (in hours)	Burden hours
State Plan	5	Annually	5	160	800
Quarterly Report	5	Quarterly	20	8	160
Totals			25		960

Total Burden Hours: 960.

Total annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: Governors may request waiver authority from the Secretary of Labor to waive certain provisions of the Workforce Investment Act Title I programs. Applications are submitted to the ETA National Office on behalf of states and local areas to implement reforms of State Workforce Investment systems.

Ira L. Mills,

Departmental Clearance Officer/Team Leader.

[FR Doc. 05–7492 Filed 4–13–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

April 8, 2005.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Ira Mills on 202–693–4122 (this is not a toll-free number) or e-mail: *mills.ira@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL, Office of Management and Budget, Room 10235, Washington, DC 20503 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration.

Type of Review: Extension of a currently approved collection.

Title: Unemployment Insurance (UI) State Quality Service Plan.

OMB Number: 1205–0132.

Frequency: Quarterly; and Annually.

Affected Public: State, local, or tribal government.

Number of Respondents: 53.

Number of Annual Responses: 583.

Estimated Time per Response: 3.14 hours.

Total Burden Hours: 1829.

Total annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The State Quality Service Plan represents an approach to the unemployment insurance performance management and planning process that allows for an exchange of information between the federal and state partners to enhance the ability of the program to reflect the joint commitment to performance excellence and client centered services.

Ira L. Mills,

Departmental Clearance Officer/Team Leader.

[FR Doc. 05–7493 Filed 4–13–05; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Privacy Act of 1974; Notice of Amendment to System of Records

AGENCY: Institute of Museum and Library Services (IMLS), National Foundation on the Arts and the Humanities.

ACTION: Notice of amendment to system of records.

SUMMARY: The Institute of Museum and Library Services (IMLS), is publishing an amendment of its systems of records with descriptions of the systems and the ways they are maintained, as required by the Privacy Act of 1974, 5 U.S.C. 552(a)(e)(4). This notice clarifies the appropriate systems managers, thus enabling individuals who wish to access information maintained in IMLS systems to make accurate and specific requests for such information.

EFFECTIVE DATE: The amended system notice is effective upon date of publication.

FOR FURTHER INFORMATION CONTACT: Nancy E. Weiss, General Counsel, or Rebecca W. Danvers, Director of Research and Technology, Institute for Museum and Library Services, 1100 Pennsylvania Avenue, NW., Room 802, Washington, DC 20506; by telefax at (202) 606–1077; or by electronic mail at *info@imls.gov.*

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 552a(e)(4), IMLS today is publishing an amended notice of the existence and character of its systems of records in order to make available in one place in the **Federal Register** the most up-to-date information regarding these systems.

Statement of General Routine Uses

The following general routine uses are incorporated by reference into each system of records set forth herein, unless specifically limited in the system description.

1. A record may be disclosed as a routine use to a Member of Congress or his or her staff, when the Member of Congress or his or her staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

2. A record may be disclosed as a routine use to designated officers and employees of other agencies and departments of the Federal government having an interest in the subject individual for employment purposes (including the hiring or retention of any employee; the issuance of a security clearance; the letting of a contract; or the issuance of a license, grant, or other benefits by the requesting agency) to the extent that the information is relevant and necessary to the requesting agency's decision on the matter involved.

3. In the event that a record in a system of records maintained by IMLS indicates, either by itself or in combination with other information in IMLS' possession, a violation or potential violation of the law (whether civil, criminal, or regulatory in nature, and whether arising by statute or by regulation, rule, or order issued pursuant thereto), that record may be referred, as a routine use, to the appropriate agency, whether Federal, State, local, or foreign, charged with investigating or prosecuting such violation, or charged with enforcing or implementing the statue, rule, regulation, or order issued pursuant

thereto. Such referral shall be deemed to authorize: (1) Any and all appropriate and necessary uses of such records in a court of law or before an administrative board or hearing; and (2) Such other interagency referrals as may be necessary to carry out the receiving agencies' assigned law enforcement duties.

4. The names, Social Security numbers, home addresses, dates of birth, dates of hire, quarterly earnings, employer identifying information, and State of hire of employees may be disclosed as a routine use to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, as follows:

(a) For use in the Federal Parent Locator System (FPLS) and the Federal Tax Offset System for the purpose of locating individuals to establish paternity, establishing and modifying orders of child support, identifying sources of income, and for other child support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193);

(b) For release to the Social Security Administration for the purpose of verifying Social Security numbers in connection with the operation of FPLS; and

(c) For release to the U.S. Department of the Treasury (Treasury) for the purpose of payroll, savings bonds, and other deductions; administering the Earned Income Tax Credit Program (section 32, Internal Revenue Code of 1986); and verifying a claim with respect to employment on a tax return, as required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193);

5. A record may be disclosed as a routine use in the course of presenting evidence to a court, magistrate, or administrative tribunal of appropriate jurisdiction, and such disclosure may include disclosures to opposing counsel in the course of settlement negotiations.

6. Information from any system of records may be used as a data source for management information, for the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel management functions or manpower studies. Information also may be disclosed to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act.

7. A record may be disclosed as a routine use to a contractor, expert, or consultant of IMLS (or an office within IMLS) when the purpose of the release is to perform a survey, audit, or other review of IMLS' procedures and operations.

8. A record from any system of records may be disclosed as a routine use to the National Archives and Records Administration as part of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

9. A record may be disclosed to a contractor, grantee, or other recipient of federal funds when the record to be released reflects serious inadequacies with the recipient's personnel, and disclosure of the record is for the purpose of permitting the recipient to effect corrective action in the government's best interest.

10. A record may be disclosed to a contractor, grantee, or other recipient of Federal funds when the recipient has incurred indebtedness to the government through its receipt of government funds, and the release of the record is for the purpose of allowing the debtor to effect collection against a third party.

11. Information in a system of records may be disclosed as a routine use to the Treasury; other Federal agencies; ''consumer reporting agencies'' (as defined in the Fair Credit Reporting Act, 15 U.S.C. 1681a(f), or the Federal Claims Collection Act of 1966, 31 U.S.C. 3701(a)(3)); or private collection contractors for the purpose of collecting a debt owed to the Federal government as provided in the regulations promulgated by IMLS at 45 CFR part 1183.

Table of Contents

This document gives notice that the following IMLS systems of records are in effect.

IMLS–1 IMLS Reviewers—Application and Award Management (AAMS)
IMLS–2 IMLS Reviewers—Paper Files
IMLS–3 IMLS Reviewers—Native American Grant Consultants
IMLS–4 Personnel/Payroll System

IMLS–1

SYSTEM NAME:

IMLS Reviewers—Application and Award Management System (AAMS)—Automated Systems.

SYSTEM LOCATION:

Office of Research and Technology, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals whom IMLS may ask or has asked to serve as application reviewers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, telephone number, telefax number, e-mail address, date of birth, identification numbers assigned by IMLS, panel assignments, and other data concerning potential and actual reviewers, including area of expertise. This system is maintained in a Microsoft Sequential Database

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Museum and Library Services Act of 2003 (20 U.S.C. 9101 *et seq.*)

PURPOSE(S):

To provide a central repository for information about experts who could be or have been called upon to review applications, and to enable staff to retrieve and manage reviewer information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Data in this system may be used for the identification of reviewers, as well as general administration of the grant review process. *See also* the list of General Routine Uses contained in the Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THIS SYSTEM:

Authorized IMLS staff use passwords to access to the database.

STORAGE:

Records in this system are maintained electronically in Microsoft Sequential databases and related automated systems.

RETRIEVABILITY:

Records in this system are retrieved by name, area of expertise, panel assignment, state and other data elements.

SAFEGUARDS:

This system is maintained in a locked computer room that can be accessed only by authorized employees of IMLS. Access to records in this system is further controlled by password, with different levels of modification rights assigned to individuals and offices at IMLS based upon their specific job functions.

RETENTION AND DISPOSAL:

Records in this system are maintained and updated on a continuing basis, as new information is received. IMLS staff

periodically will request updated information from individuals who are included as reviewers in the AAMS. Records will be removed only with the concurrence of the appropriate discipline directors.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Research and Technology; Institute of Museum and Library Services; 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

NOTIFICATION PROCEDURE:

See 45 CFR part 1115.

RECORD ACCESS PROCEDURES:

See 45 CFR part 1115.

CONTESTING RECORD PROCEDURES:

See 45 CFR part 1115.

RECORD SOURCE CATEGORIES:

Data in this system is obtained from individuals covered by the system, as well as from IMLS employees involved in the administration of grants.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

IMLS–2

SYSTEM NAME:

IMLS Reviewers—Paper Files.

SYSTEM LOCATION:

Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals whom IMLS may ask or has asked to serve as application reviewers.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system also contains information about potential and actual reviewers, including materials such as resumes, reviewer profile forms, and contracts concerning participation on panels.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Museum and Library Services Act of 2003 (20 U.S.C. 9101 *et seq.*)

PURPOSE(S):

To complement the AAMS (IMLS–1) with information well suited for maintenance in hard copy form.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Data in this system may be used for the general administration of the grant review and award process, as well as identification of reviewers and their activities in this capacity. See also the list of General Routine Uses contained in the Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are maintained in file cabinets.

RETRIEVABILITY:

Records in this system are retrieved by name.

SAFEGUARDS:

Rooms containing the records in this system are kept locked during non-working hours.

RETENTION AND DISPOSAL:

Discipline offices maintain paper files that grow as individuals, or discipline directors who are processing individuals for service as reviewers, submit resumes. Resumes and profile forms are removed from these files only when they are replaced by more recent information or when the information has been entered into the electronic system. These files may include panelist contracts, copies of which are forwarded to IMLS' Office of Administration and Budget.

SYSTEM MANAGER(S) AND ADDRESS:

Directors of the Offices of Museum Services and Library Services Discretionary Programs, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

NOTIFICATION PROCEDURE:

See 45 CFR part 1115.

RECORD ACCESS PROCEDURES:

See 45 CFR part 1115.

CONTESTING RECORD PROCEDURES:

See 45 CFR part 1115.

RECORD SOURCE CATEGORIES:

Data in this system is obtained from individuals covered by the system, as well as from IMLS employees involved in the administration of grants.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

IMLS–3

SYSTEM NAME:

IMLS Reviewers—Consultant for Native American Grant Projects.

SYSTEM LOCATION:

Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who IMLS may ask or has asked to serve as reviewers and consultants for Native American tribal libraries that seek funding for professional assistance.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, telephone number, telefax number, e-mail address, and areas of expertise.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Museum and Library Services Act of 2003 (20 U.S.C. 9101 *et seq.*)

PURPOSE(S):

To provide a central repository for information about individuals with appropriate expertise for tribal libraries which seek funding for professional assistance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Data in this system is used to identify consultants for Native American tribal libraries.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

The repository is reviewed and records updated once each year. Records for individuals no longer interested in or appropriate for the repository are removed from the electronic file.

STORAGE:

The repository is maintained electronically in a Microsoft Office Access database.

RETRIEVABILITY:

Records in this system are retrieved by name and area of expertise. Only staff in the Office of Library Services—Discretionary Programs' Native American Program can retrieve records from the database.

SAFEGUARDS:

Only authorized IMLS staff can view, add, delete, update or retrieve records in the Access database. Access to records in this system is controlled further by password to the network on which the database resides.

RETENTION AND DISPOSAL:

Records in this database are maintained and updated on an annual basis as new information is received by the program. IMLS staff request updated information from individuals in the database.

SYSTEM MANAGER(S) AND ADDRESS:

Program Officer for the Native American Library Services, Office of Library Services, Discretionary Programs, Institute of Museum and

Library Services; 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

NOTIFICATION PROCEDURE:

See 45 CFR part 1115.

RECORD ACCESS PROCEDURES:

See 45 CFR part 1115.

CONTESTING RECORD PROCEDURES:

See 45 CFR part 1115.

RECORD SOURCE CATEGORIES:

Data in this system is obtained from individuals covered by the system, as well as from IMLS employees and other individuals referring potential consultants.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

IMLS–4

SYSTEM NAME:

Payroll/Personnel System.

SYSTEM LOCATION:

Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of IMLS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Payroll and personnel information, such as time and attendance data, statements of earnings and leave, training data, wage and tax statements, and payroll and personnel transactions. This system includes data that also is maintained in IMLS' official personnel folders, which are managed in accordance with Office of Personnel Management (OPM) regulations. The OPM has given notice of its system of records covering official personnel folders in OPM/GOVT–1.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Museum and Library Services Act of 2003 (20 U.S.C. 9010 *et seq.*); Federal Personnel Manual and Treasury Fiscal Requirements Manual.

PURPOSE(S):

To document IMLS' personnel processes and to calculate and process payroll.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Data in this system may be transmitted to the U.S. Department of Agriculture and Treasury, and employee-designated financial institutions to effect issuance of paychecks to employees and distributions of pay according to employee directions for authorized purposes. Data in this system also may be used to prepare payroll, meet government record keeping and reporting requirements, and retrieve and apply payroll and personnel information as required for agency needs. See also the list of General and Routine Uses contained in the Preliminary Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic records in this system are maintained off-site by the Department of Agriculture's National Finance Center (NFC). Paper records generated through the NFC are maintained in file cabinets by the Offices of Administration and Budget/Human Resources after arriving at IMLS. Discipline officers also may use file cabinets to maintain paper records concerning performance reviews and other personnel actions in their divisions.

RETRIEVABILITY:

Records in this system are retrieve by name, Social Security number, or date of birth.

SAFEGUARDS:

Access to the electronic records in this system is controlled by password on the limited number of IMLS computers that can be used to draw information from the NFC. File cabinets containing the paper records in this system either are kept locked during non-business hours, or are located in rooms that are kept locked during non-business hours.

RETENTION AND DISPOSAL:

The Human Resources Officer maintains paper records in this system in accordance with the General Services Administration's General Records Schedule 2. Division offices may maintain paper records concerning performance reviews and other personnel actions in their divisions for the duration of an individual's employment with IMLS.

SYSTEM MANAGER(S) AND ADDRESS:

Human Resources Officer, Institute of Museum and Library Services; 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

NOTIFICATION PROCEDURE:

See 45 CFR part 1115.

RECORD ACCESS PROCEDURES:

See 45 CFR part 1115.

CONTESTING RECORD PROCEDURES.

See 45 CFR part 1115.

RECORD SOURCE CATEGORIES:

Data in this system is obtained from individuals covered by the system, as well as from IMLS employees involved in the administration of personnel and payroll processes.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Nancy E. Weiss,

General Counsel.

[FR Doc. 05–7498 Filed 4–13–05; 8:45 am]

BILLING CODE 7036–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR part 32—Specific Domestic Licenses to Manufacture or Transfer Certain Items Containing Byproduct Material.

2. *Current OMB approval number:* 3150–0001.

3. *How often the collection is required:* There is a one-time submittal of information to receive a license. Renewal applications are submitted every 10 years. In addition, recordkeeping must be performed on an on-going basis, and reports of transfer of byproduct material must be reported every 5 years, and in a few cases, every year.

4. *Who is required or asked to report:* All specific licensees who manufacture or initially transfer items containing byproduct material for sale or distribution to general licensees or persons exempt from licensing.

5. *The estimated number of annual respondents:* 972 (275 NRC licensees and 700 Agreement State licensees).

6. *The number of hours needed annually to complete the requirement or request:* 135,741 (36,623 hours for NRC licensees [5,225 hours reporting, or an

average of 8 hours per response + 31,398 hours recordkeeping, or 114 hours per recordkeeper] and 99,118 hours for Agreement State licensees [20,863 hours reporting, or an average of 8.3 hours per response + 78,255 hours recordkeeping, or an average of 112 hours per recordkeeper]).

7. *Abstract:* 10 CFR part 32 establishes requirements for specific licenses for the introduction of byproduct material into products or materials and transfer of the products or materials to general licensees or persons exempt from licensing. It also prescribes requirements governing holders of the specific licenses. Some of the requirements are for information which must be submitted in an application for a specific license, records which must be kept, reports which must be submitted, and information which must be forwarded to general licensees and persons exempt from licensing. In addition, 10 CFR part 32 prescribes requirements for the issuance of certificates of registration (concerning radiation safety information about a product) to manufacturers or initial transferors of sealed sources and devices. Submission or retention of the information is mandatory for persons subject to the 10 CFR part 32 requirements. The information is used by NRC to make licensing and other regulatory determinations concerning the use of radioactive byproduct material in products and devices.

Submit, by June 13, 2005, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC World Wide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC Home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–5 F53, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail to *INFOCOLLECTS@NRC.GOV*.

Dated at Rockville, Maryland, this 7th day of April, 2005.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer.

[FR Doc. E5–1752 Filed 4–13–05; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 15c2–11; SEC File No. 270–196; OMB Control No. 3235–0202.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

The Commission adopted Rule 15c2–11 [1] (Rule 15c2–11 or Rule) in 1971 under the Securities Exchange Act of 1934 [2] (Exchange Act) to regulate the initiation or resumption of quotations in a quotation medium by a broker-dealer for over-the-counter (OTC) securities. The Rule was designed primarily to prevent certain manipulative and fraudulent trading schemes that had arisen in connection with the distribution and trading of unregistered securities issued by shell companies or other companies having outstanding but infrequently traded securities. Subject to certain exceptions, the Rule prohibits brokers-dealers from publishing a quotation for a security, or submitting a quotation for publication, in a quotation medium unless they have reviewed specified information concerning the security and the issuer.

The information required to be reviewed is submitted by the respondents to the National Association of Securities Dealers Regulation (''NASDR'') on Form 211 for review and approval.

According to NASDR estimates, we believe that approximately 1,200 new applications from broker-dealers to initiate or resume publication of covered OTC securities in the OTC Bulletin Board and/or the Pink Sheets or other quotation mediums were received by the NASDR for the 2004 calendar year. We estimate that 80% of the covered OTC securities were issued by reporting issuers, while the other 20% were issued by non-reporting issuers. We believe that it will take a broker-dealer about 4 hours to collect, review, record, retain, and supply to the NASDR the information pertaining to a reporting issuer, and about 8 hours to collect, review, record, retain, and supply to the NASDR the information pertaining to a non-reporting issuer.

We therefore estimate that broker-dealers who are the first to publish the first quote for a covered OTC security of a reporting issuer will require 3,840 hours ($1{,}200 \times 80\% \times 4$) to collect, review, record, retain, and supply to the NASDR the information required by the Rule. We estimate that the broker-dealers who are the first to publish the first quote for a covered OTC security of a non-reporting issuer will require 1,920 hours ($1{,}200 \times 20\% \times 8$) to collect, review, record, retain, and supply to the NASDR the information required by the Rule. We therefore estimate the total annual burden hours for the first broker-dealers to be 5,760 hours (3,840 + 1,920). The Commission estimates that the annual cost to comply with Rule 15c2–11 is $115,200 ($20 per hour times 5,760 hours).

Written 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

[1] 17 CFR 240.15c2–11.

[2] 15 U.S.C. 78a *et seq.*

Dated: April 6, 2005.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–1760 Filed 4–13–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26831; File No. 812–13129]

John Hancock Life Insurance Company, et al.

April 11, 2005.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order pursuant to Section 26(c) of the Investment Company Act of 1940 (the ''Act'') approving certain substitutions of securities.

DATES: *Filing Date:* The application was filed on October 15, 2004 and amended on February 9, 2005 and on April 11, 2005.

APPLICANTS: John Hancock Life Insurance Company (''John Hancock''), John Hancock Variable Life Insurance Company (''JHVLICO''), and the following separate accounts of John Hancock and JHVLICO (''Separate Accounts''): John Hancock Variable Life Account S (''Account S''), John Hancock Variable Life Account UV (''Account UV''), John Hancock Variable Life Account U (''Account U''), John Hancock Variable Annuity Account JF (''Account JF''), John Hancock Variable Annuity Account I (''Account I''), and John Hancock Variable Annuity Account H (''Account H'') (collectively, ''Applicants'').

SUMMARY OF APPLICATION: Applicants request an order to permit certain unit investment trusts to substitute shares of the following series of John Hancock Trust (''JHT'') (formerly, Manufacturers Investment Trust): (a) Shares of JHT 500 Index Trust B for shares of each of the following series of unaffiliated registered investment companies: AIM V.I. Premier Equity Fund (Series I and Series II Shares) of AIM Variable Insurance Funds, AllianceBernstein Growth and Income Portfolio (Class B Shares) of AllianceBernstein Variable Products Series Fund, Inc., AllianceBernstein Premier Growth Portfolio (Class B Shares) of AllianceBernstein Variable Products Series Fund, Inc., Fidelity VIP Growth Portfolio (Service Class and Service Class 2 Shares) of Variable Insurance Products Fund, MFS Investors Growth Stock Series (Initial Class) of MFS Variable Insurance Trust, and Growth and Income Portfolio (Class VC Shares) of Lord Abbett Series Fund, Inc.; (b) shares of JHT Total Stock Market Index Trust for shares of each of the following series of unaffiliated registered investment companies: Fidelity VIP Contrafund Portfolio (Service Class Shares) of Variable Insurance Products Fund II, MFS Research Series (Initial Class and Service Class) of MFS Variable Insurance Trust, Putnam VT Investors Fund (Class 1B Shares) of Putnam Variable Trust, Oppenheimer Capital Appreciation Fund/VA (Service Class Shares) of Oppenheimer Variable Account Funds, Mutual Shares Securities Fund (Class 2 Shares) of Franklin Templeton Variable Insurance Products Trust, Global Technology Portfolio (Service Shares) of Janus Aspen Series; (c) shares of JHT Mid Cap Index Trust for shares of each of the following series of unaffiliated registered investment companies: Mid Cap Value Portfolio (Class VC Shares) of Lord Abbett Series Fund, Inc., Putnam VT Vista Fund (Class IB Shares) of Putnam Variable Trust, MFS Mid Cap Growth Series (Service Class Shares) of MFS Variable Insurance Trust, Mid Cap Stock Portfolio (Service Class Shares) of Dreyfus Investment Portfolios, and AIM V.I. Capital Development Fund (Series I and Series II shares) of AIM Variable Insurance Funds; (d) shares of JHT Small Cap Index Trust for shares of each of the following series of unaffiliated registered investment companies: Delaware VIP Small Cap Value Series (Service Class Shares) of Delaware VIP Trust, Emerging Leaders Portfolio (Service Class Shares) of Dreyfus Investment Portfolios, Franklin Small Cap Fund (Class 2 Shares) of Franklin Templeton Variable Insurance Products Trust, Delaware VIP Trend Series (Service Class Shares) of Delaware VIP Trust, MFS New Discovery Series (Initial Class and Service Class Shares) of MFS Variable Insurance Trust; (e) shares of JHT International Equity Index Trust B for shares of each of the following series of unaffiliated registered investment companies: Fidelity VIP Overseas Portfolio (Service Class and Service Class 2 Shares) of Variable Insurance Products Fund, Worldwide Growth Portfolio (Service Shares) of Janus Aspen Series, and Putnam VT International Equity Fund (Class 1B Shares) of Putnam Variable Trust; (f) shares of JHT U.S. Government Securities Trust for shares of the following series of an unaffiliated registered investment company: Putnam VT American Government Income Fund (Class 1B Shares) of Putnam Variable Trust; and (g) shares of JHT Bond Index Trust B for shares of the following series of an unaffiliated registered investment company: Franklin U.S. Government Fund (Class 2 Shares) of Franklin Templeton Variable Insurance Products Trust.

HEARING OF NOTIFICATION: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission 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 April 29, 2005, and should be accompanied by proof of service on 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 may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants: Raymond A. O'Hara III, Blazzard, Grodd & Hasenauer, P.C., 943 Post Road East, Westport, CT 06880 and Arnold R. Bergman, John Hancock Life Insurance Company, 601 Congress Street, 11th Floor, Boston, MA 02210–2801.

FOR FURTHER INFORMATION CONTACT: Harry Eisenstein, Senior Counsel, at (202) 551–6764 or Zandra Bailes, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 551–6795.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW., Washington, DC 20549, (202) 942–8090.

Applicants' Representations

1. John Hancock is a Massachusetts stock life insurance company. On February 1, 2000, John Hancock Mutual Life Insurance Company converted to a stock company from a mutual company and changed its name to its present name. As part of the demutualization process, John Hancock became a subsidiary of John Hancock Financial Services, Inc., a newly-formed publicly-traded corporation. In April 2004, John Hancock Financial Services, Inc. was merged with a subsidiary of Manulife Financial Corporation, a publicly-traded corporation organized under the laws of Canada. The merger was effected pursuant to an Agreement and Plan of Merger dated as of September 28, 2003.

As a consequence of the merger, John Hancock's ultimate parent is now Manulife Financial Corporation. John Hancock provides a broad range of insurance and investment products, and investment management and advisory services.

2. JHVLICO is a wholly-owned subsidiary of John Hancock and is organized under the laws of Massachusetts. JHVLICO is a stock life insurance company, which was organized in 1979. Its primary business is life insurance and annuities. John Hancock and JHVLICO are referred to collectively herein as the ''Insurance Companies.''

3. Account S is a separate investment account established by JHVLICO under Massachusetts law to fund variable life insurance policies issued by JHVLICO. Account S is registered under the Act as a unit investment trust (File No. 811–7782). The variable life insurance policies funded by Account S that are affected by the application are as follows: Medallion Executive Variable Life (''MEVL''), MEVL II, and MEVL III, interests under all of which are also registered under the Securities Act of 1933 (the ''1933 Act'') (File No. 333–425); Majestic Variable Universal Life (''MVUL''), and MVUL 98, interests under both of which are also registered under the 1933 Act (File No. 333–15075); Variable Master Plan Plus (''VCOLI''), interests under which are also registered under the 1933 Act (File No. 33–79108); Majestic VCOLI (''MVCOLI''), interests under which are also registered under the 1933 Act (File No. 333–60274); and Variable Estate Protection (''VEP''), Majestic Variable Estate Protection (''MVEP''), MVEP98, and VEP Plus, interests under all of which also are registered under the 1933 Act (File No. 33–64366); VEP Edge, interests under which are also registered under the 1933 Act (File No. 33–55172); and Performance Executive Variable Life (''PEVL''), interests under which are also registered under the 1933 Act (File No. 333–111385).

4. Account UV is a separate investment account established by John Hancock under Massachusetts law to fund variable life insurance policies issued by John Hancock. Account UV is registered under the Act as a unit investment trust (File No. 811–7766). The variable life insurance policies funded by Account UV that are affected by the application are as follows: VEP (NY), interests under which are also registered under the 1933 Act (File No. 33–64364); VEP Plus–NY, interests under which are also registered under the 1933 Act (File No. 333–73082); VEP Edge–NY, interests under which are also registered under the 1933 Act (File No. 333–73072); MVUL98–NY, interests under which are also registered under the 1933 Act (File No. 333–42378); MVEP98–NY, interests under which are also registered under the 1933 Act (File No. 333–73444); MEVL III–NY, interests under which are also registered under the 1933 Act (File No. 333–63654); MVL Plus–NY, interests under which are also registered under the 1933 Act (File No. 70734); MVL Edge–NY and MVL Edge II–NY, interests under both of which are also registered under the 1933 Act (File No. 333–70746); VCOLI–NY, interests under which are also registered under the 1933 Act (File No. 333–67744); MVCOLI–NY, interests under which are registered on Form N–6 under the 1933 Act (File No. 333–91448); and PEVL–NY, interests under which are registered on Form N–6 under the 1933 Act (File No. 333–111383).

5. Account U is a separate investment account established by JHVLICO under Massachusetts law to fund variable life insurance policies issued by JHVLICO. Account U is registered under the Act as a unit investment trust (File No. 811–3068). The Account U variable life insurance policies affected by the application are as follows: MVL Plus, interests under which are also registered under the 1933 Act (File Nos. 33–76660), MVL Edge and MVL–Edge II, interests under both of which are also registered under the 1933 Act (File No. 333–52128); and eVariable Life, interests under which are also registered under the 1933 Act (File No. 333–50312).

6. Account JF is a separate investment account established by JHVLICO under Massachusetts law to fund variable annuity contracts issued by JHVLICO. Account JF is registered under the Act as a unit investment trust (File No. 811–07451). The Account JF variable annuity contracts affected by the application are as follows: Revolution Access, Revolution Extra, Revolution Standard, and Revolution Value, interests under all of which are also registered under the 1933 Act (File Nos. 333–84769, 333–84767, 333–84763, and 333–81127, respectively).

7. Account I is a separate investment account established by JHVLICO under Massachusetts law to fund variable annuity contracts issued by JHVLICO. Account I is registered under the Act as a unit investment trust (File No. 811–8696). The only Account I variable life insurance policy affected by the application is eVariable Annuity, interests under which are also registered under the 1933 Act (File No. 333–16949).

8. Account H is a separate investment account established by John Hancock under Massachusetts law to fund variable annuity contracts issued by John Hancock. Account H is registered under the Act as a unit investment trust (File No. 811–07711). The Account H contracts affected by the application are as follows: Revolution Access, Revolution Extra and Revolution Extra II, Revolution Standard, and Revolution Value, Revolution Value II and Wealth Builder, interests under all of which are also registered under the 1933 Act (File Nos. 333–84771, 333–84783, 333–84765 and 333–81103, respectively).

9. JHT was originally organized on August 3, 1984 as a Maryland corporation. Effective December 31, 1988, JHT was reorganized as a Massachusetts business trust. JHT is registered under the Act as an open-end management investment company of the series type, and its securities are registered under the 1933 Act. JHT currently offers 79 series. The substitutions will involve seven series of JHT, three of which—the JHT 500 Index Trust B, the JHT International Equity Index Trust B and the JHT Bond Index Trust B—are newly-organized funds that will first issue shares on April 29, 2005, pursuant to a reorganization that will combine shares of certain series of John Hancock Variable Series Trust I into certain existing and certain newly-organized series of JHT.

10. Each of the variable life and variable annuity policies identified above (''Contracts'') issued by the Separate Accounts permits its owners to allocate the Contract's accumulated value among numerous available subaccounts, each of which invests in a different investment portfolio (''Fund'') of an underlying mutual fund. Each of the Contracts has at least 32 different subaccounts (and corresponding funds) that are currently available for this purpose.

11. Each Contract permits its owner to transfer the Contract's accumulated value from one subaccount to another subaccount of the issuing Separate Account at any time, subject to certain potential restrictions and charges described below. No sales charge applies to any such transfer of accumulated value among subaccounts.

12. The only other charges on such transfers are, under certain Contracts, flat dollar amounts that may be assessed to help defray the administrative costs of effecting these transfers. In some cases, the Contracts permit up to a specified number of free transfers in a Contract year, before any such transfer charge may be imposed. Also, under

certain Contracts, no transfer is permitted if it would result in the Contract being invested in more than 18 investment options over the life of the Contract or, after the annuity payment commencement date, in more than four investment options at any one time.

13. To the extent that the Contracts contain restrictions or limitations on an owner's right to transfer, such restrictions and limitations will be suspended in connection with the transfers as described in further detail below.

14. John Hancock or JHVLICO, as applicable, reserves the right to make certain changes, including the right to substitute, for the shares held in any subaccount, the shares of another Fund or the shares of another underlying mutual fund, as stated in each prospectus for the Contracts contained in the applicable Form N–6 or Form N–4 registration statement.

The Proposed Substitutions

15. Each Insurance Company, on its behalf and on behalf of the Separate Accounts, proposes to make certain substitutions of shares of twenty-seven funds (the ''Existing Funds'') held in subaccounts of its respective Separate Accounts for certain series (the ''Replacement Funds'') of JHT. The proposed substitutions are as follows:

(1) Shares of JHT 500 Index Trust B for shares of each of the following series of unaffiliated registered investment companies:

(a) AIM V.I. Premier Equity Fund (Series I and Series II Shares) of AIM Variable Insurance Funds.

(b) AllianceBernstein Growth and Income Portfolio (Class B Shares) of AllianceBernstein Variable Products Series Fund, Inc.

(c) AllianceBernstein Premier Growth Portfolio (Class B Shares) of AllianceBernstein Variable Products Series Fund, Inc.

(d) Fidelity VIP Growth Portfolio (Service Class and Service Class 2 Shares) of Variable Insurance Products Fund.

(e) MFS Investors Growth Stock Series (Initial Class) of MFS Variable Insurance Trust.

(f) Growth and Income Portfolio (Class VC Shares) of Lord Abbett Series Fund, Inc.

(2) Shares of JHT Total Stock Market Index Trust for shares of each of the following series of unaffiliated registered investment companies:

(a) Fidelity VIP Contrafund Portfolio (Service Class Shares) of Variable Insurance Products Fund II.

(b) MFS Research Series (Initial Class and Service Class) of MFS Variable Insurance Trust.

(c) Putnam VT Investors Fund (Class 1B Shares) of Putnam Variable Trust.

(d) Oppenheimer Capital Appreciation Fund/VA (Service Class Shares) of Oppenheimer Variable Account Funds.

(e) Mutual Shares Securities Fund (Class 2 Shares) of Franklin Templeton Variable Insurance Products Trust.

(f) Global Technology Portfolio (Service Shares) of Janus Aspen Series.

(3) Shares of JHT Mid Cap Index Trust for shares of each of the following series of unaffiliated registered investment companies:

(a) Mid Cap Value Portfolio (Class VC Shares) of Lord Abbett Series Fund, Inc.

(b) Putnam VT Vista Fund (Class 1B Shares) of Putnam Variable Trust.

(c) MFS Mid Cap Growth Series (Service Class Shares) of MFS Variable Insurance Trust.

(d) Mid Cap Stock Portfolio (Service Class Shares) of Dreyfus Investment Portfolios.

(e) AIM V.I. Capital Development Fund (Series I and Series II Shares) of AIM Variable Insurance Funds.

(4) Shares of JHT Small Cap Index Trust for shares of each of the following series of unaffiliated registered investment companies:

(a) Delaware VIP Small Cap Value Series (Service Class Shares) of Delaware VIP Trust.

(b) Emerging Leaders Portfolio (Service Class Shares) of Dreyfus Investment Portfolios.

(c) Franklin Small Cap Fund (Class 2 Shares) of Franklin Templeton Variable Insurance Products Trust.

(d) Delaware VIP Trend Series (Service Class Shares) of Delaware VIP Trust.

(e) MFS New Discovery Series (Initial Class and Service Class Shares) of MFS Variable Insurance Trust.

(5) Shares of JHT International Equity Index Trust B for shares of each of the following series of unaffiliated registered investment companies:

(a) Fidelity VIP Overseas Portfolio (Service Class and Service Class 2 Shares) of Variable Insurance Products Fund.

(b) Worldwide Growth Portfolio (Service Shares) of Janus Aspen Series.

(c) Putnam VT International Equity Fund (Class 1B Shares) of Putnam Variable Trust.

(6) Shares of JHT U.S. Government Securities Trust for shares of the following series of an unaffiliated registered investment company: Putnam VT American Government Income Fund (Class 1B Shares) of Putnam Variable Trust.

(7) Shares of JHT Bond Index Trust B for shares of the following series of an unaffiliated registered investment company: Franklin U.S. Government Fund (Class 2 Shares) of Franklin Templeton Variable Insurance Products Trust.

The Funds' Investment Strategies

16. Set forth below is a description of the investment objectives and principal investment policies of each Existing Fund and its corresponding Replacement Fund.

Existing fund	Replacement fund
AIM V.I. Premier Equity Fund—seeks to achieve long-term growth of capital. Income is a secondary objective. The Fund normally invests at least 80% of its net assets in equity securities. The Fund may also invest in preferred stocks and debt instruments that have prospects for growth of capital and may invest up to 25% of its total assets in foreign securities. The portfolio managers focus on undervalued equity securities.	JHT 500 Index Trust B—seeks to approximate the aggregate total return of a broad U.S. domestic equity market index. The Trust invests, under normal market conditions, at least 80% of its net assets (plus any borrowings for investment purposes) in (a) the common stocks that are included in the Standard & Poor's 500 (S&P 500) Index and (b) securities (which may or may not be included in the S&P 500 Index) that the subadviser, believes as a group will behave in a manner similar to the index.
AllianceBernstein Growth and Income Portfolio—seeks reasonable current income and reasonable opportunity for appreciation through investments primarily in dividend-paying common stocks of good quality companies. The Portfolio also may invest in fixed-income and convertible securities and in securities of foreign issuers.	JHT 500 Index Trust B.

Existing fund	Replacement fund
AllianceBernstein Premier Growth Portfolio—seeks growth of capital by pursuing aggressive investment policies. The Portfolio invests primarily in the securities of a small number of U.S. companies. The Portfolio may invest up to 20% of its total assets in foreign securities and up to 20% of its net assets in convertible securities.	JHT 500 Index Trust B.
Fidelity VIP Growth Portfolio—seeks to achieve capital appreciation. The Portfolio normally invests its assets primarily in common stocks. The Portfolio also may invest in securities of foreign issuers in addition to securities of domestic issuers.	JHT 500 Index Trust B.
MFS Investors Growth Stock Series—seeks to provide long-term growth of capital and future income rather than current income. The Series invests, under normal market conditions, at least 80% of its net assets in common stocks and related securities, such as preferred stocks, convertible securities and depository receipts. The Series also may invest in foreign securities.	JHT 500 Index Trust B.
Lord Abbett Growth and Income Portfolio—seeks long-term growth of capital and income without excessive fluctuations in market value. The Portfolio primarily invests in equity securities of large, seasoned U.S. and multinational companies. Under normal circumstances, the Portfolio will invest at least 80% of its net assets in equity securities of large companies with market capitalizations of at least $5 billion at the time of purchase.	JHT 500 Index Trust B.
Fidelity VIP Contrafund Portfolio—seeks long-term capital appreciation. The Portfolio normally invests primarily in common stocks, investing in securities of companies whose value it believes is not fully recognized by the public. The Portfolio invests in both domestic and foreign issuers and invests in either ''growth'' stocks or ''value'' stocks or both.	JHT Total Stock Market Index Trust—seeks to approximate the aggregate total return of a broad U.S. domestic equity market index. The Trust invests, under normal market conditions, at least 80% of its net assets (plus any borrowings for investment purposes) in (a) the common stocks that are included in the Dow Jones Wilshire 5000 Index and (b) securities (which may or may not be included in the Dow Jones Wilshire 5000 Index) that MFC Global (U.S.A.), the subadviser, believes as a group will behave in a manner similar to the index.
MFS Research Series—seeks to provide long-term growth of capital and future income. The Series invests at least 80% of its net assets in common stocks and related securities. The Series may invest in companies of any size and in foreign securities, including emerging market securities.	JHT Total Stock Market Index Trust.
Putnam VT Investors Fund—seeks long-term growth of capital and any increased income that results from this growth. The Fund invests mainly in common stocks of U.S. companies which the adviser believes have favorable investment potential. The Fund invests mainly in large companies.	JHT Total Stock Market Index Trust.
Oppenheimer Capital Appreciation Fund/VA—seeks capital appreciation by investing in securities of well-known, established companies. The Fund invests mainly in common stocks of ''growth companies. The Fund currently focuses mainly on mid-cap and large-cap domestic companies, but buys foreign stocks as well.	JHT Total Stock Market Index Trust.
Mutual Shares Securities Fund—seeks capital appreciation. Income is a secondary goal. Under normal market conditions, the Fund invests mainly in equity securities believed to be undervalued. The Fund invests substantially in medium and large capitalization companies with market capitalization values greater than $1.5 billion. The Fund expects to invest significantly in foreign investments. The Fund also invests in risk arbitrage securities and distressed companies.	JHT Total Stock Market Index Trust.
Global Technology Portfolio—seeks long-term growth of capital. The Portfolio invests, under normal circumstances, at least 80% of its net assets in securities of companies that the portfolio manager believes will benefit significantly from advances or improvements in technology. The Portfolio invests primarily in equity securities of U.S. and foreign companies. The Portfolio may invest without limit in foreign equity and debt securities. The Portfolio will limit its investment in high-yield/high-risk bonds to less than 35% of its net assets.	JHT Total Stock Market Index Trust.
Lord Abbett Mid-Cap Value Portfolio—seeks capital appreciation through investments, primarily in equity securities, which are believed to be undervalued in the marketplace. The Portfolio normally invests at least 80% of its net assets, plus the amount of borrowings for any investment purposes, in equity securities of mid-sized companies meaning those with a market capitalization of roughly $500 million to $10 billion, at time of purchase. The Portfolio may invest in various equity securities.	JHT Mid Cap Index Trust—seeks to approximate the aggregate total return of a mid cap U.S. domestic equity index. The Trust invests, under normal market conditions, at least 80% of its net assets (plus any borrowings for investment purposes) in (a) the common stocks that are included in the Standard & Poor's 400 (S&P 400) Index and (b) securities (which may or may not be included in the S&P 400 Index) that MFC Global (U.S.A.), the subadviser, believes as a group will behave in a manner similar to the index. There are no limitations on the amount of fixed income securities in which the Trust may invest.

Existing fund	Replacement fund
Putnam VT Vista Fund— seeks capital appreciation. The Fund invests mainly in common stocks of U.S. companies with a focus on growth stocks. The Fund invests mainly in midsized companies.	JHT Mid Cap Index Trust.
MFS Mid Cap Growth Series—seeks long-term growth of capital. The Series invests, under normal market conditions, at least 80% of its net assets in common stocks and related securities of companies with medium market capitalization (at least $250 million. The Series may invest in foreign securities.	JHT Mid Cap Index Trust.
Mid Cap Stock Portfolio—seeks investment results that are greater than the total return performance of publicly traded common stocks of medium-size domestic companies in the aggregate, as represented by the S&P 400. The Portfolio normally invests at least 80% of its assets in stocks of midsize companies.	JHT Mid Cap Index Trust.
AIM V.I. Capital Development Fund—seeks long-term growth of capital. The Fund invests primarily in securities, including common stocks, convertible securities and bonds, of small- and medium-sized companies. The Fund may also invest up to 25% of its total assets in foreign securities. There are no limitations on the amount of fixed income securities in which the Trust may invest.	JHT Mid Cap Index Trust.
Delaware VIP Small Cap Value Series—seeks capital appreciation. The series will invest, under normal circumstances, at least 80% of its net assets in investments of small capitalization companies (which it currently defines as those having a market capitalization of generally less than $2 billion at the time of purchase).	JHT Small Cap Index Trust—seeks to approximate the aggregate total return of a small cap U.S. domestic equity market index. The Trust invests, under normal market conditions, at least 80% of its net assets (plus any borrowings for investment purposes) in (a) the common stocks that are included in the Russell 2000 Index and (b) securities (which may or may not be included in the Russell 2000 Index) that MFC Global (U.S.A.), the subadviser, believes as a group will behave in a manner similar to the index.
Emerging Leaders Portfolio—seeks capital growth. The Portfolio normally invests at least 80% of its assets in stocks of companies the adviser believes to be ''emerging leaders.'' The Portfolio primarily invests in companies with market capitalizations of less than $2 billion at the time of purchase. The Portfolio may invest up to 25% of its assets in foreign securities.	JHT Small Cap Index Trust.
Franklin Small Cap Fund—seeks long-term capital growth. Under normal market conditions, the Fund invests at least 80% of its net assets in investments of small capitalization (small-cap) companies, *i.e.*, those with market capitalizations not exceeding (a) $1.5 billion or (b) the highest market capitalization value in the Russell 2000 Index, whichever is greater at time of purchase. The Fund may invest up to 20% of its net assets in investments of larger companies.	JHT Small Cap Index Trust.
Delaware VIP Trend Series—seeks long-term capital appreciation. The Series invests primarily in stocks of small, growth-oriented or emerging companies.	JHT Small Cap Index Trust.
MFS New Discovery Series—seeks capital appreciation. The Series invests, under normal market conditions, at least 65% of its net assets in equity securities of emerging growth companies. The Series generally focuses on smaller capitalization emerging growth companies that are early in their life cycle. The Series' adviser defines small cap companies as those with market capitalization within the range of market capitalizations in the Russell 2000 Stock Index at the time of investment. The Series may also invest in foreign securities.	JHT Small Cap Index Trust.
Fidelity VIP Overseas Portfolio—seeks long-term growth of capital. The Portfolio's adviser normally invests at least 80% of the Portfolio's assets in non-U.S. securities. The Portfolio normally invests primarily in common stocks.	JHT International Equity Index Trust B—seeks to track the performance of a broad-based equity index of foreign companies primarily in developed countries and, to a lesser extent, in emerging market countries. The Trust invests, under normal market conditions, at least 80% of its assets in securities listed in the Morgan Stanley Capital International All Country World Excluding U.S. Index.
Worldwide Growth Portfolio—seeks long-term growth of capital in a manner consistent with the preservation of capital. The Portfolio invests primarily in common stocks of companies of any size located throughout the world. The Portfolio normally invests in issuers from at least five different countries, including the U.S. The Portfolio may invest without limit in foreign equity and debt securities, but will limit its investment in high-yield/high-risk bonds to less than 35% of its net assets.	JHT International Equity Index Trust B
Putnam VT International Equity Fund—seeks capital appreciation, by investing mainly in common stocks of companies outside the U.S. Under normal circumstances, at least 80% of the Fund's assets will be invested in equity investments. The Fund invests mainly in midsized and large companies. The Fund may invest in companies located in developing (emerging) markets.	JHT International Equity Index Trust B.

