1–27–05 Thursday
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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Presidential Documents

Title 3—

The President

Presidential Determination No. 2005–17 of January 7, 2005

Implementation of Section 603 and 604 of the Foreign Relations Authorization Act, Fiscal Year 2003 (Public Law 107–228)

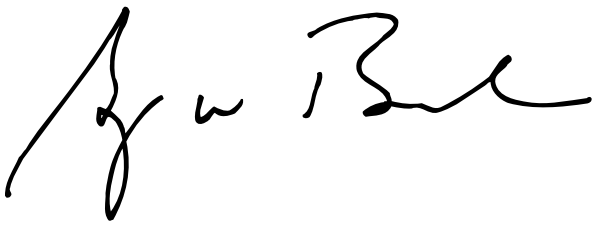
Memorandum for the Secretary of State

Consistent with the authority contained in section 604 of the Foreign Relations Authorization Act, Fiscal Year 2003 (Public Law 107–228) (the ''Act''), and with reference to the determinations set out in the report to Congress transmitted on the date hereof, pursuant to section 603 of that Act, regarding noncompliance by the PLO and the Palestinian Authority with certain commitments, I hereby impose the sanction set out in section 604 (a) (2), ''Downgrade in Status of the PLO Office in the United States.'' This sanction is imposed for a period of 180 days from the date hereof or until such time as the next report required by section 603 of the Act is transmitted to the Congress, whichever is later.

You are authorized and directed to transmit to the appropriate congressional committees the report prepared by my Administration that is described in section 603 of the Act.

Furthermore, I hereby determine that it is in the national security interest of the United States to waive that sanction, pursuant to section 604(c) of the Act. This waiver shall be effective for a period of 180 days from the date hereof or until such time as the next report required by section 603 of the Act is transmitted to the Congress, whichever is later.

You are hereby authorized and directed to transmit this determination to the Congress and to publish it in the **Federal Register**.



THE WHITE HOUSE,
Washington, January 7, 2005.

[FR Doc. 05–1626
Filed 1–26–05; 8:45 am]
Billing code 4710–10–P

Presidential Documents

Presidential Determination No. 2005–18 of January 13, 2005

Extension of Waiver of Section 907 of the FREEDOM Support Act with respect to Assistance to the Government of Azerbaijan

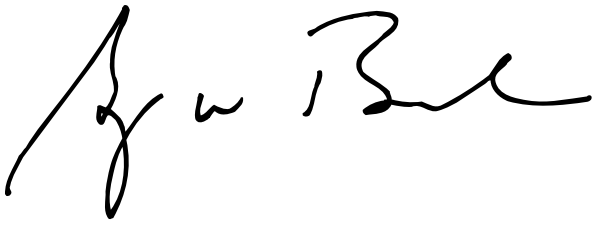
Memorandum for the Secretary of State

Pursuant to the authority contained in title II of the Kenneth M. Ludden Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107–115), I hereby determine and certify that extending the waiver of section 907 of the FREEDOM Support Act of 1992 (Public Law 102–511):

- is necessary to support United States efforts to counter international terrorism;
- is necessary to support the operational readiness of United States Armed Forces or coalition partners to counter international terrorism;
- is important to Azerbaijan's border security; and
- will not undermine or hamper ongoing efforts to negotiate a peaceful settlement between Armenia and Azerbaijan or be used for offensive purposes against Armenia.

Accordingly, I hereby extend the waiver of section 907 of the FREEDOM Support Act.

You are authorized and directed to notify the Congress of this determination and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
Washington, January 13, 2005.

[FR Doc. 05–1627
Filed 1–26–05; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

Federal Register
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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 550

RIN 3206–AK74

Pay Administration (General)

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing interim regulations to implement a provision of the Federal Workforce Flexibility Act of 2004, which established a new form of compensatory time off for time spent by an employee in a travel status away from the employee's official duty station when such time is not otherwise compensable.

DATES: *Effective Date:* The interim regulations will become effective on January 28, 2005.

Comment Date: Comments must be received on or before March 28, 2005.

ADDRESSES: Send or deliver written comments to Donald J. Winstead, Deputy Associate Director for Pay and Performance Policy, Office of Personnel Management, Room 7H31, 1900 E Street, NW., Washington, DC 20415, by FAX at (202) 606–0824, or by e-mail at *pay-performance-policy@opm.gov.*

FOR FURTHER INFORMATION CONTACT: Vicki Draper by telephone at (202) 606–2858; by fax at (202) 606–0824; or by e-mail at *pay-performance-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is issuing interim regulations to implement a new compensatory time off provision established by section 203 of the Federal Workforce Flexibility Act of 2004 (Public Law 108–411, October 30, 2004). Section 203 amended subchapter V of chapter 55 of title 5, United States Code, by adding a new section 5550b, which establishes a new form of compensatory time off for time spent by an employee in a travel status away from the employee's official duty station when such time is not otherwise compensable. Under 5 U.S.C. 5548, OPM has general authority to issue regulations necessary to administer the premium pay provisions in subchapter V of chapter 55. These regulations amend part 550 of title 5, Code of Federal Regulations, by adding a new subpart N, Compensatory Time Off for Travel.

Section 203(c) provides that this new form of compensatory time off for travel takes effect on the earlier of (1) the effective date of implementing regulations or (2) the 90th day after the date of the law's enactment (January 28, 2005). These regulations are effective on January 28, 2005.

In § 550.1403, we provide definitions of various terms used in subpart N. For example, the term ''travel'' is defined to mean officially authorized travel—that is, travel for work purposes that is approved by an authorized agency official or otherwise authorized under established agency policies. The term ''travel status'' is defined to mean travel as described in § 550.1404 that is creditable for the purpose of accruing compensatory time off under subpart N. To make clear that an employee may not receive double compensation for travel hours, the term ''travel status'' as used in subpart N does not include travel time that is otherwise compensable as hours of work. For example, travel hours outside an employee's regular working hours that are compensable hours of work under 5 U.S.C. 5542(b)(2)(B) and 5 CFR 550.112(g)(2), may not also be credited as time in a travel status under subpart N.

The term ''compensable'' is defined to make clear what periods of time are ''not otherwise compensable'' and thus potentially creditable for the purpose of compensatory time off for travel under subpart N. Time is considered compensable if the time is creditable as hours of work for the purpose of determining a specific pay entitlement. This is true even when that work time does not result in additional compensation due to the application of pay limitations. For example, under the availability pay provisions in 5 U.S.C. 5545a, all unscheduled duty hours (including any hours in excess of the minimum hours necessary in a 12-month period to justify the payment of availability pay) are considered ''compensable'' hours, since availability pay represents full compensation for all unscheduled duty hours. In addition, even though a criminal investigator may not receive the full 25-percent availability pay because of the biweekly premium pay limitation in 5 U.S.C. 5547, all hours of a type that are creditable as unscheduled duty hours for the purpose of availability pay are considered to be compensable. Thus, with respect to any hours of a type that is creditable as unscheduled duty hours for availability pay purposes, any travel time during such hours are not creditable under subpart N.

In § 550.1404(b), we clarify that time in travel status includes only the time actually spent traveling between the official duty station and a temporary duty station, or between two temporary duty stations, and the ''usual waiting time'' that precedes or interrupts such travel. Generally, passengers are required to arrive at a transportation terminal (*e.g.,* airport or train station) at a designated pre-departure time (*e.g.,* 1 to 2 hours prior to the scheduled departure time of an airplane, depending on whether it is a domestic or international flight). Such waiting time at the transportation terminal is considered usual waiting time and is creditable time in a travel status. The concept of ''usual waiting time'' is currently used in determining creditable overtime hours of work under title 5 and the Fair Labor Standards Act of 1938, as amended.

In addition, when an employee's travel is interrupted (*i.e.,* the employee travels to an intervening transportation terminal and has to wait for a connecting flight to continue traveling to a temporary duty station), usual waiting time at the intervening transportation terminal also is creditable time in a travel status, subject to exclusions for bona fide meal periods. If the employee experiences an extended (*i.e.,* not usual) waiting time during which he or she is free to use the time for his or her own purposes (*e.g.,* rest or sleep), the extended waiting time that is outside the employee's regular working hours is not creditable time in a travel status. Once the employee arrives at a temporary duty station, he or she is not

considered to be in a travel status just because he or she is away from the official duty station. In other words, the time spent at a temporary duty station between arrival and departure cannot be credited as time in a travel status.

In § 550.1404(c) and (d), we clarify when it is appropriate to offset creditable time in a travel status by the amount of time the employee spends in normal commuting between home and work. For example, such an offset applies to an employee who travels directly between his or her home and a temporary duty station outside the limits of the employee's official duty station. Also, the commuting time offset applies if an employee is required to travel between home and a transportation terminal outside the limits of his or her official duty station.

Section 550.1405 addresses the crediting of compensatory time off for travel. Qualifying compensatory time off for travel must be credited and used in increments of one-tenth of an hour (6 minutes) or one-quarter of an hour (15 minutes). This is consistent with OPM's standardized policy for charging annual and sick leave in increments of one-tenth or one-quarter of an hour. An employee must comply with his or her agency's procedures for requesting credit of compensatory time off and the employee must file such requests within the time period required by the agency.

Section 550.1406 addresses the usage of accrued compensatory time off for travel. An employee must submit a request to his or her supervisor to schedule time off from his or her normal tour of duty for the purpose of using accrued compensatory time off.

In an effort to give employees sufficient time to use their accumulated compensatory time off and to enhance the efficiency and effectiveness of standardized payroll policies and processes, § 550.1407(a) provides that an employee must use his or her accrued compensatory time off within 26 pay periods after it is earned or forfeit such compensatory time off, except in certain circumstances (*e.g.,* when an employee separates or is placed in a leave without pay status to perform service in the uniformed services with restoration rights).

Section 550.1407(b) provides that, upon voluntary transfer to another agency, an employee's unused compensatory time off balance must be forfeited.

Section 550.1407(c) provides that an employee must forfeit any unused compensatory time off when he or she separates from Federal service, except in the circumstances described in § 550.1407(a)(2).

Section 550.1407(d) provides that an employee must forfeit any unused compensatory time off when he or she moves to a Federal position not covered by subpart N. However, this requirement does not prevent an agency from using another legal authority to give the employee credit for compensatory time off for travel equal to the forfeited amount.

Section 550.1408 restates the statutory prohibition on paying employees for unused compensatory time off for travel earned under this subpart.

Section 550.1409 makes clear that compensatory time off for travel earned under this subpart is not considered in applying the biweekly and annual premium pay limitations in 5 U.S.C. 5547 or the aggregate pay limitation on pay in 5 U.S.C. 5307.

In exercising our broad regulatory authority under 5 U.S.C. 5548, we have deliberately taken a conservative approach with respect to the time limit on the use of earned compensatory time off. We are mindful that we are dealing with a new type of employee benefit which presents new issues and administrative challenges for agencies. We believe it is appropriate to approach this new benefit without imposing overly burdensome administrative procedures.

Waiver of Notice of Proposed Rulemaking

Pursuant to section 553(b)(3)(B) of title 5 of the United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists for making this rule effective in less than 30 days. These regulations implement a provision of Public Law 108–411 that becomes effective on the effective date of these regulations. The waiver of the requirements for proposed rulemaking and a delay in the effective date are necessary to ensure timely implementation of the law as intended by Congress.

E.O. 12866, Regulatory Review

The Office of Management and Budget has reviewed this rule in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 550

Administrative practice and procedure, Claims, Government employees, Wages.

Office of Personnel Management.

Kay Coles James,

Director.

■ Accordingly, OPM is amending 5 CFR part 550 as follows:

PART 550—PAY ADMINISTRATION (GENERAL)

■ 1. The authority citation for part 550 continues to read as follows:

Authority: 5 U.S.C. 5304 note, 5305 note, 5541(2)(iv), 5545a(h)(2)(B) and (i), 5547(b) and (c), 5548, and 6101(c); sections 407 and 2316, Pub. L. 105–277, 112 Stat. 2681–101 and 2681–828 (5 U.S.C. 5545a); E.O. 12748, 3 CFR, 1992 Comp., p. 316.

■ 2. A new subpart N is added to read as follows:

Subpart N—Compensatory Time Off for Travel

Subpart N—Compensatory Time Off for Travel

§ 550.1401 Purpose.

This subpart contains OPM regulations implementing 5 U.S.C. 5550b, which establishes a new type of compensatory time off. Subject to the conditions specified in this subpart, an employee is entitled to earn, on an hour-for-hour basis, compensatory time off for time in a travel status away from the employee's official duty station when the travel time is not otherwise compensable.

§ 550.1402 Coverage.

This subpart applies to an employee as defined in 5 U.S.C. 5541(2) who is employed by an agency.

§ 550.1403 Definitions.

In this subpart:

Agency means an Executive agency as defined in 5 U.S.C. 105.

Compensable refers to periods of time that are creditable as hours of work for the purpose of determining a specific pay entitlement, even when that work

time may not actually generate additional compensation because of applicable pay limitations.

Compensatory time off means compensatory time off for travel that is credited under the authority of this subpart.

Official duty station means the geographic area surrounding an employee's regular work site that is the same as the area designated by the employing agency for the purpose of determining whether travel time is compensable for the purpose of determining overtime pay, consistent with the regulations in 5 CFR 550.112(j) and 551.422(d).

Regular working hours means the days and hours of an employee's regularly scheduled administrative workweek established under 5 CFR part 610.

Scheduled tour of duty for leave purposes means an employee's regular hours for which he or she may be charged leave under 5 CFR part 630 when absent. For full-time employees, it is the 40-hour basic workweek as defined in 5 CFR 610.102. For employees with an uncommon tour of duty as defined in 5 CFR 630.201, it is the uncommon tour of duty.

Travel means officially authorized travel—i.e., travel for work purposes that is approved by an authorized agency official or otherwise authorized under established agency policies.

Travel status means travel time as described in § 550.1404 that is creditable in accruing compensatory time off for travel under this subpart, excluding travel time that is otherwise compensable under other legal authority.

§ 550.1404 Creditable travel time.

(a) *General.* Subject to the conditions specified in this subpart, an agency must credit an employee with compensatory time off for time in a travel status if—

(1) The employee is required to travel away from the official duty station; and

(2) The travel time is not otherwise compensable hours of work under other legal authority.

(b) *Travel status.* (1) Time in a travel status includes the time an employee actually spends traveling between the official duty station and a temporary duty station, or between two temporary duty stations, and the usual waiting time that precedes or interrupts such travel, subject to the exclusions specified in paragraphs (b)(2) and (b)(3) of this section and the requirements in paragraphs (c) and (d) of this section. Time spent at a temporary duty station between arrival and departure is not time in a travel status. Determinations regarding what is creditable as ''usual waiting time'' are within the sole and exclusive discretion of the employing agency.

(2) Bona fide meal periods during actual travel time or waiting time are not creditable as time in a travel status.

(3) If an employee experiences an extended (*i.e.,* not usual) waiting time between actual periods of travel during which the employee is free to rest, sleep, or otherwise use the time for his or her own purposes, the extended waiting time is not creditable as time in a travel status.

(c) *Travel between home and a temporary duty station.* (1) If an employee is required to travel directly between his or her home and a temporary duty station outside the limits of the employee's official duty station, the travel time is creditable as time in a travel status if otherwise qualifying under this subpart. However, the agency must deduct from such travel hours the time the employee would have spent in normal home-to-work or work-to-home commuting.

(2) In the case of an employee who is offered one mode of transportation and who is permitted to use an alternative mode of transportation, or who travels at a time or by a route other than that selected by the agency, the agency must determine the estimated amount of time in a travel status the employee would have had if the employee had used the mode of transportation offered by the agency or traveled at the time and by the route selected by the agency. In determining time in a travel status under this subpart, the agency must credit the employee with the lesser of the estimated time in a travel status or the actual time in a travel status.

(3) In the case of an employee who is on a multiple-day travel assignment and who chooses, for personal reasons, not to use temporary lodgings at the temporary duty station, but to return home at night or on a weekend, only travel from home to the temporary duty station on the 1st day and travel from the temporary duty station to home on the last day that is otherwise qualifying as time in a travel status under this subpart is mandatorily creditable (subject to the deduction of normal commuting time). Travel to and from home on other days is not creditable travel time unless the agency, at its discretion, determines that credit should be given based on the net savings to the Government from reduced lodging costs, considering the value of lost labor time attributable to compensatory time off. The dollar value of an hour of compensatory time off for this purpose is equal to the employee's hourly rate of basic pay as defined in § 550.103.

(d) *Time spent traveling to or from a transportation terminal as part of travel away from the official duty station.* If an employee is required to travel between home and a transportation terminal (*e.g.,* airport or train station) within the limits of his or her official duty station as part of travel away from that duty station, the travel time outside regular working hours to or from the terminal is considered to be equivalent to commuting time and is not creditable time in a travel status. If the transportation terminal is outside the limits of the employee's official duty station, the travel time to or from the terminal outside regular working hours is creditable as time in a travel status, but is subject to an offset for the time the employee would have spent in normal home-to-work or work-to-home commuting. If the employee travels between a worksite and a transportation terminal, the travel time outside regular working hours is creditable as time in a travel status, and no commuting time offset applies.

§ 550.1405 Crediting compensatory time off.

(a) Upon a request filed in accordance with the procedures established under paragraph (b) of this section, an employee is entitled to credit for compensatory time off for travel under the conditions specified in this subpart. The employing agency must credit an employee with compensatory time off for creditable time in a travel status as provided in § 550.1404. The agency may authorize credit in increments of one-tenth of an hour (6 minutes) or one-quarter of an hour (15 minutes). Agencies must track and manage compensatory time off granted under this subpart separately from other forms of compensatory time off.

(b) An employee must comply with his or her agency's procedures for requesting credit of compensatory time off under this section. Employees must file such requests within the time period required by the agency.

§ 550.1406 Usage of accrued compensatory time off.

(a) An employee must request permission from his or her supervisor to schedule the use of his or her accrued compensatory time off in accordance with agency-established policies and procedures.

(b) Compensatory time off may be used when the employee is granted time off from his or her scheduled tour of duty established for leave purposes. An

employee must use earned compensatory time off under this subpart in increments of one-tenth of an hour (6 minutes) or one-quarter of an hour (15 minutes).

§ 550.1407 Forfeiture of unused compensatory time off.

(a) *After 26 pay periods.* (1) Except as provided in paragraph (a)(2) of this section, an employee must use accrued compensatory time off by the end of the 26th pay period after the pay period during which it was credited. If an employee fails to use the compensatory time off within 26 pay periods after it was credited, he or she must forfeit such compensatory time off.

(2) If an employee with unused compensatory time off separates from Federal service or is placed in a leave without pay status in the following circumstances and later returns to service with the same (or successor) agency, the employee must use all of the compensatory time off by the end of the 26th pay period following the pay period in which the employee returns to duty, or such compensatory time off will be forfeited:

(i) The employee separates or is placed in a leave without pay status to perform service in the uniformed services (as defined in 38 U.S.C. 4303 and 5 CFR 353.102) and later returns to service through the exercise of a reemployment right provided by law, Executive order, or regulation; or

(ii) The employee separates or is placed in a leave without pay status because of an on-the-job injury with entitlement to injury compensation under 5 U.S.C. chapter 81 and later recovers sufficiently to return to work.

(b) *Upon transfer to another agency.* When an employee voluntarily transfers to another agency (including a promotion or change to lower grade action), he or she must forfeit his or her unused compensatory time off.

(c) *Upon separation.* (1) When an employee separates from Federal service, any unused compensatory time off is forfeited, except as provided in paragraph (c)(2) of this section.

(2) Unused compensatory time off will not be forfeited but will be held in abeyance in the case of an employee who separates from Federal service and later returns to service with the same (or successor) agency under the circumstances described in paragraph (a)(2) of this section.

(d) *Upon movement to a noncovered position.* When an employee moves to a Federal position not covered by this subpart, he or she forfeits any unused compensatory time off. This requirement does not prevent an agency from using another legal authority to give the employee credit for compensatory time off equal to the forfeited amount.

§ 550.1408 Prohibition against payment for unused compensatory time off.

As provided by 5 U.S.C. 5550b(b), an individual may not receive payment under any circumstances for any unused compensatory time off he or she earned under this subpart. This prohibition against payment applies to surviving beneficiaries in the event of the individual's death.

§ 550.1409 Inapplicability of premium pay and aggregate pay caps.

Accrued compensatory time off under this subpart is not considered in applying the premium pay limitations established under 5 U.S.C. 5547 and 5 CFR 550.105 through 550.107 or the aggregate limitation on pay established under 5 U.S.C. 5307 and 5 CFR part 530, subpart B.

[FR Doc. 05–1457 Filed 1–26–05; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 576

RIN 3206–AJ76

Voluntary Separation Incentive Payments

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations on Voluntary Separation Incentive Payments (generally known as ''VSIPs'' or ''buyouts''). These final regulations explain how an agency requests authority from OPM to offer Voluntary Separation Incentive Payments under the Chief Human Capital Officers Act of 2002, which applies to most executive branch agencies.

These final regulations also explain how agencies must inform employees returning from military leave of any Voluntary Separation Incentive Payment offers they may have missed while on military leave. Finally, these regulations explain how in exceptional circumstances an agency that is hiring a former employee who previously received a Voluntary Separation Incentive Payment may request that OPM waive the general requirement that the individual repay the incentive if reemployed in the Government within 5 years of receiving the incentive.

DATES: These regulations are effective January 27, 2005.

FOR FURTHER INFORMATION CONTACT: Sharon K. Ginley at (202 606–0960, fax at (202) 606–2329, TTY at (202) 418–3134, or e-mail at *sharon.ginley@opm.gov.*

SUPPLEMENTARY INFORMATION: Section 1313(a) of the Chief Human Capital Officers Act of 2002 (Public Law 107–296; 116 Stat. 2135) added new sections 3521 through 3525 to title 5, United States Code, to allow executive branch agencies, at their option, to offer Voluntary Separation Incentive Payments to employees who separate by voluntary retirement or by resignation. On February 4, 2003, OPM issued interim regulations to revise part 576 of title 5, Code of Federal Regulations, with a request for public comments. These final regulations incorporate public comments and make clarifying revisions.

To offer buyouts, an agency must submit a plan for OPM approval. The plan must describe how the agency will use Voluntary Separation Incentive Payments as a tool to facilitate its restructuring goals. OPM will review each agency's plan and, in consultation with the Director of the Office of Management and Budget (OMB), may make any appropriate modifications to the agency's plan for Voluntary Separation Incentive Payments. The review may include a consideration of costs and benefits associated with using the authority. OPM will issue supplemental guidance for agency use in preparing a VSIP implementation plan. The agency must have OPM approval before using this flexibility.