Existing fund	Replacement fund
Franklin U.S. Government Fund—seeks income. Under normal market conditions, the Fund invests at least 80% of its net assets in U.S. government securities. The Fund currently invests primarily in fixed and variable rate mortgage-backed securities, a substantial portion of which is in securities issued by the Government National Mortgage Association. The Fund also may invest in U.S. government securities backed by other types of assets as well as in U.S. Treasury bonds, notes and bills, and securities issued by U.S. government agencies or authorities.	JHT Bond Index Trust B—seeks to track the performance of the Lehman Brothers Aggregate Bond Index (''Lehman Index''), which broadly represents the U.S. investment grade bond market. The Trust is an intermediate term bond fund of high and medium credit quality which normally will invest more than 80% of its assets in securities listed in the Lehman Index. The Lehman Index consists of dollar denominated, fixed rate, investment grade debt securities with maturities generally greater than one year and outstanding par values of at least $200 million. The Lehman Index includes U.S. Treasury and agency securities; asset-backed and mortgage-backed securities; corporate bonds, both U.S. and foreign (if dollar denominated); and foreign government and agency securities (if dollar denominated).
Putnam VT American Government Income Fund—seeks high current income with preservation of capital as its secondary objective. Under normal circumstances, the Fund invests at least 80% of its net assets in U.S. government securities. The Fund invests mainly in intermediate-to long-term bonds that are obligations of the U.S. government, its agencies and instrumentalities and are backed by the full faith and credit of the U.S., or by only the credit of a federal agency or government sponsored entity. The Fund may also make other types of investments, such as investments in derivatives.	JHT U.S. Government Securities Trust—seeks to obtain a high level of current income consistent with preservation of capital and maintenance of liquidity. The Trust invests a substantial portion of its assets in debt obligations and mortgage-backed securities issued or guaranteed by the U.S. government, its agencies or instrumentalities and derivative securities such as collateralized mortgage obligations backed by such securities and futures contracts. The Trust may also invest a portion of its assets in investment grade corporate bonds.

17. John Hancock Investment Management Services, LLC (''JHIMS'') is the Adviser to all of the Replacement Funds. MFC Global Investment Management (U.S.A.) Limited is the subadviser to the JHT 500 Index Trust B, JHT Total Stock Market Index Trust, JHT Mid Cap Index Trust and JHT Small Cap Index Trust. SSgA Funds Management, Inc. is the subadviser to the JHT International Equity Index Trust B. Declaration Management and Research LLC is the subadviser to the JHT Bond Index Trust B. Salomon Brothers Asset Management Inc., is the subadviser to the JHT U.S. Government Securities Trust. Currently, all of the Replacement Funds in JHT have Rule 12b–1 Plans through their Series I, II and III share classes. However, to accommodate the substitutions described herein, JHT is adding another class to each of the Replacement Funds which will have no Rule 12b–1 Plan (''NAV Class''). The NAV Class will be the only class used to accommodate the substitutions.

Funds' Financial Data

18. Comparative size and expense data for the JHT 500 Index B Fund substitutions are as follows:

(a) AIM V.I. Premier Equity Fund—JHT 500 Index Trust B

The aggregate amount of assets in the Separate Accounts allocated to the AIM V.I. Premier Equity Fund as of December 31, 2004 was approximately $89,043,959. It is estimated that the newly-created JHT 500 Index Trust B series will have at least $1,137,000,000 in assets as of April 29, 2005.

The management fees and total operating expenses of the two Funds are shown below. As discussed above, depicted below is an NAV Class for the Replacement Fund which will be created for the substitution. Expenses shown for the JHT 500 Index Trust B are based on estimates for the current fiscal year.

[In percent]

Fees and expenses	Existing Fund AIM V.I. Premier Equity Fund		Replacement Fund JHT 500 Index Trust B NAV Class
	Series I	Series II	
Management Fee	0.61	0.61	0.47
12b–1 Fee	.....	0.25	
Other Expenses	0.30	0.30	0.03
Total Expenses	0.91	1.16	0.50
Waivers	−0.01	−.01	*−0.25
Net Expenses	0.90	1.15	0.25

*Pursuant to an agreement between JHT and JHIMS, JHIMS has agreed to waive fees or reimburse expenses so that Total Expenses do not exceed the rate shown in the table above. This expense cap will remain in effect until May 1, 2006 and will terminate after that date only if JHT, without the prior written consent of JHIMS, sells shares of the fund to (or has shares of the fund held by) any person other than the insurance company separate accounts of John Hancock or any of its affiliates that are specified in the agreement.

(b) AllianceBernstein Growth and Income Portfolio—JHT 500 Index Trust B

The aggregate amount of assets in the Separate Accounts allocated to the AllianceBernstein Growth and Income Portfolio as of December 31, 2004 was approximately $2,306,677. It is estimated that the newly-created JHT 500 Index Trust B series will have at least $1,137,000,000 in assets as of April 29, 2005.

The management fees and total operating expenses of the two Funds are shown below. As discussed above, depicted below is an NAV Class for the Replacement Fund which will be created for the substitution. Expenses shown for the JHT 500 Index Trust B are based on estimates for the current fiscal year.

[In percent]

Fees and expenses	Existing Fund AllianceBernstein Growth and Income Portfolio Class B	Replacement Fund JHT 500 Index Trust B NAV Class
Management Fee	0.55	0.47
12b–1 Fee	0.25	.....
Other Expenses	0.05	0.03
Total Expenses	0.85	0.50
Waivers	.....	*–0.25
Net Expenses	0.85	0.25

*Pursuant to an agreement between the Trust and JHIMS, JHIMS has agreed to waive fees or reimburse expenses so that the Total Expenses do not exceed the rate shown in the table above. This expense cap will remain in effect until May 1, 2006 and will terminate after that date only if the Trust, without the prior written consent of JHIMS, sells shares of the fund to (or has shares of the fund held by) any person other than the insurance company separate accounts of John Hancock or any of its affiliates that are specified in the agreement.

(c) AllianceBernstein Premier Growth Portfolio—JHT 500 Index Trust B

The aggregate amount of assets in the Separate Accounts allocated to the AllianceBernstein Premier Growth Portfolio as of December 31, 2004 was approximately $371,125. It is estimated that the newly-created JHT 500 Index Trust B series will have at least $1,137,000,000 in assets as of April 29, 2005.

The management fees and total operating expenses of the two Funds are shown below. As discussed above, depicted below is an NAV Class for the Replacement Fund which will be created for the substitution. Expenses shown for the JHT 500 Index Trust B are based on estimates for the current fiscal year.

[In percent]

Fees and expenses	Existing Fund AllianceBernstein Premier Growth Portfolio	Replacement Fund JHT 500 Index Trust B
	Class B	NAV Class
Management Fee	0.75	0.47
12b–1 Fee	0.25	.....
Other Expenses	0.06	0.03
Total Expenses	1.06	0.50
Waivers	.....	*–0.25
Net Expenses	1.06	0.25

*Pursuant to an agreement between the Trust and JHIMS, JHIMS has agreed to waive fees or reimburse expenses so that the Total Expenses do not exceed the rate shown in the table above. This expense cap will remain in effect until May 1, 2006 and will terminate after that date only if the Trust, without the prior written consent of JHIMS, sells shares of the fund to (or has shares of the fund held by) any person other than the insurance company separate accounts of John Hancock or any of its affiliates that are specified in the agreement.

(d) Fidelity VIP Growth Portfolio—JHT 500 Index Trust B

The aggregate amount of assets in the Separate Accounts allocated to the Fidelity VIP Growth Portfolio as of December 31, 2004 was approximately $85,567,487. It is estimated that the newly-created JHT 500 Index Trust B series will have at least $1,137,000,000 in assets as of April 29, 2005.

The management fees and total operating expenses of the two Funds are shown below. As discussed above, depicted below is an NAV Class for the Replacement Fund which will be created for the substitution. Expenses shown for the JHT 500 Index Trust B are based on estimates for the current fiscal year.

[In percent]

Fees and expenses	Existing Fund Fidelity VIP Growth Portfolio		Replacement Fund JHT 500 Index Trust B
	Service Class	Service Class 2	NAV Class
Management Fee	0.58	0.58	0.47
12b–1 Fee	0.10	0.25	
Other Expenses	0.10	0.10	0.03
Total Expenses	0.78	0.93	0.50
Waivers	0	0	*–0.25
Net Expenses	0.78	0.93	0.25

*Pursuant to an agreement between the Trust and JHIMS, JHIMS has agreed to waive fees or reimburse expenses so that the Total Expenses do not exceed the rate shown in the table above. This expense cap will remain in effect until May 1, 2006 and will terminate after that date only if the Trust, without the prior written consent of JHIMS, sells shares of the fund to (or has shares of the fund held by) any person other than the insurance company separate accounts of John Hancock or any of its affiliates that are specified in the agreement.

(e) MFS Investors Growth Stock Series—JHT 500 Index Trust B

The aggregate amount of assets in the Separate Accounts allocated to the MFS Investors Growth Stock Series as of December 31, 2004 was approximately $30,894,103. It is estimated that the newly-created JHT 500 Index Trust B series will have at least $1,137,000,000 in assets as of April 29, 2005.

The management fees and total operating expenses of the two Funds are shown below. As discussed above, depicted below is an NAV Class for the Replacement Fund which will be created for the substitution. Expenses shown for the JHT 500 Index Trust B are based on estimates for the current fiscal year.

[In percent]

Fees and expenses	Existing Fund MFS Investors Growth Stock Series	Replacement Fund JHT 500 Index Trust B
	Initial Class	NAV Class
Management Fee	0.75	0.47
12b–1 Fee	0	
Other Expenses	0.11	0.03
Total Expenses	0.86	0.50
Waivers	0	–**0.25
Net Expenses	0.86	0.25

**Pursuant to an agreement between the Trust and JHIMS, JHIMS has agreed to waive fees or reimburse expenses so that the Total Expenses do not exceed the rate shown in the table above. This expense cap will remain in effect until May 1, 2006 and will terminate after that date only if the Trust, without the prior written consent of JHIMS, sells shares of the fund to (or has shares of the fund held by) any person other than the insurance company separate accounts of John Hancock or any of its affiliates that are specified in the agreement.

(f) Lord Abbett Growth and Income Portfolio—JHT 500 Index Trust B

The aggregate amount of assets in the Separate Accounts allocated to the Lord Abbett Growth and Income Portfolio as of December 31, 2004 was approximately $1,462,569. It is estimated that the newly-created JHT 500 Index Trust B series will have at least $1,137,000,000 in assets as of April 29, 2005.

The management fees and total operating expenses of the two Funds are shown below. As discussed above, depicted below is an NAV Class for the Replacement Fund which will be created for the substitution. Expenses shown for the JHT 500 Index Trust B are based on estimates for the current fiscal year.

[In percent]

Fees and expenses	Existing Fund Lord Abbett Growth and Income Portfolio	Replacement Fund JHT 500 Index Trust B
	Class VC	NAV Class
Management Fee	0.50	0.47
12b–1 Fee	.....	

[In percent]

Fees and expenses	Existing Fund Lord Abbett Growth and Income Portfolio	Replacement Fund JHT 500 Index Trust B
	Class VC	NAV Class
Other Expenses	0.39	0.03
Total Expenses	0.89	0.50
Waivers	.....	*−0.25
Net Expenses	0.89	0.25

*Pursuant to an agreement between the Trust and JHIMS, JHIMS has agreed to waive fees or reimburse expenses so that the Total Expenses do not exceed the rate shown in the table above. This expense cap will remain in effect until May 1, 2006 and will terminate after that date only if the Trust, without the prior written consent of JHIMS, sells shares of the fund to (or has shares of the fund held by) any person other than the insurance company separate accounts of John Hancock or any of its affiliates that are specified in the agreement.

19. Comparative size and expense data for the JHT Total Stock Market Index Trust substitutions are as follows:

(a) Fidelity VIP Contrafund Portfolio—JHT Total Stock Market Index Trust

The aggregate amount of assets in the Separate Accounts allocated to the Fidelity VIP Contrafund Portfolio as of December 31, 2004 was approximately $167,672,399. As of December 31, 2004, the JHT Total Stock Market Index Trust's assets were approximately $212,471,510.

The management fees and total operating expenses of the two Funds are shown below. As discussed above, depicted below is an NAV Class for the Replacement Fund which will be created for the substitution. The Management Fee shown below reflects the increase anticipated to take effect on May 1, 2005. Other Expenses are shown as if the NAV Class had been in place for the Replacement Fund at December 31, 2004.

[In percent]

Fees and expenses	Existing Fund Fidelity VIP Contrafund Portfolio	Replacement Fund JHT Total Stock Market Index Trust
	Service Class	NAV Class
Management Fee	0.57	0.49
12b–1 Fee	0.10	
Other Expenses	0.11	0.03
Total Expenses	0.78	0.52
Net Expenses	0.78	0.52

(b) MFS Research Series—JHT Total Stock Market Index Trust

The aggregate amount of assets in the Separate Accounts allocated to the MFS Research Series as of December 31, 2004 was approximately $18,991,017. As of December 31, 2004, the JHT Total Stock Market Index Trust's assets were approximately $212,471,510.

The management fees and total operating expenses of the two Funds are shown below. As discussed above, depicted below is an NAV Class for the Replacement Fund which will be created for the substitution. The Management Fee shown below reflects the increase anticipated to take effect on May 1, 2005. Other Expenses are shown as if the NAV Class had been in place for the Replacement Fund at December 31, 2004.

[In percent]

Fees and expenses	Existing fund MFS Research Series		Replacement fund JHT Total Stock Market Index Trust
	Initial Class	Service Class	NAV Class
Management Fee	0.75	0.75	0.49
12b–1 Fee	0	0.25	
Other Expenses	0.13	0.13	0.03
Total Expenses	0.88	1.13	0.52

[In percent]

Fees and expenses	Existing fund MFS Research Series		Replacement fund JHT Total Stock Market Index Trust
	Initial Class	Service Class	NAV Class
Net Expenses	0.88	*1.13	0.52

(c) Putnam VT Investors Fund—JHT Total Stock Market Index Trust

The aggregate amount of assets in the Separate Accounts allocated to the Putnam VT Investors Fund as of December 31, 2004 was approximately $166,524. As of December 31, 2004, the JHT Total Stock Market Index Trust's assets were approximately $212,471,510.

The management fees and total operating expenses of the two Funds are shown below. As discussed above, depicted below is an NAV Class for the Replacement Fund which will be created for the substitution. The Management Fee shown below reflects the increase anticipated to take effect on May 1, 2005. Other Expenses are shown as if the NAV Class had been in place for the Replacement Fund at December 31, 2004.

[In percent]

Fees and expenses	Existing Fund Putnam VT Investors Fund	Replacement Fund JHT Total Stock Market Index Trust
	Class 1B	NAV Class
Management Fee	0.65	0.49
12b–1 Fee	0.25	
Other Expenses	0.11	0.03
Total Expenses	1.01	0.52
Net Expenses	1.01	0.52

(d) Oppenheimer Capital Appreciation Fund/VA—JHT Total Stock Market Index Trust

The aggregate amount of assets in the Separate Accounts allocated to the Oppenheimer Capital Appreciation Fund/VA as of December 31, 2004 was approximately $1,762,206. As of December 31, 2004, the JHT Total Stock Market Index Trust's assets were approximately $212,471,510.

The management fees and total operating expenses of the two Funds are shown below. As discussed above, depicted below is an NAV Class for the Replacement Fund which will be created for the substitution. The Management Fee shown below reflects the increase anticipated to take effect on May 1, 2005. Other Expenses are shown as if the NAV Class had been in place for the Replacement Fund at December 31, 2004.

[in percent]

Fees and expenses	Existing fund Oppenheimer capital appreciation fund/VA	Replacement fund JHT total stock market index trust
	Service class	NAV class
Management Fee	0.65	0.49
12b–1 Fee	0.25	
Other Expenses	0.01	0.03
Total Expenses	0.91	0.52
Net Expenses	0.91	0.52

(e) Mutual Shares Securities Fund—JHT Total Stock Market Index Trust

The aggregate amount of assets in the Separate Accounts allocated to the Mutual Shares Securities Fund as of December 31, 2004 was approximately $859,664. As of December 31, 2004, the JHT Total Stock Market Index Trust's assets were approximately $212,471,510.

The management fees and total operating expenses of the two Funds are shown below. As discussed above, depicted below is an NAV Class for the Replacement Fund which will be created for the substitution. The

Management Fee shown below reflects the increase anticipated to take effect on May 1, 2005. Other Expenses are shown as if the NAV Class had been in place for the Replacement Fund at December 31, 2004.

[In percent]

Fees and expenses	Existing Fund Mutual Shares Securities Fund	Replacement Fund JHT Total Stock Market Index Trust
	Class 2	NAV Class
Management Fee	0.60	0.49
12b–1 Fee	0.25	
Other Expenses	0.15	0.03
Total Expenses	1.00	0.52
Net Expenses	1.00	0.52

20. Comparative size and expense data for the JHT Total Stock Market Index Trust substitutions are as follows:

(a) Global Technology Portfolio—JHT Total Stock Market Index Trust

The aggregate amount of assets in the Separate Accounts allocated to the Global Technology Portfolio as of December 31, 2004 was approximately $5,307,134. As of December 31, 2004, the JHT Total Stock Market Index Trust's assets were approximately $212,471,510.

The management fees and total operating expenses of the two Funds are shown below. As discussed above, depicted below is an NAV Class for the Replacement Fund which will be created for the substitution. The Management Fee shown below reflects the increase anticipated to take effect on May 1, 2005. Other Expenses are shown as if the NAV Class had been in place for the Replacement Fund at December 31, 2004.

[In percent]

Fees and expenses	Existing Fund Global Technology Portfolio	Replacement Fund JHT Total Stock Market Index Trust
	Service Shares	NAV Class
Management Fee	0.64	0.49
12b–1 Fee	0.25	
Other Expenses	0.20	0.03
Total Expenses	1.09	0.52
Net Expenses	1.09	0.52

(b) Lord Abbett Mid Cap Value Portfolio—JHT Mid Cap Index Trust

The aggregate amount of assets in the Separate Accounts allocated to the Lord Abbett Mid Cap Value Portfolio as of December 31, 2004 was approximately $1,314,074. As of December 31, 2004, the JHT Mid Cap Index Trust's assets were approximately $247,296,621.

The management fees and total operating expenses of the two Funds are shown below. As discussed above, depicted below is an NAV Class for the Replacement Fund which will be created for the substitution. The Management Fee shown below reflects the increase anticipated to take effect on May 1, 2005. Other Expenses are shown as if the NAV Class had been in place for the Replacement Fund at December 31, 2004.

[In percent]

Fees and expenses	Existing Fund Lord Abbett Mid Cap Value Portfolio	Replacement Fund JHT Mid Cap Index Trust
	Class VC	NAV Class
Management Fee	0.75	0.49
12b–1 Fee	.....	
Other Expenses	0.42	0.03
Total Expenses	1.17	0.52

[In percent]

Fees and expenses	Existing Fund Lord Abbett Mid Cap Value Portfolio	Replacement Fund JHT Mid Cap Index Trust
	Class VC	NAV Class
Net Expenses	1.17	0.52

(c) Putnam VT Vista Fund—JHT Mid Cap Index Trust

The aggregate amount of assets in the Separate Accounts allocated to the Putnam VT Vista Fund as of December 31, 2004 was approximately $119,673. As of December 31, 2004, the JHT Mid Cap Index Trust's assets were approximately $247,296,621.

The management fees and total operating expenses of the two Funds are shown below. As discussed above, depicted below is an NAV Class for the Replacement Fund which will be created for the substitution. The Management Fee shown below reflects the increase anticipated to take effect on May 1, 2005. Other Expenses are shown as if the NAV Class had been in place for the Replacement Fund at December 31, 2004.

[In percent]

Fees and expenses	Existing Fund Putnam VT Vista Fund	Replacement Fund JHT Mid Cap Index Trust
	Class 1B	NAV Class
Management Fee	0.65	0.49
12b–1 Fee	0.25	
Other Expenses	0.14	0.03
Total Expenses	1.04	0.52
Net Expenses	1.04	0.52

(d) MFS Mid Cap Growth Series—JHT Mid Cap Index Trust

The aggregate amount of assets in the Separate Accounts allocated to the MFS Mid Cap Growth Series as of December 31, 2004 was approximately $434,324. As of December 31, 2004, the JHT Mid Cap Index Trust's assets were approximately $247,296,621.

The management fees and total operating expenses of the two Funds are shown below. As discussed above, depicted below is an NAV Class for the Replacement Fund which will be created for the substitution. The Management Fee shown below reflects the increase anticipated to take effect on May 1, 2005. Other Expenses are shown as if the NAV Class had been in place for the Replacement Fund at December 31, 2004.

[In percent]

Fees and expenses	Existing Fund MFS Mid Cap Growth Series	Replacement Fund JHT Mid Cap Index Trust
	Service Class	NAV Class
Management Fee	0.75	0.49
12b–1 Fee	0.25	
Other Expenses	0.12	0.03
Total Expenses	1.12	0.52
Net Expenses	1.12	0.52

(e) Mid Cap Stock Portfolio—JHT Mid Cap Index Trust

The aggregate amount of assets in the Separate Accounts allocated to the Mid Cap Stock Portfolio as of December 31, 2004 was approximately $734,207. As of December 31, 2004, the JHT Mid Cap Index Trust's assets were approximately $247,296,621.

The management fees and total operating expenses of the two Funds are shown below. As discussed above, depicted below is an NAV Class for the Replacement Fund which will be created for the substitution. The Management Fee shown below reflects the increase anticipated to take effect on May 1, 2005. Other Expenses are shown as if the NAV Class had been in place for the Replacement Fund at December 31, 2004.

[In percent]

Fees and expenses	Existing Fund Mid Cap Stock Portfolio	Replacement Fund JHT Mid Cap Index Trust
	Service Class	NAV Class
Management Fee	0.75	0.49
12b–1 Fee	0.25	
Other Expenses	0.03	0.03
Total Expenses	1.03	0.52
Waivers	*0.03	
Net Expenses	1.00	0.52

*The manager has agreed, from January 1, 2004 to December 31, 2005, to waive receipt of its fees and/or assume the expenses of the portfolio so that the expenses (excluding taxes, brokerage fees, interest on borrowings and extraordinary expenses) do not exceed 1.00% of the value of the average daily net assets.

(f) AIM V.I. Capital Development Fund—JHT Mid Cap Index Trust

The aggregate amount of assets in the Separate Accounts allocated to the AIM V.I. Capital Development Fund as of December 31, 2004 was approximately $7,229,586. As of December 31, 2004, the JHT Mid Cap Index Trust's assets were approximately $247,296,621.

The management fees and total operating expenses of the two Funds are shown below. As discussed above, depicted below is an NAV Class for the Replacement Fund which will be created for the substitution. The Management Fee shown below reflects the increase anticipated to take effect on May 1, 2005. Other Expenses are shown as if the NAV Class had been in place for the Replacement Fund at December 31, 2004.

[In percent]

Fees and expenses	Existing Fund AIM V.I. Capital Development Fund		Replacement Fund JHT Mid Cap Index Trust
	Series I	Series II	NAV Class
Management Fee	.075	0.75	
12b–1 Fee		0.25	
Other Expenses	0.35	0.35	0.03
Total Expenses	1.10	1.35	0.52
Waivers	−0.01	−0.01	
Net Expenses	1.09	1.34	0.52

21. Comparative size and expense data for the JHT Small Cap Index Trust substitutions are as follows:

(a) Delaware VIP Small Cap Value Series—JHT Small Cap Index Trust

The aggregate amount of assets in the Separate Accounts allocated to the Delaware VIP Small Cap Value Series as of December 31, 2004 was approximately $1,318,590. As of December 31, 2004, the JHT Small Cap Index Trust's assets were approximately $234,277,032.

The management fees and total operating expenses of the two Funds are shown below. As discussed above, depicted below is an NAV Class for the Replacement Fund which will be created for the substitution. The Management Fee shown below reflects the increase anticipated to take effect on May 1, 2005. Other Expenses are shown as if the NAV Class had been in place for the Replacement Fund at December 31, 2004.

[In percent]

Fees and expenses	Existing Fund Delaware VIP Small Cap Value Series	Replacement Fund JHT Small Cap Index Trust
	Service Class	NAV Class
Management Fee	0.75	0.48
12b–1 Fee	0.30	
Other Expenses	0.08	0.03
Total Expenses	1.13	0.51

[In percent]

Fees and expenses	Existing Fund Delaware VIP Small Cap Value Series	Replacement Fund JHT Small Cap Index Trust
	Service Class	NAV Class
Waivers	*0.05	
Net Expenses	1.08	0.51

*The adviser has contractually agreed to waive that portion, if any, of its management fee and reimburse the Series to the extent necessary to ensure that annual operating expenses, exclusive of taxes, interest, brokerage commissions, distribution fees, certain insurance costs and extraordinary expenses, do not exceed 0.95% of average daily net assets of the Series through April 30, 2005. No reimbursement was due for the year ended December 31, 2004.

(b) Emerging Leaders Portfolio—JHT Small Cap Index Trust

The aggregate amount of assets in the Separate Accounts allocated to the Emerging Leaders Portfolio as of December 31, 2004 was approximately $602,768. As of December 31, 2004, the JHT Small Cap Index Trust's assets were approximately $234,277,032.

The management fees and total operating expenses of the two Funds are shown below. As discussed above, depicted below is an NAV Class for the Replacement Fund which will be created for the substitution. The Management Fee shown below reflects the increase anticipated to take effect on May 1, 2005. Other Expenses are shown as if the NAV Class had been in place for the Replacement Fund at December 31, 2004.

[In percent]

Fees and expenses	Existing Fund Emerging Leaders Portfolio	Replacement Fund JHT Small Cap Index Trust
	Service Class	NAV Class
Management Fee	0.90	0.48
12b–1 Fee	0.25	
Other Expenses	0.23	0.03
Total Expenses	1.38	0.51
Waivers*		
Net Expenses	1.38	0.51

*The adviser has agreed, until December 31, 2005, to waive receipt of its fees and/or assume the expenses of the portfolio so that the expenses (excluding taxes, brokerage commissions, extraordinary expenses, interest expenses and commitment fees on borrowings) do not exceed 1.50%.

(c) Franklin Small Cap Fund — JHT Small Cap Index Trust

The aggregate amount of assets in the Separate Accounts allocated to the Franklin Small Cap Fund as of December 31, 2004 was approximately $647,520. As of December 31, 2004, the JHT Small Cap Index Trust's assets were approximately $234,277,032.

The management fees and total operating expenses of the two Funds are shown below. As discussed above, depicted below is an NAV Class for the Replacement Fund which will be created for the substitution. The Management Fee shown below reflects the increase anticipated to take effect on May 1, 2005. Other Expenses are shown as if the NAV Class had been in place for the Replacement Fund at December 31, 2004.

[In percent]

Fees and expenses	Existing fund Franklin Small Cap Fund	Replacement Fund JHT Small Cap Index Trust
	Class 2	NAV Class
Management Fee	0.48	0.48
12b–1 Fee	0.25	
Other Expenses	0.29	0.03
Total Expenses	1.02	0.51
Waivers	*(0.03)	

[In percent]

Fees and expenses	Existing fund Franklin Small Cap Fund	Replacement Fund JHT Small Cap Index Trust
	Class 2	NAV Class
Net Expenses	0.99	0.51

*The manager has agreed in advance to reduce its fee from assets invested by the Fund in a Franklin Templeton money fund. This reduction is required by the Board and an order of the Commission.

(d) Delaware VIP Trend Series—JHT Small Cap Index Trust

The aggregate amount of assets in the Separate Accounts allocated to the Delaware VIP Trend Series as of December 31, 2004 was approximately $91,176. As of December 31, 2004, the JHT Small Cap Index Trust's assets were approximately $234,277,032.

The management fees and total operating expenses of the two Funds are shown below. As discussed above, depicted below is an NAV Class for the Replacement Fund which will be created for the substitution. The Management Fee shown below reflects the increase anticipated to take effect on May 1, 2005. Other Expenses are shown as if the NAV Class had been in place for the Replacement Fund at December 31, 2004.

[In percent]

Fees and expenses	Existing Fund Delaware VIP Trend Series	Replacement Fund JHT Small Cap Index Trust
	Service Class	NAV Class
Management Fee	0.75	0.48
12b–1 Fee	0.30	
Other Expenses	0.09	0.03
Total Expenses	1.14	0.51
Waivers**	0.05	
Net Expenses	1.09	0.51

**The adviser has contractually agreed to waive that portion, if any, of its management fee and reimburse the Series to the extent necessary to ensure that annual operating expenses, exclusive of taxes, interest, brokerage commissions, distribution fees, certain insurance costs and extraordinary expenses do not exceed 0.95% of average daily net assets of the Series through April 30, 2005. No reimbursement was due for the year ended December 31, 2004.

(e) MFS New Discovery Series—JHT Small Cap Index Trust

The aggregate amount of assets in the Separate Accounts allocated to the MFS New Discovery Series as of December 31, 2004 was approximately $31,823,713. As of December 31, 2004, the JHT Small Cap Index Trust's assets were approximately $234,277,032.

The management fees and total operating expenses of the two Funds are shown below. As discussed above, depicted below is an NAV Class for the Replacement Fund which will be created for the substitution. The Management Fee shown below reflects the increase anticipated to take effect on May 1, 2005. Other Expenses are shown as if the NAV Class had been in place for the Replacement Fund at December 31, 2004.

[In percent]

Fees and expenses	Existing Fund MFS New Discovery Series		Replacement Fund JHT Small Cap Index Trust
	Initial Class	Service Class	NAV Class
Management Fee	0.90	0.90	0.48
12b–1 Fee	0	0.25	
Other Expenses	0.11	0.11	0.03
Total Expenses	1.01	1.26	0.51
Waivers	0	0	
Net Expenses	1.01	1.26	0.51

22. Comparative size and expense data for the JHT International Equity Index Trust B substitutions are as follows:

(a) Fidelity VIP Overseas Portfolio—JHT International Equity Index Trust B

The aggregate amount of assets in the Separate Accounts allocated to the Fidelity VIP Overseas Portfolio as of December 31, 2004 was approximately $34,468,284. The JHT International Equity Index Trust B series is a newly-created series which will begin selling its shares on or about May 1, 2005. Projected asset information with respect to the newly-created JHT International Equity Index Trust B series is not yet available.

The management fees and total operating expenses of the two Funds are shown below. As discussed above, depicted below is an NAV Class for the Replacement Fund which will be created for the substitution. Expenses shown for the JHT International Equity Index Trust B are based on estimates for the current fiscal year.

[In percent]

Fees and expenses	Existing Fund Fidelity VIP Overseas Portfolio		Replacement Fund JHT International Equity Index Trust B
	Service Class	Service Class	NAV Class
Management Fee	0.72	0.72	0.55
12b–1 Fee	0.10	0.25	
Other Expenses	0.19	0.19	0.04
Total Expenses	1.01	1.16	0.59
Waivers	0		*–0.25
Net Expenses*	1.01	1.16	0.34

*Pursuant to an agreement between the Trust and JHIMS, JHIMS has agreed to waive fees or reimburse expenses so that the Total Expenses do not exceed the rate shown in the table above. This expense cap will remain in effect until May 1, 2006 and will terminate after that date only if the Trust, without the prior written consent of JHIMS, sells shares of the fund to (or has shares of the fund held by) any person other than the insurance company separate accounts of John Hancock or any of its affiliates that are specified in the agreement.

(b) Worldwide Growth Portfolio—JHT International Equity Index Trust B

The aggregate amount of assets in the Separate Accounts allocated to the Worldwide Growth Portfolio as of December 31, 2004 was approximately $15,068,888. The JHT International Equity Index Trust B series is a newly-created series which will begin selling its shares on or about May 1, 2005. Projected asset information with respect to the newly-created JHT International Equity Index Trust B series is not yet available.

The management fees and total operating expenses of the two Funds are shown below. As discussed above, depicted below is an NAV Class for the Replacement Fund which will be created for the substitution. Expenses shown for the JHT International Equity Index Trust B are based on estimates for the current fiscal year. x

[In percent]

Fees and expenses	Existing Fund Worldwide Growth Portfolio	Replacement Fund JHT International Equity Index Trust B
	Service Shares	NAV Class
Management Fee	0.60	0.55
12b–1 Fee	0.25	
Other Expenses	0.06	0.04
Total Expenses	0.91	0.59
Waivers		*–0.25
Net Expenses	0.91	0.34

*Pursuant to an agreement between the Trust and JHIMS, JHIMS has agreed to waive fees or reimburse expenses so that the Total Expenses do not exceed the rate shown in the table above. This expense cap will remain in effect until May 1, 2006 and will terminate after that date only if the Trust, without the prior written consent of JHIMS, sells shares of the fund to (or has shares of the fund held by) any person other than the insurance company separate accounts of John Hancock or any of its affiliates that are specified in the agreement.

(c) Putnam VT International Equity Fund—JHT International Equity Index Trust B

The aggregate amount of assets in the Separate Accounts allocated to the Putnam VT International Equity Fund as of December 31, 2004 was approximately $817,663. Projected asset information with respect to the newly-created JHT International Equity Index Trust B series is not yet available.

The management fees and total operating expenses of the two Funds are shown below. As discussed above, depicted below is an NAV Class for the Replacement Fund which will be created for the substitution. Expenses shown for the JHT International Equity Index Trust B are based on estimates for the current fiscal year.

[In percent]

Fees and expenses	Existing Fund Putnam VT International Equity Fund	Replacement Fund JHT International Equity Index Trust B
	Class 1B	NAV Class
Management Fee	0.76	0.55
12b–1 Fee	0.25	
Other Expenses	0.18	0.04
Total Expenses	1.19	0.59
Waivers		*–0.25
Net Expenses	1.19	0.34

*Pursuant to an agreement between the Trust and JHIMS, JHIMS has agreed to waive fees or reimburse expenses so that the Total Expenses do not exceed the rate shown in the table above. This expense cap will remain in effect until May 1, 2006 and will terminate after that date only if the Trust, without the prior written consent of JHIMS, sells shares of the fund to (or has shares of the fund held by) any person other than the insurance company separate accounts of John Hancock or any of its affiliates that are specified in the agreement.

23. Comparative size and expense data for the JHT Bond Index Trust B substitution are as follows:

Franklin U.S. Government Fund—JHT Bond Index Trust B

The aggregate amount of assets in the Separate Accounts allocated to the Franklin U.S. Government Fund as of December 31, 2004 was approximately $2,990,795. It is estimated that the newly-created JHT Bond Index Trust B series will have approximately $205,000,000 in assets as of April 29, 2005.

The management fees and total operating expenses of the two Funds are shown below. As discussed above, depicted below is an NAV Class for the Replacement Fund which will be created for the substitution. Expenses shown for the JHT Bond Index Trust B are based on estimates for the current fiscal year.

[in percent]

Fees and expenses	Existing fund Franklin U.S. Government Fund	Replacement fund JHT Bond Index Trust B
	Class 2	NAV Class
Management Fee	*0.49	0.47
12b–1 Fee	0.25	
Other Expenses	0.05	0.03
Total Expenses	0.79	0.50
Waivers		**–0.25
Net Expenses	0.79	0.25

*The fund administration fee is paid indirectly through the management fee.

**Pursuant to an agreement between the Trust and JHIMS, JHIMS has agreed to waive fees or reimburse expenses so that the Total Expenses do not exceed the rate shown in the table above. This expense cap will remain in effect until May 1, 2006 and will terminate after that date only if the Trust, without the prior written consent of JHIMS, sells shares of the fund to (or has shares of the fund held by) any person other than the insurance company separate accounts of John Hancock or any of its affiliates that are specified in the agreement.

24. Comparative size and expense data for the JHT Bond Index Trust B substitution are as follows:

Putnam VT American Government Income Fund—JHT U.S. Government Securities Trust

The aggregate amount of assets in the Separate Accounts allocated to the Putnam VT American Government Income Fund as of December 31, 2004 was approximately $258,450. As of December 31, 2004, the JHT U.S. Government Securities Trust's assets were approximately $736,062,950.

The management fees and total operating expenses of the two Funds are shown below. As discussed above, depicted below is an NAV Class for the Replacement Fund which will be created for the substitution. The Management Fee shown below reflects the increase anticipated to take effect on May 1, 2005. Other Expenses are shown as if the NAV Class had been in place for the Replacement Fund at December 31, 2004.

[In percent]

Fees and expenses	Existing Fund Putnam VT American Government Income Fund	Replacement Fund JHT U.S. Government Securities Trust
	Class 1B	NAV Class
Management Fee	0.65	0.62
12b–1 Fee	0.25	
Other Expenses	0.01	0.07
Total Expenses	0.91	0.69
Net Expenses	0.91	0.69

Summary of Benefits

25. Applicants note that contract owners with subaccount balances invested in shares of the Replacement Funds will, in every case, have lower total expense ratios than they currently have in the Existing Funds. In each case, the total expenses of the Replacement Funds (even without applicable fee waivers) are lower than those of the Existing Funds with their fee waivers. Further, in each case, the management fees of the Replacement Funds are lower than those of the Existing Funds even with the Replacement Funds' fee increase described below. For Contract owners with account balances in funds involved in the substitutions, the substitutions are therefore expected to result in decreased expense ratios. Moreover, there will be no increase in Contract fees and expenses, including mortality and expense risk fees and administration and distribution fees charged to the Separate Accounts as a result of the substitutions.

26. With respect to the JHT 500 Index Trust B, the JHT Total Stock Market Index Trust, the JHT Mid Cap Index Trust, the JHT Small Cap Index Trust, the JHT International Equity Index Trust B, and the JHT U.S. Government Securities Trust, Applicants believe that the each of these Replacement Funds is no more risky than any of the Existing Funds being substituted into it. Applicants note that each of these Replacement Funds are invested substantially in securities similar to each of the Existing Funds being substituted into it, and so believe that it has risk characteristics very similar to each of those Existing Funds. Applicants also note that each of these Replacement Funds, other than the JHT U.S. Government Securities Trust, is an index fund and is not actively managed.

27. Applicants believe that investment in the JHT Bond Index Trust B Replacement Fund involves certain additional risks not involved in the Franklin U.S. Government Existing Fund relating to investment in corporate bonds. However, Applicants believe that the additional risks are not materially significant and that the Replacement Fund is a suitable replacement investment for the Franklin U.S. Government Existing Fund. Both the JHT Bond Index Trust B Replacement Fund and the Franklin U.S. Government Existing Fund are invested substantially in bonds and therefore share the common risks of investing in bonds. Additionally, the JHT Bond Index Trust B Replacement Fund is an index fund and is not actively managed.

28. Applicants expect that the substitutions will provide significant benefits to Contract owners, including improved selection of portfolio managers and simplification of fund offerings through the elimination of overlapping offerings. Applicants state that the Insurance Companies considered the performance history of the Existing Funds and the Replacement Funds and determined that no Contract owners would be materially adversely affected as a result of the substitutions. Applicants believe that the substitutions, each of which replaces outside funds with funds for which JHIMS acts as investment adviser, will permit JHIMS, under a multi-manager order granted by the Commission [1] to hire, monitor and replace sub-advisers as necessary to seek optimal performance and to ensure a consistent investment style. The Applicants further believe that the subadvisers to the Replacement Funds overall are better positioned to provide consistent above-average performance for their Funds than are the advisers or sub-advisers of the Existing Funds. Applicants state that Contract owners will continue to be able to select among a large number of funds, with a full range of investment objectives, investment strategies, and managers. Applicants believe there will also be a significant savings to Contract owners because certain costs, such as the costs of printing and mailing lengthy periodic reports and prospectuses for the Existing Funds will be substantially reduced. Applicants state this would be the case because the Replacement Funds are each a series of one Fund (JHT), so an individual fund prospectus and reports or prospectuses and reports with just a limited number of funds will be able to be sent to Contract owners.

29. Applicants state that, in addition, as a result of the substitutions, neither JHIMS nor any of its affiliates will receive increased amounts of compensation from the charges to the Separate Accounts related to the Contracts or from Rule 12b–1 fees or revenue sharing currently received from the investment advisers or distributors of the Existing Funds. In fact, owners will benefit from a reduction in fund expenses since many of the Existing Funds have 12b–1 fees in place, while the NAV Class of the Replacement Funds will have no 12b–1 fees.

30. The proposed substitutions will take place at relative net asset value with no change in the amount of any Contract owner's Contract value, cash value, or death benefit or in the dollar value of his or her investment in the Separate Accounts. Applicants expect that the substitutions will be effected by redeeming shares of an Existing Fund for cash and using the cash to purchase shares of the Replacement Fund.

31. Contract owners will not incur any fees or charges as a result of the proposed substitutions, nor will their rights or an Insurance Company's obligations under the Contracts be altered in any way. All expenses incurred in connection with the proposed substitutions, including brokerage, legal, accounting, and other

[1] John Hancock Investment Management Services LLC, *et al.,* Investment Company Act Release No. 24261 (December 29, 1999) (notice), Investment Company Act Release No. 24261 (January 27, 2000) (order).

fees and expenses, will be paid by the Insurance Companies. In addition, the proposed substitutions will not impose any tax liability on Contract owners. The proposed substitutions will not cause the Contract fees and charges currently being paid by existing Contract owners to be greater after the proposed substitutions than before the proposed substitutions. No fees will be charged on the transfers made at the time of the proposed substitutions because the proposed substitutions will not be treated as a transfer for the purpose of assessing transfer charges or for determining the number of remaining permissible transfers in a Contract year.

32. By a supplement to the prospectuses for the Contracts and the Separate Accounts, each Insurance Company has notified all owners of the Contracts of its intention to take the necessary actions, including seeking the requested order, to substitute shares of the funds as described in this notice. The supplement advised Contract owners that from the date of the supplement until the date of the proposed substitution, owners are permitted to make transfers of Contract value (or annuity unit exchange) out of the Existing Fund subaccount to another subaccount without the transfer (or exchange) being treated as one of a limited number of permitted transfers (or exchanges) or a limited number of transfers (or exchanges) permitted without a transfer charge. The supplement also informed Contract owners that the Insurance Company will not exercise any rights reserved under any Contract to impose additional restrictions on transfers until at least 30 days after the proposed substitutions. The supplement also advised Contract owners that for at least 30 days following the proposed substitutions, the Insurance Companies will permit Contract owners affected by the substitutions to make transfers of Contract value (or annuity unit exchange) out of the Replacement Fund subaccount to another subaccount without the transfer (or exchange) being treated as one of a limited number of permitted transfers (or exchanges) or a limited number of transfers (or exchanges) permitted without a transfer charge.

33. In addition to the prospectus supplements distributed to owners of Contracts, within five business days after the proposed substitutions, each Insurance Company will send Contract owners a written notice informing them that the substitutions were carried out and that they may transfer all Contract value or cash value under a Contract invested in any one of the subaccounts on the date of the notice to another subaccount available under their Contract at no cost and without regard to the usual limit on the frequency of transfers from the variable account options to the fixed account options. The notice will also reiterate that (other than with respect to ''market timing'' activity as described above, the Insurance Company will not exercise any rights reserved by it under the Contracts to impose additional restrictions on transfers or to impose any charges on transfers until at least 30 days after the proposed substitutions. The Insurance Companies will also send each Contract owner current prospectuses for the Replacement Funds involved.