A former employee who accepts any employment with the Government of the United States for compensation within 5 years after the date of separating for a Voluntary Separation Incentive Payment must repay the entire amount of the incentive payment before the first day of reemployment in the Federal service. Under exceptional circumstances, and at the request of the hiring agency, the OPM Director may waive the repayment requirement for former executive branch employees.

Comments Received

OPM received five comments from agencies concerning the interim regulations. One agency pointed out that the interim regulations contained the words ''* * * to offer Voluntary Separation Incentive Payments to surplus or displaced employees.'' The agency pointed out that the words

''surplus or displaced'' were not in Public Law 107–296. We agree that the words are unnecessary, but note that they were mentioned only in the Supplementary Information to the interim regulations, and not the actual interim regulations themselves. We have not included those words in the final regulations.

Two agencies disagreed with OPM's interpretation of the phrase ''currently employed for a continuous period of at least 3 years,'' which is a minimum service requirement for a Voluntary Separation Incentive Payment. OPM's interpretation has been 3 years of continuous employment within the same agency, and it had been included in OPM's instructions to agencies in the use of Voluntary Separation Incentive Payments (attached to Voluntary Separation Incentive Payment approval letters). For purposes of clarification, in order to fall within the coverage of section 576.101(b) of this regulation, an individual must have 3 years of current continuous employment as an employee within the meaning of 5 U.S.C. 2105 or 16 U.S.C. 590(h)(b)(5).

One agency expressed concern with the regulations allowing OPM, in consultation with OMB, to modify an agency's buyout plan. They said that the requesting agency should also be consulted before any changes are made to its plans. Although the statute does not require OPM to consult with the agency before modifying a plan, we agree with the commenter, and have made the suggested change.

Two agencies expressed concern that the requirements in section 576.102(c) of the interim regulations are more restrictive than the provisions of Public Law 107–296. Section 576.102(c) of the interim regulations requires listings of employees by organizational unit, geographic location, occupational category, and grade level. Public Law 107–296 requires ''* * * a description of which categories of employees will be offered incentives.'' Of the two agencies that commented about this section, one felt that the more detailed requirements in section 576.102(c) hamper managerial flexibility during restructuring. The other agency expressed concern that these requirements hinder an agency's ability to plan for restructuring (and submit requests for buyout authority) during periods when competitive sourcing is being studied. They pointed out that specific information about the positions for which they intend to offer buyouts might be sensitive at that time. Also, they said, such information might be inaccurate depending upon whether they won or lost a bid.

In addition to the Public Law 107–296 requirement the agency cited above, the statute also requires that agency plans identify ''the specific positions and functions to be reduced or eliminated'' and specifies the basis upon which employees shall be offered voluntary incentive payments. Identifying specific positions and functions necessarily entails identification of organizational units, occupational series or levels, and geographic locations. OPM believes, therefore, that its requirements are consistent with the statute and in the best interest of the Federal Government. Requiring the specific information about the positions for which agencies plan to offer buyouts is the best way to ensure that agencies' buyout plans are executed in the manner intended by the statute. Retaining the level of position specificity shown in the interim regulations will reinforce the fact that this is a management tool and not an employee entitlement. In regard to the competitive sourcing comment, OPM will work with agencies to determine the best course of action during study periods. For these reasons, we are retaining the specific position requirements contained in section 576.102(c) of the interim regulations. They can be found in section 576.102(a) of the final regulations.

Final Rule

New subpart A of 5 CFR part 576 defines the terms ''Employee'' and ''Specific Designee'' and provides additional guidance concerning making buyout offers to employees.

New subpart B of 5 CFR part 576 discusses the term ''employment with the Government of the United States'' for buyout repayment and waiver of buyout repayment purposes. It indicates that personal service contracts and other direct contracts are considered to be employment with the Government of the United States for buyout repayment purposes. Like other buyout recipients who accept Federal employment within 5 years of receipt of a buyout, employees working on personal service contracts and other direct contracts are also subject to buyout repayment if they begin working on such contracts within 5 years of receipt of a buyout.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain Federal employees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 576

Government employees, Wages.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

■ Accordingly, OPM amends part 576 of title 5, Code of Federal Regulations, as follows:

■ 1. Part 576 is revised to read as follows:

PART 576—VOLUNTARY SEPARATION INCENTIVE PAYMENTS

Subpart A—Voluntary Separation Incentive Payments

Subpart B—Waiver of Repayment of Voluntary Separation Incentive Payments

Authority: Sections 3521, 3522, 3523, 3524, and 3535 of title 5, United States Code.

Subpart A—Voluntary Separation Incentive Payments

§ 576.101 Definitions.

In this part:

Employee, as defined in 5 U.S.C. 3521, means an employee as defined under 5 U.S.C. 2105 employed by an agency and an individual employed by a county committee established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5)) who—

(1) Is serving under an appointment without time limitation; and

(2) Has been currently employed for a continuous period of at least 3 years.

Specific designee means a senior officer or official within an agency who has been specifically designated to sign requests for authority to offer Voluntary Separation Incentive Payments for, or in place of, the head of the agency. Examples include the Chief Human Capital Officer, the Assistant Secretary for Administration, the Director of Human Resources Management, or a deputy of one of these persons.

§ 576.102 Voluntary Separation Incentive Payment implementation plans.

(a) In accordance with section 3522(b) of title 5, United States Code, a plan submitted by the head of an agency, or his or her specific designee, must include:

(1) Identification of the specific positions and functions to be reduced or eliminated, identified by organizational unit, geographic location, occupational series, grade level and any other factors related to the position;

(2) A description of the categories of employees who will be offered incentives identified by organizational unit, geographic location, occupational series, grade level and any other factors, such as skills, knowledge, or retirement eligibility (as discussed in implementing guidance);

(3) The time period during which incentives may be paid;

(4) The number and maximum amounts of Voluntary Separation Incentive Payments to be offered;

(5) A description of how the agency will operate without the eliminated or restructured positions and functions;

(6) A proposed organizational chart displaying the expected changes in the agency's organizational structure after the agency has completed the incentive payments;

(7) A short explanation of how Voluntary Early Retirement Authority will be used in conjunction with separation incentives, if the agency has requested, or will request, that authority; and

(8) A description of how Voluntary Separation Incentives offered under another statutory authority are being used, if the agency is offering incentives under any other statutory authority.

(b) When submitting a plan to OPM, the agency may submit either:

(1) A specific Voluntary Separation Incentive Payment implementation plan outlining the intended use of the incentive payments, or

(2) The agency's human capital plan, which outlines the intended use of the incentive payments and the expected changes in the agency's organizational structure after the agency has completed the incentive payments. If the human capital plan is submitted, it must include the information specified in paragraph (a) of this section.

(c) OPM will consult with the Office of Management and Budget regarding the plan and any subsequent modifications, and will notify the agency head in writing when the plan is approved. The review may include a consideration of costs and benefits associated with using the authority. If there are questions concerning the agency's plan, OPM reserves the right to contact the agency, inform agency staff of its concerns, and require that the agency revise the plan to bring it into conformance with these regulations. The agency must obtain OPM approval before offering incentives under this authority.

§ 576.103 Offering Voluntary Separation Incentive Payments to employees.

(a) Agencies may make offers of Voluntary Separation Incentive Payments to employees who agree to voluntarily separate by resignation, early retirement, or optional retirement.

(b) Each time an agency with authority to offer Voluntary Separation Incentive Payments establishes a window period for acceptance of Voluntary Separation Incentive applications, it may limit offers to its employees based on an established opening and closing date or the acceptance of a specified number of applications. However, at the time of the offer, the agency must notify its employees that it retains the right to limit the number of Voluntary Separation Incentive Payment offers by use of a specific closing date or by receipt of a specified number of applications.

(c) An agency's downsizing and/or reshaping strategy may change, necessitating a change in the offer notice to employees. If the amended notice includes a revised closing date, or a revised number of applications to be accepted, the new date or number of applications must be announced to the same group of employees included in the original announcement. If a new or separate notice includes a new window period with a new closing date, or a new instance of a specific number of applications to be accepted, the new window period or number of applications to be accepted may be announced to a different group of employees as long as the new group is covered by the approved Voluntary Separation Incentive Payment authority.

(d) Section 4311 of title 38, United States Code, requires that, for all practical purposes, agencies treat employees on military duty as though they were still on the job. Further, employees are not to be disadvantaged because of their military duty. In accordance with these provisions, employees on military duty who would otherwise be eligible for an offer of a Voluntary Separation Incentive Payment will have 30 days following their return to duty to either accept or reject an offer of a Voluntary Separation Incentive Payment. This is true even if the Voluntary Separation Incentive Payment authority provided by OPM has expired.

(e) An employee may separate from the service voluntarily, with a Voluntary Separation Incentive Payment, if, on the date of separation, the employee:

(1) Is serving in a position covered by a Voluntary Separation Incentive Payment offer; and

(2) Meets the definition of employee discussed in 5 U.S.C. 3521.

(f) Agencies are responsible for ensuring that employees are not coerced into accepting a Voluntary Separation Incentive Payment. If an agency finds any instances of coercion, it must take appropriate corrective action.

(g) An agency may not offer Voluntary Separation Incentive Payments beyond the stated expiration date of an authority or assign an effective date for a Voluntary Separation Incentive Payment that is beyond the time period for paying a Voluntary Separation Incentive Payment that was stated in the agency's approved Voluntary Separation Incentive Payment plan.

(h) An agency may not offer Voluntary Separation Incentive Payments to employees who are outside the scope of the Voluntary Separation Incentive Payment authority approved by OPM.

(i) OPM may amend, limit, or terminate Voluntary Separation Incentive Payment authority if it determines that the agency is no longer undergoing the condition(s) that formed the basis for its approval or to ensure that the law and regulations governing Voluntary Separation Incentive Payments, including the Voluntary Separation Incentive Payment usage reporting requirements, are being properly followed.

§ 576.104 Additional agency requirements

(a) After OPM approves an agency's plan for Voluntary Separation Incentive Payments, the agency is required to immediately notify OPM of any subsequent changes in the conditions that served as the basis for the approval of the Voluntary Separation Incentive Payment authority.

(b) Agencies are required to provide OPM with interim and final Voluntary Separation Incentive Payment reports, as covered in OPM's approval letter to the agency. OPM may suspend or cancel a Voluntary Separation Incentive Payment authority if the agency is not in compliance with the reporting requirements or reporting schedule specified in OPM's Voluntary Separation Incentive Payment authority approval letter.

§ 576.105 Existing Voluntary Separation Incentive Payment authorities.

As provided in section 1313(a)(3) of Public Law 107–296, any agency exercising Voluntary Separation Incentive authority in effect on January 24, 2003, may continue to offer Voluntary Separation Incentives consistent with that authority until that authority expires. An agency that is eligible to offer Voluntary Separation Incentive Payments under this authority and under any other statutory authority may choose which authority it wishes to use, or offer incentives under both.

Subpart B—Waiver of Repayment of Voluntary Separation Incentive Payments

§ 576.201 Definitions.

'Employment' means employment with the Government of the United States, including employment under a personal services contract (or other direct contract) with the United States Government (other than an entity in the legislative branch) unless employed pursuant to § 576.203(a).

§ 576.202 Repayment requirement.

An executive branch employee who received a Voluntary Separation Incentive Payment as described in subpart A of this part and accepts any employment for compensation with the Government of the United States within 5 years after the date of the separation on which the payment is based must repay the entire amount of the Voluntary Separation Incentive Payment to the agency that paid it before the individual's first day of reemployment.

§ 576.203 Waivers of the Voluntary Separation Incentive Repayment requirement.

(a)(1) If the proposed reemployment is with an agency other than the General Accountability Office, the United States Postal Service, or the Postal Rate Commission, the Director of the Office of Personnel Management may, at the request of the head of the agency, waive the repayment if—

(i) The individual involved possesses unique abilities and is the only qualified applicant available for the position; or

(ii) In case of an emergency involving a direct threat to life or property, the individual—

(A) Has skills directly related to resolving the emergency; and

(B) Will serve on a temporary basis only so long as that individual's services are made necessary by the emergency.

(2) If the proposed reemployment is with an entity in the legislative branch, the head of the entity or the appointing official may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

(3) If the proposed reemployment is with the judicial branch, the Director of the Administrative Office of the United States Courts may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

(4) The repayment waiver provisions under this section do not extend to a repayment obligation resulting from employment under a personal services contract or other direct contract.

(b) For a Voluntary Separation Incentive Payment made under statutory authority other than subpart A of this part, the agency should review the authorizing statute and, if a waiver is permitted, submit a request as specified by that statute.

[FR Doc. 05–1483 Filed 1–26–05; 8:45 am]

BILLING CODE 6325–39–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Loan Interest Rates

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The current 18 percent per year federal credit union maximum loan rate is scheduled to revert to 15 percent on March 9, 2005, unless otherwise provided by the NCUA Board (Board). A 15 percent ceiling would restrict certain categories of credit and adversely affect the financial condition of a number of federal credit unions. At the same time, prevailing market rates and economic conditions do not justify a rate higher than the current 18 percent ceiling. Accordingly, the Board hereby continues an 18 percent federal credit union loan rate ceiling for the period March 9, 2005 through September 8, 2006. The Board is prepared to reconsider the 18 percent ceiling at any time should changes in economic conditions warrant.

DATES: Effective February 28, 2005.

FOR FURTHER INFORMATION CONTACT: Daniel Gordon, Senior Investment Officer, Office of Strategic Program Support and Planning, at the National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, or telephone (703) 518–6620.

SUPPLEMENTARY INFORMATION:

Background

Public Law 96–221, enacted in 1980, raised the loan interest rate ceiling for federal credit unions from one percent per month (12 percent per year) to 15 percent per year. 12 U.S.C. 1757(5)(A)(vi). The law also authorized the Board to set a higher limit, after consulting with Congress, the Department of Treasury and other federal financial agencies, for a period not to exceed 18 months, if the Board determined that: (1) Money market interest rates have risen over the preceding six months; and (2) prevailing interest rate levels threaten the safety and soundness of individual credit unions as evidenced by adverse trends in growth, liquidity, capital, and earnings.

On December 3, 1980, the Board determined that the foregoing conditions had been met. Accordingly, the Board raised the loan ceiling to 21 percent. In the unstable environment of the first half of the 1980s, the Board lowered the loan rate ceiling from 21 percent to 18 percent, effective May 18, 1987. This action was taken in an environment of falling market interest rates from 1980 to early 1987. The ceiling has remained at 18 percent to the present. The Board believes retaining the 18 percent ceiling will permit credit unions to continue to meet their current lending programs and permit the necessary flexibility for credit unions to react to any adverse economic developments.

The Board would prefer not to set loan interest rate ceilings for federal credit unions. Credit unions are cooperatives and establish loan and share rates consistent with the needs of their members and prevailing market interest rates. The Board supports free lending markets and the ability of federal credit union boards of directors to establish loan rates that reflect current market conditions and the interests of their members.

Congress, however, has imposed loan rate ceilings since 1934, and, as stated previously, in 1980, Congress set the ceiling at 15 percent but authorized the Board to set a ceiling in excess of 15 percent, if conditions warrant. The following analysis justifies a ceiling above 15 percent, but at the same time does not support a ceiling above the current 18 percent. The Board is prepared to reconsider this action at any time should changes in economic conditions warrant.

Money Market Interest Rates

As Table 1 below shows, interest rates on United States Treasury securities

have increased in maturities of three years and less, in the six month period June 1, 2004 through November 30, 2004.

TABLE 1.—CHANGE IN U.S. GOVERNMENT YIELDS

[May 30, 2004–November 30, 2004]

Maturity	Rate 5/30/2004 (percent)	Rate 11/30/2004 (percent)	Change (percent)
3-month	1.06	2.22	1.16
6-month	1.38	2.43	1.05
2-year	2.53	3.00	.47
3-year	3.06	3.25	.19
5-year	3.79	3.69	−.10
10-year	4.65	4.35	−.30

In addition, between June 2004 and November 30, 2004, the Board of Governors of the Federal Reserve System raised the federal funds target rate four times, from 1.00 percent to 2.00 percent. In December 2004, the Federal Reserve raised the federal funds target rate another .25 percent. Statements from Federal Reserve officials indicate that further increases in the federal funds target rate are expected. For example, Anthony M. Santomero, President of the Federal Reserve Bank of Philadelphia, said, ''I think it is fair to say a neutral federal funds policy is above our current level.'' Michael H. Moskow, President of the Federal Reserve Bank of Chicago, said, ''There is certainly more ground to cover on interest rates.''

The forward Treasury curve (Table 2) also anticipates higher rates. The expected increases range from 87 basis points in the 1-year maturity to 34 basis points in the 10-year maturity.

TABLE 2.—IMPLIED 1-YEAR FORWARD RATES

[November 30, 2004]

Maturity	Change one-year forward rate (percent)
1-year	.87
2-year	.57
3-year	.52
5-year	.64
10-year	.34

Financial Implications for Credit Unions

For at least 450 federal credit unions, representing 7.79% percent of reporting federal credit unions, the most common rate on unsecured loans was above 15 percent at year-end 2003. While the bulk of credit union lending is below 15 percent, small credit unions and credit unions that have implemented risk-based lending programs require interest rates above 15 percent to maintain liquidity, capital, earnings, and growth. Loans to members who have not yet established credit histories or have weak credit histories have more credit risk. Credit unions must charge rates to cover the potential of higher than usual losses for such loans.

There are undoubtedly more than 450 federal credit unions charging over 15 percent for unsecured loans to such members. Many credit unions have ''credit builder'' or ''credit rebuilder'' loans but report only the most common unsecured loan rates on NCUA Call Reports. Lowering the interest rate ceiling for federal credit unions would discourage these credit unions from making certain loans and many of the affected members would have no alternative but to turn to other lenders who charge higher rates.

Small credit unions would be particularly affected by lower loan rate ceilings since they tend to have higher levels of unsecured loans, typically with lower loan balances. Table 3 shows the number of federal credit unions in each asset group where the most common rate is more than 15 percent for unsecured loans.

TABLE 3.—ACTIVE FEDERAL CREDIT UNIONS WITH MOST COMMON UNSECURED LOAN RATES GREATER THAN 15 PERCENT

[December 2003]

Peer group by asset size	Total all Federal credit unions	Number of Federal credit unions with greater than 15 percent
$0–2 million	1175	92
$2–10 million	1794	164
$10–50 million	1753	123
$50 million+	1051	71
Total	5773	450

Should the interest rate charged on loans be subject to a 15 percent ceiling, a number of federal credit unions, where the majority of members are low-income, will incur significant financial strain. Approximately 12.65 percent of federal credit unions with low-income designation report loan interest rates greater than 15 percent. In contrast, only 7.79 percent of all credit unions report rates above 15 percent. Approximately 14.33 percent of low-income credit unions with assets less than $10 million would be affected.

These credit unions offset the cost of generating low-balance loans by charging increased interest rates. These credit unions generally are not able to

provide credit card loans and, instead, grant closed-ended and open-ended loans with the prerequisite underwriting documentation. Further, these smaller credit unions generally maintain a higher expense ratio, since many are involved with high-transaction accounts requiring higher personnel costs and related operational expenses, and lack economies of scale.

Further, among the 450 federal credit unions where the most common rate is more than 15 percent for unsecured loans, 62 credit unions have 20 percent or more of their assets in this category and all but five credit unions have assets of less than $10 million. For these credit unions, lowering the rates would threaten their liquidity, capital, earnings, and growth.

The Board has concluded that conditions exist to retain the federal credit union interest rate ceiling of 18 percent per year for the period March 9, 2005 through September 8, 2006. Finally, the Board is prepared to reconsider the 18 percent ceiling at any time during the extension period should changes in economic conditions warrant.

Regulatory Procedures

Administrative Procedure Act

The Board has determined that notification and public comment on this rule are impractical and not in the public interest. 5 U.S.C. 553(b)(3)(B). Due to the need for a planning period before the March 9, 2005 expiration date of the current rule, and the threat to the safety and soundness of individual credit unions with insufficient flexibility to determine loan rates, final action on the loan rate ceiling is necessary.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small credit unions (those under ten million dollars in assets). This final rule provides added flexibility to all federal credit unions regarding the permissible interest rate that may be used in connection with lending. The NCUA Board has determined and certifies that this rule will not have a significant economic impact on a substantial number of small credit unions.

Paperwork Reduction Act

NCUA has determined that this rule does not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on state and local interest. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This rule applies only to federal credit unions and, thus, will not have substantial direct effects on the states, on the relationship between the national government and the states, nor materially affect state interests. The NCUA has determined that the rule does not constitute a policy that has any federalism implication for purposes of the executive order.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act. 5 U.S.C. 551. The Office of Management and Budget has determined that this is not a major rule.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

NCUA has determined that this rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Loan interest rates.

By the National Credit Union Administration Board on January 13, 2005.

Mary F. Rupp,

Secretary to the Board.

■ Accordingly, NCUA amends 12 CFR chapter VII as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS (AMENDED)

■ 1. The authority citation for Part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, and 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*, 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

■ 2. Section 701.21(c)(7)(ii)(C) is revised to read as follows:

§ 701.21 Loans to members and lines of credit to members.

* * * * *

(c) * * *

(7) * * *

(ii) * * *

(C) *Expiration.* After September 8, 2006, or as otherwise ordered by the NCUA Board, the maximum rate on federal credit union extensions of credit to members shall revert to 15 percent per year. Higher rates may, however, be charged, in accordance with paragraph (c)(7)(ii)(A) and (B) of this section, on loans and line of credit balance existing on or before September 8, 2006.

* * * * *

[FR Doc. 05–1166 Filed 1–26–05; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–13–AD; Amendment 39–13950; AD 2005–02–05]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for Rolls-Royce (RR) plc RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–B–75 series turbofan engines. That AD currently requires initial and repetitive ultrasonic inspections of installed LPC fan blade roots on-wing and during overhaul using a surface wave ultrasonic probe, and relubrication, according to accumulated life cycles. That AD also adds the application of Metco 58 blade root coating as an optional terminating action. This AD requires the same actions, but changes the reference to Mandatory Service Bulletin (MSB) No. RB.211–72–C879 from Revision 3 to Revision 4. This AD results from RR issuing MSB No. RB.211–72–C879, Revision 4, which contains revised Accomplishment Instructions and consumable materials list. We are

issuing this AD to detect cracks in low pressure compressor (LPC) fan blade roots, which if not detected, could lead to uncontained multiple fan blade failure, and damage to the airplane.

DATES: Effective February 11, 2005. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of February 11, 2005.

We must receive any comments on this AD by March 28, 2005.

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

- By mail: Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–13–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov.*

You can get the service information referenced in this AD from Rolls-Royce plc, PO Box 31, Derby, England, DE248BJ; telephone: 011–44–1332–242–424; fax: 011–44–1332–249–936.

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

FOR FURTHER INFORMATION CONTACT: Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (781) 238–7178; fax: (781) 238–7199.

SUPPLEMENTARY INFORMATION: On June 13, 2003, we issued AD 2003–12–15, Amendment 39–13200 (68 FR 37735, June 25, 2003). That AD requires initial and repetitive ultrasonic inspections of installed LPC fan blade roots on-wing and during overhaul using a surface wave ultrasonic probe, and relubrication, according to accumulated life cycles. That AD also introduces an alternative technique to ultrasonically inspect installed fan blades on-wing using a surface wave ultrasonic probe. Also, that AD adds the application of Metco 58 blade root coating as an optional terminating action. That AD was the result of the discovery of cracks on LPC fan blade roots during an engine overhaul. That condition, if not corrected, could result in uncontained multiple fan blade failure, and damage to the airplane.

Actions Since AD 2003–12–15 Was Issued

Since AD 2003–12–15 was issued, the Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (UK), notified us that Rolls-Royce plc has updated MSB No. RB.211–72–C879, Revision 3, dated October 3, 2002, to Revision 4, dated April 2, 2004, for RR RB211 series turbofan engines. The CAA advises that Revision 4 of the MSB contains revised Accomplishment Instructions and consumable materials list.

Special Flight Permits Paragraph Removed

Paragraph (h) of the current AD, AD 2003–12–15, contains a paragraph pertaining to special flight permits. Even though this final rule does not contain a similar paragraph, we have made no changes with regard to the use of special flight permits to operate the airplane to a repair facility to do the work required by this AD. In July 2002, we published a new part 39 that contains a general authority regarding special flight permits and airworthiness directives; see Docket No. FAA–2004–8460, Amendment 39–9474 (69 FR 47998, July 22, 2002). Thus, when we now supersede ADs we will not include a specific paragraph on special flight permits unless we want to limit the use of that general authority granted in section 39.23.

Relevant Service Information

We have reviewed and approved the technical contents of RR MSB No. RB.211–72–C879, Revision 4, dated April 2, 2004. That MSB describes procedures for ultrasonic inspection of high cyclic life blades on-wing with either the LPC fan blades in place or removed from the LPC. The CAA classified the original issue of the service bulletin as mandatory and issued AD 002–01–2000 in order to ensure the airworthiness of these RR engines in the UK.

Bilateral Airworthiness Agreement

These engine models are manufactured in the U.K. and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Under this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. We have examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determination and Requirements of This AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. Therefore, we are issuing this AD, which requires initial and repetitive ultrasonic inspection of installed LPC fan blade roots on-wing and during overhaul using a surface wave ultrasonic probe, and relubrication, according to accumulated life cycles. This AD also maintains the application of Metco 58 blade root coating as an optional terminating action. You must use the service information described previously to perform the actions required by this AD.

FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for public comment before issuing this AD are unnecessary, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include ''AD Docket No. 2000–NE–13–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us verbally, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

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 summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''AD Docket No. 2000–NE–13–AD'' in your request.

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 Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–13200 (68 FR 37735, June 25, 2003), and by adding a new airworthiness directive, Amendment 39–13950, to read as follows:

2005–02–05 Rolls-Royce plc: Amendment 39–13950. Docket No. 2000–NE–13–AD. Supersedes AD 2003–12–15, Amendment 39–13200.

Effective Date

(a) This airworthiness directive (AD) becomes effective February 11, 2005.

Affected ADs

(b) This AD supersedes AD 2003–12–15, Amendment 39–13200.

Applicability

(c) This AD applies to Rolls-Royce (RR) plc RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–B–75 series turbofan engines with low pressure compressor (LPC) fan blades with the part numbers (P/Ns) listed in Table 1 of this AD. These engines are installed on, but not limited to, Boeing 757 and Tupolev Tu204 series airplanes. Table 1 follows:

TABLE 1.—APPLICABLE LPC FAN BLADE P/NS

UL16135	UL28602
UL16171	UL29511
UL16182	UL29556
UL19643	UL30817
UL20044	UL30819
UL20132	UL30933
UL20616	UL30935
UL21345	UL33707
UL22286	UL33709
UL23122	UL36992
UL24525	UL37090
UL24528	UL37272
UL24530	UL37274
UL24532	UL37276
UL24534	UL37278
UL27992	UL38029
UL28601	UL38032

Unsafe Condition

(d) This AD results from RR issuing Mandatory Service Bulletin (MSB) No. RB.211–72–C879, Revision 4, which contains revised Accomplishment Instructions and consumable materials list. We are issuing this AD to detect cracks in low pressure compressor (LPC) fan blade roots, which if not detected, could lead to uncontained multiple fan blade failure, and damage to the airplane.

Compliance

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

(f) If you have a full set of fan blades, modified using RR Service Bulletin No. RB.211–72–C946, Revision 2, dated September 26, 2002, that can be identified by a blue triangle etched on the blade airfoil suction surface close to the leading edge tip of each blade, no further action is required.

(g) On RB211–535E4 engines, operated to Flight Profile A, ultrasonically inspect, and if required, relubricate using the following Table 2:

TABLE 2.—RB211–535E4 FLIGHT PROFILE A

Engine location	Initial inspection within cycles-since-new (CSN)	Type action	In accordance with	Repeat inspection within (CSN)
(1) On-wing	17,350	(i) Root Probe, inspect and relubricate, OR	RB.211–72–C879 Revision 4, 3.A.(1) through 3.A.(7), dated April 2, 2004.	1,400
		(ii) Wave Probe	RB.211–72–C879 Revision 4, 3.B.(1) through 3.B.(7), dated April 2, 2004.	1,150
(2) In Shop	17,350	Root Probe, inspect and relubricate.	RB.211–72–C879 Revision 4, 3.C.(1) through 3.C.(4), dated April 2, 2004.	1,400

(h) On RB211–535E4 engines, operated to Flight Profile B, ultrasonically inspect, and if required, relubricate using the following Table 3:

TABLE 3.—RB211–535E4 FLIGHT PROFILE B

Engine location	Initial inspection within (CSN)	Type action	In accordance with	Repeat inspection within (CSN)
(1) On-wing	12,350	(i) Root Probe, inspect and relubricate, OR	RB.211–72–C879 Revision 4, 3.A.(1) through 3.A.(7), dated April 2, 2004.	850
		(ii) Wave Probe	RB.211–72–C879 Revision 4, 3.B.(1) through 3.B.(7), dated April 2, 2004.	700
(2) In Shop	12,350	Root Probe, inspect and relubricate.	RB.211–72–C879 Revision 4, 3.C.(1) through 3.C.(4), dated April 2, 2004.	850

(i) On RB211–535E4 engines, operated to combined Flight Profile A and B, ultrasonically inspect, and if required, relubricate using the following Table 4:

TABLE 4.—RB211–535E4 FLIGHT PROFILE A AND B

Engine location	Initial inspection within (CSN)	Type action	In accordance with	Repeat inspection within (CSN)
(1) On-wing	65% hard life (To calculate, see Compliance Section 1.C(4)).	(i) Root Probe, inspect and relubricate, OR	RB.211–72–C879 Revision 4, 3.A.(1) through 3.A.(7), dated April 2, 2004.	As current flight profile.
	.....	(ii) Wave Probe	RB.211–72–C879 Revision 4, 3.B.(1) through 3.B.(7), dated April 2, 2004.	As current flight profile.
(2) In Shop	65% hard life (To calculate, see Compliance Section 1.C.(4)).	Root Probe, inspect and relubricate.	RB.211–72–C879 Revision 4, 3.C.(1) through 3.C.(4), dated April 2, 2004.	As current flight profile.

(j) Fan blades that have been operated within RB211–535E4 Flight Profile A and B will have final life as defined in the Time Limits Manual. See References Section 1.G.(3), of MSB RB.211–72–C879, Revision 4, dated April 2, 2004.

(k) On RB211–535E4–B engines, ultrasonically inspect, and if required, relubricate using the following Table 5:

TABLE 5.—RB211–535E4–B

Engine location	Initial inspection within (CSN)	Type action	In accordance with	Repeat inspection within (CSN)
(1) On-wing	17,000	(i) Root Probe, inspect and relubricate, OR	RB.211–72–C879 Revision 4, 3.A.(1) through 3.A.(7), dated April 2, 2004.	1,200
		(ii) Wave Probe.	RB.211–72–C879 Revision 4, 3.B.(1) through 3.B.(7), dated April 2, 2004.	1,000
(2) In Shop	17,000	Root Probe, inspect and relubricate..	RB.211–72–C879 Revision 4, 3.C.(1) through 3.C.(4), dated April 2, 2004.	1,200

Optional Terminating Action

(l) Application of Metco 58 blade root coating using RR SB No. RB.211–72–C946, Revision 2, dated September 26, 2002, constitutes terminating action to the repetitive inspection requirements specified in paragraphs (g), (h), (i), and (k) of this AD.

Alternative Methods of Compliance

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

Previous Credit

(n) Previous credit is allowed for initial and repetitive inspections performed using AD 2003–12–15 (Amendment 39–13200, 68 FR 37735, June 25, 2003) and RR MSB No. RB.211–72–C879, Revision 3, dated October 9, 2002.

Material Incorporated by Reference

(o) You must use Rolls-Royce Mandatory Service Bulletin No. RB.211–72–C879, Revision 4, dated April 2, 2004, to perform the inspections and relubrication required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You can get a copy from Rolls-Royce plc, PO Box 31, Derby, England, DE248BJ; telephone: 011–44–1332–242–424; fax: 011–44–1332–249–936. You may review copies at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or on the Internet at *http://dms.dot.gov*; 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.*

Related Information

(p) CAA airworthiness directive AD 002–01–2000, dated October 9, 2002, also addresses the subject of this AD.

Issued in Burlington, Massachusetts, on January 18, 2005.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 05–1384 Filed 1–26–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–80–AD; Amendment 39–13948; AD 2005–02–03]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D–209, –217, –217A, –217C, and –219 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for Pratt & Whitney (PW) JT8D–209, –217, –217A, –217C, and –219 series turbofan engines. That AD currently requires torque inspection of the 3rd stage and 4th stage low pressure turbine (LPT) blades for shroud notch wear and replacement of the blade if wear limits are exceeded. This AD continues to require those torque inspections at shorter inspection intervals of the refurbished 3rd stage and 4th stage LPT blades, but the same or longer inspection intervals of the new 3rd stage and 4th stage LPT blades, for shroud notch wear and replacement of the blade if wear limits are exceeded. This AD also requires replacing LPT-to-exhaust case bolts and nuts with bolts and nuts made of Tinidur material. This AD results from reports of 194 blade fractures since 1991, with 37 of those blade fractures resulting in LPT case separation, and three reports of uncontained 3rd stage and 4th stage LPT blade failures with cowl penetration. We are issuing this AD to prevent an uncontained blade failure that could result in damage to the airplane.

DATES: This AD becomes effective March 3, 2005. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of March 3, 2005.

ADDRESSES: You can get the service information identified in this AD from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8770, fax (860) 565–4503.

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA. You may examine the service information, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Keith Lardie, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7189, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed airworthiness directive (AD). The proposed AD applies to Pratt & Whitney (PW) JT8D–209, –217, –217A, –217C, and -219 series turbofan engines. We published the proposed AD in the **Federal Register** on August 16, 2004 (69 FR 50346). That action proposed to require torque inspections of the 3rd stage and 4th stage LPT blades for shroud notch wear and replacement of the blade if wear limits are exceeded. That action also proposed to require replacing the LPT-to-exhaust case bolts and nuts with bolts and nuts made of Tinidur material.

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

Comments

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

Use of Radioisotope Inspection Procedure

One commenter proposes to use a radioisotope inspection procedure, which they have developed and was approved as an alternative method of compliance (AMOC) for a previously issued AD. The commenter states that this inspection method is more reliable than the torque inspections mandated in this AD and provides an equivalent level of safety. The FAA does not agree. The commenter did not provide data to substantiate the claim of an equivalent level of safety as it relates to the revised inspection intervals. The commenter's proposal is also operator-specific and does not provide literature for the rest of the fleet. The FAA will evaluate a request for an AMOC that includes data substantiating that an acceptable level of safety is maintained using this procedure.

Costs of Compliance Underestimated

Another commenter states that the costs of compliance are underestimated. The commenter requests that we consider the costs of numerous parts removed when complying with this AD. The FAA does not agree. The indirect costs associated with this AD are not directly related to the required actions, and therefore, are not addressed in the economic analysis for this AD. A finding that an AD is warranted means that the original engine design no longer achieves the level of safety specified by related airworthiness requirements and that other required actions are necessary.

Another commenter states that the costs of compliance are underestimated. The commenter states that the cost of turbine blades and cost of labor to replace the blades when complying with this AD should be considered. The FAA agrees. We estimate that 10% of the blade sets will fail the inspection per year and will require replacement. Therefore, the estimated cost of turbine blades and labor to replace the blades is added to the total cost of the AD to U.S. operators to perform initial torque inspection and bolt and nut replacement.

Request To Clearly Identify the Superseded AD

Another commenter requests that the identification of the superseded AD be clarified. The FAA does not agree. The fact that this AD supersedes AD 99–27–01 is clearly stated in the compliance section of this AD. Although AD 99–22–14 requires replacement of the LPT-to-exhaust case bolts and nuts, that AD primarily addresses installation of high pressure turbine (HPT) containment hardware. Further, a notice of proposed rulemaking was published in the **Federal Register** on July 15, 2004 (69 FR 42356), which moves the requirement to replace the LPT-to-exhaust case bolts and nuts from AD 99–22–14 to this AD.

Request To Include Reference to NDIP–662, Revision D

Another commenter requests that this AD include a reference to NDIP–622, Revision D. The FAA does not agree. We assume that the commenter intended to

say NDIP–662, Revision D and not NDIP–622, Revision D. This AD already references PW ASB No. JT8D A6224, Revision 5, which specifies the use of NDIP–662, which is included as an Appendix in the ASB. Because all pages of NDIP–662, Revision D, are included in the ASB, a clarification to the reference and a change to this AD are not necessary.

Request To Define ''Accessibility to the LPT-to-Exhaust Case Bolts''

Another commenter requests that this AD include a definition of the statement ''accessibility to the LPT-to-exhaust case bolts'' and that the definition match the one provided in PW SB 6455. The FAA agrees. A definition of ''accessibility to the LPT-to-exhaust case bolts'' is included in this AD.

Overlap Between Inspection Torque Readings

Another commenter states that there is an overlap between the inspection torque readings in the tables providing the repetitive torque inspection intervals. For example, one range in Table 3 states ''* * * but greater than or equal to 10 LB–IN (1.130 N.m).'' Another range in Table 3 states ''Less than or equal to 10 LB–IN (1.130 N.m) * * *''. A single value cannot have two different requirements. The FAA agrees. The affected tables are corrected in this AD.

Inspect Only Turbine Blades That Fail Inspection

Another commenter proposes to inspect only the turbine blades of the LPT stage that fails the torque check inspection. Also, the commenter proposes that the requirement to inspect the turbine blades of the other LPT stages should be suggested rather than mandated as proposed in the AD. The FAA agrees. This AD clarifies the information about how to return an engine to service. In addition, this AD clarifies the information about how the repetitive inspection intervals may be reset.

Conclusion

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

Costs of Compliance

There are about 2,345 PW JT8D–200 series turbofan engines of the affected design in the worldwide fleet. We estimate that 1,143 engines installed on airplanes of U.S. registry are affected by this AD. We also estimate that it will take about 1 work hour per engine to perform the torque inspection and 1 work hour per engine to perform the bolt and nut replacements. The average labor rate is $65 per work hour. It is estimated that 10% of the blade sets will fail the inspection per year and will require replacement. The average cost for a new blade set is $72,500. The new blades take about 23 work hours to install. Based on these figures, the annual replacement cost of the AD to U.S. operators is $8,584,020. The required bolts and nuts will cost about $1,734 per engine. Based on these figures, we estimate the total annual cost of this AD to U.S. operators to perform initial torque inspection and bolt and nut replacement to be $10,565,982.

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 summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''AD Docket No. 98–ANE–80–AD'' in your request.

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 Federal Aviation Administration amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–11482 (64 FR 72916, December 29, 1999) and by adding a new airworthiness directive, Amendment 39–13948, to read as follows:

2005–02–03 Pratt & Whitney: Amendment 39–13948. Docket No. 98–ANE–80–AD. Supersedes AD 99–27–01, Amendment 39–11482.

Effective Date

(a) This AD becomes effective March 3, 2005.

Affected ADs

(b) This AD supersedes AD 99–27–01.

Applicability

(c) This AD applies to Pratt & Whitney (PW) JT8D–209, –217, –217A, –217C, and –219 series turbofan engines. These engines are installed on, but not limited to, Boeing 727 series and McDonnell Douglas MD–80 series airplanes.

Unsafe Condition

(d) This AD results from reports of 194 blade fractures since 1991, with 37 of those blade fractures resulting in low pressure turbine (LPT) case separation, and three reports of uncontained 3rd stage and 4th stage LPT blade failures with cowl penetration. We are issuing this AD to prevent an uncontained blade failure that could result in damage to the airplane.

Compliance

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

Initial Torque Inspection for JT8D–209, –217, and –217A Engines

(f) For JT8D–209, –217, and –217A engines, perform the initial torque inspection of 3rd and 4th stage LPT blades for shroud notch wear. Use the procedures described in Accomplishment Instructions, part 1, paragraphs 1. through 3. of PW Alert Service Bulletin (ASB) No. JT8D A6224, Revision 5, dated June 11, 2004, at the applicable threshold in the following Table 1:

TABLE 1.—INITIAL TORQUE INSPECTION THRESHOLD FOR JT8D–209, –217, AND –217A ENGINES

Blade type	Hours time-in-service (TIS)	Inspection threshold
(1) New pre-Service Bulletin (SB) No. 5867 (small notch) 3rd stage turbine blades.	Any number	Within 6,000 hours TIS.
(2) Refurbished pre-SB No. 5867 (small notch) 3rd stage turbine blades.	(i) Fewer than 3,000	Within 4,000 hours TIS.
	(ii) 3,000 or more	Within 6,000 hours TIS, or within 1,000 hours TIS after the effective date of this AD, whichever occurs first.
(3) New post-SB No. 5867 (large notch) 3rd stage turbine blades.	Any number	Within 10,000 hours TIS.
(4) Refurbished post-SB No. 5867 (large notch) 3rd stage turbine blades.	(i) Fewer than 6,000	Within 7,000 hours TIS.
	(ii) 6,000 or more	Within 8,000 hours TIS, or within 1,000 hours TIS after the effective date of this AD, whichever occurs first.
(5) New pre-SB No. 6029 (small notch) 4th stage turbine blades.	Any number	Within 6,000 hours TIS.
(6) Refurbished pre-SB No. 6029 (small notch) 4th stage turbine blades.	(i) Fewer than 3,000	Within 4,000 hours TIS.
	(ii) 3,000 or more	Within 6,000 hours TIS, or within 1,000 hours TIS after the effective date of this AD, whichever occurs first.
(7) New post-SB No. 6029 or new post-SB No. 6308 (large notch) 4th stage turbine blades.	Any number	Within 10,000 hours TIS
(8) Refurbished post-SB No. 6029 or refurbished post-SB No. 6308 (large notch) 4th stage turbine blades.	(i) Fewer than 6,000	Within 7,000 hours TIS.
	(ii) 6,000 or more	Within 8,000 hours TIS, or within 1,000 hours TIS after the effective date of this AD, whichever occurs first.

Repetitive Torque Inspections for JT8D–209, –217, and –217A Engines

(g) For JT8D–209, –217, and –217A engines, perform repetitive torque inspections of 3rd and 4th stage LPT blades for shroud notch wear. Use the procedures described in Accomplishment Instructions, Part 1, Paragraph 1. of PW ASB No. JT8D A6224, Revision 5, dated June 11, 2004, at the applicable intervals in the following Table 2 and Table 3:

TABLE 2.—3RD STAGE REPETITIVE TORQUE INSPECTION INTERVALS FOR JT8D–209, –217, AND –217A ENGINES

Inspection torque readings	Number of readings	Disposition
Greater than or equal to 15 LB–IN (1.695 N.m)	All	Repeat torque inspection within 1,000 hours TIS since last inspection.
Less than 15 LB–IN (1.695 N.m) but greater than or equal to 10 LB–IN (1.130 N.m).	One or more	Repeat torque inspection within 500 hours TIS since last inspection.
Less than 10 LB–IN (1.130 N.m) but greater than or equal to 5 LB–IN (0.565 N.m).	One to three	Repeat torque inspection within 125 hours TIS since last inspection.
Less than 10 LB–IN (1.130 N.m) but greater than or equal to 5 LB–IN (0.565 N.m).	Four or more	Remove engine from service within 20 hours TIS since last inspection.
Less than 5 LB–IN (0.565 N.m)	One or more	Remove engine from service within 20 hours TIS since last inspection.

TABLE 3.—4TH STAGE REPETITIVE TORQUE INSPECTION INTERVALS FOR JT8D–209, –217, AND –217A ENGINES

Inspection torque readings	Number of readings	Disposition
Greater than or equal to 15 LB–IN (1.695 N.m)	All	Repeat torque inspection within 1,000 hours TIS since last inspection.
Less than 15 LB–IN (1.695 N.m) but greater than or equal to 10 LB–IN (1.130 N.m).	One or more	Repeat torque inspection within 500 hours TIS since last inspection.
Less than 10 LB–IN (1.130 N.m) but greater than or equal to 5 LB–IN (0.565 N.m).	One to six	Repeat torque inspection within 125 hours TIS since last inspection.
Less than 10 LB–IN (1.130 N.m) but greater than or equal to 5 LB–IN (0.565 N.m).	Seven or more	Remove engine from service within 20 hours TIS since last inspection.
Less than 5 LB–IN (0.565 N.m)	One or more	Remove engine from service within 20 hours TIS since last inspection.

(h) Subsequent repeat inspection intervals must not exceed the previous inspection interval.

JT8D–209, –217, and –217A Engines Removed From Service

(i) JT8D–209, –217, and –217A engines removed from service may be returned to service after a detailed inspection and repair or replacement for all blades, of the failed stage, that exceed Engine Manual limits is done. Information on repairing or replacing turbine blades can be found in Sections 72–53–12 through 72–53–13 of the JT8D–200 Engine Manual, Part No. 773128.