Applicants' Legal Analysis

1. Applicants note that Section 26(c) of the Act provides that ''[i]t shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the [Commission] shall have approved such substitution.'' Section 26(b) of the Act was enacted as part of the Investment Company Act Amendments of 1970. Applicants contend that the section's legislative history makes clear Congress' intent to provide Commission scrutiny of proposed substitutions which could otherwise, in effect, force shareholders dissatisfied with the substituted security to redeem their shares, thereby possibly incurring either a loss of the sales load deducted from initial purchase payments, an additional sales load upon reinvestment of the proceeds of redemption, or both.

2. Applicants note that the Contracts expressly reserve to the applicable Insurance Company the right, subject to compliance with applicable law, to substitute shares of another investment company for shares of an investment company held by a subaccount of the Separate Accounts. Applicants assert that the prospectuses for the Contracts and the Separate Accounts contain appropriate disclosure of this right.

3. In each case, Applicants believe that it is in the best interests of the Contract owners to substitute the Replacement Fund for the Existing Fund. In this regard, Applicants contend that the proposed Replacement Fund for each Existing Fund has an investment objective that is at least substantially similar to that of the Existing Fund. Applicants also assert that the principal investment policies of the Replacement Funds are similar to those of the corresponding Existing Funds. In addition, with respect to each proposed substitution, Applicants note that Contract owners with balances invested in the Replacement Fund will have a lower expense ratio in all cases.

4. Applicants anticipate that Contract owners will be better off with the array of subaccounts offered after the proposed substitutions than they have been with the array of subaccounts offered prior to the substitutions. The proposed substitutions retain for Contract owners the investment flexibility which is a central feature of the Contracts. If the proposed substitutions are carried out, all Contract owners will be permitted to allocate purchase payments and transfer Contract values and cash values between and among approximately the same number of subaccounts as they could before the proposed substitutions. Moreover, the elimination of the costs of printing and mailing prospectuses and periodic reports of the Existing Funds will benefit Contract owners.

5. Applicants note that Contract owners who do not wish to participate in a Replacement Fund will have an opportunity to reallocate their accumulated value among other available subaccounts without the imposition of any charge or limitation (other than with respect to ''market timing'' activity).

6. Applicants assert that, for the reasons summarized above, the proposed substitutions and related transactions meet the standards of Section 26(c) of the Act and that the requested order should be granted.

Applicants' Condition

For purposes of the approval sought pursuant to Section 26(c) of the Act, the substitutions described in the application will not be completed unless the following condition is met:

For those who were Contract owners on the date of the proposed substitutions, John Hancock and JHVLICO will reimburse, on the last business day of each fiscal period (not to exceed a fiscal quarter) during the twenty-four months following the date of the proposed substitutions, the subaccount investing in the Replacement Fund such that the sum of the Replacement Fund's operating expenses (taking into account fee waivers and expense reimbursements) and subaccount expenses (asset-based fees and charges deducted on a daily basis from subaccount assets and reflected in the calculation of subaccount unit values) for such period will not exceed, on an annualized basis, the sum of the Replacement Fund's operating expenses (taking into account

fee waivers and expense reimbursements) and subaccount expenses for the fiscal year preceding the date of the proposed substitution. In addition, for twenty-four months following the proposed substitutions, John Hancock and JHVLICO will not increase asset-based fees or charges for Contracts outstanding on the date of the proposed substitutions.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 05–7496 Filed 4–11–05; 12:35 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26831A; File No. 812–13129]

John Hancock Life Insurance Company, et al.

April 12, 2005.

AGENCY: Securities and Exchange Commission.

ACTION: This is to amend and restate the ''Hearing of Notification'' section in a notice issued April 11, 2005 on an application authorizing the substitution of shares of certain series of John Hancock Trust for shares of certain series of various registered investment companies under Section 26(c) of the Investment Company Act of 1940 (Investment Company Act Release No. 26831).

The amended and restated ''Hearing of Notification'' section now reads as follows:

Hearing of Notification: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission 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 April 28, 2005 and should be accompanied by proof of service on 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 may request notification of a hearing by writing to the Secretary of the Commission.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–7602 Filed 4–12–05; 3:34 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51510; File No. SR–CBOE–2004–59]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto by the Chicago Board Options Exchange, Incorporated Relating to Back-up Trading Arrangements

April 8, 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 August 27, 2004, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On October 21, 2004, the Exchange amended its proposal.[3] On October 26, 2004, the Exchange further amended its proposal.[4] On March 23, 2005, the Exchange submitted a third amendment.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission proposed new rules that will facilitate the CBOE entering into arrangements with one or more other exchanges that would provide back-up trading facilities for CBOE listed options at another exchange if CBOE's facility becomes disabled and trading is prevented for an extended period of time, and similarly provide trading facilities at CBOE for another exchange to trade its listed options if that exchange's facility becomes disabled. The Exchange also proposes to adopt a rule addressing general Exchange procedures under emergency conditions and to eliminate a rule adopted following the events of September 11, 2001. Additionally, the Exchange has submitted a corresponding back-up trading agreement between itself and the Philadelphia Stock Exchange as Exhibit B to its Form 19b–4 filing. This back-up trading agreement is available for viewing on the Commission's Web site, *http://www.sec.gov/rules/sro.shtml,* and at the Exchange and the Commission.[6] The text of the proposed rule change, as amended, is set forth below. Proposed new language is in *italics;* proposed deletions are in [brackets].

* * * * *

Chicago Board Options Exchange, Inc.

Rules

* * * * *

CHAPTER III

MEMBERSHIP

Temporary Access

Rule 3.22

[Until emergency conditions in the aftermath of the terrorist on New York City on September 11, 2001 cease, the Exchange may permit a person or organization to conduct business on the Exchange provided that the person or organization (i) is a member in good standing of the American Stock Exchange ''AMEX'', (ii) is not subject to a statutory disqualification under the Exchange Act, and (iii) is not subject to an investigation conducted by any self-regulatory organization under the Exchange Act that may involve the fitness for membership on the Exchange of that person or organization. Any such person or organization granted temporary access to conduct business on the Exchange ''TPO'' shall only be permitted (i) to act in those Exchange capacities that are authorized by the Exchange and that are comparable to capacities which TPO has been authorized to act on the AMEX and (ii) to trade in those securities in which the TPO is authorized to trade on the AMEX. Each TPO shall be subject to, and obligated to comply with, the rules of the Exchange that are applicable to exchange members, but shall have none of the rights of a member of the Exchange except the right to conduct business on the Exchange to the extent

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Jaime Galvan, Attorney, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated October 20, 2004 (''Amendment No. 1''). In Amendment No. 1, the Exchange modified the text of proposed CBOE Rule 6.16 and made certain other clarifying changes to the original submission. Amendment No. 1 replaced CBOE's original filing in its entirety.

[4] *See* letter from Jaime Galvan, Attorney, CBOE, to Brian Trackman, Special Counsel, Division, Commission, dated October 25, 2004 (''Amendment No. 2''). In Amendment No. 2, the Exchange corrected typographical errors in the proposed rule text.

[5] *See* Amendment No. 3, dated March 23, 2005 (''Amendment No. 3'') In Amendment No. 3, the Exchange modified portions of the proposed rule text and corresponding sections of the Form 19b–4 describing the rule proposal. Amendment No. 3 replaces CBOE's previously amended filing in its entirety.

[6] *See infra* note 10. The Commission notes that the text of the back-up trading agreement that appears on the Commission's Web site was filed as part of Amendment No. 3.

permitted by this Rule. In the event that an individual TPO is associated with an organization, the TPO shall provide to the Exchange, in a form and manner prescribed by the Exchange, an agreement by the organization to be responsible for all obligations arising out of that person's activities on or relating to the Exchange.] *Reserved.*

* * * * *

CHAPTER VI

DOING BUSINESS ON THE EXCHANGE TRADING FLOOR

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Section A: General

Back-up Trading Arrangements

Rule 6.16

(a) CBOE is Disabled Exchange.

(1) CBOE Exclusively Listed Options.

A. For purposes of this Rule 6.16, the term ''exclusively listed option'' means an option that is listed exclusively by an exchange (because the exchange has an exclusive license to use, or has proprietary rights in, the interest underlying the option).

B. The Exchange (''CBOE'') may enter into arrangements with one or more other exchanges (each a ''Back-up Exchange'') to permit CBOE and its members to use a portion of the Back-up Exchange's facilities to conduct the trading of some or all of CBOE's exclusively listed options in the event that the functions of CBOE are severely and adversely affected by an emergency or extraordinary circumstances (a ''Disabling Event''). Such option classes shall trade as listings of CBOE. The facility of the Back-up Exchange used by CBOE for this purpose will be deemed to be a facility of CBOE.

C. Trading of CBOE exclusively listed options on CBOE's facility at the Back-up Exchange shall be conducted in accordance with the rules of the Back-up Exchange, except that (i) such trading shall be subject to CBOE rules with respect to doing business with the public, margin requirements, net capital requirements, listing requirements and position limits, (ii) CBOE members that are trading on CBOE's facility at the Back-up Exchange (not including members of the Back-up Exchange who become temporary members of CBOE pursuant to paragraph (a)(1)(F)) will be subject to CBOE rules governing or applying to the maintenance of a person's or a firm's status as a member of CBOE, and (iii) CBOE Rule 8.87.01 may be utilized to establish a lower DPM participation rate applicable to trading on CBOE's facility on the Back-up Exchange than the rate that is applicable under the rules of the Back-up Exchange if agreed to by CBOE and the Back-up Exchange. In addition, CBOE and the Back-up Exchange may agree that other CBOE rules will apply to such trading. CBOE and the Back-up Exchange have agreed to communicate to their respective members which rules apply in advance of trading. The Back-up Exchange rules that govern trading on CBOE's facility at the Back-up Exchange shall be deemed to be CBOE rules for purposes of such trading.

D. The Back-up Exchange has agreed to perform the related regulatory functions with respect to trading of CBOE exclusively listed options on CBOE's facility at the Back-up Exchange, in each case except as CBOE and the Back-up Exchange may specifically agree otherwise. The Back-up Exchange and CBOE have agreed to coordinate with each other regarding surveillance and enforcement respecting trading of CBOE exclusively listed options on CBOE's facility at the Back-up Exchange. CBOE shall retain the ultimate legal responsibility for the performance of its self-regulatory obligations with respect to CBOE's facility at the Back-up Exchange.

E. CBOE shall have the right to designate its members that will be authorized to trade CBOE exclusively listed options on CBOE's facility at the Back-up Exchange and, if applicable, its member(s) that will be an LMM or DPM in those options. If the Back-up Exchange is unable to accommodate all CBOE members that desire to trade on CBOE's facility at the Back-up Exchange, CBOE may determine which members shall be eligible to trade at that facility. Factors to be considered in making such determinations may include, but are not limited to, any one or more of the following: Whether the member is a DPM or LMM in the applicable product(s), the number of contracts traded by the member in the applicable product(s), market performance, and other factors relating to a member's contribution to the market in the applicable product(s).

F. Members of the Back-up Exchange shall not be authorized to trade in any CBOE exclusively listed options, except that (i) CBOE may deputize willing floor brokers of the Back-up Exchange as temporary CBOE members to permit them to execute orders as brokers in CBOE exclusively listed options traded on CBOE's facility at the Back-up Exchange, and (ii) the Back-up Exchange has agreed that it will, at the instruction of CBOE, select members of the Back-up Exchange that are willing to be deputized by CBOE as temporary CBOE members authorized to trade CBOE exclusively listed options on CBOE's facility at the Back-up Exchange for such period of time following a Disabling Event as CBOE determines to be appropriate, and CBOE may deputize such members of the Back-up Exchange as temporary CBOE members for that purpose.

(2) CBOE Singly Listed Options.

A. For purposes of this Rule 6.16, the term ''singly listed option'' means an option that is not an ''exclusively listed option'' but that is listed by an exchange and not by any other national securities exchange.

B. CBOE may enter into arrangements with a Back-up Exchange under which the Back-up Exchange will agree, in the event of a Disabling Event, to list for trading singly listed option classes that are then singly listed only by CBOE and not by the Back-up Exchange. Any such option classes listed by the Back-up Exchange shall trade on the Back-up Exchange and in accordance with the rules of the Back-up Exchange. Such option classes shall be traded by members of the Back-up Exchange and by CBOE members selected by CBOE to the extent the Back-up Exchange can accommodate CBOE members in the capacity of temporary members of the Back-up Exchange. If the Back-up Exchange is unable to accommodate all CBOE members that desire to trade singly listed options at the Back-up Exchange, CBOE may determine which members shall be eligible to trade such options at the Back-up Exchange. Factors to be considered in making such determinations may include, but are not limited to, any one or more of the following: Whether the member is a DPM or LMM in the applicable product(s), the number of contracts traded by the member in the applicable product(s), market performance, and other factors relating to a member's contribution to the market in the applicable product(s).

C. Any options class listed by the Back-up Exchange pursuant to paragraph (a)(2)(B) that does not satisfy the standard listing and maintenance criteria of the Back-up Exchange will be subject, upon listing by the Back-up Exchange, to delisting (and, thus, restrictions on opening new series, and engaging in opening transactions in those series with open interest, as may be provided in the rules of the Backup Exchange).

(3) Multiply Listed Options.

CBOE may enter into arrangements with a Back-up Exchange to permit CBOE members to conduct trading on a Back-up Exchange of some or all of CBOE's multiply listed options in the event of a Disabling Event. Such options

shall trade as a listing of the Back-up Exchange and in accordance with the rules of the Back-up Exchange. Such options shall be traded by members of the Back-up Exchange and by CBOE members selected by CBOE to the extent the Back-up Exchange can accommodate CBOE members in the capacity of temporary members of the Back-up Exchange. If the Back-up Exchange is unable to accommodate all CBOE members that desire to trade multiply listed options at the Back-up Exchange, CBOE may determine which members shall be eligible to trade such options at the Back-up Exchange. Factors to be considered in making such determinations may include, but are not limited to, any one or more of the following: Whether the member is a DPM or LMM in the applicable product(s), the number of contracts traded by the member in the applicable product(s), market performance, and other factors relating to a member's contribution to the market in the applicable product(s).

(b) CBOE is Back-up Exchange.

(1) Disabled Exchange Exclusively Listed Options.

A. CBOE may enter into arrangements with one or more other exchanges (each a ''Disabled Exchange'') to permit the Disabled Exchange and its members to use a portion of CBOE's facilities to conduct the trading of some or all of the Disabled Exchange's exclusively listed options in the event of a Disabling Event. Such option classes shall trade as listings of the Disabled Exchange. The facility of CBOE used by the Disabled Exchange for this purpose will be deemed to be a facility of the Disabled Exchange.

B. Trading of the Disabled Exchange's exclusively listed options on the Disabled Exchange's facility at CBOE shall be conducted in accordance with CBOE rules, except that (i) such trading shall be subject to the Disabled Exchange's rules with respect to doing business with the public, margin requirements, net capital requirements, listing requirements and position limits, and (ii) members of the Disabled Exchange that are trading on the Disabled Exchange's facility at CBOE (not including CBOE members who become temporary members of the Disabled Exchange pursuant to paragraph (b)(1)(D)) will be subject to the rules of the Disabled Exchange governing or applying to the maintenance of a person's or a firm's status as a member of the Disabled Exchange. In addition, the Disabled Exchange and CBOE may agree that other Disabled Exchange rules will apply to such trading. The Disabled Exchange and CBOE have agreed to communicate to their respective members which rules apply in advance of trading.

C. CBOE will perform the related regulatory functions with respect to trading of the Disabled Exchange's exclusively listed options on the Disabled Exchange's facility at CBOE, in each case except as the Disabled Exchange and CBOE may specifically agree otherwise. CBOE and the Disabled Exchange have agreed to coordinate with each other regarding surveillance and enforcement respecting trading of the Disabled Exchange's exclusively listed options on the Disabled Exchange's facility at CBOE. The Disabled Exchange has agreed that it shall retain the ultimate legal responsibility for the performance of its self-regulatory obligations with respect to the Disabled Exchange's facility at CBOE.

D. CBOE members shall not be authorized to trade in any exclusively listed options of the Disabled Exchange, except (i) that the Disabled Exchange may deputize willing CBOE floor brokers as temporary members of the Disabled Exchange to permit them to execute orders as brokers in exclusively listed options of the Disabled Exchange traded on the facility of the Disabled Exchange at CBOE, and (ii) at the instruction of the Disabled Exchange, CBOE shall select CBOE members that are willing to be deputized by the Disabled Exchange as temporary members of the Disabled Exchange authorized to trade the Disabled Exchange's exclusively listed options on the facility of the Disabled Exchange at CBOE for such period of time following a Disabling Event as the Disabled Exchange determines to be appropriate, and the Disabled Exchange may deputize such CBOE members as temporary members of the Disabled Exchange for that purpose.

(2) Disabled Exchange Singly Listed Options.

A. CBOE may enter into arrangements with a Disabled Exchange under which CBOE will agree, in the event of a Disabling Event, to list for trading singly listed option classes that are then singly listed only by the Disabled Exchange and not by CBOE. Any such option classes listed by CBOE shall trade on CBOE and in accordance with CBOE rules. Such option classes shall be traded by CBOE members and by members of the Disabled Exchange selected by the Disabled Exchange to the extent CBOE can accommodate members of the Disabled Exchange in the capacity of temporary members of CBOE. CBOE may allocate such option classes to a CBOE DPM in advance of a Disabling Event, without utilizing the allocation process under CBOE Rule 8.95, to enable CBOE to quickly list such option classes upon the occurrence of a Disabling Event.

B. Any options class listed by CBOE pursuant to paragraph (b)(2)(A) that does not satisfy the listing and maintenance criteria under CBOE rules will be subject, upon listing by CBOE, to delisting (and, thus, restrictions on opening new series, and engaging in opening transactions in those series with open interest, as may be provided in CBOE rules).

(3) Multiply Listed Options.

CBOE may enter into arrangements with a Disabled Exchange to permit the Disabled Exchange's members to conduct trading on CBOE of some or all of the Disabled Exchange's multiply listed options in the event of a Disabling Event. Such options shall trade as a listing of CBOE and in accordance with CBOE rules. Such options shall be traded by CBOE members and by members of the Disabled Exchange to the extent CBOE can accommodate members of the Disabled Exchange in the capacity of temporary members of CBOE.

(c) Member Obligations.

(1) Temporary Members of the Disabled Exchange

A. A CBOE member acting in the capacity of a temporary member of the Disabled Exchange pursuant to paragraph (b)(1)(D) shall be subject to, and obligated to comply with, the rules that govern the operation of the facility of the Disabled Exchange at CBOE, including the rules of the Disabled Exchange to the extent applicable during the period of such trading. Additionally, (i) such CBOE member shall be deemed to have satisfied, and the Disabled Exchange has agreed to waive specific compliance with, rules governing or applying to the maintenance of a person's or a firm's status as a member of the Disabled Exchange, including all dues, fees and charges imposed generally upon members of the Disabled Exchange based on their status as such, (ii) such CBOE member shall have none of the rights of a member of the Disabled Exchange except the right to conduct business on the facility of the Disabled Exchange at CBOE to the extent described in this Rule, (iii) the member organization associated with such CBOE member, if any, shall be responsible for all obligations arising out of that CBOE member's activities on or relating to the Disabled Exchange, and (iv) the Clearing Member of such CBOE member shall guarantee and clear the

transactions of such CBOE member on the Disabled Exchange.

B. A member of a Back-up Exchange acting in the capacity of a temporary member of CBOE pursuant to paragraph (a)(1)(F) shall be subject to, and obligated to comply with, the rules that govern the operation of the facility of CBOE at the Back-up Exchange, including CBOE rules to the extent applicable during the period of such trading. Additionally, (i) such temporary member shall be deemed to have satisfied, and CBOE will waive specific compliance with, rules governing or applying to the maintenance of a person's or a firm's status as a member of CBOE, including all dues, fees and charges imposed generally upon CBOE members based on their status as such, (ii) such temporary member shall have none of the rights of a CBOE member except the right to conduct business on the facility of CBOE at the Back-up Exchange to the extent described in this Rule, (iii) the member organization associated with such temporary member, if any, shall be responsible for all obligations arising out of that temporary member's activities on or relating to CBOE, and (iv) the Clearing Member of such temporary member shall guarantee and clear the transactions on CBOE of such temporary member.

(2) Temporary Members of the Back-up Exchange

A. A CBOE member acting in the capacity of a temporary member of the Back-up Exchange pursuant to paragraphs (a)(2)(B) or (a)(3) shall be subject to, and obligated to comply with, the rules of the Back-up Exchange that are applicable to the Back-up Exchange's own members. Additionally, (i) such CBOE member shall be deemed to have satisfied, and the Back-up Exchange has agreed to waive specific compliance with, rules governing or applying to the maintenance of a person's or a firm's status as a member of the Back-up Exchange, including all dues, fees and charges imposed generally upon members of the Back-up Exchange based on their status as such, (ii) such CBOE member shall have none of the rights of a member of the Back-up Exchange except the right to conduct business on the Back-up Exchange to the extent described in this Rule, (iii) the member organization associated with such CBOE member, if any, shall be responsible for all obligations arising out of that CBOE member's activities on or relating to the Back-up Exchange, (iv) the Clearing Member of such CBOE member shall guarantee and clear the transactions of such CBOE member on the Back-up Exchange, and (v) such CBOE member shall only be permitted (x) to act in those capacities on the Back-up Exchange that are authorized by the Back-up Exchange and that are comparable to capacities in which the CBOE member has been authorized to act on CBOE, and (y) to trade in those option classes in which the CBOE member is authorized to trade on CBOE.

B. A member of a Disabled Exchange acting in the capacity of a temporary member of CBOE pursuant to paragraphs (b)(2)(A) or (b)(3) shall be subject to, and obligated to comply with, CBOE rules that are applicable to CBOE's own members. Additionally, (i) such temporary member shall be deemed to have satisfied, and CBOE will waive specific compliance with, rules governing or applying to the maintenance of a person's or a firm's status as a member of CBOE, including all dues, fees and charges imposed generally upon CBOE members based on their status as such, (ii) such temporary member shall have none of the rights of a CBOE member except the right to conduct business on CBOE to the extent described in this Rule, (iii) the member organization associated with such temporary member, if any, shall be responsible for all obligations arising out of that temporary member's activities on or relating to CBOE, (iv) the Clearing Member of such temporary member shall guarantee and clear the transactions of such temporary member on the CBOE, and (v) such temporary member shall only be permitted (x) to act in those CBOE capacities that are authorized by CBOE and that are comparable to capacities in which the temporary member has been authorized to act on the Disabled Exchange, and (y) to trade in those option classes in which the temporary member is authorized to trade on the Disabled Exchange.

(d) Member Proceedings.

(1) If CBOE initiates an enforcement proceeding with respect to the trading during a back-up period of the singly or multiply listed options of the Disabled Exchange by a temporary member of CBOE or the exclusively listed options of the Disabled Exchange by a member of the Disabled Exchange (other than a CBOE member who is a temporary member of the Disabled Exchange), and such proceeding is in process upon the conclusion of the back-up period, CBOE may transfer responsibility for such proceeding to the Disabled Exchange following the conclusion of the back-up period. Arbitration of any disputes with respect to any trading during a back-up period of singly or multiply listed options of the Disabled Exchange or of exclusively listed options of the Disabled Exchange on the Disabled Exchange's facility at CBOE will be conducted in accordance with CBOE rules, unless the parties to an arbitration agree that it shall be conducted in accordance with the rules of the Disabled Exchange.

(2) If the Back-up Exchange initiates an enforcement proceeding with respect to the trading during a back-up period of CBOE singly or multiply listed options by a temporary member of the Back-up Exchange or CBOE exclusively listed options by a CBOE member (other than a member of the Back-up Exchange who is a temporary member of CBOE), and such proceeding is in process upon the conclusion of the back-up period, the Back-up Exchange may transfer responsibility for such proceeding to CBOE following the conclusion of the back-up period. Arbitration of any disputes with respect to any trading during a back-up period of CBOE singly or multiply listed options on the Back-up Exchange or of CBOE exclusively listed options on the facility of CBOE at the Disabled Exchange will be conducted in accordance with the rules of the Back-up Exchange, unless the parties to an arbitration agree that it shall be conducted in accordance with CBOE rules.

(e) Member Preparations.

CBOE members are required to take appropriate actions as instructed by CBOE to accommodate CBOE's back-up trading arrangements with other exchanges and CBOE's own back-up trading arrangements.

** * * Interpretations and Policies:*

.01 This Rule 6.16 reflects back-up trading arrangements that CBOE has entered into or may enter into with one or more other exchanges. To the extent that this Rule provides that another exchange will take certain action, the Rule is reflecting what that exchange has agreed to do by contractual agreement with CBOE, but the Rule itself is not binding upon the other exchange.

* * * * *

Authority to Take Action Under Emergency Conditions

Rule 6.17

The Chairman of the Board, the President or such other person or persons as may be designated by the Board shall have the power to halt or suspend trading in some or all securities traded on the Exchange, to close some or all Exchange facilities, to determine the duration of any such halt, suspension or closing, to take one or more of the actions permitted to be taken by any person or body of the Exchange under Exchange rules, or to

take any other action deemed to be necessary or appropriate for the maintenance of a fair and orderly market or the protection of investors, or otherwise in the public interest, due to emergency conditions or extraordinary circumstances, such as (1) actual or threatened physical danger, severe climatic conditions, natural disaster, civil unrest, terrorism, acts of war, or loss or interruption of facilities utilized by the Exchange, or (2) a request by a governmental agency or official, or (3) a period of mourning or recognition for a person or event. The person taking the action shall notify the Board of actions taken pursuant to this Rule, except for a period of mourning or recognition for a person or event, as soon thereafter as is feasible.

* * * * *

CHICAGO BOARD OPTIONS EXCHANGE, INC.

FEE SCHEDULE

APRIL 1, 2005

1. Option Transaction Fees (1)(3)(4)(7)*(17)*: Remainder unchanged.

2. Market-Maker, e-DPM & DPM Marketing Fee (in option classes in which a DPM has been appointed) (6)*(17)*: Remainder unchanged.

3. Floor Brokerage Fee (1)(5)*(17)*: Remainder unchanged.

4. RAES Access Fee (Retail Automatic Execution System) (1)(4)*(17)*: Remainder unchanged.

5. ETFs, Structured Products, Rights, Warrants (per round lot) *(17)*: Remainder unchanged.

6. Indexes Customer Order Book Official (OBO) Execution Fees *(17)*: Remainder unchanged.

Footnotes:

(1)–(16) Unchanged.

(17) If CBOE exclusively listed options are traded at CBOE's facility on a Back-up Exchange pursuant to CBOE Rule 6.16, the Back-up Exchange has agreed to apply the per contract and per contract side fees in this fee schedule to such transactions. If any other CBOE listed options are traded on the Back-up Exchange (such as CBOE singly listed options that are listed by the Back-up Exchange) pursuant to CBOE Rule 6.16, the fee schedule of the Back-up Exchange shall apply to such trades. If the exclusively listed options of a Disabled Exchange are traded on the Disabled Exchange's facility at CBOE pursuant to CBOE Rule 6.16, CBOE will apply the per contract and per contract side fees in the fee schedule of the Disabled Exchange to such transactions. If any other options classes of the Disabled Exchange are traded on CBOE (such as singly listed options of the Disabled Exchange) pursuant to CBOE Rule 6.16, the fees set forth in the CBOE fee schedule shall apply to such trades.

Remainder of Fee Schedule: Unchanged.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

In its filing with the Commission, CBOE included statements concerning the purpose of, and basis for, the proposed rule and discussed any comments it received on the proposed rule. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

1. Purpose

a. *Introduction.* The Exchange proposes to adopt new CBOE Rule 6.16, *Back-Up Trading Arrangements*, which will facilitate the CBOE entering into arrangements with one or more other exchanges (each a ''Back-up Exchange'') to permit CBOE and its members to use a portion of a Back-up Exchange's facilities to conduct the trading of CBOE exclusively listed options [7] in the event of a Disabling Event, and similarly will permit the CBOE to provide trading facilities at CBOE for another exchange's exclusively listed options if that exchange (a ''Disabled Exchange'') is prevented from trading due to a Disabling Event. Proposed Rule 6.16 would also permit the CBOE to enter into arrangements with a Back-up Exchange to provide for the listing and trading of CBOE singly listed options [8] by the Back-up Exchange if CBOE's facility becomes disabled, and conversely provide for the listing and trading by CBOE of the singly listed options of a Disabled Exchange.

The Exchange also proposes an amendment to its Fee Schedule relative to the fees that shall apply to transactions in the options of a Disabled Exchange effected on a Back-up Exchange. Additionally, the Exchange proposes to adopt a new Rule 6.17, which addresses Exchange procedures under emergency conditions and is similar to rules that have been adopted by other exchanges. Finally, the rule proposal will replace and supersede current CBOE Rule 3.22, which the Exchange adopted following the events of September 11, 2001.

b. *Background.* The back-up trading arrangements contemplated by proposed Rule 6.16 represent CBOE's immediate plan to ensure that CBOE's exclusively listed and singly listed options will have a trading venue if a catastrophe renders its primary facility inaccessible or inoperable. The Commission has suggested measures that CBOE should undertake to expedite reopening of CBOE's exclusively listed securities if a catastrophic event prevents trading at CBOE for an extended period of time.[9] Proposed Rule 6.16 would facilitate CBOE entering into back-up trading arrangements with other exchanges that would address the measures suggested by the Commission. In addition to these back-up trading arrangements, CBOE is currently working on other back-up trading plans.

In September 2003, CBOE entered into separate Memoranda of Understanding with the American Stock Exchange LLC (''Amex''), Pacific Exchange (''PCX'') and Philadelphia Stock Exchange (''Phlx'') to memorialize their mutual understanding to work together to develop bi-lateral back-up trading arrangements in the event that trading is prevented at one of the exchanges. Since then, CBOE has been working with each of these exchanges to put in place written agreements outlining essential commercial terms with respect to the arrangements as well as operational plans that describe the operational and logistical aspects of the arrangements.

CBOE and Phlx have signed an agreement relative to back-up trading arrangements and are in the process of completing the operational plan for those arrangements. The Exchange submitted a copy of this agreement as Exhibit 3.A to its Form 19b–4 for the rule change proposal, together with a copy of a first amendment to the agreement as Exhibit 3.B.[10]

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[7] For purposes of proposed CBOE Rule 6.16, the term ''exclusively listed option'' means an option that is listed exclusively by an exchange (because the exchange has an exclusive license to use, or has proprietary rights in, the interest underlying the option).

[8] For purposes of proposed Rule 6.16, the term ''singly listed option'' means an option that is not an ''exclusively listed option'' but that is listed by an exchange and not by any other national securities exchange.

[9] *See* letter from Annette L. Nazareth, Director, Division of Market Regulation, Commission, to William J. Brodsky, Chairman and Chief Executive Officer, CBOE, dated April 17, 2003. The Exchange states that comparable letters were also sent to the other options exchanges.

[10] These exhibits are available for viewing on the Commission's Web site, *http://www.sec.gov/rules/sro.shtml*, and at the Exchange and the Commission. The Exchange states that the first amendment to the

c. *Proposed Rule 6.16: If CBOE is the Disabled Exchange.* The Exchange proposes to adopt Rule 6.16 to make effective its back-up trading arrangements with other exchanges. Section (a) of proposed Rule 6.16 describes the back-up trading arrangements that would apply if CBOE were the Disabled Exchange. Under proposed paragraph (a)(1)(B), the facility of the Back-up Exchange used by CBOE to trade some or all of CBOE's exclusively listed options will be deemed to be a facility of CBOE, and such option classes shall trade as listings of CBOE. This approach of deeming a portion of the Back-up Exchange's facilities to be a facility of the Disabled Exchange is an approach approved by the Commission in previous emergency situations.[11]

Since the trading of CBOE exclusively listed options will be conducted using the systems of the Back-up Exchange, proposed paragraph (a)(1)(C) provides that the trading of CBOE exclusively listed options on CBOE's facility at the Back-up Exchange shall be conducted in accordance with the rules of the Back-up Exchange, except that (i) such trading shall be subject to CBOE rules with respect to doing business with the public, margin requirements, net capital requirements, listing requirements and position limits, (ii) CBOE members that are trading on CBOE's facility at the Back-up Exchange (not including members of the Back-up Exchange who become temporary members of CBOE pursuant to paragraph (a)(1)(F)) will be subject to CBOE rules governing or applying to the maintenance of a person's or a firm's status as a member of CBOE, and (iii) CBOE Rule 8.87.01 may be utilized to establish a lower DPM participation rate applicable to trading on CBOE's facility on the Back-up Exchange than the rate that is applicable under the rules of the Back-up Exchange if agreed to by CBOE and the Back-up Exchange. In addition, CBOE and the Back-up Exchange may agree that other CBOE rules will apply to such trading. The Back-up Exchange rules that govern trading on CBOE's facility at the Back-up Exchange shall be deemed to be CBOE rules for purposes of such trading.

Proposed paragraph (a)(1)(D) reflects that the Back-up Exchange has agreed to perform the related regulatory functions with respect to trading of CBOE exclusively listed options on CBOE's facility at the Back-up Exchange, in each case except as CBOE and the Back-up Exchange may specifically agree otherwise. The Back-up Exchange and CBOE will coordinate with each other regarding surveillance and enforcement respecting such trading. CBOE shall retain the ultimate legal responsibility for the performance of its self-regulatory obligations with respect to CBOE's facility at the Back-up Exchange.

Under proposed paragraph (a)(1)(E), CBOE shall have the right to designate its members that will be authorized to trade CBOE exclusively listed options on CBOE's facility at the Back-up Exchange and, if applicable, its member(s) that will be a Lead Market-Maker (''LMM'') or Designated Primary Market-Maker (''DPM'') in those options. If the Back-up Exchange is unable to accommodate all CBOE members that desire to trade on CBOE's facility at the Back-up Exchange, CBOE may determine which members shall be eligible to trade at that facility by considering factors such as whether the member is a DPM or LMM in the applicable product(s), the number of contracts traded by the member in the applicable product(s), market performance, and other factors relating to a member's contribution to the market in the applicable product(s).

Under proposed paragraph (a)(1)(F), members of the Back-up Exchange shall not be authorized to trade in any CBOE exclusively listed options, except that (i) CBOE may deputize willing floor brokers of the Back-up Exchange as temporary CBOE members to permit them to execute orders as brokers in CBOE exclusively listed options traded on CBOE's facility at the Back-up Exchange,[12] and (ii) the Back-up Exchange has agreed that it will, at the instruction of CBOE, select members of the Back-up Exchange that are willing to be deputized by CBOE as temporary CBOE members authorized to trade CBOE exclusively listed options on CBOE's facility at the Back-up Exchange for such period of time following a Disabling Event as CBOE determines to be appropriate, and CBOE may deputize such members of the Back-up Exchange as temporary CBOE members for that purpose. The second of the foregoing exceptions would permit members of the Back-up Exchange to trade CBOE exclusively listed options on the CBOE facility on the Back-up Exchange if, for example, circumstances surrounding a Disabling Event result in CBOE members being delayed in arriving at the Back-up Exchange in time for prompt resumption of trading.

Section (a)(2) of the proposed rule provides for the continued trading of CBOE singly listed options at a Back-up Exchange in the event of a Disabling Event at CBOE. Proposed paragraph (a)(2)(B) provides that CBOE may enter into arrangements with a Back-up Exchange under which the Back-up Exchange will agree, in the event of a Disabling Event, to list for trading option classes that are then singly listed only by CBOE. Such option classes would trade on the Back-up Exchange as listings of the Back-up Exchange and in accordance with the rules of the Back-up Exchange. Under proposed paragraph (a)(2)(C), any such options class listed by the Back-up Exchange that does not satisfy the standard listing and maintenance criteria of the Back-up Exchange will be subject, upon listing by the Back-up Exchange, to delisting (and, thus, restrictions on opening new series, and engaging in opening transactions in those series with open interest, as may be provided in the rules of the Back-up Exchange).

CBOE singly listed option classes would be traded by members of the Back-up Exchange and by CBOE members selected by CBOE to the extent the Back-up Exchange can accommodate CBOE members in the capacity of temporary members of the Back-up Exchange. If the Back-up Exchange is unable to accommodate all CBOE members that desire to trade CBOE singly listed options at the Back-up Exchange, CBOE may determine which members shall be eligible to trade such options at the Back-up Exchange by considering the same factors used to determine which CBOE members are eligible to trade CBOE exclusively listed options at the CBOE facility at the Back-up Exchange.

Proposed Section (a)(3) provides that CBOE may enter into arrangements with a Back-up Exchange to permit CBOE members to conduct trading on a Back-up Exchange of some or all of CBOE's multiply listed options in the event of a Disabling Event. While continued trading of multiply listed options upon the occurrence of a Disabling Event is not likely to be as great a concern as the continued trading of exclusively and singly listed options, CBOE nonetheless believes a provision for multiply listed options should be included in the rule so that the exchanges involved will have

agreement between CBOE and Phlx has been agreed to in principle by the parties but remains subject to final approval by Phlx.

[11] The Commission approved a similar approach when options listed on the Pacific Stock Exchange were physically moved to other exchanges in October 1989 due to an earthquake (*See* Exchange Act Release No. 27365 (October 19, 1989), 54 FR 43511 (October 25, 1989)), and when Dell options were relocated from Phlx to Amex on a temporary basis in June 1998 (*See* Exchange Act Release No. 40088 (June 12, 1998), 63 FR 33426 (June 18, 1998)).

[12] The exchanges that acted as Back-up Exchanges in the emergency situations noted above also deputized its floor brokers in this manner. *See supra* note 11.

the option to permit members of the Disabled Exchange to trade multiply listed options on the Back-up Exchange. Such options shall trade as a listing of the Back-up Exchange and in accordance with the rules of the Back-up Exchange.

If CBOE Is the Back-Up Exchange

Section (b) of proposed Rule 6.16 describes the back-up trading arrangements that would apply if CBOE were the Back-up Exchange. In general, the provisions in Section (b) are the converse of the provisions in Section (a). With respect to the exclusively listed options of the Disabled Exchange, the facility of CBOE used by the Disabled Exchange to trade some or all of the Disabled Exchange's exclusively listed options will be deemed to be a facility of the Disabled Exchange, and such option classes shall trade as listings of the Disabled Exchange. Trading of the Disabled Exchange's exclusively listed options on the Disabled Exchange's facility at CBOE shall be conducted in accordance with CBOE rules, except that (i) such trading shall be subject to the Disabled Exchange's rules with respect to doing business with the public, margin requirements, net capital requirements, listing requirements and position limits, and (ii) members of the Disabled Exchange that are trading on the Disabled Exchange's facility at CBOE (not including CBOE members who become temporary members of the Disabled Exchange pursuant to paragraph (b)(1)(D)) will be subject to the rules of the Disabled Exchange governing or applying to the maintenance of a person's or a firm's status as a member of the Disabled Exchange. In addition, the Disabled Exchange and CBOE may agree that other Disabled Exchange rules will apply to such trading.

CBOE will perform the related regulatory functions with respect to such trading, in each case except as the Disabled Exchange and CBOE may specifically agree otherwise. Proposed paragraph (b)(1)(C) reflects that the Disabled Exchange has agreed to retain the ultimate legal responsibility for the performance of its self-regulatory obligations with respect to the Disabled Exchange's facility at CBOE.

Sections (b)(2) and (b)(3) describe the arrangements applicable to trading of the Disabled Exchange's singly and multiply listed options at CBOE, and are the converse of Sections (a)(2) and (a)(3). One difference is in paragraph (b)(2)(A), which includes a provision that would permit CBOE to allocate singly listed option classes of the Disabled Exchange to a CBOE DPM in advance of a Disabling Event, without utilizing the allocation process under CBOE Rule 8.95, to enable CBOE to quickly list such option classes upon the occurrence of a Disabling Event.

Member Obligations

Section (c) describes the obligations of members and member organizations with respect to the trading by ''temporary members'' on the facilities of another exchange pursuant to Rule 6.16. Section (c)(1) sets forth the obligations applicable to members of a Back-up Exchange who act in the capacity of temporary members of the Disabled Exchange on the facility of the Disabled Exchange at the Back-up Exchange.

Section (c)(1) provides that a temporary member of the Disabled Exchange shall be subject to, and obligated to comply with, the rules that govern the operation of the facility of the Disabled Exchange at the Back-up Exchange. This would include the rules of the Disabled Exchange to the extent applicable during the period of such trading, including the rules of the Disabled Exchange limiting its liability for the use of its facilities that apply to members of the Disabled Exchange. Additionally, (i) such temporary member shall be deemed to have satisfied, and the Disabled Exchange has agreed to waive specific compliance with, rules governing or applying to the maintenance of a person's or a firm's status as a member of the Disabled Exchange, including all dues, fees and charges imposed generally upon members of the Disabled Exchange based on their status as such, (ii) such temporary member shall have none of the rights of a member of the Disabled Exchange except the right to conduct business on the facility of the Disabled Exchange at the Back-up Exchange to the extent described in the Rule, (iii) the member organization associated with such temporary member, if any, shall be responsible for all obligations arising out of that temporary member's activities on or relating to the Disabled Exchange, and (iv) the Clearing Member of such temporary member shall guarantee and clear the transactions of such temporary member on the Disabled Exchange.

Section (c)(2) sets forth the obligations applicable to members of a Disabled Exchange who act in the capacity of temporary members of the Back-up Exchange for the purpose of trading singly and multiply listed options of the Disabled Exchange. Such temporary members shall be subject to, and obligated to comply with, the rules of the Back-up Exchange that are applicable to the Back-up Exchange's own members, including the rules of the Back-up Exchange limiting its liability for the use of its facilities that apply to members of the Back-up Exchange. Temporary members of the Back-up Exchange have the same obligations as those set forth in Section (c)(1) that apply to temporary members of the Disabled Exchange, except that, in addition, temporary members of the Back-up Exchange shall only be permitted (i) to act in those capacities on the Back-up Exchange that are authorized by the Back-up Exchange and that are comparable to capacities in which the temporary member has been authorized to act on the Disabled Exchange, and (ii) to trade in those option classes in which the temporary member is authorized to trade on the Disabled Exchange.

Member Proceedings

As noted above, proposed Rule 6.16 provides that the rules of the Back-up Exchange shall apply to the trading of the singly and multiply listed options of the Disabled Exchange traded on the Back-up Exchange's facilities, and (with certain limited exceptions) the trading of exclusively listed options of the Disabled Exchange traded on the facility of the Disabled Exchange at the Back-up Exchange. The Back-up Exchange has agreed to perform the related regulatory functions with respect to such trading (except as the Back-up Exchange and the Disabled Exchange may specifically agree otherwise).

Section (d) of proposed Rule 6.16 provides that if a Back-up Exchange initiates an enforcement proceeding with respect to the trading during a back-up period of singly or multiply listed options of the Disabled Exchange by a temporary member of the Back-up Exchange or exclusively listed options of the Disabled Exchange by a member of the Disabled Exchange (other than a member of the Back-up Exchange who is a temporary member of the Disabled Exchange), and such proceeding is in process upon the conclusion of the back-up period, the Back-up Exchange may transfer responsibility for such proceeding to the Disabled Exchange following the conclusion of the back-up period. This approach to the exercise of enforcement jurisdiction is also consistent with past precedent.

With respect to arbitration jurisdiction, proposed Section (d) provides that arbitration of any disputes with respect to any trading during a back-up period of singly or multiply listed options of the Disabled Exchange or of exclusively listed options of the

Disabled Exchange on the Disabled Exchange's facility at the Back-up Exchange will be conducted in accordance with the rules of the Back-up Exchange, unless the parties to an arbitration agree that it shall be conducted in accordance with the rules of the Disabled Exchange.

Member Preparations

To ensure that members are prepared to implement CBOE's back-up trading arrangements, proposed Section (e) requires CBOE members to take appropriate actions as instructed by CBOE to accommodate CBOE's back-up trading arrangements with other exchanges and CBOE's own back-up trading arrangements.