Initial Inspection for JT8D–217C and –219 Engines

(j) For JT8D–217C and –219 engines, perform the initial torque inspection of 4th stage LPT blades for shroud notch wear. Use the procedures described in Accomplishment Instructions, Part 2, Paragraphs 1. through 3. of PW ASB No. JT8D A6224, Revision 5, dated June 11, 2004, at the applicable threshold in the following Table 4:

TABLE 4.—INITIAL TORQUE INSPECTION THRESHOLD FOR JT8D–217C AND –219 ENGINES

Blade Type	TIS	Inspection threshold
(1) New pre-SB No. 6090 (small notch) 4th stage turbine blades.	Any number	Within 5,000 hours TIS.
(2) Refurbished pre-SB No. 6090 (small notch) 4th stage turbine blades.	(i) Fewer than 3,000	Within 4,000 hours TIS.
	(ii) 3,000 or more	Within 5,000 hours TIS, or within 1,000 hours TIS after the effective date of this AD, whichever occurs first.
(3) New post-SB No. 6090, new post-SB No. 6402, or new post-SB No. 6412 (large notch) 4th stage turbine blades.	Any number	Within 10,000 hours TIS.
(4) Refurbished ''As-Cast'' post-SB No. 6090, post-SB No. 6402, or post-SB No. 6412 (large notch) 4th stage turbine blades.	Any number	Within 7,000 hours TIS.
(5) Refurbished ''Modified'' post-SB No. 6090, post-SB No. 6402, or post-SB No. 6412 (large notch) 4th stage turbine blades.	(i) Fewer than 3,000	Within 4,000 hours TIS.
	(ii) 3,000 or more	Within 7,000 hours TIS, or within 1,000 hours TIS after the effective date of this AD, whichever occurs first.

Repetitive Torque Inspections for JT8D–217C and –219 Engines

(k) For JT8D–217C and –219 engines, perform repetitive torque inspections of 4th stage LPT blades for shroud notch wear. Use the procedures described in Accomplishment Instructions, Part 2, Paragraph 1. of PW ASB No. JT8D A6224, Revision 5, dated June 11, 2004, at the applicable intervals in the following Table 5:

TABLE 5.—REPETITIVE TORQUE INSPECTION INTERVALS FOR JT8D–217C AND –219 ENGINES

Inspection torque readings	Number of readings	Disposition
Greater than or equal to 15 LB-IN (1.695 N.m)	All	Repeat torque inspection within 1,000 hours TIS since last inspection.
Less than 15 LB-IN (1.695 N.m) but greater than or equal to 10 LB-IN (1.130 N.m).	One or more	Repeat torque inspection within 500 hours TIS since last inspection.
Less than 10 LB-IN (1.130 N.m) but greater than or equal to 5 LB-IN (0.565 N.m).	One to six	Repeat torque inspection within 125 hours TIS since last inspection.
Less than 10 LB-IN (1.130 N.m) but greater than or equal to 5 LB-IN (0.565 N.m).	Seven or more	Remove engine from service within 20 hours TIS since last inspection.
Less than 5 LB-IN (0.565 N.m).	One or more	Remove engine from service within 20 hours TIS since last inspection.

(l) Subsequent repeat inspection intervals must not exceed the previous inspection interval.

JT8D–217C and –219 Engines Removed From Service

(m) JT8D–217C and –219 engines removed from service may be returned to service after a detailed inspection and repair or replacement for all blades, of the failed stage, that exceed Engine Manual limits is done. Information on repairing or replacing turbine blades can be found in Sections 72–53–12 through 72–53–13 of the JT8D–200 Engine Manual, Part No. 773128.

Other Criteria for All Engine Models Listed in This AD

(n) Whenever a refurbished or used blade is intermixed with new blades in a rotor, use the lowest initial inspection threshold that is applicable.

(o) The initial torque inspection or the repetitive inspection intervals for a particular stage may not be reset unless the blades for that stage are refurbished or replaced.

(p) Whenever a used (service run) blade is reinstalled in a rotor, the previous used time should be subtracted from the initial torque inspection threshold.

LPT-to-Exhaust Case Bolts and Nuts Replacement

(q) At next accessibility to the LPT-to-exhaust case bolts, part number (P/N) ST1315–15, and nuts, P/N 4023466, replace bolts and nuts with bolts and nuts made of Tinidur material. Information on replacing the bolts and nuts can be found in PW SB No. 6455, dated January 15, 2004.

Definitions

(r) For the purpose of this AD, refurbishment is defined as restoration of either the shrouds or blade retwist or both, per the JT8D–200 Engine Manual, Part No. 773128.

(s) For the purpose of this AD, ''As-Cast'' refers to blades that were machined from new castings and ''Modified'' refers to blades that were derived from the pre-SB No. 6090 configuration.

(t) For the purpose of this AD, ''accessibility to the LPT-to-exhaust case bolts'' refers to when the engine is disassembled sufficiently to give access to the LPT-to-exhaust case bolts, which is whenever the inner turbine fan ducts are removed.

Alternative Methods of Compliance

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

Material Incorporated by Reference

(v) You must use Pratt & Whitney (PW) Alert Service Bulletin (ASB) No. JT8D A6224, Revision 5, dated June 11, 2004, to perform the inspections required by this AD. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You can get a copy from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8770, fax (860) 565–4503. You can review copies at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; 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.*

Related Information

(w) None.

Issued in Burlington, Massachusetts, on January 14, 2005.

Francis A. Favara,

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

[FR Doc. 05–1463 Filed 1–26–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–38–AD; Amendment 39–13928; AD 2005–01–04]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company 90, 99, 100, 200, and 300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2005–01–04, which was published in the **Federal Register** on January 6, 2005 (70 FR 1169) and applies to certain Raytheon Aircraft Company 90, 99, 100, 200, and 300 series airplanes. We incorrectly referenced an airplane model number in the applicability section of this AD. This action corrects the applicability section of AD 2005–01–04, Amendment 39–13928.

EFFECTIVE DATE: The effective date of this AD remains January 6, 2005.

FOR FURTHER INFORMATION CONTACT: Jeffrey A. Pretz, Aerospace Engineer, ACE–116W, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4153; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

On December 27, 2004, FAA issued AD 2005–01–04, Amendment 39–13928 (70 FR 1169, January 6, 2005), which applies to certain Raytheon Aircraft Company 90, 99, 100, 200, and 300 series airplanes. That AD requires you to check the airplane maintenance records from January 1, 1994, up to and including the effective date of that AD, for any MIL–H–6000B fuel hose replacements on the affected airplanes; inspecting any replaced rubber fuel hose for a spiral or diagonal external wrap with a red or orange-red stripe along the length of the hose with 94519 printed along the stripe; and replacing any MIL–H–6000B rubber fuel hose matching this description with an FAA-approved hose having a criss-cross or braided external wrap.

Need for the Correction

The FAA incorrectly referenced airplane model number C90B in the applicability section of the original AD. Model C90B should be changed to read C90A. This correction is needed to prevent confusion in the field regarding the applicability of this AD.

Correction of Publication

■ Accordingly, the publication of January 6, 2005 (70 FR 1169), of Amendment 39–13928; AD 2005–01–04, which was the subject of FR Doc. 05–35, is corrected as follows:

§ 39.13 [Corrected]

■ On page 1171, in section 39.13 [Amended], 2., paragraph (c) (6) of the AD, change reference from C90B to C90A.

Action is taken herein to correct this reference in AD 2005–01–04 and to add this AD correction to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The effective date remains January 6, 2005.

Issued in Kansas City, Missouri, on January 20, 2005.

David A. Downey,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–1513 Filed 1–26–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–70–AD; Amendment 39–13954; AD 2005–02–09]

RIN 2120–AA64

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

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

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Airbus Model A319, A320, and A321 series airplanes, that requires operators to revise the Airworthiness Limitations section (ALS) of the Instructions for Continued Airworthiness to incorporate new and more restrictive service life limits for certain items, and new and more restrictive inspections to detect fatigue cracking, accidental damage, or corrosion in certain structures. The actions specified by this AD are intended to ensure the continued structural integrity of these airplanes. This action is intended to address the identified unsafe condition.

DATES: Effective March 3, 2005.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Airbus Model A319, A320, and A321 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on March 11, 2004 (69 FR 11558). That action proposed to require operators to revise the ALS of the Instructions for Continued Airworthiness to incorporate new and more restrictive service life limits for certain items, and new and more restrictive inspections to detect fatigue

cracking, accidental damage, or corrosion in certain structures.

Comments

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

Request To Change Paragraph (a)

One commenter asks that the FAA either approve Airbus Service Information Letter (SIL) 32–098, dated December 22, 2003, as a method for assigning accumulated life on parts not previously tracked, or provide another method for tracking these parts in paragraph (a) of the proposed AD. The commenter notes that incorporation of Revision 06 of ALS sub-Sections 9–1–2 and 9–1–3 of the Maintenance Planning Document (MPD) would require incorporation of Airbus SIL 32–098, as specified in Section 9–1, ''Life Limits/Monitored Parts,'' of the MPD. The commenter adds that certain information contained in the SIL was not approved by the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, that would probably necessitate FAA approval of an alternative method of compliance (AMOC).

We agree with the commenter for the reasons provided. We have added a new Note 1 to the final rule to specify that Airbus SIL 32–098 may be used as a source of service information for managing life-limited and demonstrated fatigue life parts that were not previously tracked. Additionally, under the provisions of paragraph (e) of the final rule, we may approve requests for other methods for assigning accumulated life on life-limited and demonstrated fatigue life parts that were not previously tracked if data are submitted to substantiate that such other methods would provide an acceptable level of safety.

Requests for Changes to Compliance Times

One commenter asks that the compliance time specified in paragraph (a) of the proposed AD be changed, but the commenter does not suggest a new compliance time. The commenter states that paragraph (a) of the proposed AD requires the revision of the ALS on ''Life Limits/Monitored Parts,'' and ''Demonstrated Fatigue Life Parts,'' within 2 months after the effective date of the AD. The commenter notes that this would require the tracking, assignment of accumulated life, if unknown, and serialization/marking of parts if not serialized. The commenter adds that this date cannot be achieved, for the following reasons:

- The incorporation of Revision 06 of ALS sub-Sections 9–1–2 and 9–1–3 of the MPD would require incorporation of Airbus SIL 32–098, as specified in Section 9–1, ''Life Limits/Monitored Parts,'' of the MPD when the complete life history of a part is unknown.
- There are a number of items that were not tracked in the original certification of the airplane, and detailed information about these items was not provided by the manufacturer after production.
- Airbus Operator Information Telex SE999.0072/03/CL indicates the subject SIL was available in September 2003, but the SIL was not available until December 2003, so operators were not able to start the investigation immediately.
- The SIL refers to five service bulletins needed for serialization/marking of certain in-service parts. Four of the five bulletins are not yet available; therefore, operators would not have the proper instructions to serialize/mark in-service parts.

We agree with the commenter that all the documents necessary to manage parts not previously tracked were not available at the time of publication of the proposed AD; we also agree that more time is necessary to manage those parts (track and assign accumulated life). Therefore, for those reasons, we have changed the compliance time specified in paragraph (a) of the final rule from 2 months to 6 months. In addition, we have verified that the five service bulletins referenced in the SIL have since been issued, and that proper instructions to manage parts not previously tracked are now available.

The same commenter asks that the compliance time specified in paragraph (b) of the proposed AD be changed from 2 months to 6 months. The commenter states that paragraph (b) would require the revision of the ALS on Airworthiness Limitation Items (ALI) within 2 months after the effective date of the AD. The commenter adds that this date cannot be achieved for the following reasons:

- Revision 06 of the MPD, sub-Section 9–2, introduced weight variants to determine effectivity that would require more time to ensure the proper tracking of ALI tasks relative to existing Significant Structural Items.
- Revision 06 of the MPD, sub-Section 9–2, lowered the inspection threshold of certain ALI tasks. There may be airplanes in service that already exceed the new reduced thresholds and some of these inspections cannot be easily accomplished when airplanes are outside maintenance checks. Neither the MPD nor the proposed AD provided any clear instructions for the phase-in of those inspections should airplanes have already exceeded the new, reduced inspection threshold.

We have reviewed and agree with the commenter's supporting data, and we have changed the compliance time specified in paragraph (b) of the final rule from 2 months to 6 months. Extending the compliance time allows operators more time to determine weight variant effectivity, and time to phase in any inspections that have exceeded the new or revised inspection thresholds and intervals since the ALS revisions were issued. In addition, we agree that some provision for phase-in of future revisions of the ALS that may introduce more restrictive life limits or inspections is necessary. We have requested that Airbus add phase-in criteria to future revisions of the ALS to avoid potential problems with complying with new or revised inspection thresholds and intervals.

Credit for Accomplishing Repetitive Ultrasonic Inspections in Related AD

Two commenters request that we approve incorporation of Issue 6 of the ALI as an acceptable AMOC for accomplishing the ultrasonic inspections required by AD 2004–03–06, amendment 39–13450 (69 FR 5909, February 9, 2004). The commenters note that ALI tasks 571170–01–1 and –2 specify the same ultrasonic inspection of the wing/fuselage joint cruciform fittings that is required by AD 2004–03–06, but at a different threshold and interval. The commenters add that there is a conflict between the inspection threshold and intervals in this proposed AD and between the inspection threshold and interval for the same inspection required by AD 2004–03–06.

We agree with the commenters that there is a conflict, as stated above. Although AD 2004–03–06 was not referenced in the proposed AD, it is a related AD which requires repetitive ultrasonic inspections for fatigue cracking in the wing/fuselage joint cruciform fittings. We have determined that the inspection threshold and repetitive interval in Issue 6 of the ALI should be used as the appropriate threshold and repetitive interval for the inspection in this final rule. Therefore, we have added a new paragraph (c) to this final rule, as follows: ''For Model A319 and A320 series airplanes: Accomplishing the approved revision of the ALS specified in paragraph (b) of this AD terminates the repetitive inspections required by paragraphs (b) and (c) of AD 2004–03–06.'' We have re-

numbered subsequent paragraphs accordingly.

Clarification of Paragraph (b)

One commenter asks for clarification that the revision of the ALS, as specified in paragraph (b) of the proposed AD, must be done in accordance with only Airbus A318/A319/A320/A321 ALI AI/SE–M4/95A.0252/96, Issue 6, dated May 15, 2003 (approved by the DGAC on July 15, 2003). The commenter states that Revision 06 of the MPD dated June 13, 2003, did not revise sub-Section 9–2.

We agree that Revision 06 of the MPD did not revise sub-Section 9–2. This AD specifies incorporation of both MPD sub-Section 9–2, Revision 06, and Airbus ALI AI/SE–M4/95A.0252/96, Issue 6, dated May 15, 2003; MPD sub-Section 9–2 references Airbus ALI AI/SE–M4/95A.0252/96 as the official repository for the ALI; both documents need to be incorporated to avoid any confusion. In addition, we have determined that the references in both paragraphs (a) and (b) of this final rule need clarification. The reference to incorporating into the ALS sub-Section 9–1–2 and sub-Section 9–1–3, as specified in paragraph (a) of the proposed AD, is the wrong reference and should instead specify incorporating Airbus A318/A319/A320/A321 MPD, sub-Section 9–1–2 and sub-Section 9–1–3. Additionally, an incorrect title was used in the proposed AD for sub-Section 9–1–2, ''Life Limits/Monitored Parts.'' That title should be ''Life Limited Parts.'' We have corrected that title in this final rule. The reference to incorporating into the ALS sub-Section 9–2, as specified in paragraph (b) of the proposed AD, is the wrong reference and should instead reference incorporating Airbus A318/A319/A320/A321 MPD, sub-Section 9–2.

Change to Final Rule

We have changed paragraphs (a) and (b) of this final rule to specify that the actions must be done in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the DGAC (or its delegated agent). In addition, incorporating Airbus A318/A319/A320/A321 Maintenance Planning Document (MPD), sub-Section 9–1–2, ''Life Limited Parts,'' and sub-Section 9–1–3, ''Demonstrated Fatigue Life Parts,'' and Airbus A318/A319/A320/A321 MPD, sub-Section 9–2, ''Airworthiness Limitation Items,'' are listed as approved methods of compliance for accomplishing the actions. We have also changed paragraph (d) of this final rule to remove the reference to paragraphs (a) and (b) due to this change.

Conclusion

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

Cost Impact

There are approximately 605 airplanes of U.S. registry affected by this AD. It takes approximately 1 work hour per airplane to accomplish the revision to the ALS, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $39,325, or $65 per airplane.

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

Authority for This Rulemaking

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, 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 AD.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–02–09 Airbus: Amendment 39–13954. Docket 2000–NM–70–AD.

Applicabilty: All Model A319, A320, and A321 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure continued structural integrity of these airplanes, accomplish the following:

Revise Airworthiness Limitations Section (ALS)

(a) For all airplanes: Within 6 months after the effective date of this AD, revise the ALS of the Instructions for Continued Airworthiness in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Direction Generale de l'Aviation Civile (DGAC) (or its delegated

agent). One approved method of compliance is incorporating Airbus A318/A319/A320/A321 Maintenance Planning Document (MPD), sub-Section 9–1–2, ''Life Limited Parts,'' and sub-Section 9–1–3, ''Demonstrated Fatigue Life Parts,'' both Revision 06, both dated June 13, 2003.

Note 1: Airbus Service Information Letter 32–098, dated December 22, 2003, may be used as a source of service information for managing life limited and demonstrated fatigue life parts that were not previously tracked.

(b) For all airplanes except Model A319 series airplanes on which Airbus Modification 28238, 28162, and 28342 was incorporated during production: Within 6 months after the effective date of this AD, revise the ALS of the Instructions for Continued Airworthiness in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent). One approved method of compliance is incorporating both Airbus A318/A319/A320/A321 MPD, sub-Section 9–2, ''Airworthiness Limitation Items'' (ALI), Revision 06, dated June 13, 2003; and Airbus A318/A319/A320/A321 ALI, AI/SE–M4/95A.0252/96, Issue 6, dated May 15, 2003 (approved by the DGAC on July 15, 2003).

(c) For Model A319 and A320 series airplanes: Accomplishing the approved revision of the ALS specified in paragraph (b) of this AD terminates the repetitive inspections required by paragraphs (b) and (c) of AD 2004–03–06, amendment 39–13450.

(d) Except as provided by paragraph (e) of this AD: After the actions specified in paragraphs (a) and (b) of this AD have been accomplished, no alternative life limits, inspections, or inspection intervals may be used.

Alternative Methods of Compliance

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

Note 2: The subject of this AD is addressed in French airworthiness directive F–2004–018, dated February 4, 2004; and in French airworthiness directive F–2004–032, dated February 18, 2004.

Effective Date

(f) This amendment becomes effective on March 3, 2005.

Issued in Renton, Washington, on January 18, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–1514 Filed 1–26–05; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR part 305

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act (''Appliance Labeling Rule'')

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (''Commission'') amends its Appliance Labeling Rule (''Rule'') by publishing new ranges of comparability to be used on required labels for compact and standard-sized clothes washers. The Commission is also making several technical corrections to language in the Rule related to clothes washers and dishwashers.

EFFECTIVE DATE: The amendments announced in this document will become effective on April 27, 2005.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, Attorney, Division of Enforcement, Federal Trade Commission, Washington, DC 20580 (202) 326–2889.

SUPPLEMENTARY INFORMATION: The Rule was issued by the Commission in 1979, 44 FR 66466 (Nov. 19, 1979), in response to a directive in the Energy Policy and Conservation Act of 1975 (''EPCA'').[1] The Rule covers several categories of major household appliances including clothes washers.

I. Background

The Rule requires manufacturers of all covered appliances to disclose specific energy consumption or efficiency information (derived from the DOE test procedures) at the point of sale in the form of an ''EnergyGuide'' label and in catalogs. The Rule requires manufacturers to include, on labels and fact sheets, an energy consumption or efficiency figure and a ''range of comparability.'' This range shows the highest and lowest energy consumption or efficiencies for all comparable appliance models so consumers can compare the energy consumption or efficiency of other models (perhaps competing brands) similar to the labeled model. The Rule also requires manufacturers to include, on labels for some products, a secondary energy usage disclosure in the form of an estimated annual operating cost based on a specified DOE national average cost for the fuel the appliance uses.

Section 305.8(b) of the Rule requires manufacturers, after filing an initial report, to report certain information annually to the Commission by specified dates for each product type.[2] These reports, which assist the Commission in preparing the ranges of comparability, contain the estimated annual energy consumption or energy efficiency ratings for the appliances derived from tests performed pursuant to the DOE test procedures. Because manufacturers regularly add new models to their lines, improve existing models, and drop others, the data base from which the ranges of comparability are calculated is constantly changing. To keep the required information on labels consistent with these changes, the Commission will publish new ranges if an analysis of the new information indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission will publish a statement that the prior ranges remain in effect for the next year.

II. 2004 Clothes Washer Ranges

The Commission has analyzed the 2004 annual data submissions for clothes washers. The data submissions show a significant change in the range of comparability scale for both compact and standard-size clothes washers. Accordingly, the Commission is publishing new ranges of comparability for clothes washers in Appendix F1 and Appendix F2 of the Rule.[3]

In addition to using these new ranges, manufacturers of clothes washers must now base the disclosures of estimated annual operating cost required at the bottom of EnergyGuide labels for clothes washers on the 2004 Representative Average Unit Costs of Energy for electricity (8.60 cents per kiloWatt-hour) and natural gas (91.0 cents per therm) that were published by DOE on January 27, 2004 (69 FR 3907) and by the Commission on April 30, 2004 (69 FR 23650). The new ranges will become effective April 27, 2005. Manufacturers may begin using the new ranges before that date.

The Commission is also making a minor correction to the capacity designations in Appendices F1 and F2.

[1] 42 U.S.C. 6294. The statute also requires the Department of Energy (''DOE'') to develop test procedures that measure how much energy the appliances use, and to determine the representative average cost a consumer pays for the different types of energy available.

[2] Reports for clothes washers are due October 1.

[3] In 2003, the Commission published amendments to the clothes washer label to require advisory language related to the new test procedure on labels for all models produced beginning on January 1, 2004 (see 68 FR 36458 (June 18, 2003)). The data submitted to FTC this year reflects the results of the new test procedure (10 CFR Part 430, Subpt. B, App. J1).

The Rule currently indicates that a standard model has a tub capacity of 1.6 cu. ft. or 13 gallons of water or more. Although the 1.6 cu. ft. figure accurately reflects DOE requirements (see 10 CFR part 430, subpart B, App. J1), the reference to 13 gallons reflects an incorrect conversion of cubic feet to gallons. In addition, this reference to gallons is irrelevant for labeling purposes (see 16 CFR 305.7(g)) and may cause confusion for manufacturers.

Accordingly, the Commission is amending Appendices F1 and F2 to eliminate the reference to gallons. The Commission is also updating the language in section 305.7(g) to reflect the new DOE test procedure at 10 CFR part 430 subpart B, App. J1 and to eliminate the irrelevant reference to gallons.

III. Minor Correction to Sample Dishwasher Label

The Commission is also amending Sample Label 4 in Appendix L to remove language that was inadvertently included in amendments issued on September 9, 2004. A portion of the explanatory language on the sample label incorrectly read: ''Based on four wash loads a week using the normal cycle and a 2004 U.S. Government national average cost of 8.60¢ per kWh for electricity and 91.0¢ per therm for natural gas.'' The correct statement as required by section 305.11(a)(5)(H)(2) of the Rule is: ''Based on four wash loads a week and a 2004 U.S. Government national average cost of 8.60¢ per kWh for electricity and 91.0¢ per therm for natural gas.''

IV. Administrative Procedure Act

The amendments published in this notice involve routine, technical or minor corrective changes to the labeling requirements in the Rule. These technical amendments merely provide a routine change to the range and cost information required on EnergyGuide labels. Accordingly, the Commission finds for good cause that public comment for these technical, procedural amendments is impractical and unnecessary (5 U.S.C. 553(b)(A)(B) and (d)).

V. Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a Regulatory Flexibility Act analysis (5 U.S.C. 603–604) are not applicable to this proceeding because the amendments do not impose any new obligations on entities regulated under the Appliance Labeling Rule. These technical amendments merely provide a routine change to the range information required on EnergyGuide labels. Thus, the amendments will not have a ''significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605. The Commission has concluded, therefore, that a regulatory flexibility analysis is not necessary, and certifies, under Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the amendments announced today will not have a significant economic impact on a substantial number of small entities.

VI. Paperwork Reduction Act

In a June 13, 1988 notice (53 FR 22106), the Commission stated that the Rule contains disclosure and reporting requirements that constitute ''information collection requirements'' as defined by 5 CFR 1320.7(c)), the regulation that implements the Paperwork Reduction Act.[4] The Commission noted that the Rule had been reviewed and approved in 1984 by the Office of Management and Budget (''OMB'') and assigned OMB Control No. 3084–0068. OMB has extended its approval for its recordkeeping and reporting requirements until December 31, 2007. The amendments now being adopted do not change the substance or frequency of the recordkeeping, disclosure, or reporting requirements and, therefore, do not require further OMB clearance.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

■ Accordingly, 16 CFR part 305 is amended as follows:

PART 305—[AMENDED]

■ 1. The authority citation for part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

■ 2. In § 305.7, paragraph (g) is revised to read as follows:

§ 305.7 Determinations of capacity.

* * * * *

(g) Clothes washers. The capacity shall be the tub capacity as determined according to appendix J1 to 10 CFR part 430, subpart B, in the terms ''standard'' or ''compact'' as defined in appendix J1.

* * * * *

■ 3. Appendix F1 to part 305 is revised to read as follows:

Appendix F1 to Part 305—Standard Clothes Washers

Range Information

''Standard'' includes all household clothes washers with a tub capacity of 1.6 cu. ft. or more.

Capacity	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Standard	113	680

Cost Information

When the above range of comparability is used on EnergyGuide labels for standard clothes washers, the estimated annual operating cost disclosure appearing in the box at the bottom of the labels must be derived using the 2004 Representative Average Unit Costs for electricity (8.60¢ per kiloWatt-hour) and natural gas (91.0¢ per therm), and the text below the box must identify the costs as such.

■ 4. Appendix F2 to part 305 is revised to read as follows:

Appendix F2 to Part 305—Compact Clothes Washers

Range Information

''Compact'' includes all household clothes washers with a tub capacity of less than 1.6 cu. ft.

Capacity	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Compact	125	223

Cost Information

When the above range of comparability is used on EnergyGuide labels for compact clothes washers, the estimated annual operating cost disclosure appearing in the box at the bottom of the labels must be derived using the 2004 Representative Average Unit Costs for electricity (8.60¢ per kiloWatt-hour) and natural gas (91.0¢ per therm), and the text below the box must identify the costs as such.

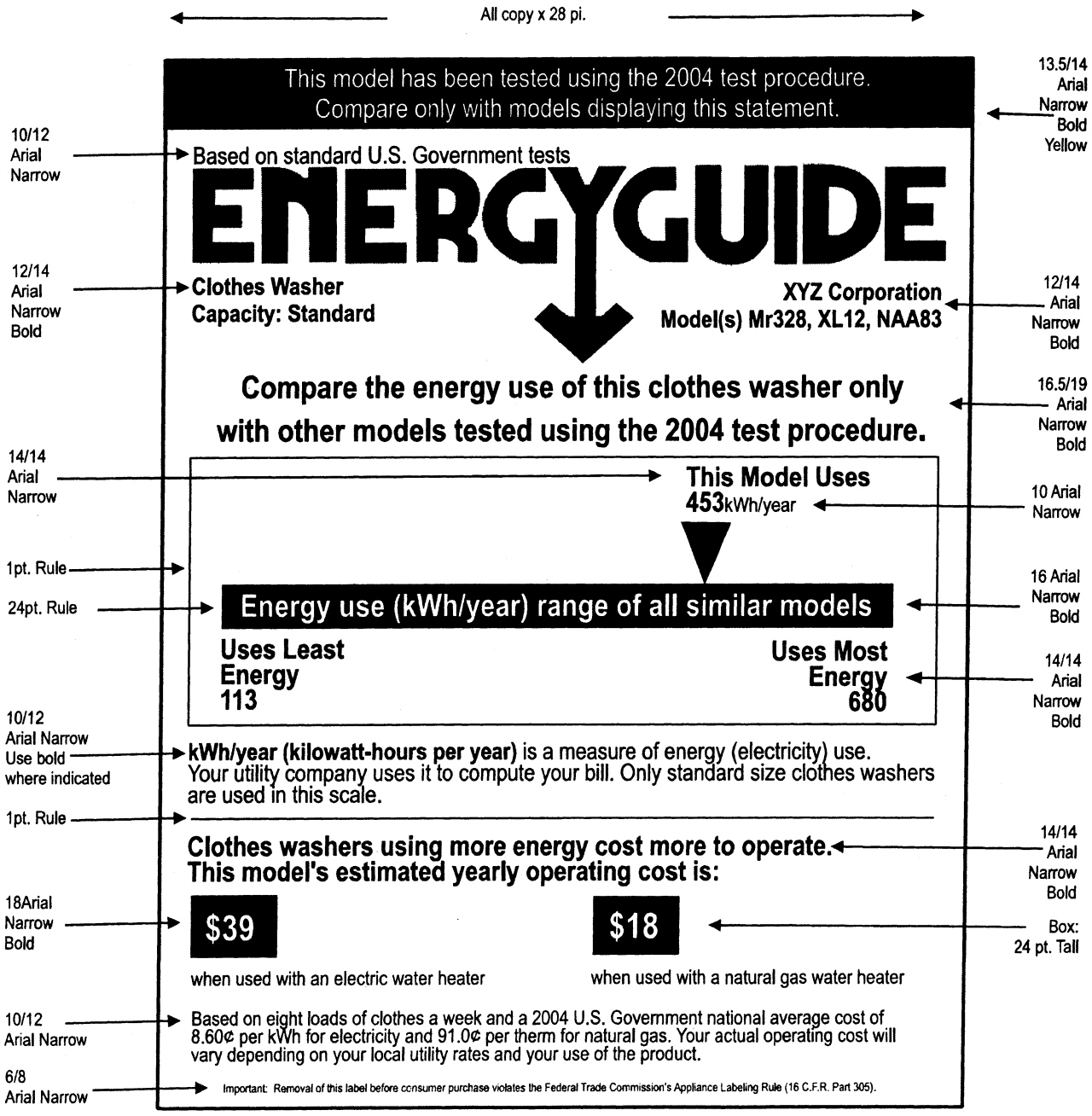
■ 5. Appendix L to part 305 is amended by revising Prototype Label 2, Sample Label 3, and Sample Label 4 to read as follows:

Appendix L to Part 305—Sample Labels

* * * * *

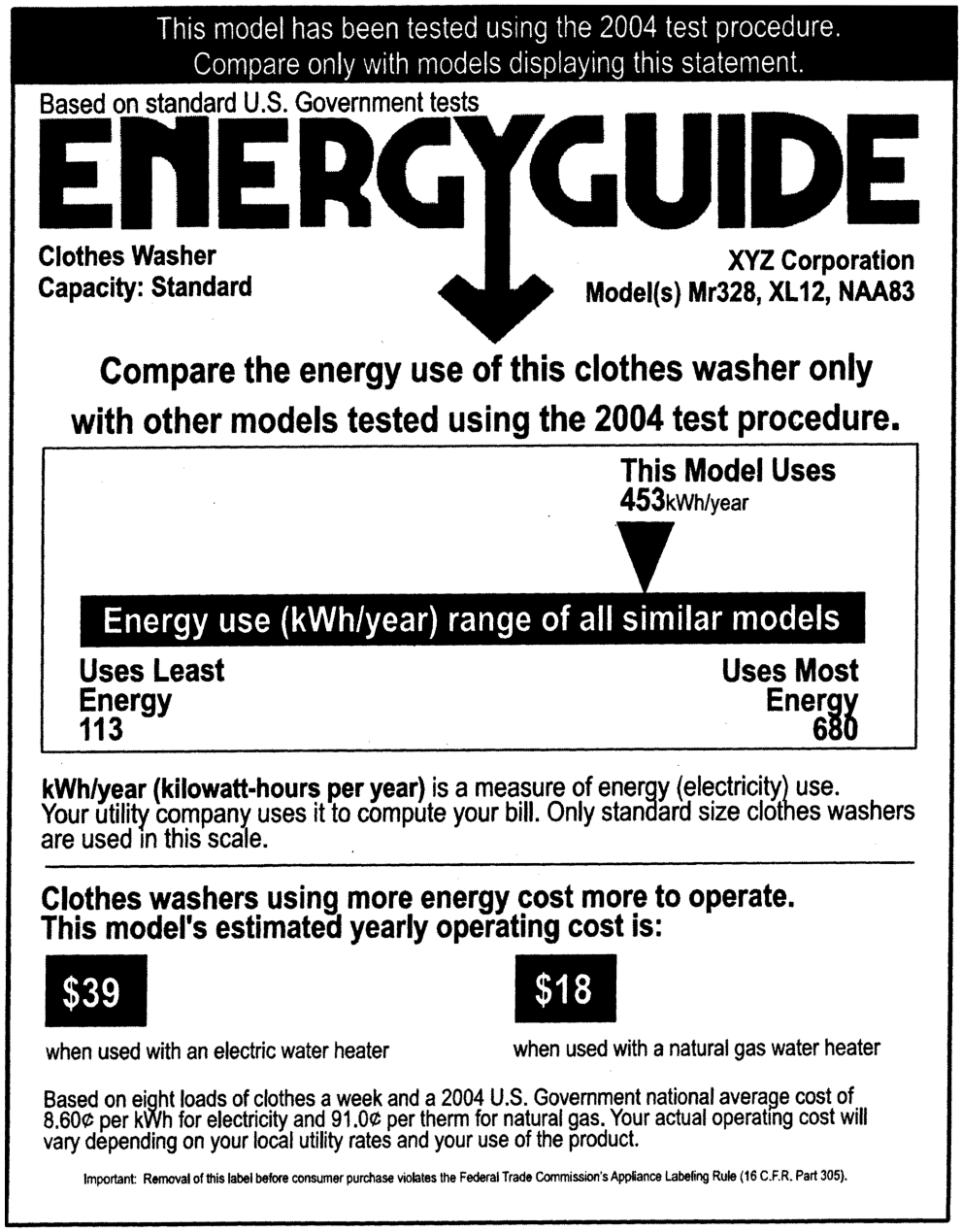
[4] 44 U.S.C. 3501–3520.

All copy Arial Narrow Regular or Bold as below.
Helvetica Condensed series typeface or other equivalent also acceptable.

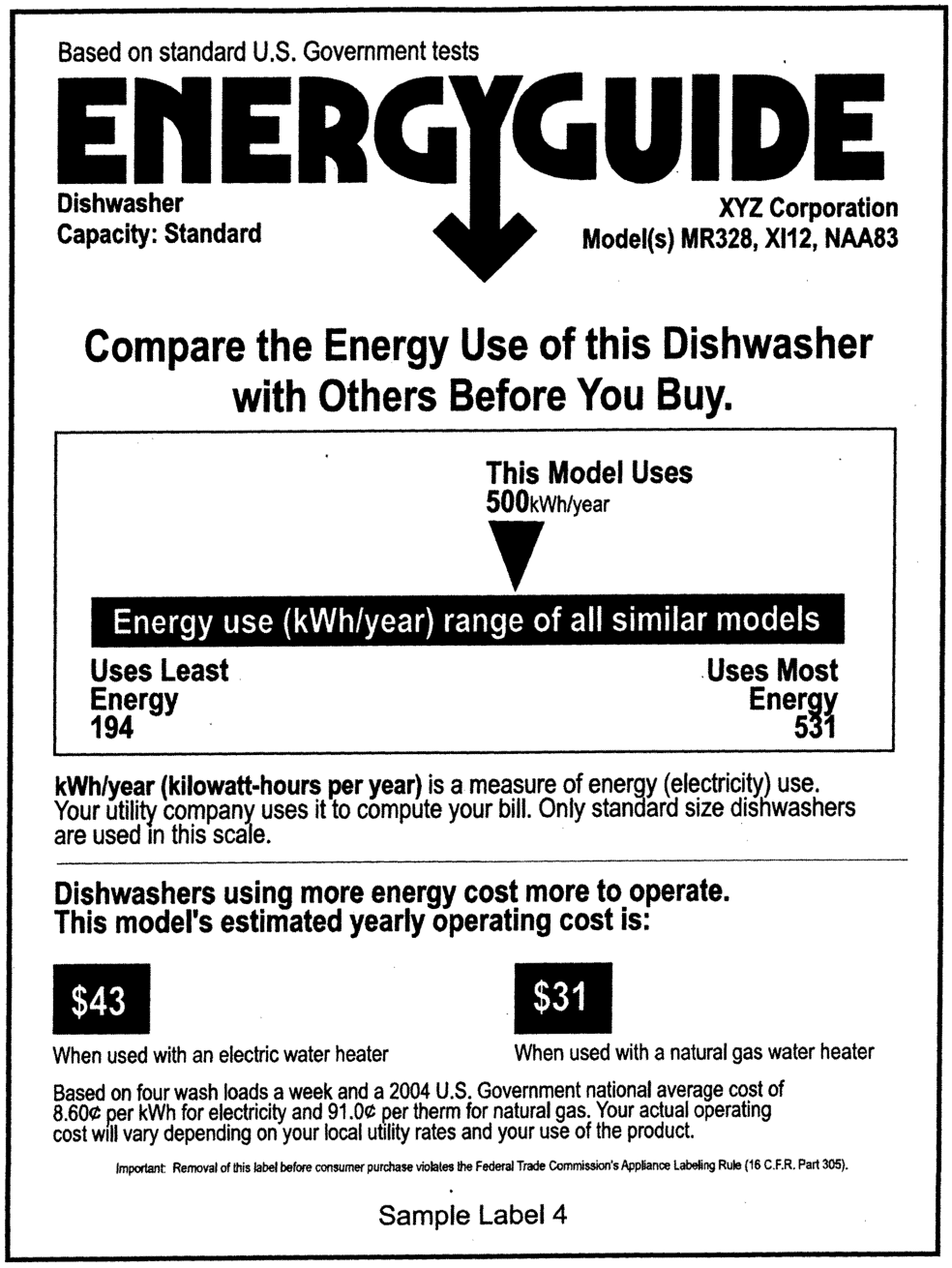


Prototype Label 2

* * * * *



Sample Label 3



Sample Label 4

BILLING CODE 6750–01–C

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 05–1498 Filed 1–26–05; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD 07–05–001]

RIN 1625–AA11

Special Local Regulation; Annual Gasparilla Marine Parade, Hillsborough Bay, Tampa, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the regulations regarding the Annual Gasparilla Marine Parade, Hillsborough Bay, and Tampa, FL. This action is necessary because the Parade will be held on January 29, 2005, instead of the first Saturday in February as established by permanent regulation. Also, the Coast Guard and the Parade coordinators have agreed on a modified parade route to minimize security and safety concerns and reduce congestion in the Sparkman and Ybor channels in vicinity of commercial port facilities.

DATES: This rule is effective from 9 a.m. on January 29, 2005, until 2:30 p.m. on February 5, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [CGD 07–05–001] and are available for inspection or copying at Marine Safety Office Tampa, 155 Columbia Drive, Tampa, Florida 33606–3598 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Jennifer Andrew at Marine Safety Office Tampa (813) 228–2191 Ext. 8101.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM for this rule would be contrary to the public interest since security and safety concerns in vicinity of commercial facilities on the Sparkman and Ybor channels require redirection of the parade route in order to minimize potential danger to the public, the port and waterways. The Coast Guard will issue a broadcast notice to mariners to advise mariners of the restriction.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. To alleviate security and safety concerns, it is in the public interest that this rule be effective on the rescheduled date for the event, which will occur prior to 30 days after publication.

Background and Purpose

The Annual Gasparilla Marine Parade is governed by a permanent regulation published at 33 CFR 100.734 and is normally held on the first Saturday in February. This year, the event is being moved to January 29, 2005, because event coordinators were concerned there would be a lack of participation if the event was held during the weekend of the Super Bowl. The effective dates of this rule include the time from the new date until the date on which the event is normally held in order to make the regulation enforceable on January 29, 2005 and to remove existing restrictions normally imposed on the first Saturday in February.

The proximity of vessels and persons to high profile commercial port facilities in the Port of Tampa, Florida, as well as waterway congestion in the vicinity of these facilities, continue to generate security and safety concerns for the Coast Guard, the marine industry and the public. To alleviate these concerns, the Coast Guard Captain of the Port Tampa and event planners for this parade have coordinated efforts to modify the existing parade route to avoid parade transit and significant congestion in the vicinity of commercial facilities on the Sparkman and Ybor channels.

Discussion of Rule

This rule is necessary to accommodate the change in date of the event and to modify the parade route to reflect the coordinated efforts of the Coast Guard and event planners. The portions of the parade route that transit the Sparkman and Ybor channels have been removed from the parade route for this year's events.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the policies and procedures of DHS is unnecessary. The short duration of this regulation would have little, if any, economic impact.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Hillsborough Bay and its tributaries north of a line drawn along latitude 27° 51′ 18″ N (Coordinates Reference Datum: NAD 1983).

The amendments to the current existing regulation will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for one day and only commercial marine traffic will be precluded from entering the regulated area. Minimal marine traffic is expected to transit this area. Before the effective period, we will issue maritime advisories widely available to users of the waterway.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a

State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does 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.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. As a special local regulation issued in conjunction with a marine parade, this rule satisfies the requirements of paragraph (34)(h). Under figure 2–1, paragraph (34)(h), of the instruction, an ''Environmental Analysis Check List'' and a draft ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 100

Regattas and marine parades.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

■ 2. From 9 a.m. on January 29, 2005, until 2:30 p.m. on February 5, 2005, in § 100.734, suspend paragraphs (a), (b) and (c), and add new paragraphs (d) and (e) to read as follows:

§ 100.734 Annual Gasparilla Marine Parade; Hillsborough Bay, Tampa, FL.

* * * * *

(d) *Regulated area.* A regulated area is established consisting of all waters of Hillsborough Bay and its tributaries north of a line drawn along latitude 27° 51′ 18″ N. The regulated area includes the following in their entirety: Hillsborough Cut ''D'' Channel, Seddon Channel and the Hillsborough River south of the John F. Kennedy Bridge. Coordinates Reference Datum, NAD 1983.

(e) *Special Local Regulations.* (1) Entry into the regulated area is prohibited to all commercial marine traffic from 9 a.m. to 2:30 p.m. EST on January 29, 2005.

(2) The regulated area is an idle speed, ''no wake'' zone.

(3) All vessels within the regulated area shall stay clear of and give way to all vessels in parade formation in the Gasparilla Marine Parade.

(4) When within the marked channels of the parade route, vessels participating in the Gasparilla Marine Parade may not exceed the minimum speed necessary to maintain steerage.

(5) Jet skis and vessels without mechanical propulsion are prohibited from the parade route.

(6) Northbound vessels in excess of 80 feet in length without mooring arrangements made prior to January 29, 2005, are prohibited from entering Seddon Channel unless the vessel is officially entered in the Gasparilla Marine Parade. All northbound vessels in excess of 80 feet without prior mooring arrangements and not officially entered in the Gasparilla Marine Parade, must use the alternate route through Sparkman Channel.

W.E. Justice,

Captain, U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 05–1509 Filed 1–26–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 41

[Docket No. 2003–P–026]

RIN 0651–AB54

Changes To Implement the Patent Fee Related Provisions of the Consolidated Appropriations Act, 2005

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Consolidated Appropriations Act, 2005 (Consolidated Appropriations Act), revises patent fees in general, and provides for a search fee and examination fee that are separate

from the filing fee, during fiscal years 2005 and 2006. This final rule revises the patent fees set forth in the rules of practice to conform them to the patent fees set forth in the Consolidated Appropriations Act.

DATES: *Effective Date:* December 8, 2004.

Applicability Date: The changes in this final rule apply to all patents (including patents in reexamination proceedings), whenever granted, and to all patent applications pending on or after December 8, 2004.

FOR FURTHER INFORMATION CONTACT: Robert W. Bahr, Senior Patent Attorney, Office of the Deputy Commissioner for Patent Examination Policy, by telephone at (571) 272–8800, by mail addressed to: Box Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA, 22313–1450, or by facsimile to (571) 273–7735, marked to the attention of Robert W. Bahr.

SUPPLEMENTARY INFORMATION: The Consolidated Appropriations Act (section 801 of Division B) provides that 35 U.S.C. 41(a), (b), and (d) shall be administered in a manner that revises patent application fees (35 U.S.C. 41(a)) and patent maintenance fees (35 U.S.C. 41(b)), and provides for a separate filing fee (35 U.S.C. 41(a)), search fee (35 U.S.C. 41(d)(1)), and examination fee (35 U.S.C. 41(a)(3)) during fiscal years 2005 and 2006. *See* Pub. L. 108–447, 118 Stat. 2809 (2004). This final rule revises the patent fees set forth in the rules of practice in title 37 of the Code of Federal Regulations (CFR) to conform them to the patent fees set forth in the Consolidated Appropriations Act. The citations to 35 U.S.C. 41 in this final rule are citations to 35 U.S.C. 41 as it is being administered during fiscal years 2005 and 2006 pursuant to the Consolidated Appropriations Act.