Interpretations and Policies

Proposed Interpretation and Policy .01 to Rule 6.16 clarifies that to the extent Rule 6.16 provides that another exchange will take certain action, the Rule is reflecting what that exchange has agreed to do by contractual agreement with CBOE, but Rule 6.16 itself is not binding on the other exchange.

d. *Fee Schedule* The Exchange proposes to add a footnote to its Fee Schedule to inform its members regarding what fees will apply to transactions in the listed options of a Disabled Exchange effected on a Back-up Exchange under Rule 6.16. The footnote provides that if CBOE is the Disabled Exchange, the Back-up Exchange has agreed to apply the per contract and per contract side fees in the CBOE fee schedule to transactions in CBOE exclusively listed options traded on the CBOE facility on the Back-up Exchange.[13] If any other CBOE listed options are traded on the Back-up Exchange (such as CBOE singly listed options that are listed by the Back-up Exchange) pursuant to CBOE Rule 6.16, the fee schedule of the Back-up Exchange shall apply to such trades. The footnote contains a second paragraph stating the converse if CBOE is the Back-up Exchange under Rule 6.16.

e. *Proposed Rule 6.17* The Exchange proposes to adopt a general emergency rule in proposed Rule 6.17. Although not directly related to the implementation of the back-up trading arrangements, the Exchange believes that it is appropriate to adopt such a rule in conjunction with implementing the back-up trading arrangements. Currently, there is no Exchange rule that grants specific authority in an emergency to any person or persons to take all actions necessary or appropriate for the maintenance of a fair and orderly market or the protection of investors. Authority to take actions affecting trading or the operation of CBOE systems is currently granted to the Board of Directors, floor officials and other individuals under several Exchange rules (*e.g.*, CBOE Rules 4.16, 6.3, 6.6 and 24.7). Several other exchanges already have adopted general emergency rules (*e.g.*, NYSE Rule 51).

Finally, the Exchange proposes to delete CBOE Rule 3.22, which is a temporary rule adopted in response to the events of September 11, 2001.

2. Statutory Basis

The Exchange states that the proposed rule change is intended to ensure that CBOE's exclusively listed and singly listed products will have a trading venue in the event that trading at CBOE is prevented due to a Disabling Event, thus minimizing potential disruptions for the markets and investors under those circumstances. The Exchange thus believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act,[14] in that it is designed to perfect the mechanisms of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2004–59 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–CBOE–2004–59. 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 CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2004–59 and should be submitted on or before May 5, 2005.

[13] When Phlx Dell options relocated to Amex in June 1998, Phlx fees applied to transactions in Dell options on the Amex. *See* supra note 11.

[14] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–1758 Filed 4–13–05; 8:45 am]

BILLING CODE 8010–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for new information collections, approval of existing information collections, revisions to OMB-approved information collections, and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below:

(OMB):

Office of Management and Budget, Attn: Desk Officer for SSA, Fax: (202) 395–6974.

(SSA):

Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1338 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: (410) 965–6400.

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at (410) 965–0454 or by writing to the address listed above.

1. *Farm Arrangement Questionnaire—20 CFR 404.1082(c)—0960–0064.* SSA uses the information collected on the SSA–7157–F4 to determine if farm rental income may be considered self-employment income for Social Security benefits coverage purposes. The respondents are individuals alleging self-employment income from the renting of land for farming activities.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 38,000.

Frequency of Response: 1.

Average Burden per Response: 30 minutes.

Estimated Annual Burden: 19,000 hours.

2. *Application for Benefits Under a U.S. International Social Security Agreement—20 CFR 404.1925—0960–0448.* The information collected on the SSA–2490–BK is required to determine entitlement to old-age, survivors or disability benefits from the United States or from a country that has entered into a Social Security agreement with the United States. The respondents are individuals who are applying for benefits from the U.S. or from a totalization agreement country.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 23,200.

Frequency of Response: 1.

Average Burden per Response: 30 minutes.

Estimated Average Burden: 11,600 hours.

3. *Letter to Landlord Requesting Rental Information—20 CFR 416.1130(b)—0960–0454.* Form SSA–L5061 provides a nationally uniform vehicle for collecting information from landlords for use in making rental subsidy determinations in the Supplemental Security Income (SSI) program. The information is used in deciding whether income limits are met for SSI eligibility. Respondents are landlords who provide subsidized rental arrangements to SSI applicants and recipients.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 49,000.

Frequency of Response: 1.

Average Burden per Response: 10 minutes.

Estimated Annual Burden: 8,167 hours.

4. *Plan for Achieving Self-Support—20 CFR 416.1180–1182, 416.1225–1227, 416.110(e)—0960–0559.* The information on form SSA–545 is collected by SSA when a Supplemental Security Income (SSI) applicant/recipient desires to use available income and resources to obtain education and/or training in order to become self-supportive. The information is used to evaluate the recipient's plan for achieving self-support to determine whether the plan may be approved under the provisions of the SSI program. The respondents are SSI applicants/recipients who are blind or disabled.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 7,000.

Frequency of Response: 1.

Average Burden per Response: 2 hours.

Estimated Annual Burden: 14,000 hours.

5. *Disability Update Report—20 CFR 404.1589–404.1595, 20 CFR 416.988–416.996—0960–0511.* Forms SSA–455 and SSA–455–OCR–SM are used by SSA to collect information when the continuing disability review (CDR) diary of a recipient of SSA-administered payments, based on disability, has matured or there is an indication of possible medical improvement. The information collected from beneficiaries is reviewed by specialists in the evaluation of work and earnings and in disability adjudication. The respondents are recipients of benefits, based on disability, under title II and/or XVI of the Social Security Act.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 981,000.

Frequency of Response: 1.

Average Burden per Response: 15 minutes.

Estimated Annual Burden: 245,250 hours.

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at (410) 965–0454, or by writing to the address listed above.

1. *Statement Regarding Contributions—20 CFR 360–366 and 404.736—0960–0020.* The determination of one-half support or contributions to support must be made to entitle certain child applicants to social security benefits. SSA uses Form SSA–783 to collect the information necessary to make such a determination. The respondents are persons giving information about a child's sources of support for entitlement to child's benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 30,000.

Frequency of Response: 1.

[15] 17 CFR 200.30–3(a)(12).

Average Burden per Response: 17 minutes.

Estimated Annual Burden: 8,500 hours.

2. *Report of Death by Funeral Director—20 CFR 404.715, 404.720, 416.635—0960–0142.* SSA uses the information on Form SSA–721 to make timely and accurate decisions based on the report of death including: (1) Proving the death of an insured individual, (2) learning of the death of a beneficiary whose benefits should terminate, and (3) determining who is eligible for the Lump-Sum Death Payment (LSDP) or may be eligible for benefits. The respondents are funeral directors with knowledge of the fact of death.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 741,113.

Frequency of Response: 1.

Average Burden per Response: 3.5 minutes.

Estimated Annual Burden: 43,232 hours.

3. *Authorization To Obtain Earnings Data From the Social Security Administration—0960–0602.* The information collected on Form SSA–581 is used to verify the authorization of the wage earner, or other party, to access the correct earnings record and disposition of the response. This access is required in order to produce an itemized statement for release to the proper third party. The respondents are individuals, and various private/public organizations/agencies needing detailed earnings information.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 60,000.

Frequency of Response: 1.

Average Burden per Response: 2 minutes.

Estimated Average Burden: 2,000 hours.

Dated: April 8, 2005.

Faye L. Lipsky,

Acting Reports Clearance Officer, Social Security Administration.

[FR Doc. 05–7451 Filed 4–13–05; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

Social Security Disability Program Demonstration Project: Benefit Offset Pilot Demonstration

AGENCY: Social Security Administration.

ACTION: Notice.

SUMMARY: We announce a demonstration project relating to the Social Security disability program under title II of the Social Security Act (the Act). In this demonstration, called the Benefit Offset Pilot Demonstration, we will test modifications to current program rules that we apply to title II disability beneficiaries who work. We will also modify current rules for paying outcome payments to providers of services under the Ticket to Work and Self-Sufficiency program (Ticket to Work program). We are conducting this project under the demonstration authority provided in section 234 of the Act.

EFFECTIVE DATES: We anticipate that we will implement the Benefit Offset Pilot Demonstration on or about May 1, 2005.

FOR FURTHER INFORMATION CONTACT: Mark Green by e-mail at *mark.green@ssa.gov,* by telephone at (410) 965–9852 or by mail at Social Security Administration, Office of Program Development and Research, 3520 Annex Building, 6401 Security Boulevard, Baltimore, MD 21235.

SUPPLEMENTARY INFORMATION:

The Benefit Offset Pilot Demonstration

In this demonstration project, we will apply alternate rules for treating the work activity of beneficiaries under the title II disability program. Our ultimate goal is to enable more beneficiaries to return to work and maximize their employment, earnings and economic independence. The project will test the effects of reducing benefits $1 for every $2 of a beneficiary's earnings above the Substantial Gainful Activity (SGA) amount when title II benefits otherwise would not be payable during the disability beneficiary's reentitlement period. This benefit offset will be provided in concert with other support services, such as benefits counseling. The demonstration also will test the effects of extending the duration of the reentitlement period from the current 36 months to 72 months. The demonstration also will test the effects of altering current rules that we use in continuing disability reviews. Only beneficiaries selected for the treatment group under the project will be eligible for the demonstration provisions. We will also modify the rules for paying outcome payments to providers participating in the Ticket to Work program who have accepted tickets from beneficiaries in the treatment group. We are conducting this demonstration project in the States of Connecticut, Utah, Vermont and Wisconsin.

This pilot demonstration is the beginning stage of demonstration activities that we plan to conduct to test the effects of a benefit offset as an alternative approach for treating work activity of title II disability beneficiaries. Information available from this pilot demonstration will be used to assist in the development of a more expansive demonstration project that we plan on conducting. We plan to conduct a demonstration project testing alternate methods of treating work activity in the title II disability program at a nationally representative sample of sites. We intend to enter into a contract to obtain assistance in the design, implementation, evaluation and management of this project, which will test a range of employment supports in combination with a $1 reduction in benefits for every $2 in earnings for individuals receiving disability benefits under title II of the Act. We estimate that this national demonstration project will begin in 2006. The contractor for the national demonstration project will carefully consider the information available from this pilot project.

In the Benefit Offset Pilot Demonstration, we have entered into contracts with Connecticut, Utah, Vermont and Wisconsin, to assist us in conducting a pilot demonstration designed to test a benefit offset in concert with various support services and inform the planning phases of the national demonstration. In this pilot demonstration, we are testing the effectiveness of certain modifications of title II disability program rules and a requirement under section 1148 of the Act. Our goal is to enable more beneficiaries to return to work and maximize their employment, earnings and economic independence. For title II disability beneficiaries who are participating in the treatment group of the demonstration project, we will waive title II rules that provide that we will stop benefits for any month, after the third month, in which a beneficiary performs SGA during the reentitlement period, and rules regarding the duration of the reentitlement period. In addition, we will waive certain rules relating to continuing disability reviews. We also will waive rules regarding payments to employment networks under the Ticket to Work program.

We are conducting the Benefit Offset Pilot Demonstration under the authority of section 234 of the Act. Section 234 of the Act directs the Commissioner of Social Security to carry out experiments and demonstration projects to determine the relative advantages and disadvantages of, among other approaches, various alternative methods of treating work activity of individuals entitled to title II benefits based on disability, including such methods as a reduction in benefits based on earnings,

designed to encourage these beneficiaries to return to work.

Section 234 of the Act authorizes the Commissioner to waive compliance with the benefit requirements of title II of the Act and the requirements of section 1148 of the Act as they relate to the program established under title II, and authorizes the Secretary of Health and Human Services to waive compliance with the benefit requirements of title XVIII of the Act, insofar as is necessary for a thorough evaluation of the alternative methods under consideration.

Participation in the Benefit Offset Pilot Demonstration

To participate in the Benefit Offset Pilot Demonstration an individual must be entitled to title II benefits based on disability and be enrolled in the Benefit Offset Pilot Demonstration. Enrollment will be a function of the four States that are participating in the demonstration. The following rules on eligibility for participation in the demonstration project also will apply:

- Individuals who are entitled to title II disability benefits but whose benefits are suspended because of performance of SGA during the reentitlement period will be eligible to participate in the project.
- Beneficiaries whose 36-month reentitlement period has ended but who are still entitled to title II disability benefits will be eligible to participate in the project, provided that the beneficiary is enrolled as a project participant prior to the close of the 71st month following the end of his or her trial work period.
- Concurrent title II/title XVI beneficiaries will not be eligible to participate in the project.
- Beneficiaries for whom we have already started a continuing disability review will be eligible to participate in the project, but we will complete the continuing disability review in accordance with current rules.
- Beneficiaries who have received a medical cessation determination or decision will not be eligible to participate in the project unless, on appeal, they subsequently receive an administrative determination or decision that their disability continues.

While consent of participants is not a requirement of demonstration projects under section 234, participation in this demonstration will be through voluntary written consent. Title II disability beneficiaries who are eligible for statewide programs providing employment support services, such as the State vocational rehabilitation (VR) agency program and the Benefits Planning, Assistance and Outreach program in the State, will be asked by the State programs to volunteer for the demonstration project. Beneficiaries who volunteer for the project will be randomly assigned to treatment and control groups. The treatment group will receive State-specific employment supports and will be eligible for the benefit offset and other title II disability program waivers, while the control group will receive only the employment supports. Since these employment supports are provided through statewide programs, individuals do not have to participate in the demonstration project to be eligible for them.

The individual's consent to participate in the Benefit Offset Pilot Demonstration may be withdrawn by the individual, in writing, at any time. If an individual has withdrawn his or her consent or is no longer eligible for the demonstration project according to the terms of the informed consent, we will apply all the relevant provisions of title II and section 1148 of the Act beginning with the first day of the month following the month in which the revocation is signed or the individual ceases to be eligible for the demonstration project.

Alternate Title II Program Rules That Apply to Participants in the Benefit Offset Pilot Demonstration

1. The Reentitlement Period

Current rules provide an individual entitled to title II benefits based on disability with an additional period, immediately following the individual's completion of 9 months of trial work, during which the individual can continue to test his or her ability to work if the individual has a disabling impairment. Section 223(a)(1) and sections 202(d)(1), (e)(1), and (f)(1) of the Act provide that this additional period, known as the reentitlement period, ends after 36 months or, if earlier, when the individual ceases to have a disabling impairment. Under these sections of the Act, an individual's performance of SGA during the reentitlement period will not terminate his or her entitlement to disability benefits. However, section 223(e) of the Act provides that benefits may not be paid for any month, after the third month, in which the individual engages in SGA during the reentitlement period. Our regulation at 20 CFR 404.1592a reflects these provisions of the Act.

Under section 404.1592a(a)(1) of our regulations, the first month that an individual entitled to title II disability benefits engages in SGA following completion of a 9-month trial work period, we will find that the individual's disability ceased because he or she has demonstrated the ability to do SGA. If the month disability ceased due to the performance of SGA occurs after the reentitlement period, entitlement to and payment of benefits will terminate with the second month after the month disability ceased. There are different rules if the month disability ceased due to the performance of SGA occurs during the reentitlement period. In this situation, section 404.1592a(a)(3) provides that we will find that the individual's entitlement to disability benefits terminates in the first month in which the individual engages in SGA after the end of the reentitlement period.

If we determine that a beneficiary's disability ceased during the reentitlement period because he or she performed SGA, section 404.1592a(a)(2) provides that the beneficiary will be paid benefits for the first month after the trial work period in which the beneficiary engages in SGA and for the two succeeding months, whether or not the beneficiary does SGA in those months. These three months are known as the ''grace period.'' After the grace period, we will not pay benefits for any month during the reentitlement period in which the beneficiary does SGA. However, we will pay benefits for any month during the reentitlement period in which the beneficiary does not do SGA. In determining whether an individual does SGA in a month after the grace period, we will consider only the individual's work in, or earnings for, that month. We will not apply the rules regarding averaging of earnings or unsuccessful work attempts.

Section 404.1592a(b) provides that the reentitlement period ends with the earlier of:

- The month before the first month an individual's impairment no longer exists or is not medically disabling; or
- The last day of the 36th month following the end of the individual's trial work period.

We are waiving specific provisions relating to the reentitlement period for this demonstration project. First, we are waiving the provisions of section 223(e)(1) of the Act and 20 CFR 404.401a and 404.1592a(a)(2)(i) that provide that, after the grace period, we will not pay benefits for any month during the reentitlement period in which the beneficiary does SGA. For project participants selected for the treatment group, we are waiving these provisions to permit the payment of benefits for months during the reentitlement period in which the beneficiary does SGA, subject to the

application of a benefit offset. Under the benefit offset, we will reduce the amount of the beneficiary's monthly title II disability benefits by $1 for every $2 of the beneficiary's earnings above the SGA threshold amount (for 2004, $830 per month for non-blind beneficiaries and $1350 per month for blind beneficiaries). We will determine the amount of monthly title II disability benefits that would have been payable to the beneficiary had the beneficiary not engaged in SGA, using the current title II program rules, including the rules in 20 CFR 404.401 *et seq.* regarding deductions, reductions, and nonpayment of benefits. We will apply the benefit offset to the disability benefits that would have been payable for the month had the beneficiary not engaged in SGA. This waiver will be effective only for benefits for months that begin after the month in which the disability beneficiary is enrolled as a participant in the treatment group of the project.

We also are waiving the provisions in section 223(e)(2) of the Act and 20 CFR 404.401a and 404.1592a(a)(2)(ii), which provide that title II benefits of dependents entitled on the earnings record of an individual entitled to disability insurance benefits will not be payable for any month for which the individual's disability insurance benefits are not payable under the Act and regulations because he or she engages in SGA during the reentitlement period. For persons entitled to dependents' benefits based on the earnings record of a disability insurance beneficiary who is a participant in the treatment group, we are waiving these provisions of the Act and regulations to permit the payment of such dependents' benefits for months in which the disability insurance beneficiary does SGA after the grace period and during his or her reentitlement period. Using the current title II program rules, including the rules in 20 CFR 404.401 *et seq.*, we will pay the monthly dependents' benefits that would have been payable had the disability insurance beneficiary not engaged in SGA. This waiver will be effective only for dependents' benefits for months that begin after the month in which the disability insurance beneficiary is enrolled as a participant in the treatment group of the project.

In addition, for the purpose of this demonstration project, we are waiving the provisions of sections 223(a)(1) and (e)(1) and sections 202(d)(1), (e)(1), and (f)(1) of the Act and 20 CFR 404.1592a(b) that limit the duration of the reentitlement period to 36 months. We are waiving these provisions for the purpose of providing a reentitlement period of up to 72 months for project participants selected for the treatment group. For these project participants, the reentitlement period will end with the earliest of the following:

- The month before the first month an individual's impairment no longer exists or is not medically disabling; or
- The last day of the 72nd month following the end of the trial work period.

For a beneficiary whose 36-month reentitlement period has ended and who is enrolled as a participant in the treatment group prior to the close of the 71st month following the end of his or her trial work period, we will provide the beneficiary with an extended reentitlement period of up to 72 months beginning with the month immediately following the end of his or her trial work period. However, as explained above, the alternate rules for paying disability benefits subject to the application of the benefit offset (and for paying dependents' benefits, if applicable) will be effective only for benefits for months that begin after the month in which the disability beneficiary is enrolled as a participant in the treatment group of the project. Therefore, if a disability beneficiary in the treatment group (including the aforementioned category of beneficiary) does SGA in or before the month in which he or she is enrolled as a project participant, and such month of SGA occurs after the grace period and during the extended reentitlement period, we will suspend the payment of disability benefits (and any dependents' benefits, if applicable) for that month under the current title II program rules.

Finally, to reduce the reporting burden we are waiving the provision in 20 CFR 404.1592a(a)(2) that provides that, in deciding whether a beneficiary does SGA in a particular month after the grace period and within the reentitlement period for purposes of determining whether benefits should be paid for that month, we will consider only the work in, or earnings for, that month, and we will not apply the provision regarding averaging of earnings. For a project participant who works after the grace period and within the reentitlement period, we will consider the individual's earnings on an annual basis and use averaging to determine whether the individual's average monthly earnings are above the SGA amount and, if so, to calculate the monthly benefit amount. We will pay benefits based on the individual's estimate of annual earnings and make necessary adjustments when the year ends, or sooner if relevant information is available.

In order to ensure that beneficiaries are not disadvantaged by their participation in this demonstration project, the alternate title II program rules will affect neither entitlement to a trial work period nor the payment of benefits during the grace period for beneficiaries selected for the treatment group. The benefit offset will be effective beginning with the month immediately following the month in which the beneficiary is enrolled as a participant in the treatment group. However, the benefit offset will not take effect any earlier than with the first month in which the beneficiary engages in SGA after both the trial work period and the grace period. In addition, the waivers under this demonstration project will not affect the period of extended Medicare coverage that applies to an individual whose entitlement to title II disability benefits has terminated due to the performance of SGA after the reentitlement period and who continues to have a disabling impairment. The period of extended Medicare eligibility for such an individual will continue to be determined as though the reentitlement period were 15 months, as required under section 226(b) of the Act. Beneficiaries who participate in this demonstration will continue to be entitled to at least 93 months of hospital insurance and supplementary medical insurance under Medicare after the last month of the trial work period if they continue to have a disabling impairment.

2. Continuing Disability Reviews

We are required under section 221(i) of the Act and our regulations to periodically reevaluate a disability beneficiary's impairment(s) to determine whether he or she continues to be under a disability. We call this evaluation a continuing disability review (CDR). We conduct CDRs at regularly scheduled intervals. However, we may begin a CDR at other times if circumstances warrant. Our regulations at 20 CFR 404.1589 and 404.1590 explain when we will begin CDRs for title II disability beneficiaries. If we determine in a CDR that the individual is no longer under a disability, in most cases benefits will stop.

We are waiving section 221(i) and related provisions of the Act and 20 CFR 404.1589 and 404.1590 for the purpose of suspending the initiation of CDRs for participants in the Benefit Offset Pilot Demonstration for the period up to and including a participant's extended reentitlement period. This means that

we will not begin a CDR for a participant in the treatment group either prior to or during his or her extended reentitlement period.

Alternate Rule for Outcome Payments Under the Ticket to Work Program

Under the Ticket to Work program under section 1148 of the Act, we make milestone and/or outcome payments to a provider of services which is serving as an employment network under that program and to which a disability beneficiary has assigned a ticket if certain conditions are met. Section 1148(h) of the Act and our regulations at 20 CFR 411.500, 411.525 and 411.575 provide that an employment network to which a beneficiary has assigned a ticket will be eligible for an outcome payment for each month (up to a maximum of 60 months) for which title II disability benefits and Federal Supplemental Security Income cash benefits based on disability or blindness are not payable to the individual because of work or earnings. Thus, an employment network to which a title II-only beneficiary has assigned a ticket can receive an outcome payment for any month during the beneficiary's reentitlement period for which title II disability benefits are not payable to the beneficiary because he or she is engaging in SGA.

For a participant in the demonstration project, we will not stop the payment of benefits for months during the beneficiary's extended reentitlement period because the beneficiary engages in SGA. Instead, we will reduce benefits by $1 for every $2 of the beneficiary's earnings above the SGA threshold amount. Thus, for employment networks serving beneficiaries who are project participants, a month of SGA that would otherwise generate an outcome payment for the employment network would not, because of the benefit offset, qualify as an outcome payment month under the Ticket to Work Program, unless the beneficiary's earnings are sufficient to reduce monthly benefits to zero after application of the benefit offset. This could impose an undue burden on employment networks serving these beneficiaries, since they would not receive outcome payments under the Ticket to Work program for which they would otherwise be eligible if the beneficiaries were not project participants.

Therefore, for this demonstration project, we are waiving the requirement in section 1148(h) of the Act and 20 CFR 411.500(b)–(e), 411.525(a)(1)(i), and 411.575(b)(1)(i)(A) that an outcome payment may be made to an employment network to which a title II beneficiary has assigned a ticket, only for a month for which title II disability benefits are not payable to the beneficiary because of work or earnings. For an employment network to which a beneficiary participating in this demonstration project has assigned a ticket, we are waiving this requirement for the purpose of permitting payment of an outcome payment for any month for which the employment network would have been eligible for such a payment if the beneficiary were not a participant in this demonstration project. If, but for this demonstration project, title II disability benefits would not have been payable to the beneficiary for a particular month because of the beneficiary's work or earnings, we will pay an outcome payment to the employment network for that month if all other requirements for payment under the Ticket to Work program are met.

We also may pay milestone and/or outcome payments to a State VR agency which is serving a beneficiary under the Ticket to Work program if the State agency has elected to be paid under an employment network payment system with respect to that beneficiary. Therefore, this waiver also will apply to a State VR agency to which a beneficiary participating in the project has assigned a ticket and which has elected to be paid under an employment network payment system with respect to that beneficiary.

Objectives of the Benefit Offset Pilot Demonstration

Through this demonstration project we expect to:

- Determine the effectiveness of the alternate rules in encouraging title II disability beneficiaries to return to work or increase their earnings;
- Obtain information that can be used in planning the national demonstration project;
- Support the President's New Freedom Initiative; and
- Further the goal of supporting work at all stages of our disability process.

We will work with the contractors to develop appropriate measurements of the effects of the alternate rules to be tested under this demonstration project. The evaluation of the project will focus on issues such as the rate of return to work by project participants, their earnings and ability to sustain their work attempts, and the rate at which they leave cash benefits because of work. We also will be examining for whom these interventions appear to be the most effective.

Statutory and Regulatory Provisions Waived

We waive the provisions of section 223(e)(1) of the Act and 20 CFR 404.401a and 404.1592a(a)(2)(i) to the extent necessary to permit the payment of disability benefits to a beneficiary who is a participant in the treatment group for months during the reentitlement period in which the beneficiary does SGA, subject to the application of the benefit offset described above. We also waive the provisions of section 223(e)(2) of the Act and 20 CFR 404.401a and 404.1592a(a)(2)(ii) to the extent necessary to permit the payment of dependents' benefits to persons entitled to such benefits based on the earnings record of a disability insurance beneficiary who is a participant in the treatment group, for months during the reentitlement period in which the project participant does SGA. We waive the provisions of sections 223(a)(1) and (e)(1) and sections 202(d)(1), (e)(1), and (f)(1) of the Act and 20 CFR 404.1592a(b) to the extent necessary to provide participants in the treatment group an extended reentitlement period of up to 72 months. We waive the provisions of 20 CFR 404.1592a(a)(2) to the extent necessary to permit us to consider a project participant's earnings on an annual basis and use averaging to determine whether that beneficiary's average monthly earnings for a month during the reentitlement period are above the SGA amount for purposes of applying the benefit offset and calculating the monthly benefit amount under the offset.

We waive section 221(i) and relevant provisions of sections 202(d)(1), (e)(1), and (f)(1), 216(i), and 223(a)(1) of the Act and 20 CFR 404.1589 and 404.1590 to the extent necessary to permit us to suspend the initiation of CDRs for a beneficiary who is a project participant for the period up to and including the participant's extended reentitlement period.

We waive the provisions of section 1148(h) of the Act and 20 CFR 411.500(b)–(e), 411.525(a)(1)(i), and 411.575(b)(1)(i)(A) to the extent necessary to permit us to make an outcome payment under the Ticket to Work program to an employment network (or State VR agency, if applicable) to which a beneficiary who is a participant in the treatment group has assigned a ticket, for any month for which the employment network (or State VR agency) would have been eligible for such payment if the beneficiary were not a participant in this demonstration project.

Authority: Section 234 of the Social Security Act.

Dated: March 23, 2005.

Jo Anne B. Barnhart,

Commissioner of Social Security.

[FR Doc. 05–7450 Filed 4–13–05; 8:45 am]

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DEPARTMENT OF STATE

[Public Notice 5049]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals for Study of the U.S. Institute for Bolivian Indigenous Student Leaders

Announcement Type: New Cooperative Agreement.

Funding Opportunity Number: ECA/A/E/USS–05–09–BSL.

Catalog of Federal Domestic Assistance Number: 00.000.

Key Dates:

Application Deadline: June 1, 2005.

Executive Summary: The Study of the U.S. Branch, Office of Academic Exchange Programs, Bureau of Educational and Cultural Affairs, announces an open competition for public and private non-profit organizations to develop and implement a four-week ''Study of the United States Institute for Bolivian Indigenous Student Leaders'' to take place in January or January-February 2006. This program is to be conducted in Spanish as the primary language of instruction. It is designed to provide a group of 12 to 15 highly motivated undergraduate student leaders representing the Bolivian indigenous population with a four-week academic seminar and educational travel program that will give them a deeper understanding of U.S. society, culture, values and institutions, while at the same time assisting these participants in the further development of their leadership potential and collective problem-solving skills.

The Bureau anticipates providing one assistance award to support this program.

Program participants will be drawn principally from the Quechua and Aymara indigenous groups of Bolivia, but should include students from some of Bolivia's 30 other ethnic groups. The participants will be identified and selected by the U.S. Embassy in La Paz, in consultation with the State Department's Bureau of Western Hemisphere Affairs and ECA.

Participants will be selected on the basis of their demonstrated leadership capacity as well as academic achievement, community involvement and interest in learning about the United States. It is expected that they will draw on the experience derived from this institute in future positions of leadership in their community and home country.

I. Funding Opportunity Description

Authority: Overall grant making authority for these programs is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.''

Based on a group of 12 to 15 participants, the total Bureau-funded budget (program and administrative) for the Study of the U.S. Institute for Bolivian Indigenous Student Leaders should be approximately $230,000. Please Note: Proposals for programs involving between 12 and 15 participants will be eligible for consideration, however preference will be given to proposals that accommodate larger numbers of participants, up to the maximum of 15 (12 participants should be the minimum).

Applicants must submit a comprehensive budget for the entire program. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program, and availability of U.S. government funding.

Purpose: The Bureau is seeking detailed proposals for the Study of the United States Institute for Bolivian Indigenous Student Leaders from U.S. liberal arts colleges, universities, consortia of colleges and universities, and other not-for-profit academic organizations, that have an established reputation in one or more of the following fields: political science, international relations, law, history, sociology, U.S. studies, and/or other disciplines or sub-disciplines related to the study of the United States.

The academic program should be designed to illuminate the history and evolution of U.S. society, culture, values and institutions, broadly defined. It should include attention to the role and influence of principles and values such as democracy, the rule of law, individual rights, freedom of expression, equality, diversity and tolerance in American life and society, and provide insight into the nature of the political process in the United States. The concepts of individual and civic responsibility, volunteerism and community involvement should also be addressed. To the extent feasible, hands-on activities related to these areas should be included in the program.

Within this broader framework, the program should also include a focus on how different social and ethnic groups interact in American society and politics, and how disadvantaged populations within the U.S.—*e.g.*, Native Americans and other minorities, immigrants and other populations—have been able to overcome discrimination or exclusion and enter the mainstream of American economic, political and social life. The program should examine current political, social and economic issues and debates relating to these groups and their relations with broader U.S. society. Participants also should learn how free enterprise, free trade, foreign investment, and creation of economic zones can promote economic development and economic opportunity.

In light of the foregoing, it will be important that applicant institutions demonstrate a competence in such areas as civil rights, governance in ethnically and socially diverse communities, interactions between different social, cultural and ethnic groups, and strategies to promote economic opportunity among disadvantaged groups. Applicant institutions are strongly encouraged to involve organizations that represent these interests and groups in the planning and implementation of the institute.

In addition to promoting a better understanding of the United States and of how diverse groups interact and cooperate within the U.S., an important objective of this institute is to help the participants develop their leadership and consensus-building skills. In this context, the program should include lectures as well as group discussions and exercises focusing on such topics as the essential attributes of leadership; ''teambuilding;'' developing effective communication and problem-solving skills; and managing change in different organizational settings.

Because the program will be conducted in Spanish as the primary language of instruction, applicant institutions must demonstrate that most

if not all the institute faculty, as well as guest speakers, administrative staff, and others who will be prominently involved in program implementation are fluent Spanish speakers, *or that* appropriate arrangements for translation services can be made within the confines of the program budget.

The program should be four weeks in length with a domestic travel component of not more than seven (7) days, including a concluding 2–3 days in Washington, DC, at the end of the program. This travel component should directly complement the academic residency segment. It should include visits to cities and other sites of interest in the region of the host institution.

The institute should be organized through an integrated, balanced series of lectures, readings, seminar discussions, experiential learning exercises, regional travel, and site visits. The academic component should encourage active participation by the students in lecture and panel formats, as well as through activities such as group projects and debates. Opportunities for participants to meet ordinary Americans from different social, ethnic and economic backgrounds should be arranged in the form of dinners or weekend home stays with local families, meetings of civic organizations, or get-togethers with American students. Participants may be invited to speak to appropriate student and civic groups about their experiences and life in their home country.

Applicants are encouraged to design thematically coherent programs in ways that draw upon the particular strengths, faculty and resources of their institutions and communities as well as upon the nationally recognized expertise of scholars and other experts throughout the United States. Within the limits of their thematic focus and organizing framework, Institute programs should also be designed to:

1. Bring an interdisciplinary or multi-disciplinary focus to bear on the program content;

2. give participants a multi-dimensional view of U.S. society and institutions that includes a broad and balanced range of perspectives. Where possible, programs should therefore include the views not only of scholars but also other professionals such as government officials, representatives of non-governmental or community service organizations, journalists, and others who can substantively contribute to the topics at issue; and

3. ensure access to library and material resources that will enable grantees to continue their research and study upon returning to their home institutions.

The project director or one of the key program staff responsible for the academic program must have an advanced degree in political science, international relations, law, history, sociology, U.S. studies and/or other disciplines or sub-disciplines related to the study of the United States. Programs must conform with Bureau requirements and guidelines outlined in the Solicitation Package. Bureau programs are subject to the availability of funds.

The host institution will also be expected to provide participants post-program opportunities for further investigation and research on the topics and issues examined and discussed during the institute.

Participants: As specified in the Project Objectives, Goals and Implementation (POGI) guidelines in the solicitation package, participants in the ''Study of the United States Institute for Bolivian Indigenous Student Leaders'' will be highly motivated students representing the Quechua, Aymara and other indigenous populations who are enrolled as first, second or third year undergraduates at Bolivian universities. Participants will be fully conversant in Spanish, which is the language of instruction in many Bolivian universities; however, they will likely have very limited or no working knowledge of English. All participants will have demonstrated academic excellence, leadership potential as manifested through, *e.g.*, community involvement, and a serious interest in learning more about the United States.

Participants will be identified and selected by the U.S. Embassy in La Paz in consultation with the State Department's Bureau of Western Hemisphere Affairs and ECA. A mix of male and female participants will be included, and a mix of ethnic, religious and cultural backgrounds represented. The students' major fields are expected to vary, including the humanities, social sciences, education, business, and other professional fields.

All participants in this program will be required to return home to continue their university studies following completion of their Institute program. They will have had little or no prior study or travel experience in the United States or elsewhere outside of their home country, and must be willing and able to fully participate in an intensive academic program, community service, and active educational travel program. As participants will be selected in part on the basis of their demonstrated leadership capacity, it is expected they will use the experience derived from the program in positions of responsibility in their communities and country in the future.

Please note: Special attention will be required on the part of the host institution to the students' limited knowledge of the U.S. and their varying levels of academic sophistication. Particular sensitivity also may be required on the part of the host institution to the cultural traditions and religious practices of the participating students, who will represent a variety of ethnic and religious groups. Special requirements and restrictions regarding diet, worship, housing and medical care may need to be considered. ECA will provide guidance and assistance, as needed.

Program Dates: The Study of the United States Institute for Bolivian Indigenous Student Leaders should be 28 days in length (including participant arrival and departure days). The institute should begin in early to mid-January 2006 and conclude either in late January or early February 2006.

Program Guidelines: The conception and structure of the institute program is the responsibility of the organizers. It is critically important that proposals provide a full, detailed and comprehensive narrative describing the objectives of the institute; the title, scope and content of each session; planned site visits; and, how each session relates to the overall institute theme(s). A syllabus must be included that indicates the subject matter for each lecture, panel discussion or other activity (*e.g.*, group exercises), confirms or provisionally identifies proposed lecturers and session leaders, and clearly shows how assigned readings will support each session (assigned readings should be Spanish-language only). A calendar of all program activities must also be included. The recipient may be required to obtain review and approval of significant agenda/syllabus changes in advance of their implementation.

Note: In a cooperative agreement, ECA is substantially involved in program activities above and beyond routine grant monitoring. ECA activities and responsibilities for this program are as follows: ECA will participate in the selection of participants, will exercise oversight with one or more site visits and will debrief participants while in the U.S. and also engage in follow-up communications with the participants upon their return home. ECA may require changes in the activities proposed even after the grant is awarded.

II. Award Information

Type of Award: Cooperative Agreement. ECA's level of involvement

in this program is described in section I above.

Fiscal Year Funds: FY–2005.

Approximate Total Funding: $230,000.

Approximate Number of Awards: 1.

Approximate Average Award: $230,000.

Floor of Award Range: $200,000.

Ceiling of Award Range: $230,000.

Anticipated Award Date: Pending availability of funds, August 1, 2005.

Anticipated Project Completion Date: September 30, 2006.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds

There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements

(a) Bureau grant guidelines require that organizations with fewer than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates awarding one assistance award in an amount up to $230,000 for the Study of the U.S. Institute for Bolivian Indigenous Student Leaders. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

(b) *Technical Eligibility:* All proposals must comply with the following: The project director or one of the key program staff responsible for the academic program must have an advanced degree in one of the following fields: political science, international relations, law, history, sociology, literature, U.S. studies, and/or other disciplines or sub-disciplines related to the program themes.

Failure to meet this criterion will result in your proposal being declared technically ineligible and given no further consideration in the review process.

IV. Application and Submission Information

Note: Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Staff in ECA's Study of the U.S. Branch ECA/A/E/USS) staff will be available to consult with prospective applicant institutions about proposal preparation and program design and content up until the proposal submission deadline. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1. Contact Information To Request an Application Package

Please contact the Branch for the Study of the U.S., ECA/A/E/USS, Room Number 252, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, telephone number (202) 453–8536 and fax number (202) 453–8533, email *BendaPM@State.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/A/E/USS–05–09–BSL when making your request.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation.

It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

IV.2. To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm.* Please read all information before downloading.

IV.3. Content and Form of Submission

Applicants must follow all instructions in the Solicitation Package. The original and eight (8) copies of the application should be sent per the instructions under IV.3e. ''Submission Dates and Times section'' below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please refer to the solicitation package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1 Adherence to All Regulations Governing the J Visa

The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and

other requirements. ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD–SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 401–9810, FAX: (202) 401–9809.

Please refer to Solicitation Package for further information.

IV.3d.2 Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes,* in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. *Participant satisfaction* with the program and exchange experience.

2. *Participant learning,* such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. *Participant behavior,* concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. *Institutional changes,* such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (i.e., surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Please note: Because the cooperative agreement prospectively to be awarded under the terms of the present RFGP is likely to be of less than one year's duration, host institutions will not be expected to be able to demonstrate significant specific results in terms of participant behavior or institutional changes during the agreement period. Applicant institutions' monitoring and evaluation plans should, therefore, focus primarily on the first and more particularly the second level of outcomes (learning). ECA/A/E/USS will assume principal responsibility for developing performance indicators and conducting post-institute evaluations to measure changes in participant behavior as a result of the program, and effect of the program on institutions, over time.

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3d.4. Describe Your Plans for Overall Program Management, Staffing, and Coordination With ECA

ECA considers program management, staffing and coordination with the Department of State essential elements of your program. Please be sure to give sufficient attention to these elements in your proposal. Please refer to the Technical Eligibility Requirements and the POGI in the Solicitation package for specific guidelines.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

Applicants must submit a comprehensive budget for the entire program. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program, and availability of U.S. government funding.

Please refer to the ''POGI'' in the Solicitation Package for complete institute budget guidelines and formatting instructions.

IV.3e.2. Allowable Costs for the Program Include the Following

(1) Institute staff salary and benefits.

(2) Honoraria for guest speakers.

(3) Participant per diem.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Submission Dates and Times: Application Deadline Date: June 1, 2005.

Explanation of Deadlines: Due to heightened security measures, proposal submissions must be sent via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.) and be shipped no later than the above deadline. The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. ECA will *not* notify you upon receipt of application. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered. Applications may not be submitted electronically at this time.

Applicants must follow all instructions in the Solicitation Package. *Important note:* When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM.''

The original and eight (8) copies of the application for the Study of the U.S. Institute for Bolivian Indigenous Student Leaders should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547, Reference number: ECA/A/E/USS–05–09-BSL.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3g. *Intergovernmental Review of Applications:* Executive Order 12372 does not apply to this program.

Applicants are also requested to submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal in text (.txt) format on a PC-formatted disk.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the ECA program office, the Bureau of Western Hemisphere Affairs, and the Public Affairs Section of the U.S. Embassy in La Paz. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for cooperative agreements resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Overall Quality:* Proposals should exhibit originality and substance, consonant with the highest standards of American teaching and scholarship. Program design should reflect the main currents as well as the debates within the subject disciplines of each institute. Program elements should be tailored for students with limited knowledge of the U.S. and with varying degrees of academic sophistication. Lectures, panels, and other interactive classroom activities, readings, community service, and site visits, taken as a whole, should offer a balanced presentation of issues, reflecting both the continuity of the American experience as well the diversity and dynamism inherent in it.

2. *Program Planning and Administration:* Proposals should demonstrate careful planning. The organization and structure of the institute should be clearly delineated and be fully responsive to all program objectives. A program syllabus (noting specific sessions and topical readings in Spanish supporting each academic unit) should be included, as should a calendar of activities. The travel component should not simply be a tour, but should be an integral and substantive part of the program, reinforcing and complementing the academic segment. Proposals should provide evidence of continuous administrative and managerial capacity as well as the means by which program activities and logistical matters will be implemented. Constant supervision will be required on the part of the host institution during the academic, extracurricular and daily life activities of the students.

3. *Ability to Achieve Program Objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. *Institutional Capacity:* Proposed personnel, including faculty and administrative staff as well as outside presenters, should be fully qualified to achieve the project's goals. Library and meeting facilities, housing, meals, transportation and other logistical arrangements should fully meet the needs of participants.

5. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful exchange program activities, indicating the experience that the organization and its professional staff have had working with foreign students, particularly from Latin America. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

6. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. ''Diversity'' should be interpreted in the

broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Applicant institutions should highlight instances of diversity in their proposal.

7. *Project Evaluation and Follow-up:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is strongly recommended. Proposals should also discuss provisions made for follow-up with returned grantees as a means of establishing longer-term individual and institutional linkages.

8. *Cost-Effectiveness/Cost Sharing:* Proposals for programs involving between 12 and 15 participants will be eligible for consideration, however preference will be given to proposals that accommodate larger numbers of participants, up to the maximum of 15 (12 participants should be the minimum). The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

VI. Award Administration Information

VI.1. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2 Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments.''

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Governments, and Non-profit Organizations.

Please reference the following Web sites for additional information:

http://www.whitehouse.gov/omb/grants.

http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI.

VI.3. Reporting Requirements

You must provide ECA with a hard copy original plus two copies of the following reports:

Mandatory:

(1) A final program and financial report no more than 90 days after the expiration of the award or the conclusion of the institute, whichever comes first;

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VI.4. Optional Program Data Requirements

Organizations awarded grants will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the grant or who benefit from the grant funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three work days prior to the official opening of the activity.

VII. Agency Contacts

For questions about this announcement, contact: Branch for the Study of the U.S., ECA/A/E/USS, Room Number 252, ECA/A/E/USS–05–09–BSL, Study of the U.S. Institute for Bolivian Indigenous Student Leaders, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, telephone number (202) 453–8536 and fax number (202) 453–8533, e-mail: *BendaPM@State.gov*.

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/E/USS–05–09–BSL.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice: The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: April 6, 2005.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 05–7511 Filed 4–13–05; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5050]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposal for Study of the U.S. Institute on U.S. National Security: U.S. National Security Policymaking in a Post 9/11 World

Announcement Type: New Cooperative Agreement.

Funding Opportunity Number: ECA/A/E/USS–05–10–NS.

Catalog of Federal Domestic Assistance Number: 19.418.

Key Dates: Application Deadline: June 6, 2005.

Executive Summary: The Branch for the Study of the U.S., Office of Academic Exchange Programs, Bureau of Educational and Cultural Affairs (ECA/A/E/USS), announces an open competition for public and private non-profit organizations to develop and implement the Study of the United States Institute on U.S. National Security: U.S. National Security Policymaking in a Post 9/11 World. This institute, for a multinational group of 18 experienced foreign university educators and other professionals, is intended to provide participants with a deeper understanding of U.S. approaches to national security policymaking, past and present, in order to strengthen curricula and to improve the quality of teaching about the United States at universities and other institutions abroad. The institute should be designed as intensive, academically rigorous seminars for scholars and other professionals from outside the United States and should have a strong central theme and focus. It should also have a strong contemporary component.

It is anticipated that this grant will be awarded on or about August 1, 2005 and program activities should begin shortly thereafter. The program, which should be six weeks in length, will be conducted during the winter of 2006 and must include an academic residency segment of at least four weeks duration at a U.S. college or university campus (or other appropriate U.S. location) and a study tour segment of not more than two weeks that should complement the learning gained during the academic residency segment. The study tour segment must include a visit to Washington involving substantive briefings by high-ranking national security policy professionals from the Department of State, other relevant U.S. government agencies and private institutions.

I. Funding Opportunity Description

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for this institute is provided through legislation.

Purpose: The Bureau is seeking a detailed proposal for a Study of the United States (U.S.) Institute on U.S. National Security issues from colleges, universities, consortia of colleges and universities, and other not-for-profit academic organizations that have an established reputation in one or more of the following fields: political science, international relations, law, military science, and/or other disciplines or sub-disciplines related to the program themes.

This Study of the U.S. Institute should provide a multinational group of up to 18 experienced foreign university faculty and other professionals with a deeper understanding of the process of U.S. national security policymaking. The institute should be organized around a central theme or themes in U.S. national security policy planning and formulation and should have a strong contemporary component. Through a combination of traditional, multi-disciplinary and interdisciplinary approaches, program content should be imaginatively integrated in order to elucidate the history and evolution of U.S. institutions and values, broadly defined. The program should also serve to illuminate contemporary political, social, and economic debates in American society.

The institute is intended to offer foreign scholars and other professionals whose professional work focuses in whole or in substantial part on the United States the opportunity to deepen their understanding of American society, culture and institutions. Their ultimate goal is to strengthen curricula, to improve the quality of teaching, and to broaden understanding of U.S. national security policymaking in universities and other institutions of influence abroad.

The project director or one of the key program staff responsible for the academic program must have an advanced degree in one of the following fields: political science, international relations, law, military science, and/or other disciplines or sub-disciplines related to the program themes. Staff escorts traveling under the cooperative agreement must have demonstrated qualifications to perform this service. The program must conform with Bureau requirements and guidelines outlined in the Solicitation Package. Bureau programs are subject to the availability of funds.

The institute should be designed as intensive, academically rigorous seminars intended for an experienced group of fellow scholars from outside the United States. The institute should be organized through an integrated series of lectures, readings, seminar discussions, regional travel and site visits, and should also include some opportunity for limited but well-directed independent research. Applicants are encouraged to design a thematically coherent program in ways that draw upon the particular strengths, faculty and resources of their institutions as well as upon the nationally recognized expertise of scholars and other experts throughout the United States.

This Study of the United States Institute program should seek to:

1. Provide participants with a survey of contemporary scholarship within the institute's governing academic discipline, delineating the current scholarly debate within the field. In this regard the seminar should indicate how prevailing academic practice in the discipline represents both a continuation of and a departure from past scholarly trends and practices. It is expected that presenters from other institutions will be brought in, as appropriate. Please note that the ways these alternative schools of thought will be presented should be clearly described in the proposal;

2. Bring an interdisciplinary or multi-disciplinary focus to bear on the program content;

3. Give participants a multi-dimensional examination of U.S. society and institutions that reflects a broad and balanced range of perspectives and responsible views. The program should include the views not only of scholars, but also those of other professionals such as government officials, private practitioners and others who can substantively contribute to the topics at issue; and,

4. Ensure access to library and material resources that will enable grantees to continue their research, study and curriculum development upon returning to their home institutions.

Program Description

(1) Study of the U.S. Institute on U.S. National Security: U.S. National Security Policymaking in a Post 9/11 World

This Institute should provide a multinational group of 18 experienced foreign university faculty and other professionals with an opportunity to increase their understanding of the foundations and formulation of U.S. national security policy, with specific reference to U.S. views on what constitutes basic U.S. national security and defense requirements and how those views have evolved in the post-Cold War era and in the ongoing global fight against terror. The program should be multi-disciplinary in approach and should examine various historical, political, geographic, and economic factors in involved in the making of U.S. national security policy.

Participants: As specified in the Project Objectives, Goals and Implementation (POGI) guidelines in the solicitation package, the program should be designed for highly-motivated and experienced multinational groups of 18 post-secondary educators and other professionals, and, in some cases, government officials. Participants will be interested in taking part in an intensive seminar on aspects of U.S. approaches to national security policymaking as a means to develop or improve courses and teaching about the United States at their home institutions.

Participants will be diverse in terms of age, professional position, and travel experience abroad. Participants can be expected to come from educational institutions where the study of the U.S. is relatively well-developed as well as from institutions that are just beginning to introduce courses and programs focusing on the United States. While participants may not have in-depth knowledge of the particular institute program theme, they will likely have had exposure to the relevant discipline and some experience teaching about the United States.

Participants will be drawn from all regions of the world and will be fluent or proficient in the English language.

Participants will be nominated by Fulbright Commissions and by U.S. Embassies abroad. A final list of participants will be sent to the grantee institution. The grantee institutions will participate in the selection of participants.

Program Dates: It is anticipated that this grant will be awarded on or about August 1, 2005 and program activities should begin shortly thereafter. Ideally, the institute should be 44 days in length (including participant arrival and departure days) and should begin in early January and end in mid- or late February 2006.

Program Guidelines: It is critically important that proposals provide a full, detailed and comprehensive narrative describing the objectives of the institute; the title, scope and content of each session; and, how each session relates to the overall institute theme. A syllabus must therefore indicate the subject matter for each lecture or panel discussion, confirm or provisionally identify proposed lecturers and discussants, and clearly show how assigned readings will support each session. A calendar of all activities for the program must also be included. In addition to the individual review criteria referenced in Section V.1., proposals will be reviewed on the basis of their fullness, coherence, clarity, and attention to detail.

Note: In a cooperative agreement, ECA/A/E/USS is substantially involved in program activities above and beyond routine grant monitoring. ECA/A/E/USS activities and responsibilities for this program are as follows: ECA/A/E/USS will participate in the selection of participants, will exercise oversight with one or more site visits, will coordinate and arrange briefings by officials from the Department of State, and will debrief participants. ECA/A/E/USS may also require changes in the content of the program as well as the activities proposed either before or after the grant is awarded.

II. Award Information

Type of Award: Cooperative Agreement. ECA's level of involvement in this program is listed under number I above.

Fiscal Year Funds: FY–05.

Approximate Total Funding: $260,000.

Number of Awards: 1.

Approximate Average Award: $260,000.

Floor of Award Range: $220,000.

Ceiling of Award Range: $260,000.

Anticipated Award Date: Pending availability of funds, August 1, 2005.

Anticipated Project Completion Date: March 30, 2006.

Additional Information: Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew this grant for two additional fiscal years, before openly competing it again.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds

There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements

(a) Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates awarding one grant, in an amount up to approximately $260,000 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

(b) *Technical Eligibility:* All proposals must comply with the following: The project director or one of the key program staff responsible for the academic program must have an advanced degree in one of the following fields: Political science, international relations, law, military science, and/or other disciplines or sub-disciplines related to the program themes.

Failure to meet these criteria will result in your proposal being declared

technically ineligible and given no further consideration in the review process.

IV. Application and Submission Information

Note: Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1. Contact Information to Request an Application Package

Please contact the Branch for the Study of the U.S., ECA/A/E/USS, Room Number 252, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, telephone number (202) 453–8532 and fax number (202) 453–8533, e-mail *GibsonBX@state.gov* to request a Solicitation Package. Please refer to the correct Funding Opportunity Number (ECA/A/E/USS–05–10–NS) located on the first page of this announcement when making your request.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation.

It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Program Officer Brian Gibson at *gibsonbx@state.gov* on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm*. Please read all information before downloading.

IV.3. Content and Form of Submission

Applicants must follow all instructions in the Solicitation Package. The original and thirteen (13) copies of the application should be sent per the instructions under IV.3e. ''Submission Dates and Times section'' below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please refer to the solicitation package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1. Adherence to All Regulations Governing the J Visa

The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR part 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, recordkeeping, reporting and other requirements. ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 401–9810, FAX: (202) 401–9809.

Please refer to Solicitation Package for further information.

IV.3d.2. Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and

how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes,* in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. *Participant satisfaction* with the program and exchange experience.

2. *Participant learning,* such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. *Participant professional development,* concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. *Institutional changes,* such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it: (1) Specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.*, surveys, interviews, or focus groups).

Please note: Because the cooperative agreement prospectively to be awarded under the terms of the present RFGP is likely to be of less than one year's duration, host institutions will not be expected to be able to demonstrate significant specific results in terms of participant behavior or institutional changes during the agreement period. Applicant institutions' monitoring and evaluation plans should, therefore, focus primarily on the first and more particularly the second level of outcomes (learning). ECA/A/E/USS will assume principal responsibility for developing performance indicators and conducting post-institute evaluations to measure changes in participant behavior as a result of the program(s), and effect of the program(s) on institutions, over time.

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3d.4. Describe Your Plans for Overall Program Management, Staffing, and Coordination With ECA/A/E/USS

ECA/A/E/USS considers program management, staffing and coordination with the Department of State essential elements of your program. Please be sure to give sufficient attention to these elements in your proposal. Please refer to the Technical Eligibility Requirements and the POGI in the Solicitation package for specific guidelines.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants Must Submit a Comprehensive Budget for the Entire Program

Awards should be up to approximately $260,000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

Based on a group of 18 participants, the total Bureau-funded budget (program and administrative) for this program should be up to approximately $260,000, and Bureau-funded administrative costs as defined in the budget details section of the solicitation package may be up to approximately $110,000.

Justifications for any costs above these amounts must be clearly indicated in the proposal submission. Proposals should try to maximize cost-sharing in all facets of the program and to stimulate U.S. private sector, including foundation and corporate, support. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program, and availability of U.S. government funding.

Please refer to the ''POGI'' in the Solicitation Package for complete institute budget guidelines and formatting instructions.

IV.3e.2. Allowable Costs for the Program Include the Following

(1) Institute staff salary and benefits.
(2) Honoraria for Guest speakers.
(3) Participant per diem.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Submission Dates and Times: Application Deadline Date: June 6, 2005.

Explanation of Deadlines: Due to heightened security measures, proposal submissions must be sent via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.) and be shipped no later than the above deadline. The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. ECA will *not* notify you upon receipt of application. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered. Applications may not be submitted electronically at this time.

Applicants must follow all instructions in the Solicitation Package.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and

place it in an envelope addressed to ''ECA/EX/PM''.

The original and thirteen (13) copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/E/USS–05–10–NS, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

Applicants are also requested to submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal in text (.txt) format on a PC-formatted disk.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. The Branch for the Study of the U.S. may also retain outside independent consultants to review proposals in their particular field(s) of expertise. The feedback or input of any such consultants will be advisory only. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of Program Idea/Plan:* The proposal narrative and appendices should demonstrate the complete integration of the two program modules (academic and experiential) into a single program. Applicants should clearly explain how/why site visits, consultations, reading lists etc. were chosen and how they complement the academic module and the program as a whole. The program should offer a balanced presentation of the subjects/issues covered, reflecting both the continuity of the American experience as well diversity and dynamism inherent in it.

2. *Academic Residency Program Planning and Administration:* Proposals should demonstrate careful planning. The organization and structure of the academic residency component should be clearly delineated. A program syllabus, noting specific sessions and topical readings supporting each academic unit, should be included. The expectation is that this institute will be conducted as an intensive graduate-level seminar. Plans for the academic residency segment should, therefore, avoid undue reliance on the ''lecture followed by question-and-answer session'' format, and should incorporate panel presentations, working group assignments, group debates and other modalities designed to foster and encourage active learning and participation by all institute participants.

3. *Study Tour Planning and Administration:* The study tour travel component should not simply be a tour, but rather an integral and substantive part of the program, reinforcing and complementing the academic component. The proposal should explain how the site visits and presentations included in the study tour program relate to the Institute's learning objectives. Consideration should be given to assigning lighter readings during the study tour (*e.g.*, short articles, newspaper selections, etc.) related to planned study tour travel sessions. While visits to cultural institutions may be included, the emphasis should be on meetings with scholars and other relevant professionals such as (*e.g.*) government officials, journalists, and national security policy practitioners who can substantively contribute to deepening the participants' understanding of issues and topics pertinent to the Institute's theme(s).

4. *Ability to Achieve overall program objectives:* Due to the academic nature of this program, overall objectives can only be met if proposals exhibit originality and substance consonant with the highest standards of American teaching and scholarship. Program design should reflect the main currents as well as the debates within the subject disciplines of the institute. A variety of presenters reflecting diverse backgrounds and viewpoints should be invited to discuss their specific areas of expertise with the participants. Assigned readings likewise should expose participants to diverse, responsible perspectives on the topics and issues to be explored.

5. *Support for Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Applicants should highlight instances of diversity in their proposal.

6. *Evaluation and Follow-Up:* Proposals should include a plan to evaluate an activity's success, both as it unfolds and at the end of the program. A draft survey questionnaire or other technique, plus description of a methodology to use to link outcomes to original project objectives are recommended. Proposals should discuss provisions made for follow-up with returned grantees as a means of establishing longer-term individual and institutional linkages.

7. *Cost-effectiveness/Cost Sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

8. *Institutional Capacity:* Proposals should provide evidence of continuous administrative and managerial capacity as well as the means by which program activities and logistical matters will be implemented. Proposed personnel, including faculty and administrative staff as well as outside presenters, should be fully qualified to achieve the project's goals. Library and meeting facilities, housing, meals, transportation and other logistical arrangements should fully meet the needs of participants.

9. *Institutional Track Record/Ability:* Proposals should demonstrate an institutional record of successful exchange program activities, indicating the experience that the organization and its professional staff have had working with foreign educators. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

VI. Award Administration Information

VI.1. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2. Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments''.

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information:

http://www.whitehouse.gov/omb/grants.
http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI.

VI.3. Reporting Requirements

You must provide ECA with a hard copy original plus two copies of the following reports:

Mandatory: (1) A final program and financial report no more than 90 days after the expiration of the award;

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VII. Agency Contacts

For questions about this announcement, contact: Branch for the Study of the U.S., ECA/A/E/USS, Room Number 252, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, telephone number (202) 453–8532 and fax number (202) 453–8533, Robert Schmidt, *SchmidtRC@state.gov* or Brian Gibson, *GibsonBX@state.gov* based on the funding opportunity number.

All correspondence with the Bureau concerning this RFGP should reference the appropriate Funding Opportunity Number given at the beginning of this RFGP and referenced again in section ''IV.1 Contact Information to Request an Application Package'' of this announcement.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice: The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: April 6, 2005.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 05–7510 Filed 4–13–05; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2005–22]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before May 4, 2005.

ADDRESSES: Send comments on the petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–20476 at the beginning of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: John Linsenmeyer (202–267–5174), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; or Susan Lender, 202–267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on April 8, 2005.

Anthony F. Fazio,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2005–20476.

Petitioner: Quiet Technology Aerospace, Inc.

Section of 14 CFR Affected: Section 36.1581(d).

Description of Relief Sought: To allow Quiet Technology Aerospace, Inc. to amend certain Airplane Flight Manuals to incorporate approved operating procedures to comply with noise restrictions at European Union airports.

[FR Doc. 05–7522 Filed 4–13–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2005–20858; Notice 1]

DOT Chemical, Receipt of Petition for Decision of Inconsequential Noncompliance

DOT Chemical has determined that certain containers of brake fluid which it manufactured in June 2004 do not comply with S5.1.7, S5.1.9, and S5.1.10 of 49 CFR 571.116, Federal Motor Vehicle Safety Standard (FMVSS) No. 116, ''Motor vehicle brake fluids.'' DOT Chemical has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.''

Pursuant to 49 U.S.C. 30118(d) and 30120(h), DOT Chemical has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of DOT Chemical's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Affected are a total of approximately 50,000 containers of DOT 4 brake fluid, lot numbers KMF02 and KMF03, manufactured in June 2004. FMVSS No. 116 requires that, when tested as referenced in S5.1.7 ''Fluidity and appearance at low temperature,'' S5.1.9 ''Water tolerance,'' and S5.1.10 ''Compatibility,'' the brake fluid shall show no crystallization or sedimentation. The subject brake fluid shows crystallization and sedimentation when tested as referenced in S5.1.7 at −40° F and −58° F, sedimentation when tested as referenced in S5.1.9 at −40° F, and crystallization when tested as referenced in S5.1.10 at −40° F.

DOT Chemical believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. DOT Chemical states that there are fiber-like crystals in the fluid, which are borate salts, and

> are a natural part (no contamination) of DOT 4 brake fluid production (just fallen out of solution in some packaged goods) and have not demonstrated any flow restrictions even at extended periods of low temperatures at −40° F. Furthermore, when the fluid is subjected to temperatures in a normal braking system, the crystals go back into solution in some cases not to reappear at all at ambient temperatures.

Interested persons are invited to submit written data, views, and arguments on the petition described above. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods. Mail: Docket Management Facility, U.S. Department of Transportation, Nassif Building, Room PL–401, 400 Seventh Street, SW, Washington, DC, 20590–0001. Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW, Washington, DC. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 am to 5 pm except Federal Holidays. Comments may be submitted electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov.* Click on ''Help'' to obtain instructions for filing the document electronically. Comments may be faxed to 1–202–493–2251, or may be submitted to the Federal eRulemaking Portal: go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: May 16, 2005.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8)

Issued on: April 11, 2005.

Ronald L. Medford,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. 05–7524 Filed 4–13–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. RSPA–2005–20036 (Notice No. 05–1)]

Information Collection Activities

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, PHMSA invites comments on certain information collections pertaining to hazardous materials transportation for which PHMSA intends to request renewal from the Office of Management and Budget (OMB).

DATES: Interested persons are invited to submit comments on or before June 13, 2005.

ADDRESSES: You may submit comments to Docket Number RSPA–2005–20036 (Notice No. 05–1) by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 202–493–2251.
- *Mail:* Docket Management System; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Docket Management System; Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Comments should identify the docket number [(RSPA–2005–20036) (Notice No.05–1)]. If sent by mail, comments are to be submitted in duplicate. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped

postcard. Internet users may access all comments received by the Department of Transportation at *http://dms.dot.gov.* Requests for a copy of an information collection should be directed to Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (DHM–11), Pipeline and Hazardous Materials Safety Administration, Room 8430, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone (202) 366–8553.

FOR FURTHER INFORMATION CONTACT: Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (DHM–11), Pipeline and Hazardous Materials Safety Administration, Room 8430, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION: Section 1320.8 (d), Title 5, Code of Federal Regulations requires that PHMSA provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies an information collection PHMSA is submitting to OMB for renewal and extension. This information collection is contained in the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180). PHMSA has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on changes in proposed or final rules published since the information collection was last approved. The following information is provided for each information collection: (1) Title of the information collection, including former title if a change is being made; (2) OMB control number; (3) summary of the information collection activity; (4) description of affected public; (5) estimate of total annual reporting and recordkeeping burden; and (6) frequency of collection. PHMSA will request a three-year term of approval for each information collection activity and, when approved by OMB, publish notice of the approval in the **Federal Register**.

PHMSA requests comments on the following information collection:

Title: Testing, Inspection, and Marking Requirements for Cylinders.

OMB Control Number: 2137–0022.

Summary: Requirements in § 180.201 of the HMR for qualification, maintenance and use of cylinders require cylinders to be periodically requalified to ensure continuing compliance with packaging standards. Information collection requirements address approval and registration of cylinder requalifiers, and marking and certification of cylinders in accordance with the requirements in Part 180 of the HMR. Records showing the results of inspections and retests must be retained by the person who performs the requalification until expiration of the retest period, or until the cylinder is reinspected or retested, whichever occurs first. These requirements are intended to ensure that requalifiers possess the qualifications necessary to perform tests, and to identify to cylinder fillers and users that these cylinders are qualified for continuing use. Information collection requirements in § 173.303 require that for acetylene cylinders, each day, the pressure in a cylinder representative of that day's compression must by checked by the charging plant after the cylinder has cooled to a settled temperature and a record of this test kept for at least 30 days.

Affected Public: Fillers, owners, users and requalifiers of reusable cylinders.

Recordkeeping:

Number of Respondents: 139,352.

Total Annual Responses: 153,287.

Total Annual Burden Hours: 168,431.

Frequency of Collection: On occasion.

Issued in Washington, DC, on April 8, 2005.

Susan Gorsky,

Acting Director, Office of Hazardous Materials Standards.

[FR Doc. 05–7530 Filed 4–13–05; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Application for Exemptions

AGENCY: Pipeline and Hazardous Materials Safety Administration, DOT.

ACTION: List of applications for exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before May 16, 2005.

Address comments To: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. if Confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW., Washington DC or at *http://dms.dot.gov.*

This notice of receipt of applications for modification of exemption is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on April 11, 2005.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials Safety Exemptions & Approvals.

NEW EXEMPTION

Application number	Docket number	Applicant	Regulation(s) affected	Nature of Exemption Thereof
14172–N	PHMSA–20906	Pacific Bio-Material Management, Inc. Fresno, CA.	49 CFR 173.196 and 173.199	To authorize the transportation in commerce of infectious substances in a large capacity liquid nitrogen freezer. (mode 1)

NEW EXEMPTION—Continued

Application number	Docket number	Applicant	Regulation(s) affected	Nature of Exemption Thereof
14173–N	PHMSA–20905	Dow Chemical Company Midland, MI.	49 CFR 179.13	To authorize the transportation in commerce of ethylene oxide in DOT specification 105J400W tank cars that exceed the maximum allowable gross weight on rail (263,000 lbs.). (mode 2)
14175–N	PHMSA–20903	Air Products & Chemicals, Inc. Allentown, PA.	49 CFR 180.209	To authorize the transportation in commerce of certain DOT Specification 3A and 3AA cylinders where the re-test period is extended to 10 years, the cylinders need not be removed from the bundle at each filing and that the hammer test need not be performed. (models 1, 2, 3)
14176–N	PHMSA–20902	Great Plains Industries, Inc. Wichita, KS.	49 CFR 173.242	To authorize the manufacture, mark and sale of refueling tanks of up to 80 gallon capacity for use in transporting various Class 3 hazardous materials. (mode 1)
14178–N		Brider Fire Inc. Bozeman, MT.	49 CFR 173.202	To authorize the transportation in commerce of gelled gasoline in a non-DOT specification steel drum with a pump installed, mounted in a helitorch frame. (mode 1)
14179–N		USA Jet Airlines Belleville, MI.	49 CFR 175.33	To authorize the transportation in commerce of hazardous materials by air with alternative notification to the plot. (modes 4, 5)

[FR Doc. 05–7528 Filed 4–13–05; 8:45 am]

BILLING CODE 4909—60—M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption

AGENCY: Pipeline and Hazardous Materials Safety Administration, DOT.

ACTION: List of applications for modification of exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Request of modifications of exemptions (*e.g.* to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' demote a modification request. These applications have been separated from the new application for exemption to facilitate processing.

DATES: Comments must be received on or before April 29, 2005.

Address Comments To: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If Confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW., Washington DC or at *http://dms.dot.gov.*

This notice of receipt of applications for modification of exemption is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on April 11, 2005.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials Exemptions & Approvals.

MODIFICATION EXEMPTIONS

Application number	Docket number	Applicant	Regulation(s) affected	Modification of exemption	Nature of exemption thereof
11244–M		Supercritical Thermal Systems, Inc. (formerly Aerospace Design & Development, Inc.), Longmont, CO.	49 CFR 173.316(c); 178.57.	11244	To modify the exemption to authorize an alternative outer shell material for the non-DOT specification titanium alloy cylinder transporting a Division 2.2 material.
11281–M		E.I. du Pont de Nemours & Company, Wilmington, DE.	49 CFR 172.101, Column 7, Special Provisions B14, T38.	11281	To modify the exemption to authorize the use of an additional portable tank specification and the transportation of an additional Class 8 material.

MODIFICATION EXEMPTIONS—Continued

Application number	Docket number	Applicant	Regulation(s) affected	Modification of exemption	Nature of exemption thereof
11903–M	RSPA–97–2604	Comptank Corporation, Bothwell, ON.	49 CFR 107.503(b); 172.102(c)(3), SP B15, B23, B30, B32,; 173.241; 173.242; 173.243; 178.340; 178.342; 178.343; 180.405; 180.413(d).	11903	To modify the exemption to allow for alternative carog tank designs from the referenced drawings provided they are certified by a design certifying engineer.
12412–M	RSPA–2000–6827	Hawkins, Inc., Minneapolis, MN.	49 CFR 177.834(h); 172.203(a); 172.302(c).	12412	To modify the exemption to allow the transportation and unloading of certain UN IBC and DOT Specification portable tanks containing incompatible materials on the same motor vehicle.
12842–M	RSPA–01–10751	Onyx Environmental Services, L.L.C., Flanders, NJ.	49 CFR 173.156(b)	12842	To modify the exemption to authorize a reoffering provision of the package to a non-holder of the exemption and transportation of Division 2.1 and Division 2.2. materials to an alternative disposal facility.
13245–M	RSPA–03–15985	Piper Metal Forming Corporation (Formerly Quanex), New Albany, MS.	49 CFR 173.302(a)(1); 175.3.	13245	To modify the exemption to authorize the use of non-refillable, non-DOT specification cylinders for all gases approved for shipment in DOT-3AL Specification cylinders.
13323–M	RSPA–03–16488	U.S. Department of the Interior/U.S. Geological Survey, Woods Hole, MA.	49 CFR 173.302a	13323	To modify the exemption to authorize an alternative higher pressure-rated cover for the non-DOT specification cylinders transporting a Division 2.1 material.
13548–M	RSPA–04–17545	Battery Council International (BCI).	49 CFR 173.159	13548	To modify the exemption to authorize alternative classifications for the transportation of battery fluid, acid.
13598–M	RSPA–04–18706	Jadoo Power Systems Inc., Folsom, CA.	49 CFR 173.301(a)(1), (d) and (f).	13598	To modify the exemption to authorize an increased maximum water capacity to 3.25 pounds for the hydride canister design and the use of UN4G fiberboard boxes.
14145–M	PHMSA–05–20834	T–AKE Naval Sea Systems Command, Washington, DC.	49 CFR 176.116	14145	To reissue the exemption originally issued on an emergency basis for the transportation of certain Class 1 materials by vessel and provide relief from the general stowage requirements for Class 1 materials.

[FR Doc. 05–7529 Filed 4–13–05; 8:45 am]

BILLING CODE 4909–60–M

Corrections

Federal Register

Vol. 70, No. 71

Thursday, April 14, 2005

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

Separate Rates and Combination Rates in Antidumping Investigtions Involving Non-Market Economy Countries

Correction

In notice document E5–1541 beginning on page 17233 in the issue of Tuesday, April 5, 2005, make the following correction:

On page 17233, in the third column, under the heading **EFFECTIVE DATE:**, ''March 5, 2005'' should read ''April 5, 2005''.

[FR Doc. Z5–1541 Filed 4–13–05; 8:45 am]

BILLING CODE 1505–01–D



Federal Register

Thursday,
April 14, 2005

Part II

Environmental Protection Agency

40 CFR Part 81

Air Quality Designations for the Fine Particles (PM2.5) National Ambient Air Quality Standards—Supplemental Amendments; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[OAR–2003–0061; FRL–7896–8]

RIN–2060–AM04

Air Quality Designations for the Fine Particles (PM2.5) National Ambient Air Quality Standards—Supplemental Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; supplemental amendments.

SUMMARY: On January 5, 2005, EPA promulgated air quality designations for all areas for the national ambient air quality standards (NAAQS) for fine particles (*i.e.* particles less than 2.5 microns in diameter, also known as PM2.5) (70 FR 944). We designated 47 areas composed of 224 counties and the District of Columbia as nonattainment. We designated 5 areas comprised of 7 counties as unclassifiable. We designated the remaining counties in the United States as attainment/unclassifiable. We based the designations in the January 5, 2005, final rule on air quality monitoring data from the 3-year period of 2001 to 2003. In that action, we provided that these designations would be effective 90 days from the date of publication in the **Federal Register**, which is April 5, 2005. Because the designations occurred at the end of 2004, we indicated our desire to consider 2004 data where feasible in order to evaluate attainment status based upon data from the 3-year period of 2002 to 2004. We explained that we would consider any complete, quality-assured, and certified 2004 PM2.5 data submitted by any State to EPA by February 22, 2005, if such data indicated that a change in the designation for the entire area would be appropriate.

In the January 5, 2005, action, we stated that if EPA agreed that a change in the designation was appropriate based upon the inclusion of 2004 data, then EPA would withdraw the initial designation for the area and issue a designation that reflected the consideration of the new data before the April 5, 2005, effective date. Today's action addresses areas for which States have submitted complete, quality-assured, and certified PM2.5 air quality data for 2004, and it modifies the designation status to attainment for eight areas we originally designated as nonattainment and for four areas we originally designated as unclassifiable. This action also includes technical corrections related to boundary descriptions for a few areas included in the January 5, 2005, action. The EPA has received a number of other petitions in connection with the PM2.5 designations pertaining to issues other than inclusion of 2004 data as a basis for changing the designation prior to the effective date. The EPA is not responding to those petitions in this document and will be evaluating and responding to those petitions separately.

DATES: Effective upon April 5, 2005.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. OAR–2003–0061. 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 (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 the EDOCKET or in hard copy at the 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 Office of Air and Radiation Docket and Information Center is (202) 566–1742. In addition, we have placed a copy of the rule and a variety of materials regarding designations on EPA's designation Web site at: *http://www.epa.gov/oar/oaqps/particles/designations/index.htm* and on the Tribal Web site at: *http://www/epa.gov/air/tribal*.

FOR FURTHER INFORMATION CONTACT:

Designations: Mr. Rich Damberg, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Mail Code C504–02, Research Triangle Park, NC 27711, phone number (919) 541–5592 or by e-mail at: *damberg.rich@epa.gov*.

Designations and Part 81 Code of Federal Regulations (CFR): Larry D. Wallace, Ph.D., U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Mail Code C504–02, Research Triangle Park, NC 27711, phone number (919) 541–0906 or by e-mail at: *wallace.larry@epa.gov*.

Technical Issues Related to Designations: Mr. Thomas Rosendahl, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Mail Code C504–02, Research Triangle Park, NC 27711, phone number (919) 541–5314 or by e-mail at: *rosendahl.tom@epa.gov*.

PM2.5 Air Quality Data Issues: Mr. Mark Schmidt, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Mail Code C–304–01, Research Triangle Park, NC 27711, phone number (919) 541–5314 or by e-mail at: *schmidt.mark@epa.gov*.

Region I—Alison Simcox (617) 918–1684,

Region II—Kenneth Fradkin (212) 637–3702,

Region III—Denny Lohman (215) 814–2192,

Region IV—Steve Scofield (404) 562–9034,

Region V—John Summerhays (312) 886–6067,

Region VI—Joe Kordzi (214) 665–7186,

Region VII—Amy Algoe-Eakin (913) 551–7942,

Region VIII—Libby Faulk (303) 312–6083,

Region IX—Eleanor Kaplan (415) 744–1286,

Region X—Keith Rose (206) 553–1949.

SUPPLEMENTARY INFORMATION: The public may inspect the rule and the technical support information at the following locations:

Regional offices	States
Dave Conroy, Acting Branch Chief, Air Programs Branch, EPA New England, I Congress Street, Suite 1100, Boston, MA 02114–2023, (617) 918–1661.	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.
Raymond Werner, Chief, Air Programs Branch, EPA Region II, 290 Broadway, 25th Floor, New York, NY 10007–1866, (212) 637–4249.	New Jersey, New York, Puerto Rico, and Virgin Islands.
Makeba Morris, Branch Chief, Air Quality Planning Branch, EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2187, (215) 814–2187.	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia.

Regional offices	States
Richard A. Schutt, Chief, Regulatory Development Section, EPA Region IV, Sam Nun Atlanta Federal Center, 61 Forsyth Street, SW., 12th Floor, Atlanta, GA 30303, (404) 562–9033.	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.
Jay Bortzer, Chief, Air Programs Branch, EPA Region V, 77 West Jackson Street, Chicago, IL 60604, (312) 886–4447.	Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.
Donna Ascenzi, Acting Associate Director Air Programs, EPA Region VI, 1445 Ross Avenue, Dallas, TX 75202, (214) 665–2725.	Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.
Joshua A. Tapp, Chief, Air Programs Branch, EPA Region VII, 901 North 5th Street, Kansas City, Kansas 66101–2907, (913) 551–7606.	Iowa, Kansas, Missouri, and Nebraska.
Richard R. Long, Director, Air and Radiation Program, EPA Region VIII, 999 18th, Suite 300, Denver, CO 80202, (303) 312–6005.	Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.
Steven Barhite, Air Planning Office, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3980.	Arizona, California, Guam, Hawaii, and Nevada.
Mahbubul Islam, Manager, State and Tribal Air Programs, EPA Region X, Office of Air, Waste, and Toxics, Mail Code OAQ–107, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553–6985.	Alaska, Idaho, Oregon, and Washington.

Table of Contents

The following is an outline of the Preamble.

I. What Is the Purpose of Today's Action?
II. Designation Decisions Based on 2002–2004 Data
III. Technical Corrections for Area Boundaries
IV. Significance of Today's Action
V. Effective Date of Today's Action
VI. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act (NTTAA)
J. Congressional Review Act
K. Judicial Review

I. What Is the Purpose of Today's Action?

On January 5, 2005, EPA promulgated air quality designations for all areas in the United States for the NAAQS for PM2.5 (70 FR 944), in accordance with section 107(d) of the Clean Air Act (CAA). The list of areas in each State, the boundaries of each area, and the designation of each area, appear in a table at the end of that action. The purpose of today's action is to modify the PM2.5 designation for a number of areas that we designated nonattainment or unclassifiable in the January 5, 2005 action, and to make certain technical corrections to the table of areas described in 40 CFR part 81.

The January 5, 2005, PM2.5 designations were based on air quality data for 2001 through 2003. We designated 47 areas comprised of 224 counties and the District of Columbia were designated as nonattainment. We designated 5 areas comprised of 7 counties as unclassifiable. We designated the remaining counties in the United States as attainment/unclassifiable. We based the designations in the January 5, 2005, action on air quality monitor data from the 3-year period of 2001 to 2003. The action provided that these designations would be effective 90 days from the date of publication (*i.e.* April 5, 2005).

Because the designation process occurred so close to the end of the 2004 calendar year, EPA indicated that we would consider any complete, quality-assured, and certified PM2.5 data for 2004 submitted by any State by February 22, 2005, if such data indicated that the attainment status for the entire area, based on 2002–2004 data, would differ from the status indicated in the January 5 action. In other words, we indicated that the agency would consider changing the designation status of an area from nonattainment to attainment, or unclassifiable to attainment, if *each* monitor in the initially designated area had air quality data for the 2002–2004 period below the level of the standards.

The EPA received complete, quality-assured, and certified air quality data for 2004 from a number of States prior to February 22, 2005. Based on our evaluation of this data, in today's action, EPA is changing the designation status from nonattainment to attainment for eight areas, and from unclassifiable to attainment for four areas. Today's modifications to the initial designations for these areas do not represent ''redesignations'' because these changes are being made prior to the effective date of the initial PM2.5 designations. We are making these changes to reflect the most recent 3 years of complete, quality-assured, and certified data that are available prior to the effective date of the designations. After April 5, 2005, any change in the PM2.5 designation status for an area, other than those that might result from a petition for reconsideration or error correction, would be subject to the redesignation provisions of section 107(d)(3) of the CAA.

In the January 5, 2005, action, we also stated that if certified 2004 data indicated a violation of the standard in an area we initially designated as attainment based on 2001–2003 data, EPA would evaluate the reason for the violation and determine the appropriate course of action, including the possibility of redesignation to nonattainment. No States submitted certified 2004 data by February 22, 2005, to indicate that the status of any area should change from attainment or unclassifiable to nonattainment. The EPA has committed to evaluate all 2004 data for areas initially designated as unclassifiable. Under existing regulations, States are required to certify air quality data for 2004 by July 1, 2005. At that time, EPA will evaluate whether a change of designation for an unclassifiable area is appropriate.

II. Designation Decisions Based on 2002–2004 Data

Areas changing from nonattainment to attainment based on 2002–2004 data. A number of States, including AL, CA, GA, IN, KY, OH, PA, TN, and WV, submitted certified 2004 air quality monitoring data to EPA by February 22, 2005. (All correspondence from States related to this action can be found in docket OAR–2003–0061 for this action.) Based upon our technical evaluation of the certified 2004 data provided by these States, we have determined that the nonattainment designation for seven areas listed in the January 5 action (based on 2001–2003 data) should be changed to attainment (based on 2002–

2004 data). In each of these areas, all PM2.5 monitors have complete, quality-assured, and certified data below the level of the PM2.5 standards for the 2002–2004 period. These seven areas are:

—Athens, Georgia (Clarke county);
—Elkhart, Indiana (Elkhart and St. Joseph's counties);
—Lexington, Kentucky (Fayette and Mercer counties);
—Marion county, WV (Marion, Monangalia, and Harrison counties);
—San Diego, California (San Diego county);
—Toledo, Ohio (Lucas and Wood counties); and
—Youngstown, OH-PA (Columbiana, Mahoning, and Trumbull counties, Ohio; Mercer county, Pennsylvania).

(A summary of the air quality data for these areas is included in the technical support document for this action. Comprehensive information for these areas is available from EPA's Air Quality Subsystem at: *http://www.epa.gov/ttn/airs/airsaqs/index.htm*.)

Areas changing from unclassifiable to attainment based on 2002–2004 data. In addition, we have determined that for four areas the unclassifiable designation in the January 5 action (based on 2001–2003 data) should now be changed to attainment (based on 2002–2004 data). In each of these areas, all PM2.5 monitors have complete, quality-assured, and certified data below the level of the PM2.5 standards for the 2002–2004 period. These four areas are:

—Dekalb county, Alabama;
—Gadsden, Alabama (Etowah county);
—McMinn county, Tennessee; and
—Muncie, Indiana (Delaware county).

(A summary of the air quality data for these areas is included in the technical support document for this action. Comprehensive information for these areas is available from EPA's Air Quality Subsystem at: *http://www.epa.gov/ttn/airs/airsaqs/index.htm*.)

For all of the areas changing from either nonattainment or unclassifiable to attainment based upon the consideration of 2004 data, EPA has determined that it is appropriate to revise the initial designation announced in the January 5, 2005, action before the April 5, 2005, effective date. The EPA believes that the specific redesignation requirements of the CAA, including those set forth in section 107(d)(3)(E), do not apply until after the effective date of a designation. The EPA has concluded that, where possible, inclusion of 2004 data results in the appropriate initial designation. Subsequent changes to the designation of these or other areas may require compliance with the statutory provisions governing the formal redesignation process.

Requests to change individual counties to attainment. The EPA received requests from a number of States to change the status of a selected county within a larger nonattainment area from nonattainment to attainment based upon 2004 data. For five counties in four nonattainment areas (see table below), States submitted certified 2004 data showing that the 2002–2004 value for all monitors in the specific county at issue is below the level of the PM2.5 annual standard. In each of these situations, however, there are other monitors in the larger nonattainment area identified in the January 5, 2005 action which continue to violate the annual standard based on 2002–2004 data. The following table lists the State and county in question, the associated nonattainment area, and the other violating county in the area.

State	County	PM2.5 nonattainment area	Other county in area violating with 2002–2004 data
Indiana	Lake	Chicago	Cook County, IL
Indiana	Vanderburgh	Evansville	Dubois County, IN
Michigan	Monroe	Detroit	Wayne County, IL
Ohio	Scioto, Lawrence	Huntington, WV-OH	Cabell County, WV

The EPA indicated in the January 5 action that we would make changes in status from nonattainment to attainment based on certified 2004 data *only* for entire areas in which all PM2.5 monitors were attaining: ''If inclusion of 2004 data causes an area to change from nonattainment to attainment, EPA will change the designation if every county in the area is neither monitoring a violation of the standards nor contributing to a violation of the standards in another nearby area.'' In addition, EPA has examined the data and concluded that each of these counties continues to contribute to the overall air quality problem in the larger nonattainment area. As explained in the January 5, 2005 action, EPA has designated as nonattainment not only those counties with violating monitors, but also those nearby counties that contribute to the problem at the violating monitor. For these reasons, EPA is not changing the designation status for Lake and Vanderburgh Counties in Indiana, Monroe County in Michigan, and Scioto and Lawrence Counties in Ohio. The technical support document for this action includes additional discussion on each of these individual counties and nonattainment areas.

Also, EPA received a number of petitions from States and local governments that did not meet our request for submission of 2004 data indicating that a change of designation was appropriate for the entire area. In general, these petitions pertained to the degree of contribution to nonattainment of one or more counties within a nonattainment area or to the boundaries of specific nonattainment areas. The EPA is evaluating these petitions and intends to respond to them separately at a later date.

Chattanooga, TN request to invalidate multiple monitoring samples and change status to attainment. The Chattanooga-Hamilton County Air Pollution Control Bureau and the State of Georgia have submitted requests to EPA to invalidate samples for 25 days at monitors in Hamilton County, TN and Walker County, GA. They based their requests on claims that these sites were impacted by various fire events occurring in locations such as Kansas, Alaska, and Canada. Chattanooga claimed that if all such days were invalidated, then the Hamilton County, TN monitors would have incomplete data and could not remain designated as nonattainment. Georgia contended that if these samples were invalidated, the Walker County, GA monitor would then attain the standards. In addition, Georgia has maintained that if Walker County attains the standard, then the status for Catoosa County should be changed to attainment because the State claims its contribution to nonattainment does not extend to Hamilton County, TN. The EPA has concluded that Catoosa County contributes to both Hamilton and Walker Counties based upon evaluation of the factors applied

by EPA in the initial designation decision (particularly population, commuting, and emissions) as discussed in the original technical support document.

We have reviewed the data for the 25 days in question and the supporting information provided by local and State agencies for the Chattanooga area. Previously, EPA disapproved the request to invalidate 10 days in 2002. For the 15 days in 2003 and 2004 requested by Chattanooga to be invalidated due to fire impacts, EPA has determined that there is insufficient evidence to show impacts from the fire events for at least 7 of these days, and is disapproving the requests to invalidate air quality data for those days. This determination is based on EPA's review of the supporting information provided to EPA, as well as additional analyses conducted by EPA. These analyses include back trajectories and a review of chemical composition data for the area, and they are available in the technical support document and docket for this action.

The EPA has determined that it is not necessary to reach a final conclusion with respect to the remaining 8-flagged days. Even if it were appropriate to invalidate the data from all of the remaining days, the monitor in Hamilton County, TN would still violate the PM2.5 standards for 2002–2004 with a design value of 15.4. Assuming invalidation of all 7 days, the monitor in Walker County, GA would attain the standard at 14.8. However, even though the Walker County monitor would be below the level of the standard, we continue to conclude that Walker County contributes to the nonattainment problem at the Hamilton County, TN monitor, thus requiring the inclusion of that county in the nonattainment area.

Thus, even if it was appropriate to invalidate all of the remaining 8-flagged days, EPA has determined that at least one county in the Chattanooga nonattainment area would continue to have a violating monitor. As stated in the January 5, 2005, action, we indicated that it might be appropriate to change the nonattainment designation of an area only if all monitors in the area show attainment. Because there is a continuing violation at one monitor in the area, and because there is continued contribution from the other counties to the violating monitor, EPA has determined that the area still would violate the standard even if all additional flagged days were invalidated. Moreover, any uncertainty concerning the possible invalidation of the remaining flagged days is not an appropriate basis for designating this area unclassifiable. That designation is reserved for those areas where EPA lacks sufficient information upon which to make a judgment whether or not the area is attaining the PM2.5 NAAQS. In this instance, given that invalidation of the remaining flagged days would not change the outcome, the area does not meet the NAAQS. For this reason, EPA is not modifying the nonattainment status of Hamilton County in Tennessee or Walker or Catoosa Counties in Georgia.