The Consolidated Appropriations Act also provides that the provisions of 35 U.S.C. 111(a) for payment of the fee for filing the application apply to the payment of the examination fee (35 U.S.C. 41(a)(3)) and search fee (35 U.S.C. 41(d)(1)) in an application filed under 35 U.S.C. 111(a), and that the provisions of 35 U.S.C. 371(d) for the payment of the national fee apply to the payment of the examination fee (35 U.S.C. 41(a)(3)) and search fee (35 U.S.C. 41(d)(1)) in an international application filed under the Patent Cooperation Treaty (PCT) and entering the national stage under 35 U.S.C. 371. *See* 35 U.S.C. 41(a)(3) and 41(d)(1)(C). Thus, the examination fee and search fee are due on filing in an application filed under 35 U.S.C. 111(a) or on commencement of the national stage in a PCT international application, but may be paid at a later time if paid within such period and under such conditions (including payment of a surcharge) as may be prescribed by the Director. *See* H. R. Rep. 108–241, at 16 (2003) (H. R. Rep. 108–241 contains an analysis and discussion of an identical provision in H.R. 1561, 108th Cong. (2004)).

The Consolidated Appropriations Act also provides that the small entity reduction set forth in 35 U.S.C. 41(h)(1) also applies to the search fee provided for in 35 U.S.C. 41(d)(1) (35 U.S.C. 41(h)(1)), and provides that the filing fee charged under 35 U.S.C. 41(a)(1)(A) shall be reduced by 75 percent with respect to its application to any small entity ''if the application is filed by electronic means as prescribed by the Director'' (35 U.S.C. 41(h)(3)). Since 35 U.S.C. 41(h)(3) applies only to the filing fee charged under 35 U.S.C. 41(a)(1)(A) (the filing fee for a nonprovisional original utility application), the 75 percent fee reduction set forth in 35 U.S.C. 41(h)(3) does not apply to design or plant applications, reissue applications, or provisional applications.

The Consolidated Appropriations Act also provides that the Office may, by regulation, provide for a refund of: (1) Any part of the excess claims fee specified in 35 U.S.C. 41(a)(2) for any claim that is canceled before an examination on the merits has been made of the application under 35 U.S.C. 131; (2) any part of the search fee for any applicant who files a written declaration of express abandonment as prescribed by the Office before an examination has been made of the application under 35 U.S.C. 131; and (3) any part of the search fee for any applicant who provides a search report that meets the conditions prescribed by the Office. This final rule does not contain changes to the rules of practice to implement the provisions for a refund of any part of the excess claims fee specified in 35 U.S.C. 41(a)(2) for any claim that is canceled before an examination on the merits has been made of the application under 35 U.S.C. 131, and any part of the search fee for any applicant who files a written declaration of express abandonment as prescribed by the Office before an examination has been made of the application under 35 U.S.C. 131.

The revised patent fees specified in 35 U.S.C. 41 apply to all patents, whenever granted, and to all applications pending on or filed after December 8, 2004, except as follows: The provisions of 35 U.S.C. 41(a)(1) (filing fee and application size fee), 35 U.S.C. 41(a)(3) (examination fee), and 35 U.S.C. 41(d)(1) (search fee) apply only to applications for patent filed under 35 U.S.C. 111 on or after December 8, 2004, and to international applications entering the national stage under 35 U.S.C. 371 for which the basic national fee specified in 35 U.S.C. 41 was not paid before December 8, 2004. In addition, the provisions of 35 U.S.C. 41(a)(2) (excess claims fee) apply only as to those claims in independent form and those claims (whether independent or dependent) that, after taking into account the claims that have been canceled, are in excess of the number of claims in independent form and claims (whether independent or dependent), respectively, for which the excess claims fee specified in 35 U.S.C. 41 was paid before December 8, 2004.

The applicable fee amount is the fee amount in effect on the day the fee is paid (in full). The day a fee is paid is the date of receipt of the fee payment in the Office under § 1.6, or the date reflected on a proper certificate of mailing or transmission on the fee payment, where such a certificate is authorized under § 1.8. Use of a certificate of mailing or transmission is not authorized for items that are specifically excluded from the provisions of § 1.8: *e.g.*, the filing of a national or international application for a patent. *See* § 1.8(a)(2). The date of receipt under 37 CFR 1.6 of patent-related correspondence delivered by the ''Express Mail Post Office to Addressee'' service of the United States Postal Service (USPS) is the date of deposit of the correspondence with the USPS. *See* §§ 1.6(a)(2) and 1.10(a)(1). The date of deposit with the USPS is shown by the ''date-in'' on the ''Express Mail'' mailing label or other official USPS notation. *See* § 1.10(a)(2).

Discussion of Specific Rules

Title 37 of the Code of Federal Regulations, Parts 1 and 41, are amended as follows:

Section 1.16: Section 1.16 is amended to set forth the application filing, excess claims, search, examination, and application size fees as specified in 35 U.S.C. 41(a) and (d)(1) as amended by the Consolidated Appropriations Act.

Sections 1.16(a) through (e) set forth the basic filing fees under the Consolidated Appropriations Act for applications filed under 35 U.S.C. 111 on or after December 8, 2004: (1) The basic filing fee for an original nonprovisional utility application is $300.00 ($150.00 for a small entity, and $75.00 for a small entity if the application is submitted in compliance with the Office electronic filing system); (2) the basic filing fee for an original

design application is $200.00 ($100.00 for a small entity); (3) the basic filing fee for an original nonprovisional plant application is $200.00 ($100.00 for a small entity); (4) the basic filing fee for a provisional application is $200.00 ($100.00 for a small entity); and (5) the basic filing fee for a reissue application is $300.00 ($150.00 for a small entity). *See* 35 U.S.C. 41(a)(1)(A) through (E).

The Consolidated Appropriations Act (Section 803(b)(1)(B)(i) of Division B) provides that the basic filing fees specified in 35 U.S.C. 41(a)(1) (except for the filing fee specified in 35 U.S.C. 41(a)(1)(D) for a provisional application) apply only to applications filed on or after December 8, 2004. Therefore, § 1.16 also sets forth the basic filing fee for applications filed under 35 U.S.C. 111 before December 8, 2004: (1) The basic filing fee for an original nonprovisional utility application and for a reissue application is $790.00 ($395.00 for a small entity); (2) the basic filing fee for an original design application is $350.00 ($175.00 for a small entity); and (3) the basic filing fee for an original nonprovisional plant application is $550.00 ($275.00 for a small entity). *See Revision of Patent Fees for Fiscal Year 2005,* 69 FR 52604 (Aug. 27, 2004) (final rule), and *Certain Fees to be Adjusted,* 1285 *Off. Gaz. Pat. Office* 185 (Aug. 31, 2004) (notice). These basic filing fees apply to applications filed before December 8, 2004, even if the basic filing fee is not paid until on or after December 8, 2004. The Consolidated Appropriations Act (Section 803(b)(1)(B)(ii) of Division B) also provides that the basic filing fee for a provisional application applies to all provisional applications filed before, on, or after December 8, 2004, in which the filing fee was not paid before December 8, 2004.

Section 1.16(f) sets forth the late filing surcharge for a nonprovisional application, and § 1.16(g) sets forth the late filing surcharge for a provisional application (formerly in §§ 1.16(e) and (l), respectively). *See also* §§ 1.53(f) and (g), respectively.

Section 1.16(h) sets forth the excess claims fee for each independent claim in excess of three; namely, $200 ($100 for a small entity) for each claim in independent form in excess of three. *See* 35 U.S.C. 41(a)(2)(A).

Section 1.16(i) sets forth the excess claims fee for each claim (whether dependent or independent) in excess of twenty; namely, $50 ($25 for a small entity) for each claim (whether dependent or independent) in excess of twenty. *See* 35 U.S.C. 41(a)(2)(B).

The excess claims fees specified in § 1.16 apply to applications filed before December 8, 2004, and to applications pending on or after December 8, 2004. The Consolidated Appropriations Act (Section 803(b)(1)(C) of Division B) provides that the excess claims fees specified in 35 U.S.C. 41(a)(2) shall apply only as to those claims (independent or dependent) that, after taking into account any claims that have been canceled, are in excess of the number of claims for which the excess claims fee specified in 35 U.S.C. 41 was paid before December 8, 2004. Thus, the Office will charge the excess claims fees specified in § 1.16(h) and (i) if an applicant in an application filed before and pending on or after December 8, 2004, adds a claim (independent or total) in excess of the number of claims (independent or total) for which the excess claims fee was previously paid (under the current or a previous fee schedule). Specifically, the excess claims fees specified in § 1.16(h) and (i) apply to any excess claims fee paid on or after December 8, 2004, regardless of the filing date of the application and regardless of the date on which the claim necessitating the excess claims fee payment was added to the application. For example, in an application (non-small entity) that contains six independent claims and thirty total claims for which the excess claims fee specified in § 1.16 was previously paid: (1) No excess claims fee is due if the applicant cancels ten claims, two of which are independent, and adds ten claims, two of which are independent; (2) the excess claims fee for a seventh independent claim ($200.00) is due if the applicant cancels ten claims, two of which are independent, and adds ten claims, three of which are independent; (3) the excess claims fee for a thirty-first claim ($50.00) is due if the applicant cancels ten claims, two of which are independent, and adds eleven claims, two of which are independent; and (4) the excess claims fees for a seventh independent claim ($200.00) and a thirty-first claim ($50.00) are due if the applicant cancels ten claims, two of which are independent, and adds eleven claims, three of which are independent.

The excess claims fees specified in § 1.16(h) and (i) also apply to all reissue applications pending on or after December 8, 2004. Under 35 U.S.C. 41(a)(2) as amended by the Consolidated Appropriations Act, the claims in the original patent are not taken into account in determining the excess claims fee for a reissue application. Under ''former'' 35 U.S.C. 41, excess claims fees were required in reissue applications for each claim in independent form in excess of the number of independent claims of the original patent, and for each claim (whether independent or dependent) in excess of twenty and also in excess of the number of claims of the original patent. Thus (in addition to excess claims under ''former'' 35 U.S.C. 41 for which the excess claims fee was not paid before December 8, 2004), the excess claims fees specified in § 1.16(h) and (i) are required for each independent claim in excess of three that is presented in a reissue application on or after December 8, 2004, and for each claim (whether independent or dependent) in excess of twenty that is presented in a reissue application on or after December 8, 2004.

Section 1.16(j) sets forth the fee for an application that contains a multiple dependent claim (formerly in § 1.16(d)). *See* 35 U.S.C. 41(a)(2)(C).

Sections 1.16(k), (l), (m), and (n) set forth the search fees as provided for in the Consolidated Appropriations Act (Section 803(c)(1) of Division B) for applications filed under 35 U.S.C. 111(a) on or after December 8, 2004. The Consolidated Appropriations Act provides for the following search fees during fiscal years 2005 and 2006: (1) $500.00 for the search of each application for an original patent, except for design, plant, provisional, or international application; (2) $100.00 for the search of each application for an original design patent; (3) $300.00 for the search of each application for an original plant patent; and (4) $500.00 for the search of each application for the reissue of a patent. These search fee amounts supersede the search fee setting provisions of 35 U.S.C. 41(d)(1)(A) and (B) (which authorize the Office to set a cost-recovery based search fee, with a number of limitations), but do not supersede provisions for the payment of search fees in 35 U.S.C. 41(d)(1)(C), the refund authorization provisions in 35 U.S.C. 41(d)(1)(D), and the small entity reduction provisions in 35 U.S.C. 41(h)(1).

Sections 1.16(o), (p), (q), and (r) set forth the examination fees specified in 35 U.S.C. 41(a)(3) for applications filed under 35 U.S.C. 111(a) on or after December 8, 2004: (1) The examination fee for each application for an original patent, except for design, plant, or provisional applications, is $200.00 ($100.00 for a small entity); (2) the examination fee for each application for an original design patent is $130.00 ($65.00 for a small entity); (3) the examination fee for each application for an original plant patent is $160.00 ($80.00 for a small entity); and (4) the examination fee for each application for

the reissue of a patent is $600.00 ($300.00 for a small entity).

Section 1.16(s) sets forth the fee for any application (including any provisional applications and any reissue application) filed under 35 U.S.C. 111 on or after December 8, 2004, the specification and drawings of which, excluding any sequence listing or computer program listing filed in an electronic medium as prescribed by the Director (*see* § 1.52(f)), exceed 100 sheets of paper (the ''application size fee''). The application size fee set forth in § 1.16(s) is $250.00 ($125.00 for a small entity) for each additional 50 sheets or fraction thereof. *See* 35 U.S.C. 41(a)(1)(G).

The provision in 35 U.S.C. 41(a)(1)(G) for the Office to prescribe the paper size equivalent of an application filed in whole or in part in an electronic medium for purposes of the fee specified in 35 U.S.C. 41(a)(1)(G) (§ 1.16(s)) will be implemented in a separate rule making.

In situations in which a payment submitted for the fees due on filing in a nonprovisional application filed under 35 U.S.C. 111(a) is insufficient and the applicant has not specified the fees to which the payment is to be applied, the Office will apply the payment in the following order until the payment is expended: (1st) the basic filing fee (§ 1.16(a), (b), (c), or (e)); (2nd) the application size fee (§ 1.16(s)); (3rd) the late filing surcharge (§ 1.16(f)); (4th) the processing fee for an application filed in a language other than English (§ 1.17(i)); (5th) the search fee (§ 1.16(k), (l), (m), or (n)); (6th) the examination fee (§ 1.16(o), (p), (q), or (r); and (7th) the excess claims fee (§§ 1.16(h), (i), and (j)). In situations in which a payment submitted for the fees due on filing in a provisional application filed under 35 U.S.C. 111(b) is insufficient and the applicant has not specified the fees to which the payment is to be applied, the Office will apply the payment in the following order until the payment is expended: (1st) the basic filing fee (§ 1.16(d)); (2nd) the application size fee (§ 1.16(s)); and (3rd) the late filing surcharge (§ 1.16(g)).

Since the basic filing fee, search fee, and examination fee under the new patent fee structure are often referred to as the ''filing fee,'' the Office will treat a deposit account authorization to charge ''the filing fee'' as an authorization to charge the applicable fees under 1.16 (the basic filing fee, search fee, examination fee, any excess claims fee, and any application size fee) to the deposit account, and will treat a deposit account authorization to charge ''the basic filing fee'' as an authorization to charge the applicable basic filing fee, search fee, and examination fee to the deposit account. Any deposit account authorization to charge the filing fee but not the search fee or examination fee must specifically limit the authorization by reference to one or more of paragraphs (a) through (e) of § 1.16.

The filing and processing fees for international applications filed under 35 U.S.C. 363 are covered in §§ 1.445 and 1.482, and the national fees (including search and examination fees) for applications entering the national stage under 35 U.S.C. 371 from international applications are covered in § 1.492.

Section 1.17: Section 1.17 is amended to set forth the application processing fees as specified in 35 U.S.C. 41(a) as amended by the Consolidated Appropriations Act.

Section 1.17(a) sets forth the extension fees for a petition for an extension of time under 35 U.S.C. 41(a)(8) and § 1.136(a): (1) the petition fee for reply within the first month is $120.00 ($60.00 for a small entity); (2) the petition fee for reply within the second month is $450.00 ($225.00 for a small entity); (3) the petition fee for reply within the third month is $1,020.00 ($510.00 for a small entity); (4) the petition fee for reply within the fourth month is $1,590.00 ($795.00 for a small entity); and (5) the petition fee for reply within the fifth month is $2,160.00 ($1,080.00 for a small entity). *See* 35 U.S.C. 41(a)(8).

Sections 1.17(l) and (m) set forth petition fees for the revival of abandoned applications, the delayed payment of issue fees, or the delayed response by the patent owner in reexamination proceedings: (1) the fee under the unavoidable standard provided for in § 1.137(a) is $500.00 ($250.00 for a small entity) (§ 1.17(l)); and (2) the fee under the unintentional standard provided for in § 1.137(b) is $1,500.00 ($750 for a small entity) (§ 1.17(m)). *See* 35 U.S.C. 41(a)(7).

The Consolidated Appropriations Act does not revise the fees for: (1) A request for continued examination under 35 U.S.C. 132(b) and § 1.114; (2) a submission after final rejection under § 1.129(a); or (3) each additional invention to be examined under § 1.129(b). Therefore: (1) the fee for a request for continued examination under 35 U.S.C. 132(b) and § 1.114 remains at $790.00 ($395.00 for a small entity); (2) the fee for a submission after final rejection under § 1.129(a) remains at $790.00 ($395.00 for a small entity); and (3) the fee for each additional invention to be examined under § 1.129(b) remains at $790.00 ($395.00 for a small entity). *See Revision of Patent Fees for Fiscal Year 2004,* 69 FR at 52604, and *Certain Fees to be Adjusted,* 1285 *Off. Gaz. Pat. Office* at 186.

Section 1.18: Section 1.18 is amended to set forth the patent issue fees as specified in 35 U.S.C. 41(a)(4) as amended by the Consolidated Appropriations Act: (1) The fee for issuing an original utility patent or for issuing a reissue patent is $1,400.00 ($700.00 for a small entity); (2) the fee for issuing an original design patent is $800.00 ($400.00 for a small entity); and (3) the fee for issuing an original plant patent is $1,100.00 ($550.00). *See* 35 U.S.C. 41(a)(4).

Section 1.20: Section 1.20 is amended to provide that excess claims fees as specified in 35 U.S.C. 41(a)(2) as amended by the Consolidated Appropriations Act are applicable to excess claims proposed to be added to a patent by their presentation during a reexamination proceeding. Under ''former'' 35 U.S.C. 41, excess claims fees were included as part of the ''application'' filing fee under 35 U.S.C. 41(a)(1), and thus did not apply during reexamination proceedings. The Consolidated Appropriations Act does not include the excess claims as part of the ''application'' filing fee under 35 U.S.C. 41(a)(1), but separately provides for excess claims fees in 35 U.S.C. 41(a)(2) (as being in addition to the filing fee in 35 U.S.C. 41(a)(1)). 35 U.S.C. 41(a)(2) provides that an excess claims fee is due ''on filing or on presentation at any other time'' (*e.g.*, during a reexamination proceeding) of an independent claim in excess of three or of a claim (whether independent or dependent) in excess of twenty. *See* H. R. Rep. 108–241, at 15 (''[t]he excess claims fees required by [35 U.S.C.] 41(a)(2) are due at the time of presentation of the claim for which payment is required (whether on filing or at a later time) in the application or reexamination proceeding'').

Section 1.20(c)(3) specifically requires $200 ($100 for a small entity) for each claim in independent form in excess of three that is also in excess of the number of claims in independent form in the patent under reexamination. Section 1.20(c)(4) specifically requires $50 ($25 for a small entity) for each claim (whether dependent or independent) in excess of twenty that is also in excess of the number of claims in the patent under reexamination. A claim that has been disclaimed under 35 U.S.C. 253 and § 1.321(a) as of the date of filing of the request for reexamination is not considered to be a claim in the patent under reexamination for purposes of excess claims fee

calculations. Section 1.20(c)(5) provides that if the excess claims fees required by § 1.20(c)(3) and (c)(4) are not paid with the request for reexamination or on later presentation of the claims for which the excess claims fees are due, the fees required by § 1.20(c)(3) and (c)(4) must be paid or the claims canceled by amendment prior to the expiration of the time period set for reply by the Office in any notice of fee deficiency.

The excess claims fees specified in § 1.20(c) apply to all patents, whenever granted, for each independent claim in excess of three and also in excess of the number of independent claims in the patent or for each claim (whether independent or dependent) in excess of twenty and also in excess of the number of claims in the patent that is presented in a reexamination proceeding on or after December 8, 2004 (since no excess claims fee was due under 35 U.S.C. 41 for any claim presented during a reexamination proceeding before December 8, 2004). For example, in a patent (non-small entity) that contains (including as a result of a previous reexamination proceeding) six independent claims and thirty total claims: (1) No excess claims fee is due if the patent owner cancels ten claims, two of which are independent, and adds ten claims, two of which are independent; (2) the excess claims fee for a seventh independent claim ($200.00) is due if the patent owner cancels ten claims, two of which are independent, and adds ten claims, three of which are independent; (3) the excess claims fee for a thirty-first claim ($50.00) is due if the patent owner cancels ten claims, two of which are independent, and adds eleven claims, two of which are independent; and (4) the excess claims fees for a seventh independent claim ($200.00) and a thirty-first claim ($50.00) are due if the patent owner cancels ten claims, two of which are independent, and adds eleven claims, three of which are independent.

Section 1.20(d) sets forth the fee for filing a disclaimer under 35 U.S.C. 253 and § 1.321 in a patent application or patent: $130.00 ($65 for a small entity). *See* 35 U.S.C. 41(a)(5).

Sections 1.20(e), (f), and (g) are amended to set forth the patent maintenance fees as specified in 35 U.S.C. 41(b) as amended by the Consolidated Appropriations Act: (1) the first maintenance fee due at three years and six months after grant is $900.00 ($450.00 for a small entity); (2) the second maintenance fee due at seven years and six months after grant is $2,300.00 ($1,150.00 for a small entity); and (3) the third maintenance fee due at eleven years and six months after grant is $3,800.00 ($1,900.00 for a small entity). *See* 35 U.S.C. 41(b).

Section 1.27: Section 1.27(b) is amended to implement the provision of 35 U.S.C. 41(h)(3), which provides that the fee charged under 35 U.S.C. 41(a)(1)(A) shall be reduced by 75 percent with respect to its application to any small entity ''if the application is filed by electronic means as prescribed by the Director.'' *See* 35 U.S.C. 41(h)(3). Since 35 U.S.C. 41(h)(3) applies only to the filing fee charged under 35 U.S.C. 41(a)(1)(A) (the filing fee for a nonprovisional original utility application under 35 U.S.C. 111(a)), its 75 percent fee reduction does not apply to design or plant applications, reissue applications, or provisional applications. In any event, the Office electronic filing system does not currently provide for design or plant applications, or for international applications filed under the PCT which are entering the national stage under 35 U.S.C. 371.

Section 1.27(b)(1) contains the preexisting provisions of § 1.27(b). Section 1.27(b)(2) provides that submission of an original utility application in compliance with the Office electronic filing system by an applicant who has properly asserted entitlement to small entity status pursuant to § 1.27(c) in the particular original utility application allows the payment of a reduced filing fee pursuant to 35 U.S.C. 41(h)(3) (currently $75.00).

Section 1.27(c) is amended to revise its reference to §§ 1.16 and 1.492 to reflect the corresponding changes to §§ 1.16 and 1.492.

Section 1.33: Section 1.33(c) is amended to re-insert text that was inadvertently deleted in the final rule *Changes to Representation of Others Before the United States Patent and Trademark Office,* 69 FR 35427 (June 24, 2004).

Section 1.51: Section 1.51(b)(4) is amended to indicate that a complete application under §§ 1.53(b) or 1.53(d) (nonprovisional applications filed under 35 U.S.C. 111(a)) includes the prescribed filing fee, search fee, examination fee, and application size fee. Section 1.51(c)(4) is amended to indicate that a complete application under § 1.53(c) (provisional applications filed under 35 U.S.C. 111(b)) includes the prescribed filing fee and application size fee.

Section 1.52: Section 1.52(f)(1) is added to provide that any sequence listing in an electronic medium in compliance with §§ 1.52(e) and 1.821(c) or (e), and any computer program listing filed in an electronic medium in compliance with §§ 1.52(e) and 1.96, will be excluded when determining the application size fee required by § 1.16(s) or § 1.492(j). *See* 35 U.S.C. 41(a)(1)(G) (which provides that a sequence listing or a computer program listing is excluded if filed in an electronic medium as prescribed by the Director).

Section 1.52(f)(2) is added to provide that the paper size equivalent of the specification and drawings of an application submitted via the Office electronic filing system will be considered to be the number of sheets of paper present in the specification and drawings of the application when entered into the Office file wrapper (currently in the Office image file wrapper system) after being rendered by the Office electronic filing system for purposes of computing the application size fee required by § 1.16(s). *See* 35 U.S.C. 41(a)(1)(G) (which provides that the Director shall prescribe the paper size equivalent of an application filed in an electronic medium). Section 1.52(f)(2) further provides that any sequence listing in compliance with § 1.821(c) or (e), and any computer program listing in compliance with § 1.96, submitted via the Office electronic filing system will be excluded when determining the application size fee required by § 1.16(s) if the listing is submitted in American Standard Code for Information Interchange (ASCII) text as part of an associated file of the application. That is, for applications filed via the Office electronic filing system, a sequence listing or a computer program listing is ''filed in an electronic medium as prescribed by the Director'' for purposes of 35 U.S.C. 41(a)(1)(G) only if the listing is submitted in ASCII text as part of an associated file of the application. Thus, for example, sequence listings or computer program listings submitted via the Office electronic filing system in Portable Document Format (PDF) as part of the specification or as Tagg(ed) Image File Format (TIFF) drawing files would not be excluded when determining the application size fee required by § 1.16(s) or § 1.492(j).

Section 1.53: Sections 1.53(c), (f) and (g) are amended to revise their references to § 1.16 to reflect the corresponding changes to § 1.16.

Section 1.53(f) is further amended to provide for any application under § 1.53(b), or any continued prosecution application (CPA) under § 1.53(d) (for design applications), that does not also include the search fee and the examination fee. Section 1.53(f) specifically provides that if an application under § 1.53(b) or a CPA under § 1.53(d) does not include the search fee and the examination fee: (1)

Applicant will be notified and given a period of time within which to pay the search fee and examination fee to avoid abandonment if applicant has provided a correspondence address (§ 1.33(a)); and (2) applicant has two months from the filing date of the application within which to pay the search fee and examination fee to avoid abandonment if applicant has not provided a correspondence address.

Section 1.53(f) is also amended to include the provisions formerly in § 1.16(m) that if the excess claims fees required by §§ 1.16(h) and (i) and multiple dependent claim fee required by § 1.16(j) are not paid on filing or on later presentation of the claims for which the excess claims or multiple dependent claim fees are due, the fees required by §§ 1.16(h), (i), and (j) must be paid or the claims canceled by amendment prior to the expiration of the time period set for reply by the Office in any notice of fee deficiency in order to avoid abandonment.

Section 1.53(f) is also amended to provide that if the application size fee required by § 1.16(s) (if any) is not paid on filing or on later presentation of the amendment necessitating a fee or additional fee under § 1.16(s), the fee required by § 1.16(s) must be paid prior to the expiration of the time period set for reply by the Office in any notice of fee deficiency in order to avoid abandonment. The submission of an amendment in reply to any Office action or notice which necessitates an application size fee or additional application size fee under § 1.16(s) and which does not also include the requisite application size fee under § 1.16(s) is a reply having an omission under § 1.703(c)(7), which will result in a reduction of any patent term adjustment by the number of days (if any) beginning on the day after the date the reply lacking the requisite application size under § 1.16(s) was filed and ending no earlier than the date that the requisite application size fee under § 1.16(s) was filed. *See* § 1.703(c)(7).

Section 1.53(g) is also amended to provide that if the application size fee required by § 1.16(s) (if any) is not paid on filing, the fee required by § 1.16(s) must be paid prior to the expiration of the time period set for reply by the Office in any notice of fee deficiency in order to avoid abandonment.

Section 1.69: Section 1.69 is amended to correct typographical errors.

Section 1.75: Section 1.75(c) is amended to revise its reference to § 1.16 to reflect the corresponding changes to § 1.16.

Section 1.78: Section 1.78(a) is amended to revise its reference to § 1.16 to reflect the corresponding changes to § 1.16.

Section 1.84: Section 1.84(y) is amended to correct an errant cross-reference to former § 1.174.

Section 1.111: Section 1.111(a)(2)(i) is amended to correct a typographical error.

Section 1.136: Section 1.136(b) is amended to correct an errant cross-reference to former § 1.645.

Section 1.211: Section 1.211 is amended to revise its reference to § 1.16 to reflect the corresponding changes to § 1.16. Section 1.211 is also amended to provide that the Office may delay publishing any application until it includes any application size fee required by the Office under § 1.16(s) or § 1.492(j).

Section 1.324: Section 1.324(a) is amended to correct an errant cross-reference to former § 1.634.

Section 1.445: Section 1.445(a) is amended to provide that the search fee set forth in § 1.445(a)(2)(i) is applicable only if a corresponding prior United States national application has been filed under 35 U.S.C. 111(a) and the basic filing fee, search fee, and the examination fee have been paid therein.

Section 1.492: Section 1.492 is amended to set forth the basic national, search, and examination fees for an international application entering the national stage under 35 U.S.C. 371.

Section 1.492(a) sets forth the basic national fee for an international application entering the national stage under 35 U.S.C. 371: $300.00 ($150.00 for a small entity). *See* 35 U.S.C. 41(a)(1)(F).

Section 1.492(b) sets forth the search fees for an international application entering the national stage under 35 U.S.C. 371. The Consolidated Appropriations Act (Section 803(c)(1) of Division B) provides a search fee of $500.00 ($250 for a small entity) for the search of the national stage of each international application during fiscal years 2005 and 2006.

Section 1.492(c) sets forth the examination fee for an international application entering the national stage under 35 U.S.C. 371: $200.00 ($100.00 for a small entity). *See* 35 U.S.C. 41(a)(3).

The basic national fee, search fee, and examination fee specified in § 1.492(a), (b), and (c) apply only to international applications entering the national stage under 35 U.S.C. 371 for which the basic national fee specified in 35 U.S.C. 41 was not paid before December 8, 2004. Section 1.492 does not also specify the basic national fee for an international application entering the national stage under 35 U.S.C. 371 for which the basic national fee specified in 35 U.S.C. 41 was paid before December 8, 2004, because (by definition) the basic national fee for such an application was paid before the effective date of the Consolidated Appropriations Act and this final rule.

Section 1.492(d) sets forth the excess claims fee for each independent claim in excess of three; namely, $200 ($100 for a small entity) for each claim in independent form in excess of three. *See* 35 U.S.C. 41(a)(2)(A).

Section 1.492(e) sets forth the excess claims fee for each claim (whether dependent or independent) in excess of twenty; namely, $50 ($25 for a small entity) for each claim (whether dependent or independent) in excess of twenty. *See* 35 U.S.C. 41(a)(2)(B).

Section 1.492(f) sets forth the fee for an application that contains a multiple dependent claim (formerly in § 1.492(d)). *See* 35 U.S.C. 41(a)(2)(C).

Section 1.492(g) provides that if the excess claims fees required by § 1.492(d) and (e) and multiple dependent claim fee required by § 1.492(f) are not paid with the basic national fee or on later presentation of the claims for which the excess claims or multiple dependent claim fees are due, the fees required by § 1.492(d), (e), and (f) must be paid or the claims canceled by amendment prior to the expiration of the time period set for reply by the Office in any notice of fee deficiency in order to avoid abandonment.

Section 1.492(h) sets forth the surcharge for filing the oath or declaration later than thirty months from the priority date pursuant to § 1.495(c) (formerly in § 1.492(e)).

Section 1.492(i) sets forth the processing fee for filing an English translation of an international application or of any annexes to an international preliminary examination report later than thirty months after the priority date (§§ 1.495(c) and (e)) (formerly in § 1.492(f)).

Section 1.492(j) sets forth the fee for any international application for which the basic national fee was not paid before December 8, 2004, the specification and drawings of which, excluding any sequence listing or computer program listing filed in an electronic medium as prescribed by the Director (*see* § 1.52(f)), exceed 100 sheets of paper (the ''application size fee''). The application size fee set forth in § 1.492(j) is $250.00 ($125.00 for a small entity) for each additional 50 sheets or fraction thereof. *See* 35 U.S.C. 41(a)(1)(G).

In situations in which a payment submitted for the fees due in an international application entering the national stage under 35 U.S.C. 371 and § 1.495 is insufficient and the applicant has not specified the fees to which the payment is to be applied, the Office will apply the payment in the following order until the payment is expended: (1st) the basic national fee (§ 1.492(a)); (2nd) the application size fee (§ 1.492(j)); (3rd) the surcharge for filing the oath or declaration later than thirty months from the priority date (§ 1.492(h)); (4th) the processing fee for filing an English translation later than thirty months after the priority date (§ 1.492(i)); (5th) the search fee (§ 1.492(b)); (6th) the examination fee (§ 1.492(c)); and (7th) the excess claims fee (§§ 1.492(d), (e), and (f)).

Section 1.495: Section 1.495(c) is subdivided into § 1.495(c)(1) through (c)(4). Section 1.495(c)(1) provides that if applicant complies with § 1.495(b) before expiration of thirty months from the priority date, the Office will notify the applicant if he or she has omitted any of: (1) A translation of the international application, as filed, into the English language, if it was originally filed in another language (35 U.S.C. 371(c)(2)); (2) the oath or declaration of the inventor (35 U.S.C. 371(c)(4) and § 1.497), if a declaration of inventorship in compliance with § 1.497 has not been previously submitted in the international application under PCT Rule 4.17(iv) within the time limits provided for in PCT Rule 26*ter.1*; (3) the search fee set forth in § 1.492(b); (4) the examination fee set forth in § 1.492(c); and (5) any application size fee set forth in § 1.492(j). Section 1.495(c)(2) provides that a notice under § 1.495(c)(1) will set a period of time within which applicant must provide any omitted translation, oath or declaration of the inventor, search fee set forth in § 1.492(b), examination fee set forth in § 1.492(c), and any application size fee set forth in § 1.492(j) in order to prevent abandonment of the application. Section 1.495(c)(3) and (c)(4) contain existing provisions of § 1.495(c).

Section 41.20: Section 41.20(b) sets forth appeal fees: (1) The fee for filing a notice of appeal from the examiner to the Board of Patent Appeals and Interferences is $500.00 ($250.00 for a small entity); (2) the additional fee for filing a brief in support of an appeal is $500.00 ($250.00 for a small entity); and (3) the additional fee for filing a request for an oral hearing before the Board of Patent Appeals and Interferences in an appeal under 35 U.S.C. 134 is $1,000.00 ($500.00 for a small entity). *See* 35 U.S.C. 41(a)(6).

Rule Making Considerations

Administrative Procedure Act: The changes in this final rule merely revise the rules of practice to conform to the patent fees specified in 35 U.S.C. 41 as amended by the Consolidated Appropriations Act (Pub. L. 108–447). Therefore, these rule changes involve interpretive rules or rules of agency practice and procedure under 5 U.S.C. 553(b)(A). *See Bachow Communications Inc.* v. *FCC,* 237 F.3d 683, 690 (D.C. Cir. 2001); *Paralyzed Veterans of America* v. *West*, 138 F.3d 1434, 1436 (Fed. Cir. 1998); *Komjathy* v. *National Transportation Safety Board,* 832 F.2d 1294, 1296–97 (D.C. Cir. 1987). Accordingly, the changes in this final rule may be adopted without prior notice and opportunity for public comment under 5 U.S.C. 553(b) and (c), or thirty-day advance publication under 5 U.S.C. 553(d) or 35 U.S.C. 41(g).

Regulatory Flexibility Act: As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 (or any other law), neither a regulatory flexibility analysis nor a certification under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are required. *See* 5 U.S.C. 603.

Executive Order 13132: This rule making does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

Executive Order 12866: This rule making has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

Paperwork Reduction Act: This final rule involves information collection requirements 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 *et seq.*). The collections of information involved in this final rule have been reviewed and previously approved by OMB under the following control numbers: 0651–0016, 0651–0021, 0651–0031, 0651–0032, and 0651–0033. The Office is not resubmitting information collection packages to OMB for its review and approval because the changes in this final rule do not affect the information collection requirements associated with the information collections under these OMB control numbers.

The title, description and respondent description of each of the information collections are shown below with an estimate of each of the annual reporting burdens. Included in each estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information.

OMB Number: 0651–0016.

Title: Rules for Patent Maintenance Fees.

Form Numbers: PTO/SB/45/47/65/66.

Type of Review: Approved through May of 2006.

Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-For-Profit Institutions and Federal Government.

Estimated Number of Respondents: 348,140.

Estimated Time Per Response: Between 20 seconds and 8 hours.

Estimated Total Annual Burden Hours: 30,735 hours.

Needs and Uses: Maintenance fees are required to maintain a patent, except for design or plant patents, in force under 35 U.S.C. 41(b). Payment of maintenance fees are required at 3½, 7½ and 11½ years after the grant of the patent. A patent number and application number of the patent on which maintenance fees are paid are required in order to ensure proper crediting of such payments.

OMB Number: 0651–0021.

Title: Patent Cooperation Treaty.

Form Numbers: PCT/RO/101, PCT/RO/134, PCT/IPEA/401, PTO–1382, PTO–1390, PTO/SB/61/PCT, PTO/SB/64/PCT, PCT/Model of power of attorney, PCT/Model of general power of attorney.

Type of Review: Approved through March of 2007.

Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-for-Profit Institutions, Farms, Federal Government, and State, Local or Tribal Government.

Estimated Number of Respondents: 355,655.

Estimated Time Per Response: Between 15 minutes and 8 hours.

Estimated Total Annual Burden Hours: 347,889.

Needs and Uses: The information collected is required by the Patent Cooperation Treaty (PCT). The general purpose of the PCT is to simplify the filing of patent applications on the same invention in different countries. It provides for a centralized filing procedure and a standardized application format.

OMB Number: 0651–0031.

Title: Patent Processing (Updating).

Form Numbers: PTO/SB/08A, PTO/SB/08B, PTO/SB/17i, PTO/SB/17p, PTO/SB/21–27, PTO/SB/30–37, PTO/SB/42–43, PTO/SB/61–64, PTO/SB/64a,

PTO/SB/67–68, PTO/SB/91–92, PTO/SB/96–97, PTO–2053–A/B, PTO–2054–A/B, PTO–2055–A/B, PTOL–413A.

Type of Review: Approved through July of 2006.

Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-for-Profit Institutions, Farms, Federal Government and State, Local and Tribal Governments.

Estimated Number of Respondents: 2,281,439.

Estimated Time Per Response: 1 minute and 48 seconds to 8 hours.

Estimated Total Annual Burden Hours: 2,731,841 hours.

Needs and Uses: During the processing for an application for a patent, the applicant/agent may be required or desire to submit additional information to the United States Patent and Trademark Office concerning the examination of a specific application. The specific information required or which may be submitted includes: Information disclosure statements and citations, requests for extensions of time, the establishment of small entity status; abandonment and revival of abandoned applications, disclaimers, requests for expedited examination of design applications, transmittal forms, requests to inspect, copy and access patent applications, nonpublication requests, certificates of mailing or transmission, submission of priority documents and amendments.

OMB Number: 0651–0032.

Title: Initial Patent Application.

Form Number: PTO/SB/01–07, PTO/SB/13PCT, PTO/SB/16–19, PTO/SB/29 and 29A, PTO/SB/101–110, Electronic New Utility and Provisional Application Forms.

Type of Review: Approved through July of 2006.

Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-For-Profit Institutions, Farms, Federal Government, and State, Local, or Tribal Governments.

Estimated Number of Respondents: 454,287.

Estimated Time Per Response: 22 minutes to 10 hours and 45 minutes.

Estimated Total Annual Burden Hours: 4,171,568 hours.

Needs and Uses: The purpose of this information collection is to permit the Office to determine whether an application meets the criteria set forth in the patent statute and regulations. The standard Fee Transmittal form, New Utility Patent Application Transmittal form, New Design Patent Application Transmittal form, New Plant Patent Application Transmittal form, Declaration, Provisional Application Cover Sheet, and Plant Patent Application Declaration will assist applicants in complying with the requirements of the patent statute and regulations, and will further assist the Office in processing and examination of the application.

OMB Number: 0651–0033.

Title: Post Allowance and Refiling.

Form Numbers: PTO/SB/44, PTO/SB/50–51, PTO/SB/51S, PTO/SB/52–53, PTO/SB/56–58, PTOL–85B.

Type of Review: Approved through April of 2007.

Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-For-Profit Institutions, Farms, State, Local and Tribal Governments, and Federal Government.

Estimated Number of Respondents: 223,411.

Estimated Time Per Response: 1.8 minutes to 2 hours.

Estimated Total Annual Burden Hours: 67,261 hours.

Needs and Uses: This collection of information is required to administer the patent laws pursuant to Title 35, U.S.C., concerning the issuance of patents and related actions including correcting errors in printed patents, refiling of patent applications, requesting reexamination of a patent, and requesting a reissue patent to correct an error in a patent. The affected public includes any individual or institution whose application for a patent has been allowed or who takes action as covered by the applicable rules.

Comments are invited on: (1) Whether the collection of information is necessary for proper performance of the functions of the agency; (2) the accuracy of the agency's estimate of the burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information to respondents.

Interested persons are requested to send comments regarding these information collections, including suggestions for reducing this burden, to Robert J. Spar, Director, Office of Patent Legal Administration, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, or to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, 725 17th Street, NW., Room 10235, Washington, DC 20503, Attention: Desk Officer for the United States Patent and Trademark Office.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

37 CFR Part 41

Administrative practice and procedure, Inventions and patents, Lawyers.

■ For the reasons set forth in the preamble, 37 CFR Parts 1 and 41 are amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

■ 1. The authority citation for 37 CFR Part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2).

■ 2. Section 1.16 is revised to read as follows:

§ 1.16 National application filing, search, and examination fees.

(a) Basic fee for filing each application under 35 U.S.C. 111 for an original patent, except design, plant, or provisional applications:

(1) For an application filed on or after December 8, 2004:

By a small entity (§ 1.27(a)) if the application is submitted in compliance with the Office electronic filing system (§ 1.27(b)(2))—$75.00.

By a small entity (§ 1.27(a))—$150.00.

By other than a small entity—$300.00.

(2) For an application filed before December 8, 2004:

By a small entity (§ 1.27(a))—$395.00.

By other than a small entity—$790.00.

(b) Basic fee for filing each application for an original design patent:

(1) For an application filed on or after December 8, 2004:

By a small entity (§ 1.27(a))—$100.00.

By other than a small entity—$200.00.

(2) For an application filed before December 8, 2004:

By a small entity (§ 1.27(a))—$175.00.

By other than a small entity—$350.00.

(c) Basic fee for filing each application for an original plant patent:

(1) For an application filed on or after December 8, 2004:

By a small entity (§ 1.27(a))—$100.00.

By other than a small entity—$200.00.

(2) For an application filed before December 8, 2004:

By a small entity (§ 1.27(a))—$275.00.

By other than a small entity—$550.00.

(d) Basic fee for filing each provisional application:

By a small entity (§ 1.27(a))—$100.00.

By other than a small entity—$200.00.

(e) Basic fee for filing each application for the reissue of a patent:

(1) For an application filed on or after December 8, 2004:

By a small entity (§ 1.27(a))—$150.00.

By other than a small entity—$300.00.

(2) For an application filed before December 8, 2004:

By a small entity (§ 1.27(a))—$395.00.

By other than a small entity—$790.00.

(f) Surcharge for filing the basic filing fee or oath or declaration on a date later than the filing date of the application, except provisional applications:

By a small entity (§ 1.27(a))—$65.00.

By other than a small entity—$130.00.

(g) Surcharge for filing the basic filing fee or cover sheet (§ 1.51(c)(1)) on a date later than the filing date of the provisional application:

By a small entity (§ 1.27(a))—$25.00.

By other than a small entity—$50.00.

(h) In addition to the basic filing fee in an application, other than a provisional application, for filing or later presentation at any other time of each claim in independent form in excess of 3:

By a small entity (§ 1.27(a))—$100.00.

By other than a small entity—$200.00.

(i) In addition to the basic filing fee in an application, other than a provisional application, for filing or later presentation at any other time of each claim (whether dependent or independent) in excess of 20 (note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes):

By a small entity (§ 1.27(a))—$25.00.

By other than a small entity—$50.00.

(j) In addition to the basic filing fee in an application, other than a provisional application, that contains, or is amended to contain, a multiple dependent claim, per application:

By a small entity (§ 1.27(a))—$180.00.

By other than a small entity—$360.00.

(k) Search fee for each application filed under 35 U.S.C. 111 on or after December 8, 2004, for an original patent, except design, plant, or provisional applications:

By a small entity (§ 1.27(a))—$250.00.

By other than a small entity—$500.00.

(l) Search fee for each application filed on or after December 8, 2004, for an original design patent:

By a small entity (§ 1.27(a))—$50.00.

By other than a small entity—$100.00.

(m) Search fee for each application filed on or after December 8, 2004, for an original plant patent:

By a small entity (§ 1.27(a))—$150.00.

By other than a small entity—$300.00.

(n) Search fee for each application filed on or after December 8, 2004, for the reissue of a patent:

By a small entity (§ 1.27(a))—$250.00.

By other than a small entity—$500.00.

(o) Examination fee for each application filed under 35 U.S.C. 111 on or after December 8, 2004, for an original patent, except design, plant, or provisional applications:

By a small entity (§ 1.27(a))—$100.00.

By other than a small entity—$200.00.

(p) Examination fee for each application filed on or after December 8, 2004, for an original design patent:

By a small entity (§ 1.27(a))—$65.00.

By other than a small entity—$130.00.

(q) Examination fee for each application filed on or after December 8, 2004, for an original plant patent:

By a small entity (§ 1.27(a))—$80.00.

By other than a small entity—$160.00.