Columbus, GA-AL: Request for spatial averaging and request for attainment based on 2002–2004 data.

Any State or States requesting spatial averaging of PM2.5 monitoring sites must demonstrate that the sites meet several criteria as described in EPA regulations (40 CFR part 58.). First, the annual mean for each site must be within 20 percent of the annual mean calculated with spatial averaging. Second, the sites must show ''similar day-to-day variability'' (*e.g.*, 0.60 correlation). Third, the States must demonstrate that the sites are affected by the same emissions sources. Fourth, the States must provide adequate notice to the public of the proposed change in the monitoring plan and potential effect on attainment status, including a public hearing and opportunity for public comment.

In June 2004, the States of Georgia and Alabama submitted proposed changes to their monitoring plans to conduct spatial averaging for three monitoring sites in the Columbus, GA-AL area (two in Muscogee County, GA and one in Russell County, AL). In November 2004, EPA denied the request for spatial averaging on the basis that: (1) the submittal did not provide a basis for a 3-site community monitoring zone, and (2) the information did not demonstrate that all monitors were impacted by similar emissions sources. The letter also questioned the validity of several samples collected at the Russell county site during 2001 and 2002.

In December 2004, both States submitted revised monitoring plans requesting spatial averaging for the two downtown monitoring sites, one in Muscogee County, GA and one in Russell County, AL. In February 2005, both States submitted certified 2004 data for the two sites in question, and they also requested a change in status from nonattainment to attainment for the area, provided that EPA approved their pending spatial averaging request and that 2002–2004 data for the two sites could be averaged.

The EPA has conducted an extensive technical review of the information provided by both States to support the most recent spatial averaging proposals. Based on our review of a number of factors, we are approving the spatial averaging request. We also have determined that when 2002–2004 air quality data for the two sites are averaged, the Columbus, GA-AL metropolitan area now attains the PM2.5 standards. The spatial average for 2002–2004 is just under the standard at a level of 15.04.

In evaluating the spatial averaging proposals, EPA considered a number of factors in accordance with the PM2.5 NAAQS and PM2.5 monitoring regulations. The two monitors (one operated in Phenix City by AL and one in Columbus by GA) are less that 2 km apart. Both monitors are located in the inner city and are influenced by similar emission sources. The 3-year design value for each site is within ±2 percent of the new approved spatial average design value of 15.04. Furthermore, the monitors exhibit similar day-to-day variability indicated by a 0.85 correlation of 24-hr concentrations.

However, EPA also notes that annual concentrations at the two monitors are trending upward, with each site recording its highest annual average concentration in 2004. The 2004 average for these monitors is 15.4 $\mu g/m^3$. The EPA also notes that the monitors exhibit the highest disparity in their 24-hr concentrations during the 1st calendar quarter. Therefore, EPA will continue to monitor the PM2.5 measurements particularly during the winter period to ensure that we have a continuing understanding of any air quality changes that may occur in the future.

Therefore, for the above reasons and others discussed in the technical support document, EPA is approving the December 2004 2-site spatial averaging plan for the Columbus, GA-AL nonattainment area in today's action. It is therefore appropriate to change the designation of Muscogee County, GA and Russell County, AL from nonattainment to attainment. Please refer to the technical support document for more detailed information on EPA's review of the spatial averaging plan for this area.

III. Technical Corrections for Area Boundaries

In today's rule, EPA is also making minor technical corrections to certain attainment area boundary descriptions included in the January 5 action. Technical corrections for boundaries listed in 40 CFR part 81 are included for the following areas: (1) The State of Louisiana to correct the listings for air quality control region 106, (2) the boundary description for Placer County,

CA, (3) a change to the boundary description for Randolph County, IL to change Baldwin Village to Baldwin Township, and (4) the boundary description for Gallia County, OH to remove Addison Township and to include Cheshire Township. These corrections are being made to provide an accurate description of the boundaries for the affected areas as previously submitted to EPA by the States and/or included in the January 5 technical support document. In the January 5, 2005, action, these errors were inadvertently made in the process of drafting the text for the part 81 tables. The corrections made by EPA in today's rule are listed in the tables at the end of this notice, and these changes will be reflected in a revision of 40 CFR part 81.

IV. Significance of Today's Action

Based on the foregoing discussion, EPA is today making changes to the January 5, 2005 (70 FR 944), rulemaking which designated areas for the PM2.5 NAAQS. The corrections made by EPA in today's rule, related to the designations for the PM2.5 standard, are set forth in the tables at the end of this notice, and will change the designation description for the affected areas in 40 CFR part 81 initially announced in the January 5, 2005, action. States with areas designated as nonattainment for the PM2.5 NAAQS are required to submit State Implementation Plans (SIPs) addressing nonattainment area requirements within 3 years of designation, pursuant to section 172 of the CAA. Therefore, within 3 years following the April 5, 2005, effective date for the designations identified in the January 5, 2005 (70 FR 944), rulemaking, States will be required to submit SIPs for nonattainment areas. The EPA intends to issue another rule that will assist States in developing SIPs that meet the requirements of the CAA. The EPA plans to issue the proposal for that rulemaking in the near future.

V. Effective Date of Today's Action

The effective date of designations of areas corrected or changed in today's rule is April 5, 2005, the date indicated in the January 5, 2005 (70 FR 944), PM2.5 designation rulemaking. The EPA is making these changes without notice and comment in accordance with section 107(d)(2) of the CAA, which exempts the promulgation of these designations from the notice and comment provisions of the Administrative Procedures Act. Section 553(d) of the Administrative Procedures Act generally provides that rulemakings shall not be effective less than 30 days after publication except where a substantive rule relieves a restriction or where the agency finds good cause for an earlier date. 5 U.S.C. 553(d)(1) and (3). Were EPA not to expedite the effective date of today's action, a number of areas would continue to be designated nonattainment or unclassifiable, in spite of 2004 data that indicate a change of designation is appropriate. Because EPA has concluded that a change of designation is already appropriate based on available information, EPA believes that it would serve no purpose to require the States in question to pursue redesignation through other means that may result in delay and the unnecessary expenditure of resources. The effective date for today's action is therefore justified because: (1) It relieves a restriction by eliminating a restriction by eliminating inappropriate nonattainment or unclassifiable designations that would otherwise become effective on April 5, 2005, and (2) it is in the public interest to avoid the potential delay and waste of resources associated with allowing the January 5, 2005 designations to go into effect for these areas.

VI. Statutory and Executive Order Reviews

Upon promulgation of a new or revised NAAQS, the CAA requires EPA to designate areas with respect to their attainment of such NAAQS. The CAA imposes requirements for areas based upon whether such areas are attaining or not attaining the NAAQS. In this final rule, EPA assigns designations to areas as required.

A. Executive Order 12866: Regulatory Planning and Review.

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

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a ''significant regulatory action'' because none of the above factors apply. As such, this final rule was not formally submitted to OMB for review.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This rule responds to the requirement to promulgate air quality designations after promulgation of a NAAQS. This requirement is prescribed in the CAA section 107 of title 1. The present final rule does not establish any new information collection apart from that required by law. Burden means that total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in the CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

Today's rule is not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. This rule is not subject to notice and comment requirements under the APA or any other statute because it was not subject to notice and comment rulemaking requirements. *See* CAA section 107(d)(2)(B).

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of 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 to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small government on compliance with regulatory requirements.

Today's final action does not include a Federal mandate within the meaning of UMRA that may result in expenditures of $100 million or more in any 1 year by either State, local, or Tribal governments in the aggregate or to the private sector, and therefore, is not subject to the requirements of sections 202 and 205 of the UMRA. It does not create any additional requirements beyond those of the PM2.5 NAAQS (62 FR 38652; July 18, 1997), therefore, no UMRA analysis is needed. This rule establishes the application of the PM2.5 standard and the designation for each area of the country for the PM2.5 NAAQS. The CAA requires States to develop plans, including control measures, based on their designations and classifications.

One mandate that may apply as a consequence of this action to all designated nonattainment areas is the requirement under CAA section 176(c) and associated regulations to demonstrate conformity of Federal actions to SIPs. These rules apply to Federal agencies and Metropolitan Planning Organizations (MPOs) making conformity determinations. The EPA concludes that such conformity determinations will not cost $100 million or more in the aggregate.

The EPA believes that any new controls imposed as a result of this action will not cost in the aggregate $100 million or more annually. Thus, this Federal action will not impose mandates that will require expenditures of $100 million or more in the aggregate in any 1 year.

Nonetheless, EPA carried out consultation with government entities affected by this rule, including States, Tribal governments, and local air pollution control agencies.

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, or the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have federalism implications. 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. The CAA establishes the scheme whereby States take the lead in developing plans to meet the NAAQS. This rule will not modify the relationship of the States and EPA for purposes of developing programs to implement the NAAQS. Thus, Executive Order 13132 does not apply to this rule.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.'' This final rule does not have ''Tribal implications'' as specified in Executive Order 13175. This rule concerns the designation and classification of areas as attainment and nonattainment for the PM2.5 air quality standard. The CAA provides for States to develop plans to regulate emissions of air pollutants within their jurisdictions. The Tribal Authority Rule (TAR) provides Tribes the opportunity to develop and implement CAA programs such as programs to attain and maintain the PM2.5 NAAQS, but it leaves to the discretion of the Tribe the decision of whether to develop these programs and which programs, or appropriate elements of a program, the Tribe will adopt.

This final rule does not have Tribal implications as defined by Executive Order 13175. It does not have a substantial direct effect on one or more Indian Tribes, since no Tribe has implemented a CAA program to attain the PM2.5 NAAQS at this time. Furthermore, this rule does not affect the relationship or distribution of power and responsibilities between the Federal government and Indian Tribes. The CAA and the TAR establish the relationship of the Federal government and Tribes in developing plans to attain the NAAQS, and this rule does nothing to modify that relationship. Because this rule does not have Tribal implications, Executive Order 13175 does not apply.

Although Executive Order 13175 does not apply to this rule, EPA did outreach to Tribal leaders and environmental staff regarding the designations process. The EPA supports a national ''Tribal Designations and Implementation Work Group'' which provides an open forum for all Tribes to voice concerns to EPA about the designations and implementation process for the NAAQS, including the PM2.5 NAAQS. These discussions informed EPA about key Tribal concerns regarding designations as the rule was under development and gave Tribes the opportunity to express concerns about designations to EPA. Furthermore, EPA sent individualized letters to all federally recognized Tribes about EPA's intention to designate areas for the PM2.5 standard and gave Tribal leaders the opportunity for consultation.

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

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

This final rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because EPA does not have reason to believe that the environmental health risks or safety risks addressed by this rule present a disproportionate risk or safety risk to children. Nonetheless, we have evaluated the environmental health or safety effects of the PM2.5 NAAQS on children. The results of this risk assessment are contained in the NAAQS for PM2.5, Final Rule (July 18, 1997, 62 FR 38652).

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

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

Information on the methodology and data regarding the assessment of potential energy impacts is found in Chapter 6 of U.S. EPA 2002, Cost, Emission Reduction, Energy, and the Implementation Framework for the PM2.5 NAAQS, prepared by the Innovative Strategies and Economics Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC, April 24, 2003.

I. National Technology Transfer Advancement Act (NTTAA)

Section 12(d) of the NTTAA of 1995, Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the EPA decides not to use available and applicable VCS.

This action does not involve technical standards. Therefore, EPA did not consider the use of any VCS.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. 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). Pursuant to 5 U.S.C. 801, whether major or not, a rule generally cannot take effect until after submission of a rule report, including a copy of the rule, to each House of Congress and to the Comptroller General of the United States. A statutory exception to that requirement is provided in 5 U.S.C. 808(2), which provides that for a rule for which an agency for good cause finds ''that notice and public procedure thereon are impractical, unnecessary, or contrary to the public interest, [the rule] shall take effect at such time as the Federal agency promulgating the rule determines.'' The EPA finds that the criteria for the exception contained in 5 U.S.C. 808(2) are satisfied for the following reasons. Section 107(d)(2)(B) of the CAA explicitly exempts the designation process from compliance with the notice and comment procedures of the Administrative Procedures Act and EPA has concluded that it is appropriate to promulgate the designations following the specific procedures provided within section 107(d) of the CAA. Thus, EPA believes that additional notice and public procedure are unnecessary. Given the short time period between the submission by States of 2004 data and today's action, any such additional notice and public process would have been impracticable. Moreover, EPA has concluded that it is in the public interest to modify the designations of certain areas based upon inclusion of 2004 data in order to avoid the potential for delay and the waste of resources for such areas to pursue redesignation through other means. Therefore, EPA finds that notice and public comment procedures are unnecessary, impracticable, and contrary to the public interest for this rule. Thus, in accordance with 5 U.S.C. 808(2), EPA has concluded that today's rule can be effective on April 5, 2005. The 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**.

K. Judicial Review

Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final actions by EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit: (i) When EPA action consists of ''nationally applicable regulations promulgated, or final actions taken, by the Administrator,'' or (ii) when such action is locally or regionally applicable, if ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.''

This rule designating areas for the PM2.5 NAAQS is ''nationally applicable'' within the meaning of section 307(b)(1). This rule establishes designations for all areas of the United States for the PM2.5 NAAQS. At the core of this rulemaking is EPA's interpretation of the definition of nonattainment under section 107(d)(1) of the CAA. In determining which areas should be designated nonattainment (or conversely, should be designated attainment/unclassifiable), EPA used a set of nine technical factors that it applied consistently across the United States.

For the same reasons, the Administrator also is determining that the final designations are of nationwide scope and effect for the purposes of section 307(b)(1). This is particularly appropriate because in the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator's determination that an action is of ''nationwide scope or effect'' would be appropriate for any action that has ''scope or effect beyond a single judicial circuit.'' H.R. Rep. No. 95–294 at 323, 324, *reprinted* in 1977 U.S.C.C.A.N. 1402–03. Here, the scope and effect of this rulemaking extends to numerous judicial circuits since the designations apply to all areas of the

country. In these circumstances, section 307(b)(1) and its legislative history calls for the Administrator to find the rule to be of ''nationwide scope or effect'' and for venue to be in the D.C. Circuit.

Thus, any petitions for review of final designations must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is published in the **Federal Register**.

List of Subjects in 40 CFR Part 81

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

Dated: April 5, 2005.

Stephen L. Johnson,

Acting Administrator.

■ For the reasons set forth in the preamble, 40 CFR part 81, subpart C is amended as follows:

PART 81—DESIGNATIONS OF AREAS FOR AIR QUALITY PLANNING PURPOSES

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

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

Subpart C—Section 107 Attainment Status Designations

■ 2. In § 81.301, the ''Alabama—PM2.5'' table is amended by revising the entries for ''Columbus, GA-AL'',''DeKalb County, AL'' and ''Gadsen, AL'' to read as follows:

§ 81.301 Alabama.

* * * * *

ALABAMA—PM2.5

Designated area	Designation [a]	
	Date [1]	Type
* * * * *	*	*
Columbus GA-AL:		
Russell County, AL	.....	Unclassifiable/Attainment.
* * * * *	*	*
DeKalb County, AL:		
DeKalb County	.....	Unclassifiable/Attainment.
* * * * *	*	*
Gadsden, AL:		
Etowah County	.....	Unclassifiable/Attainment.
* * * * *	*	*

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.

■ 3. In § 81.305, the ''California—PM2.5'' table is amended as follows:

■ a. Under ''Lake Tahoe Air Basin:'' by revising the entry for ''Placer County (part)''.

■ b. By revising the entry for ''Western Mojave Desert and Antelope Valley''.

■ c. By removing the entries for ''San Diego, CA:'' and ''San Diego County Tribal Area:''.

■ d. By adding a new entry for ''San Diego, CA'' at the end of table.

§ 81.305 California.

* * * * *

CALIFORNIA—PM2.5

Designated area	Designation [a]	
	Date [1]	Type
* * * * *	*	*
Lake Tahoe Air Basin:		
* * * * *	*	*
Placer County (part):		
That portion of Placer County within the drainage area naturally tributary to Lake Tahoe including said Lake, plus that area in the vicinity of the head of the Truckee River described as follows: commencing at the point common to the aforementioned drainage area crestline and the line common to Townships 15 North and 16 North, Mount Diablo Base and Meridian, and following that line in a westerly direction to the northwest corner of Section 3, Township 15 North, Range 16 East, Mount Diablo Base and Meridian, thence south along the west line of Sections 3 and 10, Township 15 North, Range 16 East, Mount Diablo Base and Meridian, to the intersection with the said drainage area crestline, thence following the said drainage area boundary in a southeasterly, then northeasterly direction to and along the Lake Tahoe Dam, thence following the said drainage area crestline in a northeasterly, then northwesterly direction to the point of beginning.	.....	Unclassifiable/Attainment.
* * * * *	*	*
Western Mojave Desert and Antelope Valley:		

CALIFORNIA—PM2.5—Continued

Designated area	Designation [a]	
	Date [1]	Type
Los Angeles County (part):		
That portion of Los Angeles County which lies north and east of a line described as follows: Beginning at the Los Angeles—San Bernardino County boundary and running west along the Township line common to Township 3 North and Township 2 North, San Bernardino Base and Meridian; then north along the range line common to Range 8 West and Range 9 West; then west along the Township line common to Township 4 North and Township 3 North; then north along the range line common to Range 12 West and Range 13 West to the southeast corner of Section 12, Township 5 North and Range 13 West; then west along the south boundaries of Sections 12, 11, 10, 9, 8, and 7, Township 5 North and Range 13 West to the boundary of the Angeles National Forest which is collinear with the range line common to Range 13 West and Range 14 West; then north and west along the Angeles National Forest boundary to the point of intersection with the Township line common to Township 7 North and Township 6 North (point is at the northwest corner of Section 4 in Township 6 North and Range 14 West); then west along the Township line common to Township 7 North and Township 6 North; then north along the range line common to Range 15 West and Range 16 West to the southeast corner of Section 13, Township 7 North and Range 16 West; then along the south boundaries of Sections 13, 14, 15, 16, 17, and 18, Township 7 North and Range 16 West; then north along the range line common to Range 16 West and Range 17 West to the north boundary of the Angeles National Forest (collinear with the Township line common to Township 8 North and Township 7 North); then west and north along the Angeles National Forest boundary to the point of intersection with the south boundary of the Rancho La Liebre Land Grant; then west and north along this land grant boundary to the Los Angeles-Kern County boundary.	.....	Unclassifiable/Attainment.
* * * * * * *		
San Diego, CA:		
San Diego County	.....	Unclassifiable/Attainment.
* * * * * * *		

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.

■ 4. In § 81.311, the ''Georgia—PM2.5'' table is amended by revising the entry for ''Clarke County'' under the heading of ''Athens, GA,'', and by revising the entry for ''Muscogee'' under the heading ''Columbus GA–AL'' to read as follows:

§ 81.311 Georgia.

* * * * *

GEORGIA—PM2.5

Designated area	Designation [a]	
	Date [1]	Type
Athens, GA:		
Clarke County	.....	Unclassifiable/Attainment.
Columbus, GA–AL:		
Muscogee County	.....	Unclassifiable/Attainment.
* * * * * * *		

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.

■ 5. In § 81.314, the ''Illinois—PM2.5'' table is amended by revising the entry for ''Randolph County (part)'' under the heading of ''St. Louis, MO–IL'' to read as follows:

§ 81.314 Illinois.

* * * * *

ILLINOIS—PM2.5

Designated area	Designation [a]	
	Date [1]	Type
* * * * * * *		
Randolph County (part)		
Baldwin Township	.....	Nonattainment.

ILLINOIS—PM2.5—Continued

Designated area	Designation [a]	
	Date [1]	Type
* * * * * * *		

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.

■ 6. In § 81.315, the ''Indiana—PM2.5'' table is amended by revising the entry for ''Elkhart, IN'' and ''Muncie, IN'' to read as follows:

§ 81.315 Indiana.

* * * * *

INDIANA—PM2.5

Designated area	Designation [a]	
	Date [1]	Type
* * * * * * *		
Elkhart, IN:		
Elkhart County		Unclassifiable/Attainment.
St. Joseph County		Unclassifiable/Attainment.
* * * * * * *		
Muncie, IN:		
Delaware County		Unclassifiable/Attainment.
* * * * * * *		

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.

■ 7. In § 81.318, the ''Kentucky—PM2.5'' table is amended by revising the entry for ''Lexington, KY'' to read as follows:

§ 81.318 Kentucky.

* * * * *

KENTUCKY—PM2.5

Designated area	Designation [a]	
	Date [1]	Type
* * * * * * *		
Lexington, KY:		
Fayette County		Unclassifiable/Attainment.
Mercer County (part),		Unclassifiable/Attainment
* * * * * * *		

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.

■ 8. In § 81.319, the ''Louisiana—PM2.5'' table is revised to read as follows:

§ 81.319 Louisiana.

* * * * *

LOUISIANA—PM2.5

Designation area	Designated [a]	
	Date [1]	Type
AQCR 019 Monroe-El Dorado Interstate:		
Caldwell Parish		Unclassifiable/Attainment.
Catahoula Parish		Unclassifiable/Attainment.
Concordia Parish		Unclassifiable/Attainment.
East Carroll Parish		Unclassifiable/Attainment.
Franklin Parish		Unclassifiable/Attainment.
La Salle Parish		Unclassifiable/Attainment.

LOUISIANA—PM2.5—Continued

Designation area	Designated [a]	
	Date [1]	Type
Madison Parish		Unclassifiable/Attainment.
Morehouse Parish		Unclassifiable/Attainment.
Ouachita Parish		Unclassifiable/Attainment.
Richland Parish		Unclassifiable/Attainment.
Tensas Parish		Unclassifiable/Attainment.
Union Parish		Unclassifiable/Attainment.
West Carroll Parish		Unclassifiable/Attainment.
AQCR 022 Shreveport-Texarkana-Tyler Interstate:		
Bienville Parish		Unclassifiable/Attainment.
Bossier Parish		Unclassifiable/Attainment.
Caddo Parish		Unclassifiable/Attainment.
Claiborne Parish		Unclassifiable/Attainment.
De Soto Parish		Unclassifiable/Attainment.
Jackson Parish		Unclassifiable/Attainment.
Lincoln Parish		Unclassifiable/Attainment.
Natchitoches Parish		Unclassifiable/Attainment.
Red River Parish		Unclassifiable/Attainment.
Sabine Parish		Unclassifiable/Attainment.
Webster Parish		Unclassifiable/Attainment.
Winn Parish		Unclassifiable/Attainment.
AQCR 106 S. Louisiana-S.E. Texas Interstate:		
Acadia Parish		Unclassifiable/Attainment.
Allen Parish		Unclassifiable/Attainment.
Ascension Parish		Unclassifiable/Attainment.
Assumption Parish		Unclassifiable/Attainment.
Avoyelles Parish		Unclassifiable/Attainment.
Beauregard Parish		Unclassifiable/Attainment.
Calcasieu Parish		Unclassifiable/Attainment.
Cameron Parish		Unclassifiable/Attainment.
East Baton Rouge Parish		Unclassifiable/Attainment.
East Feliciana Parish		Unclassifiable/Attainment.
Evangeline Parish		Unclassifiable/Attainment.
Grant Parish		Unclassifiable/Attainment.
Iberia Parish		Unclassifiable/Attainment.
Iberville Parish		Unclassifiable/Attainment.
Jefferson Davis Parish		Unclassifiable/Attainment.
Jefferson Parish		Unclassifiable/Attainment.
Lafayette Parish		Unclassifiable/Attainment.
Lafourche Parish		Unclassifiable/Attainment.
Livingston Parish		Unclassifiable/Attainment.
Orleans Parish		Unclassifiable/Attainment.
Plaquemines Parish		Unclassifiable/Attainment.
Pointe Coupee Parish		Unclassifiable/Attainment.
Rapides Parish		Unclassifiable/Attainment.
St. Bernard Parish		Unclassifiable/Attainment.
St. Charles Parish		Unclassifiable/Attainment.
St. Helena Parish		Unclassifiable/Attainment.
St. James Parish		Unclassifiable/Attainment.
St. John the Baptist Parish		Unclassifiable/Attainment.
St. Landry Parish		Unclassifiable/Attainment.
St. Martin Parish		Unclassifiable/Attainment.
St. Tammany Parish		Unclassifiable/Attainment.
Tangipahoa Parish		Unclassifiable/Attainment.
Terrebonne Parish		Unclassifiable/Attainment.
Vermilion Parish		Unclassifiable/Attainment.
Vernon Parish		Unclassifiable/Attainment.
Washington Parish		Unclassifiable/Attainment.
West Baton Rouge Parish		Unclassifiable/Attainment.
West Feliciana Parish		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.

■ 9. In § 81.336, the ''Ohio—PM2.5'' table is amended by revising the entries for Gallia County under the heading of ''Huntington-Ashland, WV-KY-OH'', for ''Toledo, OH'', and for ''Youngstown-Warren-Sharon, OH-PA'' to read as follows:

§ 81.336 Ohio.

* * * * *

OHIO—PM2.5

Designated area	Designation [a]	
	Date [1]	Type
* * * * * * *		
Gallia County (part)		
Cheshire Township		Nonattainment.
* * * * * * *		
Toledo, OH:		
Lucas County		Unclassifiable/Attainment.
Wood County		Unclassifiable/Attainment.
* * * * * * *		
Youngstown-Warren-Sharon, OH-PA:		
Columbiana County		Unclassifiable/Attainment.
Mahoning County		Unclassifiable/Attainment.
Trumbull County		Unclassifiable/Attainment.
* * * * * * *		

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.

* * * * *

■ 10. In § 81.339, the ''Pennsylvania—PM2.5'' table is amended by revising the entry for ''Youngstown-Warren-Sharon, OH-PA'' to read as follows:

§ 81.339 Pennsylvania.

PENNSYLVANIA—PM2.5

Designated area	Designation [a]	
	Date [1]	Type
* * * * * *		
Youngstown-Warren-Sharon, OH-PA:		
Mercer County		Unclassifiable/Attainment.
* * * * * *		

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.

■ 11. In § 81.343, the ''Tennessee—PM2.5'' table is amended by revising the entry for ''McMinn County, TN'' to read as follows:

§ 81.343 Tennessee.

* * * * *

TENNESSEE—PM2.5

Designated area	Designation [a]	
	Date [1]	Type
* * * * * * *		
McMinn County, TN:		
McMinn County		Unclassifiable/Attainment.
* * * * * * *		

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.

■ 12. In § 81.349, the ''West Virginia—PM2.5'' table is amended by revising the entry for ''Marion County, WV (aka Fairmont CBSA)'' to read as follows:

§ 81.349 West Virginia.

* * * * *

WEST VIRGINIA—PM2.5

Designated area	Designation [a]	
	Date [1]	Type
* * * * * * *		
Marion County, WV (aka Fairmont CBSA):		
Harrison County (part).		
Tax District of Clay		Unclassifiable/Attainment.
Marion County		Unclassifiable/Attainment.
Monongalia County.		
Tax District of Cass		Unclassifiable/Attainment.
* * * * * * *		

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.

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April 14, 2005

Part III

Department of Housing and Urban Development

24 CFR Part 990
Revisions to the Public Housing Operating Fund Program; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 990

[Docket No. FR–4874–P–07, HUD–2005–0005]

RIN 2577–AC51

Revisions to the Public Housing Operating Fund Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the regulations for the Public Housing Operating Fund Program (Operating Fund Program). Through the Operating Fund Program, HUD determines the allocation of operating subsidies to public housing agencies (PHAs). HUD developed the proposed rule with the active participation of PHAs, public housing residents, and other relevant parties using the procedures of the Negotiated Rulemaking Act of 1990. These regulatory changes reflect the recommendations made by the negotiated rulemaking committee, with some modifications, on ways to improve and clarify the current regulations governing the Operating Fund Program and take into consideration the recommendations of the congressionally-funded study by the Harvard University Graduate School of Design on the cost of operating well-run public housing.

DATES: *Comments Due Date:* June 13, 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. Electronic comments may be submitted through either:

- The Federal Rulemaking 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: Elizabeth Hanson, Public Housing Financial Management Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20024; telephone 202–475–7949 (this telephone number is not toll-free). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Section 519 of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105–276, approved October 21, 1998) amended section 9 of the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (1937 Act). As amended, section 9 of the 1937 Act establishes an Operating Fund for the purpose of making assistance available to public housing agencies (PHAs) for the operation and management of public housing. Section 9 of the 1937 Act also requires that the amount of the assistance to be made available to a PHA from that fund be determined using a formula developed through negotiated rulemaking procedures as provided in subchapter III of chapter 5 of title 5, United States Code, commonly referred to as the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561 *et seq.*).

Negotiated rulemaking for an Operating Fund Program was initiated in March 1999, and the negotiated rulemaking committee consisted of 25 members representing PHAs, tenant organizations, community-based organizations, and the three national organizations representing PHAs—Public Housing Authorities Directors Association (PHADA), Council of Large Public Housing Authorities (CLPHA) and National Association of Housing and Redevelopment Officials (NAHRO). The negotiated rulemaking committee concluded with a proposed rule, published on July 10, 2000 (65 FR 42488), which was followed by an interim rule published on March 29, 2001 (66 FR 17276). The March 29, 2001, interim rule established the Operating Fund Program regulations that are currently in effect. These regulations are located in part 990 of HUD's regulations in title 24 of the Code of Federal Regulations.

During the negotiated rulemaking for the Operating Fund Formula, Congress directed that HUD contract with the Harvard University Graduate School of Design (Harvard GSD) to conduct a study on the costs incurred in operating well-run public housing (Cost Study). This Congressional direction was contained in the Conference Report (H.R. Rep. No. 106–379 at 91 (1999)) accompanying HUD's Fiscal Year (FY) 2000 Appropriations Act (Pub. L. 106–74, approved October 20, 1999). Congress further directed that HUD make the results of the Cost Study available to the negotiated rulemaking committee and appropriate congressional committees.

The Harvard GSD performed extensive research on the question of what the expense level of managing well-run public housing should be. HUD, consistent with Congressional direction, made the results of the Cost Study available to the members of the negotiated rulemaking committee who developed the current Operating Fund Program regulations, and also invited the committee members to be active participants in Harvard GSD's research for and development of the Cost Study. The Harvard GSD also conducted several public meetings to allow for an exchange of views and expectations with the public housing industry, beyond those industry members who were part of the negotiated rulemaking committee. The Cost Study was completed and officially released in July 2003.

II. The Negotiated Rulemaking Advisory Committee on the Operating Fund

The FY 2004 Consolidated Appropriations Act (Pub. L. 108–199, approved January 23, 2004) required HUD to undertake negotiated rulemaking to make changes to the Operating Fund formula. Specifically, section 222 of the administrative provisions for the HUD appropriations provides for HUD to conduct negotiated rulemaking with representatives from interested parties for purposes of any changes to the Operating Fund, and that a final rule be issued no later than July 1, 2004.

In response to this statutory language, HUD published a notice on January 28, 2004 (69 FR 4212), announcing its intent to establish an advisory committee to provide advice and recommendations on developing a rule for effectuating changes to the Operating Fund Program in response to the Harvard Cost Study. The January 28, 2004, notice solicited public comments on the proposed membership of the committee, and explained how persons could be nominated for membership. On March 10, 2004 (69 FR 11349), HUD

published a notice in the **Federal Register** announcing both the establishment of its negotiated rulemaking advisory committee on the Operating Fund (Committee) and the final list of Committee members.

The Committee held four meetings. The meetings were held on March 30–April 1, 2004 in Washington, DC, April 13–15, 2004, also in Washington, DC, May 11–12, 2004 in Atlanta, Georgia, and June 8–9, 2004, in Potomac, Maryland. All of the Committee sessions were announced in the **Federal Register** and were open to the public. Members of the public were permitted to make statements during the meetings at designated times, and to file written statements with the Committee for its consideration.

III. Changes to Committee Recommendations

This proposed rule is based primarily on the recommendations made by the Committee on ways to improve the current Operating Fund regulations. HUD developed a draft proposed rule based on those recommendations. Consistent with HUD's obligations under Executive Order 12866 (entitled ''Regulatory Planning and Review'') and other rulemaking authorities, the draft rule underwent further HUD and executive branch review prior to publication. As a result of those review processes, certain Committee recommendations have been revised. These changes have been made to better reflect a comparison with subsidized market-based units and Administration policies and budgetary priorities. HUD believes that these changes to the recommendations advance the goals of the Committee to implement an improved and more accurate Operating Fund formula.

The overall proposed rule sets forth a formula that is comparable with subsidized market-based units; however, differences between public housing units and subsidized market-based units makes certain comparisons difficult. In acknowledgment of these difficulties, certain add-ons were included that went beyond the Harvard Cost Study recommendations and provide additional incentives in some cases (for example, the freezing of rental income for three years). With these changes, the proposed rule would provide PHAs more flexibility to augment the operating subsidy appropriations with additional revenue. In total, the Department believes the changes contained in the proposed rule and the flexibility provided is sufficient to provide for the operation and maintenance of public housing.

This section of the preamble describes those situations where the recommendations submitted by the Committee have been revised, and the rationale for the changes.

A. Public Entity Fee

The calculation of the Project Expense Level (PEL) would not include a $2 per unit month (PUM) public entity fee. The Committee recommended that a public entity fee of $2 PUM should be added to the initial PELs. After careful review of the proposal, it was determined that the expenses to be covered by the additional subsidy from this public entity fee were already adequately addressed through other means in the proposed rule.

B. Operating Subsidy for Vacant Units

Under the proposed rule, PHAs would receive subsidy for occupied dwelling units and dwelling units with an approved vacancy. The Committee recommended that PHAs also receive operating subsidy for a limited number of vacancies if the annualized rate is less than or equal to three percent. It is true that there are special circumstances that may preclude PHAs from attaining full occupancy and, therefore, HUD will continue to pay subsidy for dwelling units meeting these circumstances (*e.g.*, units undergoing modernization, special use units, etc). However, payment of subsidy for vacancies of up to three percent or for five units if the PHA has 100 or fewer units is contradictory to the goals of subsidized housing and asset management and comparability with subsidized market-based units. Accordingly, the proposed rule does not provide for such additional subsidy.

C. PEL Inflation Factor

The annual inflation factor used to adjust the PEL would continue to be the applicable local inflation factor used to adjust the Allowable Expense Level (AEL) used under the current Operating Fund Program regulations. The Committee recommended that the inflation factor should be based on information published by the Department of Labor Bureau of Labor Statistics (BLS). The Committee further recommended that the adjustment factor should reflect a weight of 40 percent for increases in cost of living as shown for such annual period by the BLS U.S. Cities Average All Items Consumer Price Index, and 60 percent for increases in wages, salaries and benefits for an annualized period as shown in the BLS Employment Cost Index. The Committee based its recommendation on the fact that the BLS data is readily available to the public. Upon further consideration, the Department has concluded that the purpose of the inflation factor is better served by using the existing inflation factor. Retaining the current inflation factor will provide PHAs with continuity and an inflation factor that has adequately served to adjust the AEL for many years.

The current inflation factor has a 60 percent wage and 40 percent non-wage structure in keeping with the Committee's recommendation. Additionally, the current inflation factor better reflects wages because it uses Bureau of Labor Statistics wage data generated from county level government wages, which is then averaged to the metropolitan and non-metropolitan level for each state. For the 40 percent non-wage inflation factor, the current formula uses the Producer Price Index (PPI) instead of the Consumer Price Index (CPI). The PPI more accurately reflects the actual costs associated with the production of non-food and non-energy goods.

D. Nonprofit Ownership Coefficient

The PEL for a given property consists of the sum of nine variable coefficients added to a formula constant. The exponent of that sum is then multiplied by a percentage, to reflect the nonprofit ownership of the property. This proposed rule provides for a nonprofit coefficient of four percent. The Committee recommended that the non-profit coefficient be ten percent. The Department believes that PHAs have strong characteristics of both profit and non-profit entities, and agrees with the Cost Study's inclusion of a coefficient. However, the ten percent differential between the costs associated with for-profit and non-profit entities also reflects inefficiencies that currently exist in the delivery of housing services that should not be supported in the formula. Accordingly, the coefficient has been reduced to account for these current inefficiencies.

E. Phase-In of Operating Subsidy Gains

For PHAs that would experience a gain in their operating subsidy, the proposed rule provides that the gain will be phased in over a four-year period. The Committee recommended that such increases be phased in over a two-year period. HUD recognizes that PHAs should receive the full benefit of increases to their operating subsidy allocation, but also believes that this period of time should be more closely aligned with the five-year phase in period for those PHAs that would have their subsidy decreased as a result of the proposed regulatory changes.

F. Discontinuation of Subsidy Reduction Through Demonstration of Successful Conversion to Asset Management

PHAs that experience a reduction in their operating subsidy will not be able to discontinue the reduction at the PHA's next subsidy calculation by demonstrating a successful conversion to asset management. The Committee recommended that HUD should discontinue subsidy reductions for a PHA that can demonstrate a successful conversion to asset management. It was concluded that the Cost Study methodology should be equally applied to all PHAs, and that providing for discontinuation of subsidy reductions would weaken implementation of the Cost Study. However, the proposed rule continues to phase in the reduction of subsidy over the five-year period and by the percentages recommended by the Committee. Further, in accordance with the Committee recommendations, the proposed rule allows PHAs to substitute independent cost data for use as a basis of subsidy funding through an appeals process.

G. Adjustment Based on Committee Recommendations for Certain PHAs

The proposed rule would provide an ''add on'' for certain PHAs that would experience a reduction in its operating subsidy between the formula in the current Operating Fund Program regulations and the formula contained in the proposed rule. Specifically, if such a PHA would instead experience an operating subsidy increase if the four factors listed below were applied to the formula in the proposed rule, the PHA will receive an add on to its subsidy allocation. The Department recognizes that many PHAs, especially those that would have experienced an operating subsidy reduction, may have already begun initial conversion steps to asset management. The Department believes that a reduction in subsidy from the current regulations for those PHAs that were expecting to receive an increase in subsidy jeopardizes their timely and successful conversion to asset management. The amount of the add-on would be equal to the difference between the PHA's operating subsidy calculated under the formula in the proposed rule and the amount of the PHA's operating subsidy under the proposed rule with the application of the four factors listed below. The amount of the increased funding would be determined using FY 2004 data and would be subject to the transition policies and requirements contained in the proposed rule. The four factors used for purposes of this calculation reflect certain Committee recommendations that, as discussed above, were not adopted in the proposed rule. Specifically, the four factors would be: (1) A $2 PUM public entity fee; (2) a ten percent nonprofit coefficient; (3) payment of operating subsidy on a limited number of vacancies if the annualized rate is less than or equal to three percent; and (4) an annual inflation factor based on the most recent annual data published by the BLS.

H. Subsidy for Vacant Units

PHAs that appeal to receive higher subsidy on vacant units due to changing market conditions would be required to submit, with their appeal, a plan to end the higher subsidy within two years. In addition, a PHA shall only be granted one such appeal and shall only receive the higher subsidy for a maximum period of two years. The Committee recommendations did not provide for the submission of a plan to end the higher subsidy, nor did the recommendations provide for a limit on the number of appeals or the term a PHA would be permitted receive this higher subsidy. HUD recognizes that when units are vacant due to changing market conditions, receipt of additional subsidy may be necessary. However, the Department believes that continuing to support vacant units is not sound fiscal policy and a two year period is a sufficient time in which to implement a plan to lease these vacant units.

I. Sanctions for Failure To Convert to Asset-Based Management

The proposed rule provides that HUD shall impose sanctions as deemed necessary, and otherwise provided by law, for those PHAs that are not in compliance with asset management by FY2011. These sanctions may include the imposition of a daily monetary fine until the PHA converts to asset management. The Committee sessions did not make a recommendation regarding sanctions for PHAs not in compliance with asset management. HUD believes that such a provision is necessary to help ensure enforcement of the asset management requirements contained in the proposed rule.

IV. This Proposed Rule

The proposed rule reflects the recommendations made by the Committee, with some modifications, on ways to improve and clarify the current regulations governing the Operating Fund Program, and takes into consideration the recommendations contained in the Cost Study. The most significant features of the proposed rule are described below.

A. Implementation of Cost Study

The Committee used the Cost Study as the basis for developing the interim regulatory changes. For example, the proposed rule would implement the recommendation made by the Cost Study to replace the current factor known as the Allowable Expense Level (AEL) with a new Project Expense Level (PEL). The proposed rule also adopts the recommendation of the Cost Study to redirect the focus of the public housing program from an ''agency-centric'' to a ''property-based'' management model, as is the case generally with multifamily rental housing management.

However, the Committee recognized that asset management reflects a significant change in the direction and methods employed by many PHAs and by HUD, and will require a longer implementation period because there are many aspects to this change. Such changes will include the creation of new goals, a conversion to project-based accounting, the establishment of a different operational approach, and the implementation of additional organizational and regulatory changes beyond those included in this rule. The regulatory changes made by this rule are a significant initial step in the direction of asset management.

B. Other Regulatory Goals

In addition to implementing the recommendations of the Cost Study, the changes contained in this proposed rule improve and clarify the existing requirements for the Operating Fund Program. As more fully described below, the proposed rule: (1) Provides more explicit guidance on the expected outcomes contained in the operating subsidy formula; (2) streamlines and simplifies the operating subsidy calculation to determine appropriate subsidy amounts for each PHA by project and to distribute those correct amounts timely and accurately, to use effective administrative control of funds; to reduce reporting errors and facilitate more efficient and robust data collection; and (3) improves the operating subsidy estimation process by placing more emphasis on actual or historical data rather than on forecasted information.

1. *Streamlined calculation.* The proposed rule re-organizes part 990 to describe and simplify the operating subsidy calculation. The rule clearly defines the major components of the formula (such as the new Project Expense Level, Utilities Expense Level, Other Formula Expenses (Add-ons), and Formula Income) and notes the

relationships of these various components.

Consistent with the Committee's decision to streamline the operating subsidy calculation, the proposed rule would not codify certain secondary elements that will be used in the revised Operating Fund Formula. These elements include the coefficients used to adjust the variables for calculating the new PEL, the units of measurement and round-off conventions that will be used in the formula, and the determination of the geographic variable used in the PEL calculation. Regulatory codification of these formula elements would require the use of notice and comment rulemaking for future amendments and, thus, potentially delay HUD's ability to update the formula as new and more accurate data becomes available. After careful consideration, the Committee determined that these details should more appropriately be provided in non-codified guidance that may be more quickly revised, such as a Handbook, **Federal Register** notice, or other non-regulatory means. Following publication of the final rule for this proposed rule, HUD will issue guidance providing the information described above, as well as other guidance regarding the revised operating subsidy calculation.

In furtherance of this goal, the Committee also elected to streamline regulatory text concerning statutory and other cross-cutting federal requirements that apply to the Operating Fund Program (for example, the environmental review procedures of the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and the implementing regulations at 24 CFR parts 50 and 58 currently referenced at § 990.111). This regulatory streamlining would not reflect any change in the timing and applicability of the requirements of part 58 as currently described in § 990.111(c), including the need to obtain approval of a request for release of funds, HUD environmental approval, or a responsible entity's determination of exemption before the funding of non-routine maintenance and capital expenditure activities may be incorporated into a PHA's initial operating budget and before the PHA may commit any funds to such activities. HUD will issue non-regulatory guidance providing further instructions on the applicability of these requirements.

2. *Increased focus on actual or historical data.* The typical budget cycle results in an 18-month lag between the time HUD formulates the Operating Fund budget request and the actual budget year. In the past, HUD has based its budget request to Congress on forecasted information. The proposed rule seeks to provide more accurate reporting and improve HUD's ability to estimate budget requirements by relying more on historical data. For example, HUD will develop a PHA's formula income from a PHA's year-end financial information provided by the PHA through HUD's information systems.

3. *Funding period.* In this proposed rule, a PHA's fiscal year-end is no longer tied to the formula and funding process. Under this proposed rule, HUD will run the formula and obligate funds for all PHAs at the same time during the fiscal year. This is a change from prior practice where HUD based the funding on a limited number of actual current year subsidy calculations submissions and estimates of the remaining outstanding subsidy calculations. This change will result in a one-time transition of obligating funds based on a PHA's fiscal year-end to a calendar year. It is also HUD's intent to use the data, where available from its systems, to populate the formula and to eliminate duplicate data reporting.

C. New Information Systems

As noted in this preamble and the proposed regulatory text, the changes to the Operating Fund Formula will require that PHAs maintain and report data not required under the current operating subsidy calculation process. Further, HUD will be required to update its automated information systems to accommodate the new data collections required by the rule. HUD has begun the process of updating its systems, and will notify each PHA when HUD has the automated systems capacity to receive the information required by the rule.

V. Overview of Revised Part 990

The proposed rule re-organizes the regulations in 24 CFR part 990 for purposes of clarity and to reflect the recommendations of the Cost Study. The proposed rule establishes ten subparts (A through J) in part 990, with each subpart addressing a specific aspect of the Operating Fund. This section of the preamble summarizes the requirements of each subpart. Further guidance will be provided in a transition notice and through annual notices provided at the beginning of each funding cycle.

Subpart A—Purpose, Applicability, Operating Fund Formula, and Definitions

Subpart A contains the definitions applicable to the Operating Fund and also describes the Operating Fund Formula along with its applicability to various HUD programs. The proposed rule revises the current regulations by removing the discussion of those provisions that pertain to the Virgin Islands, Puerto Rico, Guam, and Alaska PHAs. These PHAs had previously received operating subsidy funding outside of the Operating Fund formula but are now included within the formula.

Subpart B—Eligibility for Operating Subsidy; Computation of Eligible Unit Months

Subpart B describes the requirements and procedures governing the computation of eligible unit months. A public housing unit may receive operating subsidy for each unit month that it qualifies as an occupied dwelling unit or a dwelling unit with an approved vacancy. The total number of eligible unit months for the PHA will be calculated from July 1 to June 30 prior to the first day of the applicable funding period and will consist of eligible units as defined in this rule. The rule reserves to HUD the right to determine the status of any public housing unit based on information in HUD's information systems. In addition, the rule provides for a change in a PHA's formula within each one-year funding period based on the addition and deletion of units in a PHA's inventory.

Subpart C—Calculating Formula Expenses

New subpart C describes how formula expenses will be calculated under the revised Operating Fund Formula. The rule provides a detailed description with respect to the computation of the PEL. The PEL replaces the existing AEL methodology pursuant to the recommendations contained in the Cost Study. As more fully detailed in the proposed regulatory text, the specific PEL for a given property consists of the sum of nine variable coefficients added to a formula constant. The exponent of that sum is then multiplied by a percentage, to reflect the nonprofit ownership of the property and an annual inflation factor is then applied to the resulting PEL. This nonprofit ownership adjustment is based on the conclusions contained in the Cost Study. The Cost Study found three basic property ownership types were available for benchmarking—nonprofit, for profit, and limited dividends. The Cost Study designated PHAs as nonprofit, upon concluding that this classification related closest to the ownership and operation of public housing properties.

This subpart also describes the Utilities Expense Level (UEL), including the computation of the current

consumption level and the rolling base consumption level. A PHA that undertakes energy conservation measures financed by an entity other than HUD may qualify under this rule for financial incentives with HUD approval. In addition, this subpart describes add-ons to the subsidy calculation (*e.g.*, funding of resident participation activities, information technology, asset repositioning, and asset management).

Subpart D—Calculating Formula Income

Subpart D describes the calculation of formula income, which will be derived from a PHA's year-end audited financial information contained in HUD's information systems. Formula income is an estimate of a PHA's non-operating subsidy revenue and is calculated by multiplying the per unit month (PUM) income amount by the eligible unit months (EUMs), as defined in the rule. The rule provides for different PHA fiscal year-ends within 2004. After a PHA's formula income is calculated, it will not be recalculated nor inflated for fiscal years 2006 through 2008, unless a PHA can show a severe local economic hardship affecting its ability to maintain some aspect of its formula income. No later than FY 2008, HUD will analyze the effects of freezing formula income and, based on that analysis, determine whether to extend the applicability of this provision for future fiscal years or to modify the income component of the formula. HUD will issue this policy determination through handbook, **Federal Register** notice, or other non-regulatory means, and offer the public an opportunity to comment before the policy determination takes effect.

Subpart E—Determination and Payment of Operating Subsidy

Subpart E describes, among other things, the amount of operating subsidy for which a PHA is eligible, as well as the procedures HUD will follow to make operating subsidy payments to PHAs. Subpart E also addresses the fungibility of operating subsidy between projects. Specifically, the proposed rule provides that operating subsidy will remain fully fungible between Annual Contribution Contract (ACC) projects until operating subsidy is calculated by HUD at a project level. After subsidy is calculated at a project level, operating subsidy can only be transferred to another ACC project if a project's financial information reveals excess cash flow and only in the amount up to those excess cash flows. Under the rule, the PHA shall submit timely data to ensure accurate calculation under the formula. Failure to do so may result in sanctions. Also, if HUD determines that a PHA is not in compliance with all of the income reexamination requirements, HUD shall withhold payments to which the PHA may be entitled.

Subpart F—Transition Policy and Transition Funding

Because of the elimination of AEL, the introduction of the PEL, and other formula differences, many PHAs will experience changes in the calculation of their operating subsidies. This subpart provides policies on such transitions.

For PHAs that will experience a reduction in their operating subsidy calculated under the current regulations, such reductions will occur over a five year period. In the first year of the effect of this rule, the decrease will be limited to 24 percent of the difference between the two funding levels. The decrease will be limited to 43 percent of the difference in the second year, 62 percent of the difference in the third year, and 81 percent of the difference in the fourth year. The full amount of the reduction in the operating subsidy shall be realized in the fifth year of the effect of this rule.

For PHAs that will experience a subsidy increase in their operating subsidy, such increases will occur over a four year period. In the first year of the effect of this rule, the increase will be limited to 20 percent of the difference between the two levels. The increase will be limited to 40 percent in the second year of effect of this rule, and 60 percent in the third year. The full increase in subsidy will be realized in the fourth year of the effect of this rule.

Subpart G—Appeals

Among other changes to the Operating Fund Formula, the revised formula procedures will involve new methods for determining formula expenses and require the asset-based management of PHA properties. Given the significant changes to the current Operating Fund Formula, the Committee determined that it would be appropriate to provide PHAs with the opportunity to appeal subsidy amounts under certain specified circumstances. These appeals procedures will assist PHAs to transition to the new methods for calculating operating subsidies, and help ensure that accurate data is used in the new formula calculations.

Subpart G describes the different types of appeals available to PHAs, and the requirements applicable for each appeal. HUD will provide up to a two percent hold-back of Operating Fund appropriations for FY2006 and FY2007 to fund appeals that are filed during each of these two fiscal years. Hold-back funds not utilized will be added back to the formula within each of the affected fiscal years. Appeals are voluntary and must cover an entire portfolio, not single properties. However, the Assistant Secretary for Public and Indian Housing has the discretion to accept appeals of less than an entire portfolio for PHAs with greater than 5,000 units.

Subpart H—Asset Management

This rule states that PHAs shall manage their properties according to an asset management model, consistent with management norms in the broader multifamily management industry. PHAs shall also implement project-based management, project-based budgeting, and project-based accounting, defined in the rule, which are essential components of asset management. The rule provides that PHAs that own and operate 250 or more dwelling rental units are required to operate using an asset management model consistent with this subpart. PHAs that own and operate fewer than 250 dwelling rental units may treat their entire portfolio as a single project, but will not receive the add-on for the asset management fee. Similarly, PHAs with only one project will not be eligible for an asset management fee. The rule further provides that a PHA is considered in compliance with asset management requirements if it can demonstrate that it is managing substantially in accordance with this subpart H. This subpart also provides that HUD may impose sanctions for PHAs that are not in compliance with asset management by FY 2011.

Subpart I—Operating Subsidy for Properties Managed by Resident Management Corporations (RMCs)

This subpart describes how the operating subsidy will be calculated for RMCs including direct-funded RMCs, and lists several factors that will affect the calculation of the subsidy, including changes in inflation, utility rates and consumption, and changes in the number of units in the resident management project. The rule indicates other factors and exclusions and inclusions that will affect the amounts to be provided a project managed by an RMC. Subpart I also contains detailed provisions regarding the preparation of an RMC's operating budget and the retention of excess revenues.

Subpart J—Financial Management Systems, Monitoring, and Reporting

Subpart J describes requirements regarding financial management

systems, as well as on the monitoring of PHA program and financial performance. These requirements are mostly unchanged from the current regulatory provisions.

VI. Findings and Certifications

Information Collection Requirements

The information collection requirements contained in this proposed rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Numbers 2577–0026, 2577–0029, 2577–0066, and 2577–0072. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number

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. 4321 *et seq.*). 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.

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. The entities that would be subject to this rule are public housing agencies that administer public housing. Under the definition of ''small governmental jurisdiction'' in section 601(5) of the RFA, the provisions of the RFA are applicable only to those public housing agencies that are part of a political jurisdiction with a population of under 50,000 persons. The number of entities potentially affected by this rule is therefore not substantial. Further, the proposed regulatory changes were developed using negotiated rulemaking procedures and with the active participation of PHAs that will be affected by the revised Operating Fund requirements. The membership of the negotiated rulemaking committee included representatives of smaller PHAs, who expressed the views and concerns of these PHAs during development of the proposed regulatory changes.

Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities. Notwithstanding HUD's determination that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any 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 will not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the executive order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This rule does not impose any federal mandates on any state, local, or tribal government, nor on the private sector, within the meaning of the UMRA.

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (''entitled Regulatory Planning and Review''). This rule was determined to be economically significant under E.O. 12866. Any changes made to this proposed rule as a result of that review 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 Legislation and Regulations, Office of the General Counsel, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

The Economic Analysis prepared for this rule is also available for public inspection at the same location and on HUD's Web site at *http://www.hud.gov*. A summary of the findings contained in Economic Analysis follows.

A. *Rulemaking Goals and Focus of Economic Analysis.* As noted above, the proposed regulatory changes contained in this proposed rule reflect the recommendations made by the Committee on ways to improve and clarify the current regulations governing the Operating Fund Program, and take into consideration the recommendations of the Cost Study on the cost of operating well-run public housing. The proposed rule would make some modifications to the Committee recommendations to more accurately compare the costs of operating public housing and subsidized market-based units, as well as to better reflect Administration policies and budgetary priorities. More specifically, the rule attempts to achieve three objectives:

1. Provide more explicit guidance on the expected outcomes contained in the operating subsidy formula.

2. Streamline and simplify the operating subsidy calculation to: (i) Determine appropriate subsidy amounts for each PHA by project; (ii) distribute those amounts in a timely and accurate manner; (iii) use effective administrative control of funds; and (iv) reduce reporting errors and facilitate more efficient and robust data collection.

3. Improve the operating subsidy estimation process by placing more emphasis on actual or historical data rather than on forecasted information.

The Economic Analysis discusses the economic impact of the implementation of the proposed rule.

B. *Basis for Economically Significant Determination Under E.O. 12866.* HUD determined that the proposed rule would be an economically significant rule under E.O. 12866 because the rule would results in transfers of funding levels to and among PHAs of more than $100 million a year.

C. *Findings.* This Economic Analysis finds that, with more efficient transfers through better incentives, there will be a net increase in societal benefits. The net increase was not quantified. The Economic Analysis also finds that the full implementation cost of the proposed rule is approximately $74 million in 2003 dollars in increased operating subsidy eligibility. The transition funding provisions, which are intended to provide a transition period for PHAs with subsidy changes, would result in varying costs over a five year period when compared to the fully phased in subsidy change, which would occur in year 5 of rule implementation. The proposed rule would alter the flow

of transfers to PHAs, as such, would have a direct financial consequence on the federal budget and on individual PHAs and their tenants.

The Economic Analysis concludes that the two immediate consequences of the proposed rule would be as follows:

1. Using FY 2003 dollars and assuming funding at 100 percent of eligibility, public housing program funding eligibility for operating subsidies would increase by $83 million over the 5-year period and by about $74 million a year in 2003 dollars when fully implemented.

2. Changes in operating subsidy allocations resulting from the proposed rule would be phased in over four years for PHAs having subsidy eligibility increases and over five years for those with subsidy eligibility decreases; thus the increase in Operating Fund eligibility and the change in distribution of funds will be less during the transition than in the full implementation of the proposed rule in the fifth year.

Congressional Review of Major Proposed Rules

This rule is a ''major rule'' as defined in Chapter 8 of 5 U.S.C. At the final rule stage, the rule will be submitted for congressional review in accordance with this chapter.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CFDA) program number is 14.850.

List of Subjects in 24 CFR Part 990

Accounting, Grant programs-housing and community development, Public housing, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, HUD proposes to amend 24 CFR part 990 as follows:

PART 990—THE PUBLIC HOUSING OPERATING FUND PROGRAM

1. Revise part 990 to read as follows:

PART 990—THE PUBLIC HOUSING OPERATING FUND PROGRAM

Subpart A—Purpose, Applicability, Formula, and Definitions

Sec.

990.100 Purpose.
990.105 Applicability.
990.110 Operating fund formula.
990.115 Definitions.
990.116 Environmental review requirements.

Subpart B—Eligibility for Operating Subsidy; Computation of Eligible Unit Months

990.120 Unit months.
990.125 Eligible units.
990.130 Ineligible units.
990.135 Eligible unit months (EUMs).
990.140 Occupied dwelling units.
990.145 Dwelling units with approved vacancies.
990.155 Addition and deletion of units.

Subpart C—Calculating Formula Expenses

990.160 Overview of calculating formula expenses.
990.165 Computation of project expense level (PEL).
990.170 Computation of utilities expense level (UEL): Overview.
990.175 Utilities expense level: Computation of the current consumption level.
990.180 Utilities expense level: Computation of the rolling base consumption level.
990.185 Utilities expense level: Incentives for energy conservation/rate reduction.
990.190 Other formula expenses (add-ons).

Subpart D—Calculating Formula Income

990.195 Calculation of formula income.

Subpart E—Determination and Payment of Operating Subsidy

990.200 Determination of formula amount.
990.205 Fungibility of operating subsidy between projects.
990.210 Payment of operating subsidy.
990.215 Payments of operating subsidy conditioned upon reexamination of income of families in occupancy.

Subpart F—Transition Policy and Transition Funding

990.220 Purpose.
990.225 Transition determination.
990.230 PHAs that will experience a subsidy reduction.
990.235 PHAs that will experience a subsidy increase.

Subpart G—Appeals

990.240 General.
990.245 Types of appeals.
990.250 Requirements for certain appeals.

Subpart H—Asset Management

990.255 Overview.
990.260 Applicability.
990.265 Identification of projects.
990.270 Asset management.
990.275 Project-based management.
990.280 Project-based budgeting and accounting.
990.285 Records and reports.
990.290 Compliance with asset management requirements.

Subpart I—Operating Subsidy for Properties Managed by Resident Management Corporations (RMCs)

990.295 Resident Management Corporation operating subsidy.
990.300 Preparation of operating budget.
990.305 Retention of excess revenues.

Subpart J—Financial Management Systems, Monitoring, and Reporting

990.310 Purpose—General policy on financial management, monitoring, and reporting.
990.315 Submission and approval of operating budgets.
990.320 Audits.
990.325 Record retention requirements.

Authority: 42 U.S.C. 1437g; 42 U.S.C. 3535(d).

Subpart A—Purpose, Applicability, Formula, and Definitions

§ 990.100 Purpose.

This part implements section 9(f) of the United States Housing Act of 1937 (1937 Act), (42 U.S.C. 1437g). Section 9(f) establishes an Operating Fund for the purposes of making assistance available to public housing agencies (PHAs) for the operation and management of public housing. In the case of unsubsidized housing, the total expenses of operating rental housing should be covered by the operating income, which primarily consists of rental income and, to some degree, investment and non-rental income. In the case of public housing, the Operating Fund provides a subsidy to assist PHAs to serve low, very low, and extremely low-income families. This part describes the policies and procedures for Operating Fund formula calculations and management under the Operating Fund Program.

§ 990.105 Applicability.

(a) *Applicability of this part.* (1) With the exception of subpart I of this part, this part is applicable to all PHA rental units under an Annual Contributions Contract (ACC). This includes PHAs that have not received Operating Fund payments previously, but are eligible for such payments under the Operating Fund Formula.

(2) This part is applicable to all rental units managed by a resident management corporation (RMC), including a direct-funded RMC.

(b) *Inapplicability of this part.* (1) This part is not applicable to Indian Housing, section 5(h) and section 32 homeownership projects, the Housing Choice Voucher Program, the section 23 Leased Housing Program, or the section 8 Housing Assistance Payments Programs.

(2) With the exception of subpart J of this part, this part is not applicable to the Mutual Help Program or the Turnkey III Homeownership Opportunity Program.

§ 990.110 Operating fund formula.

(a) *General formula.* (1) The amount of annual contributions (operating

subsidy) each PHA is eligible to receive under this part shall be determined by a formula.

(2) In general, operating subsidy shall be the difference between formula expense and formula income. If a PHA's formula expense is greater than its formula income, then the PHA is eligible for an operating subsidy.

(3) Formula expense is an estimate of a PHA's operating expense and is determined by the following three components: Project Expense Level (PEL), Utility Expense Level (UEL), and other formula expenses (add-ons). Formula expense and its three components are further described in subpart C of this part. Formula income is an estimate for a PHA's non-operating subsidy revenue and is further described in subpart D of this part.

(4) Certain portions of the operating fund formula (*e.g.*, PEL) are calculated in terms of per unit month (PUM) amounts and are converted into whole dollars by multiplying the PUM amount by the number of eligible unit months (EUMs). EUMs are further described in subpart B of this part.

(b) *Specific formula.* (1) A PHA's Operating Fund amount shall be the sum of the three formula expense components calculated as follows: [(PEL multiplied by EUM) plus (UEL multiplied by EUM) plus add-ons] minus formula income multiplied by EUM.

(2) A PHA whose formula amount is equal to or less than zero is still eligible to receive Operating Fund equal to its most recent actual audit cost.

(3) Operating Fund will be limited to the availability of funds as described in § 990.210(c).

(c) *Non-codified formula elements.* This part defines the major components of the Operating Fund Formula and describes the relationships of these various components. However, this part does not codify certain secondary elements that will be used in the revised Operating Fund Formula. HUD will more appropriately provide this information in non-codified guidance, such as a Handbook, **Federal Register** notice, or other non-regulatory means that HUD determines appropriate.

§ 990.115 Definitions.

The following definitions apply to the Operating Fund program:

1937 Act means the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*)

Annual contribution contract (ACC) is a contract in the form prescribed by HUD for loans and contributions, which may be in the form of operating subsidy whereby HUD agrees to provide financial assistance and the PHA agrees to comply with HUD requirements for the development and operation of its public housing projects.

Asset management is a management model that emphasizes property management as well as long term and strategic planning.

Current consumption level is the amount of each utility consumed at a project during the one-year period that ended the June 30th prior to the beginning of the applicable funding period.

Eligible unit months (EUM) are the actual number of PHA units in eligible categories expressed in months for a specified time frame and for which a PHA receives operating subsidy.

Formula amount is the amount of operating subsidy a PHA is eligible to receive, expressed in whole dollars, as determined by the Operating Fund Formula.

Formula expense is an estimate of a PHA's operating expense used in the Operating Fund Formula.

Formula income is an estimate of a PHA's non-operating subsidy revenue used in the Operating Fund Formula.

Funding period is the calendar year for which HUD will distribute the Operating Fund according to the Operating Fund Formula.

Operating fund is the account/program authorized by section 9 of the 1937 Act for making assistance available to PHAs for the operation and managements of public housing.

Operating fund formula (Formula) means the data and calculations used under this part to determine a PHA's amount of the operating subsidy for a given period.

Operating subsidy is the amount of annual contributions for operations a PHA receives each funding period under section 9 of the 1937 Act as determined by the Operating Fund Formula in this part.

Other operating costs (add-ons) means PHA expenses that are recognized as formula expenses but are not included either in the project expense level or in the utility expense level.

Payable consumption level is the amount for all utilities consumed at a project that the Formula recognizes in the computation of a PHA's utility expense level at that project.

Per unit month (PUM) is an expression of Project Expense Level, Utility Expense Level and formula income. It describes a cost or an amount on a monthly basis per unit.

Project means each PHA project under an ACC to which the Operating Fund Formula is applicable. However, for purposes of asset management, as described in subpart H of this part, projects may be as identified under the ACC or may be a reasonable grouping of projects or portions of a project or projects under the ACC.

Project-based management is the provision of property management services that are tailored to the unique needs of each property, given the resources available to that property.

Project expense level (PEL) is the amount of estimated expenses for each project (excluding utilities and add-ons) expressed as a per unit per month cost.

Project units means all dwelling units in all of a PHA's projects under an ACC.

Rolling base consumption level (RBCL) is the average of the yearly consumption levels for the 36-month period ending 18 months prior to the beginning of the applicable funding period.

Transition funding is the timing and amount by which a PHA will realize increases and reductions in operating subsidy based on the new funding levels of the Operating Fund Formula.

Unit months are the total number of project units in a PHA's inventory expressed in months for a specified time frame.

Utilities means electricity, gas, heating fuel, water, and sewerage service.

Utilities expense level (UEL) is a product of the utility rate multiplied by the payable consumption level multiplied by the utilities inflation factor expressed as a per unit month dollar amount.

Utility rate (rate) means the actual average rate for any given utility for the latest 12 months that ended the June 30th prior to the beginning of the applicable funding period.

Yearly consumption level is the actual amount of each utility consumed at a project during a one-year period ending June 30.

§ 990.116 Environmental review requirements.

The environmental review procedures of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) and the implementing regulations at 24 CFR parts 50 and 58 are applicable to the Operating Fund Program.

Subpart B—Eligibility for Operating Subsidy; Computation of Eligible Unit Months

§ 990.120 Unit months.

(a) Some of the components of HUD's Operating Fund Formula are based on a measure known as unit months. Unit months represent a PHA's public

housing inventory during a specified period of time. The unit months eligible for operating subsidy in a one-year period are equal to the number of months that the units are in an operating subsidy eligible category, adjusted for changes in inventory (*e.g.*, units added or removed), as described below.

(b) A PHA is eligible to receive operating subsidy for a unit on the date it is both placed under the ACC and occupied. The date a unit is eligible for operating subsidy does not change the Date of Full Availability (DOFA) or the date of the End of Initial Operating Period (EIOP), nor does this provision place a project into management status.

§ 990.125 Eligible units.

A PHA is eligible to receive operating subsidy for public housing units under an ACC for:

(a) Occupied dwelling units as defined in § 990.140; and

(b) A dwelling unit with an approved vacancy (as defined in § 990.145).

§ 990.130 Ineligible units.

(a) Vacant units that do not fall within the definition of § 990.145 are not eligible for operating subsidy.

(b) Units that are eligible to receive an asset repositioning fee, as described in § 990.190(h), are not eligible to receive operating subsidy under this subpart.

§ 990.135 Eligible unit months (EUMs).

(a) A PHA's total number of eligible unit months will be calculated for the 12-month period from July 1 to June 30 that is prior to the first day of the applicable funding period, and will consist of eligible units as defined in § 990.140 and § 990.145.

(b)(1) The determination of whether a public housing unit satisfies the requirements of § 990.140 or § 990.145 for any unit month shall be based on the unit's status as of either the first or last day of the month, as determined by the PHA.

(2) HUD reserves the right to determine the status of any and all public housing units based on information in its information systems.

(c) The PHA shall maintain and, at HUD's request, shall make available to HUD, specific documentation of the status of all units, including, but not limited to, a listing of the units, street addresses or physical address, and project/management control numbers.

(d) Any unit months that do not meet the requirements of this subpart are not eligible for, and will not be subsidized by, the Operating Fund.

§ 990.140 Occupied dwelling units.

A PHA is eligible to receive operating subsidy for public housing units for each unit month they are under an ACC and occupied by a public housing eligible family under lease.

§ 990.145 Dwelling units with approved vacancies.

(a) A PHA is eligible to receive operating subsidy for vacant public housing units for each unit month they are under ACC and meet one of the following HUD-approved vacancies:

(1) *Units undergoing modernization.* Vacancies resulting from project modernization or unit modernization (such as work necessary to reoccupy vacant units) provided that one of the following conditions is met:

(i) The unit is undergoing modernization (*i.e.*, the modernization contract has been awarded or force accounting has started) and must be vacant to perform the work, and the construction is on schedule according to a HUD-approved PHA Annual Plan; or

(ii) The unit must be vacant to perform the work and the treatment of the vacant unit is included in a HUD-approved PHA Annual Plan, but the time period for placing the vacant unit under construction has not yet expired. The PHA shall place the vacant unit under construction within two federal fiscal years (FFYs) after the FFY in which the capital funds are approved.

(2) *Special use units.* Units approved and used for resident services, resident organization offices and related activities such as self-sufficiency and anti-crime initiatives.

(b) On a project-by-project basis, subject to prior HUD approval and for the time period agreed to by HUD, a PHA shall receive operating subsidy for the units affected by the following events that are outside the control of the PHA:

(1) *Litigation.* Units that are vacant due to litigation, such as a court order or settlement agreement that is legally enforceable; units that are vacant in order to meet regulatory and statutory requirements to avoid potential litigation (as covered in a HUD-approved PHA Annual Plan); and units under voluntary compliance agreements with HUD or other voluntary compliance agreements acceptable to HUD (*e.g.*, units that are being held vacant as part of a court-order, HUD-approved desegregation plan, or voluntary compliance agreement requiring modifications to the units to make them accessible pursuant to 24 CFR part 8).

(2) *Disasters.* Units that are vacant due to a federally declared, state-declared, or other declared disaster.

(3) *Casualty losses.* Damaged units that remain vacant due to delays in settling insurance claims.

(c) A PHA may appeal to HUD to receive operating subsidy for units that are vacant due to changing market conditions (see subpart G of this part—Appeals).

§ 990.155 Addition and deletion of units.

(a) *Changes in public housing unit inventory.* To generate a change to its formula amount within each one-year funding period, PHA shall periodically (*e.g.*, quarterly) report the following information to HUD, during the funding period:

(1) New units that were added to the ACC, and occupied by a public housing-eligible family during the prior reporting period for the one-year funding period, but have not been included in the previous eligible unit months' data; and

(2) Projects, or entire buildings in a project, that are eligible to receive an asset repositioning fee in accordance with the provisions in § 990.190(h).

(b) *Revised eligible unit month calculation.* (1) For new units, the revised calculation shall assume that all such units will be fully occupied for the balance of that funding period. The actual occupancy/vacancy status of these units will be included to calculate the PHA's operating subsidy in the subsequent funding period after these units have one full year of a reporting cycle.

(2) Projects, or entire buildings in a project, that are eligible to receive an asset repositioning fee in accordance with § 990.175(h) are not to be included in the calculation of eligible unit months. Funding for these units is provided under the conditions described in § 990.190(h).

Subpart C—Calculating Formula Expenses

§ 990.160 Overview of calculating formula expenses.

(a) *General.* Formula expenses represent the costs of services and materials needed by a well-run PHA to sustain the project. These costs include items such as administration, maintenance, and utilities. HUD also determines a PHA's formula expenses at a project level. HUD uses the following three factors to determine the overall formula expense level for each project:

(1) The project expense level (PEL) (calculated in accordance with § 990.165);

(2) The utilities expense level (UEL) (calculated in accordance with §§ 990.170, 990.175, 990.180, and 990.185); and

(3) Other formula expenses (add-ons) (calculated in accordance with § 990.190).

(b) *PEL, UEL, and add-ons.* Each project of a PHA has a unique PEL and UEL. The PEL for each project is based on ten characteristics and certain adjustments described in § 990.165. The PEL represents the normal expenses of operating public housing projects, such as maintenance and administration costs. The UEL for each project represents utility expenses. Utility expense levels are based on an incentive system aimed at reducing utility expenses. Both the PEL and UEL are expressed in PUM costs. The expenses not included in these expense levels and unique to PHAs are titled other formula expenses (add-ons) and are expressed in a yearly dollar amount.

(c) *Calculating project formula expense.* The formula expense of any one project is the sum of the project's PEL and the UEL, multiplied by the total eligible unit months specific to the project, plus the add-ons.

§ 990.165 Computation of project expense level (PEL).

(a) *Computation of PEL.* The PEL is calculated in terms of PUM cost and represents the costs associated with the project except for utility and add-on costs. Costs associated with the PEL are administration, management fees, maintenance, protective services, leasing, occupancy, staffing, and other expenses such as project insurance. HUD will calculate the PEL using regression analysis and benchmarking for the actual costs of Federal Housing Administration (FHA) projects to estimate costs for public housing projects. HUD will use the ten variables described in paragraph (b) of this section and their associated coefficient (*i.e.*, values that are expressed in percentage terms) to produce a PEL.

(b) *Variables.* The ten variables are:

(1) Size of project (number of units);

(2) Age of property (Date of Full Availability (DOFA));

(3) Bedroom mix;

(4) Building type;

(5) Occupancy type (family or senior);

(6) Location (an indicator of the type of community in which a property is located; location types include rural, city central metropolitan, and non-city central metropolitan (suburban) areas);

(7) Neighborhood poverty rate;

(8) Percent of households assisted;

(9) Ownership type (profit, non-profit, or limited dividend); and

(10) Geographic.

(c) *Cost adjustments.* HUD will apply five adjustments to the PEL. The adjustments are:

(1) Application of a $200 floor for any senior property and a $215 floor for any family property;

(2) Application of a $420 ceiling for any property except for New York City Housing Authority projects, which have a $480 ceiling;

(3) Application of a four percent reduction for any PEL calculated over $325, with the reduction limited to $325; and

(4) The reduction of audit costs as reported for FFY 2003 PUM amount.

(d) *Annual inflation factor.* The PEL for each project shall be adjusted annually, beginning in 2005, by the local inflation factor. The local inflation factor shall be the HUD-determined weighted average percentage increase in local government wages and salaries for the area in which the PHA is located and non-wage expenses.

(e) *Calculating a PEL.* To calculate a specific PEL for a given property, the sum of the nine variables' coefficients (all variables except ownership type) shall be added to a formula constant. The exponent of that sum shall be multiplied by a percentage to reflect the non-profit ownership type, which will produce an unadjusted PEL. For the calculation of the initial PEL, the out of model cost adjustments described in paragraphs (c)(1), (c)(2), and (c)(3) of this section will be applied. After these initial adjustments are applied, the audit adjustment will be applied to arrive at the PEL in year 2000 dollars. After the PEL in year 2000 dollars is created, the annual inflation factor as described in paragraph (d) of this section will be applied cumulatively to this number through 2004 to yield an initial PEL in terms of current dollars.

(f) *Calculation of the PEL for Moving to Work PHAs.* PHAs participating in the Moving to Work (MTW) Demonstration authorized under section 204 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Public Law 104–134, approved April 26, 1996) shall receive an operating subsidy as provided in Attachment A of their MTW Agreements executed prior to the effective date of this rule. PHAs with an MTW Agreement will continue to have the right to request extensions of or modifications to their MTW Agreements.

(g) *Calculation of the PELs for mixed finance developments.* If, prior to [insert effective date of final rule], a PHA has either a mixed-finance arrangement that has closed or has filed documents in accordance with 24 CFR 941.606 for a mixed finance transaction, then the project covered by the mixed finance transaction will receive funding based on the higher of its former Allowable Expense Level or the new computed PEL.

(h) *Calculation of PELs when data are inadequate or unavailable.* When sufficient data are unavailable for the calculation of a PEL, HUD may calculate a PEL using an alternative methodology. The characteristics may be used from similarly situated properties.

(i) *Review of PEL methodology by advisory committee.* In 2009, HUD will convene a meeting with representation of appropriate stakeholders, to review the methodology to evaluate the PEL based on actual cost data. The meeting shall be convened in accordance with the Federal Advisory Committee Act (5 U.S.C. Appendix) (FACA) or such other authority or protocol determined appropriate. HUD may determine appropriate funding levels for each project to be effective in FY 2011 after following appropriate rulemaking procedures.

§ 990.170 Computation of utilities expense level (UEL): Overview.

(a) *General.* The UEL for each PHA is based on its consumption for each utility, the applicable rates for each utility, and an applicable inflation factor. The UEL for a given funding period is the product of the utility rate multiplied by the payable consumption level multiplied by the inflation factor. The UEL is expressed in terms of PUM costs.

(b) *Utility rate.* The utility rate for each type of utility will be the actual average rate from the latest 12 months that ended June 30. The rate will be calculated by dividing the actual utility cost by the actual utility consumption, with consideration for pass-through costs (*e.g.*, state and local utility taxes, tariffs) for the respective time periods.

(c) *Payable consumption level.* The payable consumption level is based on the current consumption level adjusted by a utility consumption incentive. The incentive shall be computed by comparing current consumption levels of each utility to the rolling base consumption level. If the comparison reflects a decrease in the consumption of a utility, the PHA shall retain 75 percent of this decrease. Alternately, if the comparison reflects an increase in the consumption of a utility, the PHA shall absorb 75 percent of this increase.

(d) *Inflation factor for utilities.* The UEL shall be adjusted annually by an inflation/deflation factor based upon the fuels and utilities component of the

United States Department of Labor, Bureau of Labor Statistics (BLS) Consumer Price Index for All Urban Consumers (CPI–U). The annual adjustment to the UEL shall reflect the most recently published and localized data available from BLS at the time the annual adjustment is calculated.

(e) *Increases in tenant utility allowances.* Increases in tenant utility allowances, as a component of the formula income, as described in § 990.195(b), shall result in a commensurate increase of operating subsidy. Decreases in such utility allowances shall result in a commensurate decrease in operating subsidy.

(f) *Records and reporting.* (1) Appropriate utility records, satisfactory to HUD, shall be developed and maintained, so that consumption and rate data can be determined.

(2) All records shall be kept by utility and by project for each twelve-month period ending June 30.

(3) HUD will notify each PHA when HUD has the automated systems capacity to receive such information. Each PHA then will be obligated to provide consumption and cost data to HUD for all utilities for each project.

(4) If a PHA has not maintained or cannot recapture utility data from its records for a particular utility, the PHA shall compute the UEL by:

(i) Using actual consumption data for the last complete year(s) of available data or data of comparable project(s) that have comparable utility delivery systems and occupancy, in accordance with a method prescribed by HUD; or

(ii) Requesting field office approval to use actual PUM utility expenses for its UEL in accordance with a method prescribed by HUD when the PHA cannot obtain necessary data to calculate the UEL in accordance with paragraph (f)(4)(i) of this section.

§ 990.175 Utilities expense level: Computation of the current consumption level.

The current consumption level shall be the actual amount of each utility consumed during the one-year period ending June 30 that is six months prior to the first day of the applicable funding period.

§ 990.180 Utilities expense level: Computation of the rolling base consumption level.

(a) *General.* (1) The rolling base consumption level (RBCL) shall be equal to the average of yearly consumption levels for the 36-month period ending 18 months prior to the first day of the applicable funding period.

(2) The yearly consumption level is the actual amount of each utility consumed during a one-year period ending June 30. For example, for the funding period January 1, 2006 through December 31, 2006, the RBCL will be the average of the following yearly consumption levels:

Year 1 = July 1, 2001 through June 30, 2002

Year 2 = July 1, 2002 through July 30, 2003

Year 3 = July 1, 2003 through June 30, 2004

Note: In this example, the current year's consumption level will be July 1, 2004 through June 30, 2005.

(b) *Distortions to rolling base consumption level.* The PHA shall have its RBCL determined so as not to distort the rolling base period in accordance with a method prescribed by HUD if:

(1) A project has not been in operation during at least 12 months of the rolling base period,

(2) A project enters or exits management after the rolling base period and prior to the end of the applicable funding period, or

(3) A project has experienced a conversion from one energy source to another, switched from PHA-supplied to resident-purchased utilities during or after the rolling base period, or for any other reason that would cause the RBCL not to be comparable to the current year's consumption level.

(c) *Financial incentives.* The three-year rolling base for all relevant utilities will be adjusted to reflect any financial incentives to the PHA to reduce consumption as described in § 990.185.

§ 990.185 Utilities expense level: Incentives for energy conservation/rate reduction.

(a) *General/consumption reduction.* If a PHA undertakes energy conservation measures that are financed by an entity other than HUD, the PHA may qualify for the incentives available under this section. The measures may include, but are not limited to, physical improvements financed by a loan from a bank, utility or governmental entity, management of costs under a performance contract, or a shared savings agreement with a private energy service company. For a PHA to qualify for these incentives, the PHA must obtain HUD approval. Approval shall be based upon a determination that payments under the contract can be funded from the reasonably anticipated energy cost savings. The contract period shall not exceed 12 years.

(1) *Frozen rolling base.* (i) If a PHA undertakes energy conservation measures that are approved by HUD, the RBCL for the project and the utilities involved may be frozen during the contract period. Before the RBCL is frozen, it must be adjusted to reflect any energy savings resulting from the use of any HUD funding. The RCBL also may be adjusted to reflect systems repaired to meet applicable building and safety codes as well as to reflect adjustments for occupancy rates increased by rehabilitation. The RBCL shall be frozen at the level calculated for the year during which the conservation measures initially shall be implemented.

(ii) The PHA operating fund eligibility shall reflect the retention of 100 percent of the savings from decreased consumption until the term of the financing agreement is complete. The PHA must use at least 75 percent of the cost savings to pay off the debt, *e.g.*, pay off the contractor or bank loan. If less than 75 percent of the cost savings is used for debt payment, however, HUD shall retain the difference between the actual percentage of cost savings used to pay off the debt and 75 percent of the cost savings. If at least 75 percent of the cost savings is paid to the contractor, the PHA may use the full amount of the remaining cost savings for any eligible operating expense.

(iii) The annual three-year rolling base procedures for computing the RBCL shall be reactivated after the PHA satisfies the conditions of the contract. The three years of consumption data to be used in calculating the RBCL after the end of the contract period shall be the yearly consumption levels for the final three years of the contract.

(2) PHAs undertaking energy conservation measures that are financed by an entity other than HUD may include resident-paid utilities under the consumption reduction incentive, using the following methodology:

(i) The PHA reviews and updates all utility allowances to ascertain that residents are receiving the proper allowances before energy savings measures are begun;

(ii) The PHA makes future calculations of rental income for purposes of the calculation of operating subsidy eligibility based on these baseline allowances. In effect, HUD will freeze the baseline allowances for the duration of the contract;

(iii) After implementation of the energy conservation measures, the PHA updates the utility allowances in accordance with provisions in 24 CFR part 965, subpart E. The new allowance should be lower than baseline allowances;

(iv) The PHA uses at least 75 percent of the savings for paying the cost of the

improvement (the PHA will be permitted to retain 100 percent of the difference between the baseline allowances and revised allowances);

(v) After the completion of the contract period, the PHA begins using the revised allowances in calculating its operating subsidy eligibility; and,

(vi) The PHA may exclude from its calculation of rental income the increased rental income due to the difference between the baseline allowances and the revised allowances of the projects involved, for the duration of the contract period.

(3) *Subsidy add-on.* (i) If a PHA qualifies for this incentive, *i.e.*, the subsidy add-on, in accordance with the provisions of paragraph (a) of this section, then the PHA is eligible for additional operating subsidy each year of the contract to amortize the cost of the loan for the energy conservation measures during the term of the contract subject to the provisions of this paragraph (b)(3) of this section . The PHA's operating subsidy for the current funding year will continue to be calculated in accordance with paragraphs (a), (b) and (c) of § 990.170 (*i.e.*, the rolling base is not frozen). The PHA will be able to retain part of the cost savings in accordance with § 990.170(c).

(ii) The actual cost of energy (of the type affected by the energy conservation measure) after implementation of the energy conservation measure will be subtracted from the expected energy cost, to produce the energy cost savings for the year.

(iii) If the cost savings for any year during the contract period is less than the amount of operating subsidy to be made available under this paragraph to pay for the energy conservation measure in that year, the deficiency will be offset against the PHA's operating subsidy eligibility for the PHA's next fiscal year.

(iv) If energy cost savings are less than the amount necessary to meet amortization payments specified in a contract, the contract term may be extended (up to the 12-year limit) if HUD determines that the shortfall is the result of changed circumstances rather than a miscalculation or misrepresentation of projected energy savings by the contractor or PHA. The contract term may only be extended to accommodate payment to the contractor and associated direct costs.

(b) *Rate reduction.* If a PHA takes action beyond normal public participation in rate-making proceedings, such as well-head purchase of natural gas, administrative appeals or legal action to reduce the rate it pays for utilities, then the PHA will be permitted to retain one-half the annual savings realized from these actions.

(c) *Utility benchmarking.* HUD will pursue benchmarking utility consumption at the project level as part of the transition to asset management. HUD intends to establish benchmarks by collecting utility consumption and cost information on a project-by-project basis. In 2009, after conducting a feasibility study, HUD will convene a meeting with representation of appropriate stakeholders to review utility benchmarking options so that HUD may determine whether or how to implement utility benchmarking to be effective in FY2011. The meeting shall be convened in accordance with the Federal Advisory Committee Act (5 U.S.C. Appendix) (FACA) or such other authority or protocol determined appropriate. The HUD study shall take into account typical levels of utilities consumption at public housing developments based upon factors such as building and unit type and size, temperature zones, age and construction of building, and other relevant factors.

§ 990.190 Other formula expenses (add-ons).

In addition to calculating operating subsidy based on the PEL and UEL, a PHA's eligible formula expenses shall be increased by add-ons. The allowed add-ons are:

(a) *Self-sufficiency.* A PHA may request operating subsidy for the reasonable cost of program coordinator(s) and associated costs in accordance with HUD's self-sufficiency program regulations and notices.

(b) *Energy loan amortization.* A PHA may qualify for operating subsidy for payments of principal and interest cost for energy conservation measures described in § 990.185(a)(3).

(c) *Payments in lieu of taxes (PILOT).* Each PHA will receive an amount for PILOT in accordance with section 6(d) of the 1937 Act, based on its cooperation agreement or its latest actual PILOT payment.

(d) *Cost of independent audits.* A PHA is eligible to receive operating subsidy equal to its most recent actual audit costs of the Operating Fund when an audit is required by the Single Audit Act (31 U.S.C. 7501–7507) (*see* 24 CFR part 85) or when a PHA elects to prepare and submit such an audit to HUD. For the purpose of this rule, the most recent actual audit costs include the associated costs of an audit for the Operating Fund program only. A PHA whose operating subsidy is determined to be zero based on the Formula is still eligible to receive operating subsidy equal to its most recent actual audit costs. The most recent actual audit costs are used as a proxy to cover the cost of the next audit. If a PHA does not have a recent actual audit cost, the PHA working with HUD may establish an audit cost. A PHA that requests funding for an audit shall complete an audit. The results of the audit shall be transmitted in a time and manner prescribed by HUD.

(e) *Funding for resident participation activities.* Each PHA's operating subsidy calculation shall include $25 per occupied unit per year for resident participation activities, including, but not limited to, those described in 24 CFR part 964. For purposes of this section, a unit is eligible to receive resident participation funding if it is occupied by a public housing resident or it is occupied by a PHA employee, a police officer, or other security personnel who is not otherwise eligible for public housing. In any fiscal year, if appropriations are not sufficient to meet all funding requirements under this part, then the resident participation component of the formula will be adjusted accordingly.

(f) *Asset management fee.* Each PHA with at least 250 units shall receive a $4 PUM asset management fee. PHAs with fewer than 250 units that elect to transition to asset management shall receive an asset management fee of $2 PUM. PHAs with fewer than 250 units that elect to have their entire portfolio treated and considered as a single project as described in § 990.260(b) or PHAs with only one project will not be eligible for an asset management fee. For all PHAs eligible to receive the asset management fee, the fee will be based on the total number of ACC units. PHAs that are not in compliance with asset management as described in subpart H of this part by FY2011 will forfeit this fee.

(g) *Information technology fee.* Each PHA's operating subsidy calculation shall include $2 PUM for costs attributable to information technology. For all PHAs, this fee will be based on the total number of ACC units.

(h) *Asset repositioning fee.* (1) A PHA that transitions projects or entire buildings of a project out of its inventory is eligible for an asset repositioning fee. This fee supplements the costs associated with administration and management of demolition or disposition, tenant relocation, and minimum protection and service associated with such efforts. The asset repositioning fee is not intended for individual units within a multi-unit building undergoing similar activities.

(2) Projects covered by applications approved for demolition or disposition

shall be eligible for an asset repositioning fee on the first day of the next quarter six months after the date the first unit becomes vacant after the relocation date included in the approved relocation plan. When this condition is met, the project and all associated units are no longer considered an eligible unit month as described in § 990.155. Each PHA is responsible for accurately applying and maintaining supporting documentation on the start date of this transition period or is subject to forfeiture of this add-on.

(3) Units categorized for demolition and which are eligible for an asset repositioning fee are eligible for operating subsidy at the rate of 75 percent PEL per unit for the first twelve months, 50 percent PEL per unit for the next twelve months, and 25 percent PEL per unit for the next twelve months.

(4) Units categorized for disposition and which are eligible for an asset repositioning fee are eligible for operating subsidy at the rate of 75 percent PEL per unit for the first twelve months and 50 percent PEL per unit for the next twelve months.

Example: A PHA has HUD's approval to demolish (or dispose of) a 100-unit project from its 1,000 EUM inventory. On January 12, in conjunction with the PHA's approved Relocation Plan, a unit in that project becomes vacant. Accordingly, the demolition/disposition-approved project is eligible for an asset repositioning fee on October 1. (This date is calculated as follows: January 12 + six months = July 12. The first day of the next quarter is October 1.)

Although payment of the asset repositioning fee will not begin until October 1, the PHA will receive its full operating subsidy based on the 1,000 EUMs through September 30. On October 1 the PHA will begin its 3-year phase down of operating subsidy in accordance with paragraph (h) (3) of this section for the 100 units approved for *demolition.* (Phase down requirements for projects approved for *disposition* are found in paragraph (h)(4) of this section.) On October 1, the PHA's EUMs will be 900.

(i) *Adjustment for certain PHAs.* A PHA that will experience a reduction in its operating subsidy between calculations using the formula in effect prior to [insert effective date of final rule] and the formula in this part, but would experience an increase in its operating subsidy between calculations using the formula in effect prior to [insert effective date of final rule] and the formula in this part with application of the four factors listed in paragraphs (i)(1) through (i)(4) of this section, will receive an add on to its subsidy. The amount of the add-on will be equal to the difference between the PHA's operating subsidy calculated under the formula in this part and the amount of the PHA's operating subsidy calculated by applying the four factors to the formula in this part. The amount of the add-on will be determined using FY 2004 data and will be subject to the transition policies and requirements contained in § 990.235 of subpart F of this part. The four factors that will be used for purposes of this calculation are:

(1) A $2 PUM public entity fee;

(2) A ten percent nonprofit coefficient;

(3) Payment of operating subsidy on a limited number of vacancies if the annualized rate is less than or equal to three percent or for five units if the PHA has 100 or fewer units; and

(4) An annual inflation factor based on the most recent annual data published by the Department of Labor Bureau of Labor Statistics (BLS) for the lowest geographic area with statistically valid data at the time the annual inflation adjustment is calculated. The adjustment will reflect a weight of:

(i) 40 percent for increases in cost of living as shown for such annual period by the BLS U.S. Cities Average All Items Consumer Price Index; and

(ii) 60 percent for increases in wages, salaries and benefits for an annualized period as shown in the BLS Employment Cost Index, which annual adjustment shall reflect the most recently published annual data and the lowest geographic area with statistically valid data available from BLS at the time the annual inflation adjustment is calculated.

(j) *Costs attributable to changes in federal law, regulation or economy.* In the event that HUD determines that enactment of a federal law or revision in HUD or other federal regulations has caused or will cause a significant change in expenditures of a continuing nature above the PEL and UEL, HUD may, in HUD's sole discretion, decide to prescribe a procedure under which the PHA may apply for or may receive an adjustment in operating subsidy.

Subpart D—Calculating Formula Income

§ 990.195 Calculation of formula income.

(a) *General.* Formula income will be derived from a PHA's year-end financial information. The financial information used in the formula income computation will be the audited information provided by the PHA through HUD's information systems. The information will be calculated using the following PHA fiscal year-end information: April 1, 2003 through March 31, 2004, July 1, 2003 through June 30, 2004, October 1, 2003 through September 30, 2004, and January 1, 2004 through December 31, 2004. For the purpose of the Operating Fund Formula, formula income is equal to the amount of rent charged to tenants divided by the respective unit months leased, and is therefore expressed in terms of PUM.

(b) *Calculation of formula income.* To calculate formula income in whole dollars, the PUM amount will be multiplied by the EUMs as described in subpart B of this part.

(c) *Frozen at 2004 level.* After a PHA's formula income is calculated as described in paragraph (a) of this section, it will not be recalculated or inflated for fiscal years 2006 through 2008, unless a PHA can show a severe local economic hardship that is impacting the PHA's ability to maintain some semblance of its formula income (*see* subpart G of this part—Appeals). A PHA's formula income may be recalculated if the PHA appeals to HUD for an adjustment in its formula.

(d) *Calculation of formula income when data are inadequate or unavailable.* When audited data are unavailable in HUD's information systems for the calculation of formula income, HUD may use an alternative methodology, including, but not limited to, certifications, hard copy reports, and communications with the respective PHAs.

(e) *Inapplicability of 24 CFR 85.25.* Formula income is not subject to the provisions regarding program income in 24 CFR 85.25.

Subpart E—Determination and Payment of Operating Subsidy

§ 990.200 Determination of formula amount.

(a) *General.* The amount of operating subsidy that a PHA is eligible for is the difference between its formula expenses (as calculated under subpart C of this part) and its formula income (as calculated under subpart D of this part).

(b) *Use of HUD databases to calculate formula amount.* HUD shall utilize its databases to make the Formula calculations. HUD's databases are intended to be employed to provide information on all primary factors in determining the operating subsidy amount. Each PHA is responsible for supplying accurate information on the status of each of its units in HUD's databases.

(c) *PHA responsibility to submit timely data.* PHAs shall submit data used in the Formula on a regular and timely basis to ensure accurate

calculation under the Formula. If a PHA fails to provide accurate data, HUD will make a determination as to the PHA's inventory, occupancy, and financial information using available or verified data, which may result in a lower operating subsidy. HUD has the right to adjust any or all formula amounts based on clerical, mathematical, and informational system errors that affect any of the data elements used in the calculation of the Formula.

(d) HUD shall impose sanctions as deemed necessary, and otherwise provided by law, for those PHAs that do not report accurate and timely data, as required under this section.

§ 990.205 Fungibility of operating subsidy between projects.

(a) *General.* Operating subsidy shall remain fully fungible between ACC projects until operating subsidy is calculated by HUD at a project level. After subsidy is calculated at a project level, operating subsidy can be transferred as the PHA determines during the PHA's fiscal year to another ACC project(s) if a project's financial information, as described more fully in § 990.280, produces excess cash flow, and only in the amount up to those excess cash flows.

(b) Notwithstanding the provisions of paragraph (a) of this section and subject to all of the other provisions of this part, the New York City Housing Authority's Development Grant Project Amendment Number 180, dated July 13, 1995, to Consolidated Annual Contributions Contract NY–333 remains in effect.

§ 990.210 Payment of operating subsidy.

(a) *Payments of operating subsidy under the Formula.* HUD shall make monthly payments equal to 1/12 of a PHA's total annual operating subsidy under the Formula by electronic funds transfers through HUD's automated disbursement system. HUD shall establish thresholds that permit PHAs to request monthly installments. PHA requests that exceed these thresholds will be subject to HUD review. HUD approvals of requests that exceed these thresholds are limited to PHAs that have an unanticipated and immediate need for disbursement.

(b) *Payments procedure.* In the event that the amount of operating subsidy has not been determined by HUD as of the beginning of the funding period, operating subsidy shall be provided monthly, quarterly, or annually based upon the amount of the PHA's previous year's formula or such other amount as HUD may determine to be appropriate.

(c) *Availability of funds.* In the event that insufficient funds are available, HUD shall have discretion to revise, on a pro rata basis, the amounts of operating subsidy to be paid to PHAs.

§ 990.215 Payments of operating subsidy conditioned upon reexamination of income of families in occupancy.

(a) *General.* Each PHA is required to reexamine the income of each family in accordance with the provisions of the ACC, the 1937 Act, and HUD regulations. Income reexaminations shall be performed annually, except as provided in the 1937 Act, in HUD regulations, or in the MTW agreements. A PHA must be in compliance with all reexamination requirements in order to be eligible to receive full operating subsidy. A PHA's calculations of rent and utility allowances shall be accurate and timely.

(b) *A PHA in compliance.* A PHA shall submit a certification that it is in compliance with the annual income reexamination requirements and that rents and utility allowance calculations have been or will be adjusted in accordance with current HUD requirements and regulations.

(c) *A PHA not in compliance.* Any PHA not in compliance with annual income reexamination requirements at the time of the submission of the calculation of operating subsidy shall furnish to the responsible HUD field office a copy of the procedures it is using to achieve compliance and a statement of the number of families that have undergone reexamination during the twelve months preceding the current funding cycle. If, on the basis of this submission or any other information, HUD determines that the PHA is not substantially in compliance with all of the annual income reexamination requirements, HUD shall withhold payments to which the PHA may be entitled under this part. Payment may be withheld in an amount equal to HUD's estimate of the loss of rental income to the PHA resulting from its failure to comply with the requirements.

Subpart F—Transition Policy and Transition Funding

§ 990.220 Purpose.

This policy is aimed at assisting all PHAs in transitioning to the new funding levels as determined by the formula set forth in this rule. PHAs will be subject to a transition funding policy that will either increase or reduce their total operating subsidy for a given year.

§ 990.225 Transition determination.

The determination of the amount and period of the transition funding shall be based on the difference in subsidy levels between the formula set forth in this part and the formula in effect prior to [insert effective date of final rule]. The difference will be calculated using FY 2004 data. When actual data are not available for one of the formula components needed to calculate the Operating Fund formula of this rule for FY 2004, HUD will use alternate data as a substitute (*e.g.*, unit months available for eligible unit months, phase-down funding for asset repositioning fee, etc.) If the difference between these formulas indicates that a PHA shall have its operating subsidy reduced as a result of this Formula, the PHA will be subject to a transition policy as indicated in § 990.230. If the difference between these formulas indicates that a PHA will have its operating subsidy increased as a result of this Formula, the PHA will be subject to the transition policy as indicated in § 990.235.

§ 990.230 PHAs that will experience a subsidy reduction.

(a) For PHAs that will experience a reduction in their operating subsidy, as determined in § 990.225, such reductions will have a limit of:

(1) 24 percent of the difference between the two funding levels in the first year following [insert effective date of final rule];

(2) 43 percent of the difference between the two funding levels in the second year following [insert effective date of final rule];

(3) 62 percent of the difference between the two levels in the third year following [insert effective date of final rule]; and

(4) 81 percent of the difference between the two levels in the fourth year following [insert effective date of final rule].

(b) The full amount of the reduction in the operating subsidy level shall be realized in the fifth year following [insert effective date of final rule].

(c) For example, a PHA has a subsidy reduction from $1,000,000 under the formula in effect prior to [insert effective date of final rule] to $900,000 under the formula used for operating subsidy under this part using FY 2004 data. The difference would be calculated at $100,000 ($1,000,000 − $900,000 = $100,000). In the first year, the subsidy reduction would be limited to $24,000, (24 percent of the difference). Thus, in this example the PHA will receive an operating subsidy amount of this rule plus a transition funding amount of $76,000 (the $100,000 difference between the two subsidy amounts minus the $24,000 reduction limit).

(d) The schedule for a PHA whose subsidy would be reduced is reflected in the table below.

Funding period	Reduction limited to
Year 1	24 percent of the difference.
Year 2	43 percent of the difference.
Year 3	62 percent of the difference.
Year 4	81 percent of the difference.
Year 5	Full reduction reached.

§ 990.235 PHAs that will experience a subsidy increase.

(a) For PHAs that will experience a gain in their operating subsidy, as determined in § 990.225, such increases will have a limit of:

(1) 20 percent of the difference between the two funding levels in the first year following [insert effective date of final rule];

(2) 40 percent of the difference between the two funding levels in the second year following [insert effective date of final rule]; and

(3) 60 percent of the difference between the two funding levels in the third year following [insert effective date of final rule].

(b) The full amount of the increase in the operating subsidy level shall be realized in the fourth year following [insert effective date of final rule].

(c) For example, a PHA's subsidy increased from $900,000 under the formula in effect prior to [insert effective date of final rule] to $1,000,000 under the formula used to calculate operating subsidy under this part using FY 2004 data. The difference would be calculated at $100,000 ($1,000,000—$900,000 = $100,000). In the first year, the subsidy increase would be limited to $20,000 (20 percent of the difference). Thus, in this example the PHA will receive the PEL-derived subsidy amount of this rule minus a transition funding amount of $80,000 (the $100,000 difference between the two subsidy amounts minus the $20,000 transition amount).

(d) The schedule for a PHA whose subsidy would be increased is reflected in the table below.

Funding period	Increase limited to
Year 1	20 percent of the difference.
Year 2	40 percent of the difference.
Year 3	60 percent of the difference.
Year 4	Full increase reached.

Subpart G—Appeals

§ 990.240 General.

(a) PHAs will be provided opportunities for appeals. HUD will provide up to a two percent hold-back of the Operating Fund appropriation for FY 2006 and FY 2007. HUD will use the hold-back amount to fund appeals that are filed during each of these fiscal years. Hold-back funds not utilized will be added back to the formula within each of the affected fiscal years.

(b) Appeals are voluntary and must cover an entire portfolio, not single projects. However, the Assistant Secretary for Public and Indian Housing (or designee) has the discretion to accept appeals of less than an entire portfolio for PHAs with greater than 5,000 public housing units.

§ 990.245 Types of appeals.

(a) *Streamlined Appeal.* This appeal would demonstrate that the application of a specific Operating Fund formula component has a blatant and objective flaw.

(b) *Appeal of Formula Income for Economic Hardship.* After a PHA's formula income has been frozen, the PHA can appeal to have its formula income adjusted to reflect a severe local economic hardship that is impacting the PHA's ability to maintain rental and other revenue.

(c) *Appeal for specific local conditions.* This appeal would be based on demonstrations that the model's predictions are not reliable because of specific local conditions. To be eligible, the affected PHA must demonstrate a variance of ten percent or greater in its PEL.

(d) *Appeal for changing market conditions.* A PHA may appeal to receive operating subsidy for vacant units due to changing market conditions, after a PHA has taken aggressive marketing and outreach measures to rent these units. For example, a PHA that is located in an area experiencing population loss or economic dislocations that faces a lack of demand for housing in the foreseeable future. A PHA's appeal must contain a plan to end the higher subsidy within two years. This exemption shall only be granted one time and for a maximum term of two years.

(e) *Appeal to substitute actual project cost data.* A PHA may appeal its PEL if it can produce actual project cost data derived from actual asset management, as outlined in subpart H of this part, for a period of at least two years.

§ 990.250 Requirements for certain appeals.

(a) Appeals under § 990.245(a) and (c) must be submitted once annually. Appeals under § 990.245(a) and (c) must be submitted for new projects entering a PHA's inventory within one year of the applicable DOFA.

(b) Appeals under § 990.245(c) and (e) are subject to the following requirements:

(1) The PHA is required to acquire an independent cost assessment of its projects;

(2) The cost of services for the independent cost assessment is to be paid by the appellant PHA;

(3) The assessment is to be reviewed by a professional familiar with property management practices and costs in the region or state in which the appealing PHA is located. This professional is to be procured by HUD. The professional review and recommendation will then be forwarded to the Assistant Secretary for Public and Indian Housing or his designee for final determination; and

(4) If the appeal is granted, the PHA agrees to be bound to the independent cost assessment regardless of new funding levels.

Subpart H—Asset Management

§ 990.255 Overview.

(a) PHAs shall manage their properties according to an asset management model, consistent with the management norms in the broader multi-family management industry. PHAs shall also implement project-based management, project-based budgeting, and project-based accounting, which are essential components of asset management. The goals of asset management are to:

(1) Improve the operational efficiency and effectiveness of managing public housing assets;

(2) Better preserve and protect each asset;

(3) Provide appropriate mechanisms for monitoring performance at the property level; and

(4) Facilitate future investment and reinvestment in public housing by public and private sector entities.

(b) HUD recognizes that appropriate changes in its regulatory and monitoring programs will be needed to support PHAs to undertake the goals identified in paragraph (a) of this section.

§ 990.260 Applicability.

(a) PHAs that own and operate 250 or more dwelling rental units under title I of the 1937 Act, including units managed by a third party entity (for example, a resident management corporation) but excluding section 8 units, are required to operate using an asset management model consistent with this subpart.

(b) PHAs that own and operate fewer than 250 dwelling rental units may treat their entire portfolio as a single project. However, if a PHA selects this option,

it will not receive the add-on for the asset management fee described in § 990.190(f).

§ 990.265 Identification of projects.

For purposes of this subpart, project means a public housing building or set of buildings grouped for the purpose of management. A project may be as identified under the ACC or may be a reasonable grouping of projects or portions of a project under the ACC. HUD shall retain the right to disapprove of a PHA's designation of a project. PHAs may group up to 250 scattered-site dwelling rental units into a single project.

§ 990.270 Asset management.

As owners, PHAs have asset management responsibilities that are above and beyond property management activities. These responsibilities include decision-making on topics such as long-term capital planning and allocation, the setting of ceiling or flat rents, review of financial information and physical stock, property management performance, long-term viability of properties, property repositioning and replacement strategies, risk management responsibilities pertaining to regulatory compliance, and those otherwise consistent with the PHA's ACC responsibilities, as appropriate.

§ 990.275 Project-based management.

Project-based management (PBM) is the provision of property-based management services that are tailored to the unique needs of each property, given the resources available to that property. These property management services include, but are not limited to, marketing, leasing, resident services, routine and preventive maintenance, lease enforcement, protective services, and other tasks associated with the day-to-day operation of rental housing at the project level. Under PBM, these property management services are arranged, coordinated, or overseen by management personnel who have been assigned responsibility for the day-to-day operation of that property and who are charged with direct oversight of operations of that property. Property management services may be arranged or provided centrally; however, in those cases in which property management services are arranged or provided centrally, the arrangement or provision of these services must be done in the best interests of the property, considering such factors as cost and responsiveness.

§ 990.280 Project-based budgeting and accounting.

(a) All PHAs covered by this subpart shall develop and maintain a system of budgeting and accounting for each project in a manner that allows for analysis of the actual revenues and expenses associated with each property. Project-based budgeting and accounting will be applied to all programs and revenue sources that support projects under an ACC (*e.g.,* the Operating Fund, the Capital Fund, etc.).

(b)(1) Financial information to be budgeted and accounted for at a project level shall include all data needed to complete project-based financial statements in accordance with Accounting Principles Generally Accepted in the United States of America (GAAP), including revenues, expenses, assets, liabilities, and equity data. The PHA shall also maintain all records to support those financial transactions. At the time of conversion to project-based accounting, a PHA shall apportion its assets, liabilities, and equity to its respective projects and HUD-accepted central office cost centers.

(2) Provided that the PHA complies with GAAP and other associated laws and regulations pertaining to financial management (*i.e.,* OMB Circulars), it shall have the maximum amount of responsibility and flexibility in implementing project-based accounting.

(3) Project-specific operating income shall include, but is not limited to, such items as project-specific operating subsidy, dwelling and non-dwelling rental income, excess utilities income, and other PHA or HUD-identified income that is project-specific for management purposes.

(4) Project-specific formula expenses shall include, but are not limited to, direct administrative costs, utilities costs, maintenance costs, tenant services, protective services, general expenses, non-routine or capital expenses, and other PHA or HUD-identified costs which are project-specific for management purposes. Project-specific operating costs shall also include a property-management fee charged to each project that is used to fund operations of the central office. Amounts that can be charged to each project for the property-management fee must be reasonable. If the PHA contracts with a private management company to manage a project, the PHA may use the difference between the property management fee paid to the private management company and the fee that is reasonable to fund operations of the central office and other eligible purposes.

(5) If the project has excess cash flow available after meeting all reasonable operating needs of the property, the PHA may use this excess cash flow for the following purposes:

(i) Fungibility between projects as provided for in § 990.205.

(ii) Charging each project a reasonable asset-management fee that may also be used to fund operations of the central office. However, this asset-management fee may only be charged if the PHA performs all asset management activities described in this subpart (including project-based management, budgeting and accounting). Asset management fees are considered a direct expense.

(iii) Other eligible purposes.

(c) In addition to project-specific records, PHAs may establish central office cost centers to account for non-project specific costs (*e.g.,* human resources, Executive Director's office, etc). These costs shall be funded from the property-management fees received from each property, and from the asset-management fees to the extent these are available.

(d) In the case where a PHA chooses to centralize functions that directly support a project (*e.g.,* central maintenance), it must charge each project using a fee-for-service approach. Each project shall be charged for the actual services received and only to the extent that such amounts are reasonable.

§ 990.285 Records and reports.

(a) Each PHA shall maintain project-based budgets and fiscal year-end financial statements prepared in accordance with GAAP and shall make these budgets and financial statements available for review upon request by interested members of the public.

(b) Each PHA shall distribute the project-based budgets and year-end financial statements to the Chairman and to each member of the PHA Board of Commissioners, and to such other state and local public officials as HUD may specify.

(c) Some or all of the project-based budgets and financial statements and information shall be required to be submitted to HUD in a manner and time prescribed by HUD.

§ 990.290 Compliance with asset management requirements.

(a) A PHA is considered in compliance with asset management requirements if it can demonstrate substantially, as described in paragraph (b) below, that it is managing according to this subpart.

(b) Demonstration of compliance with asset management will be based on an independent assessment.

(1) The assessment is to be conducted by a professional familiar with property management practices and costs in the region or state in which the PHA is located. This professional is to be procured by HUD.

(2) The professional review and recommendation will then be forwarded to the Assistant Secretary or his designee for final determination of compliance to asset management.

(c) Upon HUD's determination of successful compliance with asset management, PHAs will then be funded based on this information pursuant to § 990.165(i).

(d) PHAs must be in compliance with the project-based accounting and budgeting requirements in this subpart by FY 2007. PHAs must be in compliance with the remainder of the components of asset management by FY 2011.

(e) HUD may impose sanctions as deemed necessary, and otherwise provided by law, for those PHAs that are not in compliance with asset management by FY 2011. These sanctions may include the imposition of a daily monetary fine until the PHA converts to asset management.

Subpart I—Operating Subsidy for Properties Managed by Resident Management Corporations (RMCs)

§ 990.295 Resident Management Corporation operating subsidy.

(a) *General.* This part applies to all projects managed by a Resident Management Corporation (RMC); including a direct funded RMC.

(b) *Operating subsidy.* Subject to paragraphs (c) and (d) of this section, the amount of operating funds that a PHA or HUD provides a project managed by an RMC shall not be reduced during the three-year period beginning on the date the RMC first assumes management responsibility for the project.

(c) *Change factors.* The operating subsidy for an RMC managed project shall reflect changes in inflation, utility rates and consumption, and changes in the number of units in the resident management project.

(d) *Exclusion of increased income.* Any increased income directly generated by activities by the RMC or facilities operated by the RMC shall be excluded from the calculation of the operating subsidy.

(e) *Exclusion of technical assistance.* Any technical assistance the PHA provides to the RMC will not be included for purposes of determining the amount of funds provided to a project under paragraph (b) of this section.

(f) The following conditions may not affect the amounts to be provided under this part to a project managed by an RMC:

(1) *Income reduction.* Any reduction in the subsidy or total income of a PHA that occurs as a result of fraud, waste, or mismanagement by the PHA; and

(2) *Change in total income.* Any change in the total income of a PHA that occurs as a result of project-specific characteristics when these characteristics are not shared by the project managed by the RMC.

(g) *Other project income.* In addition to the operating subsidy calculated in accordance with this part and the amount of income derived from the project (from sources such as rents and charges), the management contract between the PHA and the RMC may specify that income be provided to the project from other legally available sources of PHA income.

§ 990.300 Preparation of operating budget.

(a) The RMC and the PHA must each submit a separate operating budget to HUD for approval, including the calculation of operating subsidy eligibility in accordance with § 990.200 for the project managed by an RMC. The budget will reflect all project expenditures and will identify the expenditures related to the responsibilities of the RMC and the expenditures that are related to the functions that the PHA will continue to perform.

(b) For each project or part of a project that is operating in accordance with the ACC amendment relating to this subpart and in accordance with a contract vesting maintenance responsibilities in the RMC, the PHA will transfer into a sub-account of the operating reserve of the PHA an operating reserve for the RMC project. When all maintenance responsibilities for a resident-managed project are the responsibility of the RMC, the amount of the reserve made available to a project under this subpart will be the per unit cost amount available to the PHA operating reserve, excluding all inventories, prepaids and receivables at the end of the PHA fiscal year preceding implementation, multiplied by the number of units in the project operated. When some, but not all, maintenance responsibilities are vested in the RMC, the management contract between the PHA and RMC may provide for an appropriately reduced portion of the operating reserve to be transferred into the RMC's sub-account.

(c) The RMC's use of the operating reserve is subject to all administrative procedures applicable to the conventionally owned public housing program. Any expenditure of funds from the reserve must be for eligible expenditures that are incorporated into an operating budget subject to approval by HUD.

(d) Investment of funds held in the reserve will be in accordance with HUD regulations and guidance.

§ 990.305 Retention of excess revenues.

(a) Any income generated by an RMC that exceeds the income estimated for the income categories specified in the RMC's management contract must be excluded in subsequent years in calculating:

(1) The operating subsidy provided to a PHA under this part; and

(2) The funds the PHA provides to the RMC.

(b) The management contract must specify the amount of income that is expected to be derived from the project (from sources such as rents and charges) and the amount of income to be provided to the project from the other sources of income of the PHA (such as operating subsidy under this part, interest income, administrative fees, and rents). These income estimates must be calculated consistent with HUD's administrative instructions. Income estimates may provide for adjustment of anticipated project income between the RMC and the PHA, based upon the management and other project-associated responsibilities (if any) that are to be retained by the PHA under the management contract.

(c) Any revenues retained by an RMC under this section may only be used for purposes of improving the maintenance and operation of the project, establishing business enterprises that employ residents of public housing, or acquiring additional dwelling units for lower income families. Units acquired by the RMC will not be eligible for payment of operating subsidy.

Subpart J—Financial Management Systems, Monitoring, and Reporting

§ 990.310 Purpose—General policy on financial management, monitoring and reporting.

All PHA financial management systems, reporting and monitoring on program performance and financial reporting shall be in compliance with the requirements of 24 CFR 85.20, 85.40 and 85.41. Certain HUD requirements provide exceptions for additional specialized procedures that are determined by HUD to be necessary for the proper management of the program in accordance with the requirements of the 1937 Act and the ACC between each PHA and HUD.

§ 990.315 Submission and approval of operating budgets.

Required documentation:

(a) Prior to the beginning of its fiscal year, a PHA shall prepare an operating budget in a manner prescribed by HUD. The PHA's Board of Commissioners shall review and approve the budget by resolution. Each fiscal year, the PHA shall submit to HUD, in a time and manner prescribed by HUD, the approved Board resolution.

(b) HUD may direct the PHA to submit its complete operating budget with detailed supporting information and the Board resolution if the PHA has breached the ACC contract, or for other reasons, which, in HUD's determination, threaten the PHA's future serviceability, efficiency, economy, or stability. When the PHA no longer is operating in a manner that threatens the future serviceability, efficiency, economy, or stability of the housing it operates, HUD will notify the PHA that it no longer is required to submit a complete operating budget with detailed supporting information to HUD for review and approval.

(c) If HUD finds that an operating budget is incomplete, inaccurate, includes illegal or ineligible expenditures, mathematical errors, errors in the application of accounting procedures, or is otherwise unacceptable, HUD may, at any time, require the PHA to submit more or revised information regarding the budget or revised budget.

§ 990.320 Audits.

All PHAs that receive financial assistance under this part shall submit an acceptable audit and comply with the audit requirements in 24 CFR 85.26.

§ 990.325 Record retention requirements.

The PHA shall retain all documents related to all financial management and activities funded under operating subsidy for a period of five fiscal years after the fiscal year in which the funds were received.

Dated: March 18, 2005.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

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Federal Register

Vol. 70, No. 71

Thursday, April 14, 2005

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FEDERAL REGISTER PAGES AND DATE, APRIL

16691–16920 1
16921–17196 4
17197–17300 5
17301–17582 6
17583–17886 7
17887–18262 8
18263–18960 11
18961–19252 12
19253–19678 13
19679–19876 14

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7877 17197
7878 17293
7879 17295
7880 17297
7881 17301
7882 17883
7883 17885
7884 17887

Administrative Orders:
Memorandums:
Memorandums of March 31, 2005 17195

Executive Orders:
13295 (Amended by EO 13375) 17299
13375 17299

4 CFR

Ch. I 17583
21 19679

5 CFR

Proposed Rules:
337 17610

7 CFR

54 17611
62 17611
272 18263
274 18263
354 16691
624 16921
723 17150
1001 18961
1124 18963
1463 17150
1464 17150
1700 17199
1709 17199
1738 16930
1942 19253
4279 17616

Proposed Rules:
946 16759
1000 19012
1001 19012
1005 19012
1006 19012
1007 19012
1030 ..... 19012, 19709
1032 19012
1033 19012
1124 ..... 19012, 19636
1126 19012
1131 ..... 19012, 19636
1738 16967

8 CFR

217 17820
231 17820
251 17820

9 CFR

93 18252
94 18252
95 18252
97 16691
98 18252

Proposed Rules:
93 17928
94 17928
98 17928

11 CFR

Proposed Rules:
100 16967
110 16967
114 16967

12 CFR

303 17550
325 17550
327 17550
347 17550
617 18965
1710 17303

13 CFR

134 17583
140 17583

14 CFR

23 ..... 19254, 19257
25 18271
39 ..... 17199, 17312, 17315, 17590, 17591, 17594, 17596, 17598, 17600, 17603, 17604, 17606, 17889, 18274, 18275, 18277, 18282, 18285, 18287, 18290, 18463, 19259, 19681, 19682, 19685
71 ..... 16931, 16932, 18294, 18295, 18296, 18297, 18968
95 18299
97 17318

Proposed Rules:
25 ..... 18321, 19015
39 ..... 16761, 16764, 16767, 16769, 16771, 16979, 16981, 16984, 16986, 17212, 17216, 17340, 17342, 17345, 17347, 17349, 17351, 17353, 17354, 17357, 17359, 17361, 17366, 17368, 17370, 17373, 17375, 17377, 17618, 17620, 17621, 18322, 18324, 18327, 18332, 19340, 19342, 19345, 19718
71 ..... 18335, 18337, 19027
256 16990
413 19720
415 19720
417 19720

15 CFR

742.....19688
744.....19688
774.....19688

16 CFR

Proposed Rules:
410.....17623
Ch. II.....18338
1214.....18339

17 CFR

211.....16693
231.....19672
241.....19672
271.....19672

18 CFR

Proposed Rules:
45.....17219

19 CFR

4.....17820
122.....17820
178.....17820

20 CFR

Proposed Rules:
404 .....19351, 19353, 19356, 19358, 19361
416 .....19351, 19353, 19356, 19358, 19361
655.....16774

21 CFR

2.....17168
510.....17319
520 .....16933, 17319, 19261
522.....16933
558.....16933
1305.....16902
1308.....16935
1311.....16902
Proposed Rules:
101 .....16995, 17008, 17010

22 CFR

10.....16937

23 CFR

772.....16707
Proposed Rules:
650.....18342

24 CFR

200.....19660
203.....19666
Proposed Rules:
990.....19858

26 CFR

1.....18301, 18920
31.....19694
301 .....16711, 18920, 19697
602.....18920
Proposed Rules:
31.....19028, 19721
301.....19722

27 CFR

Proposed Rules:
1.....18949
9.....17940
301.....18949
479.....17624

28 CFR

2.....19262

29 CFR

1981.....17889

30 CFR

936.....16941
946.....19698
950.....16945
Proposed Rules:
701.....17626
774.....17626
913.....17014

31 CFR

10.....19559
351.....17288
542.....17201
Proposed Rules:
29.....19366

32 CFR

199.....19263
527.....18301
634.....18969

33 CFR

110.....17898
117.....18301, 18989
165 .....17608, 18302, 18305
Proposed Rules:
100.....16781
117.....19029
165.....17627, 18343

34 CFR

Proposed Rules:
Ch. I.....16784

36 CFR

7.....16712
1270.....16717

37 CFR

258.....17320
Proposed Rules:
1.....17629
2.....17636
3.....17629
7.....17636
10.....17629

40 CFR

9.....18074
49.....18074
52 .....16717, 16955, 16958, 17321, 18308, 18991, 18993, 18995, 19000, 19702
63.....19266
81.....19844
82.....19273
174.....17323
180 .....17901, 17908, 19278, 19283
271.....17286
Proposed Rules:
51.....17018
52 .....18346, 19030, 19031, 19035, 19723
63.....19369
82.....19371
122.....18347
300.....18347
52 .....16784, 17027, 17028, 17029, 17640
152.....16785
158.....16785

42 CFR

403.....16720
405.....16720
410.....16720
411.....16720
412.....16724
413.....16724
414.....16720
418.....16720
424.....16720
484.....16720
486.....16720

44 CFR

64.....16964
65.....16730, 16733
67.....16736, 16738
Proposed Rules:
67 .....16786, 16789, 17037

46 CFR

Proposed Rules:
67.....19376
221.....19376

47 CFR

1.....19293
2.....17327
11.....19312
15.....17328
22 .....17327, 19293, 19315
24.....17327
25.....19316
52.....19321
64 .....17330, 17334, 19330
73.....17334, 19337
74.....17327
78.....17327
80.....19315
87.....19315
90 .....17327, 19293, 19315
101.....19315
Proposed Rules:
1.....19377
69.....19381
73 .....17042, 17043, 17044, 17045, 17046, 17047, 17048, 17049, 17381, 17382, 17383, 17384, 19396, 19397, 19398, 19399, 19400, 19401, 19402, 19403, 19404, 19405, 19406, 19407, 19408

48 CFR

Ch. 1.....18954, 18959
8.....18954
25.....18954
39.....18958
52.....18959
237.....19003
Proposed Rules:
2.....17945
7.....17945
34.....17945
42.....17945
52.....17945
204.....19036, 19037
205.....19038
211.....19039
213.....19041, 19042
223.....19039
226.....19038
242.....19043
244.....19044
252 .....19038, 19039, 19043, 19044
253.....19042
538.....19045
546.....19051
552.....19042, 19051

49 CFR

219.....16966
571.....18136
573.....16742
585.....18136
1002.....17335
Proposed Rules:
172.....17385

50 CFR

13.....18311
17 .....17864, 17916, 18220, 19154, 19562
20.....17574
21.....18311
92.....18244
216.....19004
223.....17211, 17386
300.....16742, 19004
622.....16754, 17401
648.....16758
679 .....16742, 19338, 19708
Proposed Rules:
223.....17223
224.....17223
600.....17949
648.....19724
679.....19409

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT APRIL 14, 2005

COMMERCE DEPARTMENT

Industry and Security Bureau

Export administration regulations:

Chemical and biological weapons end-user/end use controls; amendments; published 4-14-05

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Access charges—

Presubscribed interexchange carrier charges; published 3-15-05

GOVERNMENT ACCOUNTABILITY OFFICE

Practice and procedure:

Bid protest regulations; published 4-14-05

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Virginia; published 4-14-05

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Empresa Brasileira de Aeronautica, S.A. (EMBRAER); published 3-10-05

Pratt & Whitney; published 3-10-05

TREASURY DEPARTMENT

Internal Revenue Service

Employment taxes and collection of income taxes at source:

Employee withoulding exemption certificates; submission and notification guidance; published 4-14-05

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Agricultural Marketing Act; miscellaneous marketing practices:

USDA farmers market; operating procedures; comments due by 4-18-05; published 2-17-05 [FR 05-03072]

Cotton classing, testing and standards:

Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]

COMMERCE DEPARTMENT

Census Bureau

Foreign trade statistics:

Automated Export System; shipper's export declaration information; mandatory filing requirement; comments due by 4-18-05; published 2-17-05 [FR 05-02926]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Atlantic highly migratory species—

Atlantic bluefin tuna; comments due by 4-22-05; published 3-23-05 [FR 05-05742]

Northeastern United States fisheries—

Northeast multispecies; comments due by 4-18-05; published 3-29-05 [FR 05-06188]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

DEFENSE DEPARTMENT

Acquisition regulations:

Pilot Mentor-Protege Program; Open for comments until further notice; published 12-15-04 [FR 04-27351]

EDUCATION DEPARTMENT

Grants and cooperative agreements; availability, etc.:

Vocational and adult education—

Smaller Learning Communities Program; Open for comments until further notice; published 2-25-05 [FR E5-00767]

ENERGY DEPARTMENT

Meetings:

Environmental Management Site-Specific Advisory Board—

Oak Ridge Reservation, TN; Open for comments until further notice; published 11-19-04 [FR 04-25693]

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Commercial and industrial equipment; energy efficiency program:

Test procedures and efficiency standards—

Commercial packaged boilers; Open for comments until further notice; published 10-21-04 [FR 04-17730]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric rate and corporate regulation filings:

Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

ENVIRONMENTAL PROTECTION AGENCY

Air pollution control:

Federal and State operating permits programs; potentially inadequate monitoring requirements and methods to improve monitoring; comment request; comments due by 4-18-05; published 2-16-05 [FR 05-02995]

Air pollution; standards of performance for new stationary sources:

Stationary combustion turbines; performance standards; comments due by 4-19-05; published 2-18-05 [FR 05-03000]

Air programs; State authority delegations:

Arizona; comments due by 4-20-05; published 3-21-05 [FR 05-05517]

Texas; comments due by 4-18-05; published 3-18-05 [FR 05-05411]

Air quality implementation plans; approval and promulgation; various States:

Arizona; comments due by 4-18-05; published 3-18-05 [FR 05-05407]

Ohio; comments due by 4-18-05; published 3-18-05 [FR 05-05408]

Environmental statements; availability, etc.:

Coastal nonpoint pollution control program—

Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]

Hazardous waste program authorizations:

North Carolina; comments due by 4-22-05; published 3-23-05 [FR 05-05721]

Texas; comments due by 4-18-05; published 3-18-05 [FR 05-05410]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Acibenzolar-S-methyl; comments due by 4-18-05; published 2-16-05 [FR 05-02897]

Avermectin B1 and its delta-8,9-isomer; comments due by 4-18-05; published 2-16-05 [FR 05-02985]

Clothianidin; comments due by 4-18-05; published 2-16-05 [FR 05-02984]

Glyphosate; comments due by 4-18-05; published 2-16-05 [FR 05-02983]

Lignosulfonates; comments due by 4-18-05; published 2-16-05 [FR 05-02986]

Octanamide, etc.; comments due by 4-18-05; published 2-16-05 [FR 05-02975]

Quizalofop-ethyl; comments due by 4-18-05; published 2-16-05 [FR 05-02982]

Syrups, hydrolyzed starch, hydrogenated; comments due by 4-18-05; published 2-16-05 [FR 05-02981]

Water pollution control:

National Pollutant Discharge Elimination System—

Concentrated animal feeding operations in New Mexico and Oklahoma; general permit for discharges; Open for comments until further notice; published 12-7-04 [FR 04-26817]

Water pollution; effluent guidelines for point source categories:

Meat and poultry products processing facilities; Open for comments until further notice; published 9-8-04 [FR 04-12017]

FEDERAL COMMUNICATIONS COMMISSION

Committees; establishment, renewal, termination, etc.:
- Technological Advisory Council; Open for comments until further notice; published 3-18-05 [FR 05-05403]

Common carrier services:
- Interconnection—
  - Incumbent local exchange carriers unbounding obligations; local competition provisions; wireline services offering advanced telecommunications capability; Open for comments until further notice; published 12-29-04 [FR 04-28531]

Radio services, special:
- Private land mobile services—
  - 800 MHz band; public safety interference proceeding; comments due by 4-21-05; published 4-6-05 [FR 05-06806]
  - 900 MHz band; Business and Industrial Land Transportation Pools channels; flexible use; comments due by 4-18-05; published 3-18-05 [FR 05-05406]

Television broadcasting:
- Digital television—
  - Television receiver tuner requirements; comments due by 4-18-05; published 3-18-05 [FR 05-05402]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

GRAS or prior-sanctioned ingredients:
- Menhaden oil; comments due by 4-22-05; published 3-23-05 [FR 05-05641]

Reports and guidance documents; availability, etc.:
- Evaluating safety of antimicrobial new animal drugs with regard to their microbiological effects on bacteria of human health concern; Open for comments until further notice; published 10-27-03 [FR 03-27113]
- Medical devices—
  - Dental noble metal alloys and base metal alloys; Class II special controls; Open for comments until further notice; published 8-23-04 [FR 04-19179]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Anchorage regulations:
- Maryland; Open for comments until further notice; published 1-14-04 [FR 04-00749]

Ports and waterways safety:
- North American right whale vessel strikes reduction; port access routes study of potential vessel routing measures; comments due by 4-19-05; published 2-18-05 [FR 05-03117]

Regattas and marine parades:
- Maritime Week Tugboat Races; comments due by 4-19-05; published 3-29-05 [FR 05-06145]

HOMELAND SECURITY DEPARTMENT

Privacy Act; implementation; comments due by 4-21-05; published 3-22-05 [FR 05-05584]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species permit applications
- Recovery plans—
  - Paiute cutthroat trout; Open for comments until further notice; published 9-10-04 [FR 04-20517]

NUCLEAR REGULATORY COMMISSION

Environmental statements; availability, etc.:
- Fort Wayne State Developmental Center; Open for comments until further notice; published 5-10-04 [FR 04-10516]

SMALL BUSINESS ADMINISTRATION

Disaster loan areas:
- Maine; Open for comments until further notice; published 2-17-04 [FR 04-03374]

OFFICE OF UNITED STATES TRADE REPRESENTATIVE

Trade Representative, Office of United States

Generalized System of Preferences:
- 2003 Annual Product Review, 2002 Annual Country Practices Review, and previously deferred product decisions; petitions disposition; Open for comments until further notice; published 7-6-04 [FR 04-15361]

TRANSPORTATION DEPARTMENT

Economic regulations:
- Aviation traffic data; collection, processing, and reporting requirements; comments due by 4-18-05; published 2-17-05 [FR 05-02861]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air traffic operating and flight rules, etc.:
- Charlotte, NC; proposed area navigation instrument flight Rules Terminal Transition Routes; comments due by 4-18-05; published 3-3-05 [FR 05-04138]

Aircraft:
- New aircraft; standard airworthiness certification; comments due by 4-18-05; published 2-15-05 [FR 05-02799]

Airworthiness directives:
- Air Tractor, Inc.; comments due by 4-21-05; published 2-22-05 [FR 05-03271]
- Airbus; comments due by 4-22-05; published 3-23-05 [FR 05-05699]
- Bell Helicopter Textron Canada; comments due by 4-18-05; published 2-17-05 [FR 05-03049]
- Boeing; comments due by 4-18-05; published 3-3-05 [FR 05-04073]
- Bombardier; comments due by 4-18-05; published 2-17-05 [FR 05-02964]
- Burkhardt Grob Luft-Und Raumfahrt GmbH & Co. KG; comments due by 4-20-05; published 3-23-05 [FR 05-05693]
- Gulfstream; comments due by 4-18-05; published 2-16-05 [FR 05-02761]
- Pilatus Aircraft Ltd.; comments due by 4-19-05; published 3-1-05 [FR 05-03634]
- Rolls-Royce plc; comments due by 4-19-05; published 2-18-05 [FR 05-03191]

Airworthiness standards:
- Special conditions—
  - Bombardier Aerospace Models BD-700-1A10 and BD-700-1A11 Global Express airplanes; comments due by 4-19-05; published 3-30-05 [FR 05-06310]

Class E airspace; comments due by 4-18-05; published 3-10-05 [FR 05-04658]

VETERANS AFFAIRS DEPARTMENT

Loan guaranty:
- Housing loans in default; servicing, liquidating, and claims procedures; comments due by 4-19-05; published 2-18-05 [FR 05-03084]

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.R. 1270/P.L. 109–6

To amend the Internal Revenue Code of 1986 to extend the Leaking Underground Storage Tank Trust Fund financing rate. (Mar. 31, 2005; 119 Stat. 20)

Last List April 1, 2005

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