(r) Examination fee for each application filed on or after December 8, 2004, for the reissue of a patent:

By a small entity (§ 1.27(a))—$300.00.

By other than a small entity—$600.00.

(s) Application size fee for any application under 35 U.S.C. 111 filed on or after December 8, 2004, the specification and drawings of which exceed 100 sheets of paper, for each additional 50 sheets or fraction thereof:

By a small entity (§ 1.27(a))—$125.00.

By other than a small entity—$250.00.

Note to § 1.16: See §§ 1.445, 1.482 and 1.492 for international application filing and processing fees.

■ 3. Section 1.17 is amended by revising paragraphs (a), (l) and (m) to read as follows:

§ 1.17 Patent application and reexamination processing fees.

(a) Extension fees pursuant to § 1.136(a):

(1) For reply within first month:

By a small entity (§ 1.27(a))—$60.00.

By other than a small entity—$120.00.

(2) For reply within second month:

By a small entity (§ 1.27(a))—$225.00.

By other than a small entity—$450.00.

(3) For reply within third month:

By a small entity (§ 1.27(a))—$510.00.

By other than a small entity—$1,020.00.

(4) For reply within fourth month:

By a small entity (§ 1.27(a))—$795.00.

By other than a small entity—$1,590.00.

(5) For reply within fifth month:

By a small entity (§ 1.27(a))—$1,080.00.

By other than a small entity—$2,160.00.

* * * * *

(l) For filing a petition for the revival of an unavoidably abandoned application under 35 U.S.C. 111, 133, 364, or 371, for the unavoidably delayed payment of the issue fee under 35 U.S.C. 151, or for the revival of an unavoidably terminated reexamination proceeding under 35 U.S.C. 133 (§ 1.137(a)):

By a small entity (§ 1.27(a))—$250.00.

By other than a small entity—$500.00.

(m) For filing a petition for the revival of an unintentionally abandoned application, for the unintentionally delayed payment of the fee for issuing a patent, or for the revival of an unintentionally terminated reexamination proceeding under 35 U.S.C. 41(a)(7) (§ 1.137(b)):

By a small entity (§ 1.27(a))—$750.00.

By other than a small entity—$1,500.00.

* * * * *

■ 4. Section 1.18 is amended by revising paragraphs (a) through (c) to read as follows:

§ 1.18 Patent post allowance (including issue) fees.

(a) Issue fee for issuing each original patent, except a design or plant patent, or for issuing each reissue patent:

By a small entity (§ 1.27(a))—$700.00.

By other than a small entity—$1,400.00.

(b) Issue fee for issuing an original design patent:

By a small entity (§ 1.27(a))—$400.00.

By other than a small entity—$800.00.

(c) Issue fee for issuing an original plant patent:

By a small entity (§ 1.27(a))—$550.00.

By other than a small entity—$1,100.00.

* * * * *

■ 5. Section 1.20 is amended by revising paragraphs (c) through (g) to read as follows:

§ 1.20 Post issuance fees.

* * * * *

(c) In reexamination proceedings

(1) For filing a request for *ex parte* reexamination (§ 1.510(a))—$2,520.00.

(2) For filing a request for *inter partes* reexamination (§ 1.915(a))—$8,800.00.

(3) For filing with a request for reexamination or later presentation at any other time of each claim in independent form in excess of 3 and also in excess of the number of claims in independent form in the patent under reexamination:

By a small entity (§ 1.27(a))—$100.00.

By other than a small entity—$200.00.

(4) For filing with a request for reexamination or later presentation at any other time of each claim (whether dependent or independent) in excess of

20 and also in excess of the number of claims in the patent under reexamination (note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes):

By a small entity (§ 1.27(a))—$25.00.

By other than a small entity—$50.00.

(5) If the excess claims fees required by paragraphs (c)(3) and (c)(4) are not paid with the request for reexamination or on later presentation of the claims for which the excess claims fees are due, the fees required by paragraphs (c)(3) and (c)(4) must be paid or the claims canceled by amendment prior to the expiration of the time period set for reply by the Office in any notice of fee deficiency in order to avoid abandonment.

(d) For filing each statutory disclaimer (§ 1.321):

By a small entity (§ 1.27(a))—$65.00.

By other than a small entity—$130.00.

(e) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond four years, the fee being due by three years and six months after the original grant:

By a small entity (§ 1.27(a))—$450.00.

By other than a small entity—$900.00.

(f) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond eight years, the fee being due by seven years and six months after the original grant:

By a small entity (§ 1.27(a))—$1,150.00.

By other than a small entity—$2,300.00.

(g) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond twelve years, the fee being due by eleven years and six months after the original grant:

By a small entity (§ 1.27(a))—$1,900.00.

By other than a small entity—$3,800.00.

* * * * *

■ 6. Section 1.27 is amended by revising paragraphs (b) and (c)(3) to read as follows:

§ 1.27 Definition of small entities and establishing status as a small entity to permit payment of small entity fees; when a determination of entitlement to small entity status and notification of loss of entitlement to small entity status are required; fraud on the Office.

* * * * *

(b) *Establishment of small entity status permits payment of reduced fees.*

(1) A small entity, as defined in paragraph (a) of this section, who has properly asserted entitlement to small entity status pursuant to paragraph (c) of this section will be accorded small entity status by the Office in the particular application or patent in which entitlement to small entity status was asserted. Establishment of small entity status allows the payment of certain reduced patent fees pursuant to 35 U.S.C. 41(h)(1).

(2) Submission of an original utility application in compliance with the Office electronic filing system by an applicant who has properly asserted entitlement to small entity status pursuant to paragraph (c) of this section in that application allows the payment of a reduced filing fee pursuant to 35 U.S.C. 41(h)(3).

(c) * * *

(3) *Assertion by payment of the small entity basic filing or basic national fee.* The payment, by any party, of the exact amount of one of the small entity basic filing fees set forth in §§ 1.16(a), 1.16(b), 1.16(c), 1.16(d), 1.16(e), or the small entity basic national fee set forth in § 1.492(a), will be treated as a written assertion of entitlement to small entity status even if the type of basic filing or basic national fee is inadvertently selected in error.

(i) If the Office accords small entity status based on payment of a small entity basic filing or basic national fee under paragraph (c)(3) of this section that is not applicable to that application, any balance of the small entity fee that is applicable to that application will be due along with the appropriate surcharge set forth in § 1.16(f), or § 1.16(g).

(ii) The payment of any small entity fee other than those set forth in paragraph (c)(3) of this section (whether in the exact fee amount or not) will not be treated as a written assertion of entitlement to small entity status and will not be sufficient to establish small entity status in an application or a patent.

* * * * *

■ 7. Section 1.33 is amended by revising paragraph (c) to read as follows:

§ 1.33 Correspondence respecting patent applications, reexamination proceedings, and other proceedings.

* * * * *

(c) All notices, official letters, and other communications for the patent owner or owners in a reexamination proceeding will be directed to the attorney or agent of record (*see* § 1.32(b)) in the patent file at the address listed on the register of patent attorneys and agents maintained pursuant to §§ 11.5 and 11.11 of this subchapter, or, if no attorney or agent is of record, to the patent owner or owners at the address or addresses of record. Amendments and other papers filed in a reexamination proceeding on behalf of the patent owner must be signed by the patent owner, or if there is more than one owner by all the owners, or by an attorney or agent of record in the patent file, or by a registered attorney or agent not of record who acts in a representative capacity under the provisions of § 1.34. Double correspondence with the patent owner or owners and the patent owner's attorney or agent, or with more than one attorney or agent, will not be undertaken. If more than one attorney or agent is of record and a correspondence address has not been specified, correspondence will be held with the last attorney or agent made of record.

* * * * *

■ 8. Section 1.51 is amended by revising paragraphs (b)(4) and (c)(4) to read as follows:

§ 1.51 General requisites of an application.

* * * * *

(b) * * *

(4) The prescribed filing fee, search fee, examination fee, and application size fee, see § 1.16.

(c) * * *

(4) The prescribed filing fee and application size fee, see § 1.16.

* * * * *

■ 9. Section 1.52 is amended by revising the heading and adding paragraph (f) to read as follows:

§ 1.52 Language, paper, writing, margins, compact disc specifications.

* * * * *

(f)(1) Any sequence listing in an electronic medium in compliance with §§ 1.52(e) and 1.821(c) or (e), and any computer program listing filed in an electronic medium in compliance with §§ 1.52(e) and 1.96, will be excluded when determining the application size fee required by § 1.16(s) or § 1.492(j).

(2) Except as otherwise provided in this paragraph, the paper size equivalent of the specification and drawings of an application submitted via the Office electronic filing system will be considered to be the number of sheets of paper present in the specification and drawings of the application when entered into the Office file wrapper after being rendered by the Office electronic filing system for purposes of computing the application size fee required by § 1.16(s). Any sequence listing in compliance with § 1.821(c) or (e), and any computer program listing in

compliance with § 1.96, submitted via the Office electronic filing system will be excluded when determining the application size fee required by § 1.16(s) if the listing is submitted in ACSII text as part of an associated file.

■ 10. Section 1.53 is amended by revising paragraphs (c)(3), (f) and (g) to read as follows:

§ 1.53 Application number, filing date, and completion of application.

* * * * *

(c) * * *

(3) A provisional application filed under paragraph (c) of this section may be converted to a nonprovisional application filed under paragraph (b) of this section and accorded the original filing date of the provisional application. The conversion of a provisional application to a nonprovisional application will not result in either the refund of any fee properly paid in the provisional application or the application of any such fee to the filing fee, or any other fee, for the nonprovisional application. Conversion of a provisional application to a nonprovisional application under this paragraph will result in the term of any patent to issue from the application being measured from at least the filing date of the provisional application for which conversion is requested. Thus, applicants should consider avoiding this adverse patent term impact by filing a nonprovisional application claiming the benefit of the provisional application under 35 U.S.C. 119(e) (rather than converting the provisional application into a nonprovisional application pursuant to this paragraph). A request to convert a provisional application to a nonprovisional application must be accompanied by the fee set forth in § 1.17(i) and an amendment including at least one claim as prescribed by the second paragraph of 35 U.S.C. 112, unless the provisional application under paragraph (c) of this section otherwise contains at least one claim as prescribed by the second paragraph of 35 U.S.C. 112. The nonprovisional application resulting from conversion of a provisional application must also include the filing fee, search fee, and examination fee for a nonprovisional application, an oath or declaration by the applicant pursuant to §§ 1.63, 1.162, or 1.175, and the surcharge required by § 1.16(f) if either the basic filing fee for a nonprovisional application or the oath or declaration was not present on the filing date accorded the resulting nonprovisional application (*i.e.*, the filing date of the original provisional application). A request to convert a provisional application to a nonprovisional application must also be filed prior to the earliest of:

(i) Abandonment of the provisional application filed under paragraph (c) of this section; or

(ii) Expiration of twelve months after the filing date of the provisional application filed under paragraph (c) of this section.

* * * * *

(f) *Completion of application subsequent to filing—Nonprovisional (including continued prosecution or reissue) application.*

(1) If an application which has been accorded a filing date pursuant to paragraph (b) or (d) of this section does not include the basic filing fee, the search fee, or the examination fee, or if an application which has been accorded a filing date pursuant to paragraph (b) of this section does not include an oath or declaration by the applicant pursuant to §§ 1.63, 1.162 or § 1.175, and applicant has provided a correspondence address (§ 1.33(a)), applicant will be notified and given a period of time within which to pay the basic filing fee, search fee, and examination fee, file an oath or declaration in an application under paragraph (b) of this section, and pay the surcharge if required by § 1.16(f) to avoid abandonment.

(2) If an application which has been accorded a filing date pursuant to paragraph (b) of this section does not include the basic filing fee, the search fee, the examination fee, or an oath or declaration by the applicant pursuant to §§ 1.63, 1.162 or § 1.175, and applicant has not provided a correspondence address (§ 1.33(a)), applicant has two months from the filing date of the application within which to pay the basic filing fee, search fee, and examination fee, file an oath or declaration, and pay the surcharge if required by § 1.16(f) to avoid abandonment.

(3) If the excess claims fees required by §§ 1.16(h) and (i) and multiple dependent claim fee required by § 1.16(j) are not paid on filing or on later presentation of the claims for which the excess claims or multiple dependent claim fees are due, the fees required by §§ 1.16(h), (i), and (j) must be paid or the claims canceled by amendment prior to the expiration of the time period set for reply by the Office in any notice of fee deficiency. If the application size fee required by § 1.16(s) (if any) is not paid on filing or on later presentation of the amendment necessitating a fee or additional fee under § 1.16(s), the fee required by § 1.16(s) must be paid prior to the expiration of the time period set for reply by the Office in any notice of fee deficiency in order to avoid abandonment.

(4) This paragraph applies to continuation or divisional applications under paragraphs (b) or (d) of this section and to continuation-in-part applications under paragraph (b) of this section. See § 1.63(d) concerning the submission of a copy of the oath or declaration from the prior application for a continuation or divisional application under paragraph (b) of this section.

(5) If applicant does not pay one of the basic filing or the processing and retention fees (§ 1.21(l)) during the pendency of the application, the Office may dispose of the application.

(g) *Completion of application subsequent to filing—Provisional application.*

(1) If a provisional application which has been accorded a filing date pursuant to paragraph (c) of this section does not include the cover sheet required by § 1.51(c)(1) or the basic filing fee (§ 1.16(d)), and applicant has provided a correspondence address (§ 1.33(a)), applicant will be notified and given a period of time within which to pay the basic filing fee, file a cover sheet (§ 1.51(c)(1)), and pay the surcharge required by § 1.16(g) to avoid abandonment.

(2) If a provisional application which has been accorded a filing date pursuant to paragraph (c) of this section does not include the cover sheet required by § 1.51(c)(1) or the basic filing fee (§ 1.16(d)), and applicant has not provided a correspondence address (§ 1.33(a)), applicant has two months from the filing date of the application within which to pay the basic filing fee, file a cover sheet (§ 1.51(c)(1)), and pay the surcharge required by § 1.16(g) to avoid abandonment.

(3) If the application size fee required by § 1.16(s) (if any) is not paid on filing, the fee required by § 1.16(s) must be paid prior to the expiration of the time period set for reply by the Office in any notice of fee deficiency in order to avoid abandonment.

(4) If applicant does not pay the basic filing fee during the pendency of the application, the Office may dispose of the application.

* * * * *

■ 11. Section 1.69 is amended by revising paragraph (b) to read as follows:

§ 1.69 Foreign language oaths and declarations.

* * * * *

(b) Unless the text of any oath or declaration in a language other than

English is in a form provided by the Patent and Trademark Office or in accordance with PCT Rule 4.17(iv), it must be accompanied by an English translation together with a statement that the translation is accurate, except that in the case of an oath or declaration filed under § 1.63, the translation may be filed in the Office no later than two months from the date applicant is notified to file the translation.

■ 12. Section 1.75 is amended by revising paragraph (c) to read as follows:

§ 1.75 Claim(s).

* * * * *

(c) One or more claims may be presented in dependent form, referring back to and further limiting another claim or claims in the same application. Any dependent claim which refers to more than one other claim (''multiple dependent claim'') shall refer to such other claims in the alternative only. A multiple dependent claim shall not serve as a basis for any other multiple dependent claim. For fee calculation purposes under § 1.16, a multiple dependent claim will be considered to be that number of claims to which direct reference is made therein. For fee calculation purposes also, any claim depending from a multiple dependent claim will be considered to be that number of claims to which direct reference is made in that multiple dependent claim. In addition to the other filing fees, any original application which is filed with, or is amended to include, multiple dependent claims must have paid therein the fee set forth in § 1.16(j). Claims in dependent form shall be construed to include all the limitations of the claim incorporated by reference into the dependent claim. A multiple dependent claim shall be construed to incorporate by reference all the limitations of each of the particular claims in relation to which it is being considered.

* * * * *

■ 13. Section 1.78 is amended by revising paragraph (a)(4) to read as follows:

§ 1.78 Claiming benefit of earlier filing date and cross-references to other applications.

(a) * * *

(4) A nonprovisional application, other than for a design patent, or an international application designating the United States of America may claim an invention disclosed in one or more prior-filed provisional applications. In order for an application to claim the benefit of one or more prior-filed provisional applications, each prior-filed provisional application must name as an inventor at least one inventor named in the later-filed application and disclose the named inventor's invention claimed in at least one claim of the later-filed application in the manner provided by the first paragraph of 35 U.S.C. 112. In addition, each prior-filed provisional application must be entitled to a filing date as set forth in § 1.53(c), and the basic filing fee set forth in § 1.16(d) must be paid within the time period set forth in § 1.53(g).

* * * * *

■ 14. Section 1.84 is amended by revising paragraph (y) to read as follows:

§ 1.84 Standards for drawings.

* * * * *

(y) *Types of drawings.* See § 1.152 for design drawings, § 1.165 for plant drawings, and § 1.173(a)(2) for reissue drawings.

■ 15. Section 1.111 is amended by revising the first sentence of paragraph (a)(2)(i) to read as follows:

§ 1.111 Reply by applicant or patent owner to a non-final Office action.

(a) * * *

(2) * * * (i) A reply that is supplemental to a reply that is in compliance with § 1.111(b) will not be entered as a matter of right except as provided in paragraph (a)(2)(ii) of this section. * * *

* * * * *

■ 16. Section 1.136 is amended by revising the fourth sentence of paragraph (b) to read as follows:

§ 1.136 Extensions of time.

* * * * *

(b) * * * See § 1.304 for extensions of time to appeal to the U.S. Court of Appeals for the Federal Circuit or to commence a civil action; § 1.550(c) for extensions of time in ex parte reexamination proceedings; § 1.956 for extensions of time in inter partes reexamination proceedings; and §§ 41.4(a) and 41.121(a)(3) of this title for extensions of time in contested cases before the Board of Patent Appeals and Interferences. * * *

* * * * *

■ 17. Section 1.211 is amended by revising paragraph (c) to read as follows:

§ 1.211 Publication of applications.

* * * * *

(c) An application filed under 35 U.S.C. 111(a) will not be published until it includes the basic filing fee (§ 1.16(a) or 1.16(c)), any English translation required by § 1.52(d), and an executed oath or declaration under § 1.63. The Office may delay publishing any application until it includes any application size fee required by the Office under § 1.16(s) or § 1.492(j), a specification having papers in compliance with § 1.52 and an abstract (§ 1.72(b)), drawings in compliance with § 1.84, and a sequence listing in compliance with §§ 1.821 through 1.825 (if applicable), and until any petition under § 1.47 is granted.

* * * * *

■ 18. Section 1.324 is amended by revising the second sentence of paragraph (a) to read as follows:

§ 1.324 Correction of inventorship in patent, pursuant to 35 U.S.C. 256.

(a) * * * A petition to correct inventorship of a patent involved in an interference must comply with the requirements of this section and must be accompanied by a motion under § 41.121(a)(2) or § 41.121(a)(3) of this title.

* * * * *

■ 19. Section 1.445 is amended by revising paragraph (a)(2) to read as follows:

§ 1.445 International application filing, processing and search fees.

(a) * * *

(2) A search fee (*see* 35 U.S.C. 361(d) and PCT Rule 16):

(i) If a corresponding prior United States national application under 35 U.S.C. 111(a) has been filed on or after December 8, 2004, the basic filing fee under § 1.16(a), search fee under § 1.16(k), and examination fee under § 1.16(o) have been paid therein, and the corresponding prior United States national application is identified by application number, if known, or if the application number is not known by the filing date, title, and name of applicant (and preferably the application docket number), in the international application or accompanying papers at the time of filing the international application—$300.00.

(ii) If a corresponding prior United States national application under 35 U.S.C. 111(a) has been filed before December 8, 2004, the basic filing fee under § 1.16 has been paid therein, and the corresponding prior United States national application is identified by application number, if known, or if the application number is not known by the filing date, title, and name of applicant (and preferably the application docket number), in the international application or accompanying papers at the time of filing the international application—$300.00.

(iii) For all situations not provided for in paragraphs (a)(2)(i) or (a)(2)(ii) of this section—$1000.00.

* * * * *

■ 20. Section 1.492 is revised to read as follows:

§ 1.492 National stage fees.

The following fees and charges are established for international applications entering the national stage under 35 U.S.C. 371:

(a) The basic national fee for an international application entering the national stage under 35 U.S.C. 371 if the basic national fee was not paid before December 8, 2004:

By a small entity (§ 1.27(a))—$150.00.

By other than a small entity—$300.00.

(b) Search fee for an international application entering the national stage under 35 U.S.C. 371 if the basic national fee was not paid before December 8, 2004:

By a small entity (§ 1.27(a))—$250.00.

By other than a small entity—$500.00.

(c) The examination fee for an international application entering the national stage under 35 U.S.C. 371 if the basic national fee was not paid before December 8, 2004:

By a small entity (§ 1.27(a))—$100.00.

By other than a small entity—$200.00.

(d) In addition to the basic national fee, for filing or on later presentation at any other time of each claim in independent form in excess of 3:

By a small entity (§ 1.27(a))—$100.00.

By other than a small entity—$200.00.

(e) In addition to the basic national fee, for filing or on later presentation at any other time of each claim (whether dependent or independent) in excess of 20 (note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes):

By a small entity (§ 1.27(a))—$25.00.

By other than a small entity—$50.00.

(f) In addition to the basic national fee, if the application contains, or is amended to contain, a multiple dependent claim, per application:

By a small entity (§ 1.27(a))—$180.00.

By other than a small entity—$360.00.

(g) If the excess claims fees required by paragraphs (d) and (e) of this section and multiple dependent claim fee required by paragraph (f) of this section are not paid with the basic national fee or on later presentation of the claims for which the excess claims or multiple dependent claim fees are due, the fees required by paragraphs (d), (e), and (f) of this section must be paid or the claims canceled by amendment prior to the expiration of the time period set for reply by the Office in any notice of fee deficiency in order to avoid abandonment.

(h) Surcharge for filing the oath or declaration later than thirty months from the priority date pursuant to § 1.495(c):

By a small entity (§ 1.27(a))—$65.00.

By other than a small entity—$130.00.

(i) For filing an English translation of an international application or of any annexes to an international preliminary examination report later than thirty months after the priority date (§§ 1.495(c) and (e))—$130.00.

(j) Application size fee for any international application for which the basic national fee was not paid before December 8, 2004, the specification and drawings of which exceed 100 sheets of paper, for each additional 50 sheets or fraction thereof:

By a small entity (§ 1.27(a))—$125.00.

By other than a small entity—$250.00.

■ 21. Section 1.495 is amended by revising paragraph (c) to read as follows:

§ 1.495 Entering the national stage in the United States of America.

* * * * *

(c)(1) If applicant complies with paragraph (b) of this section before expiration of thirty months from the priority date, the Office will notify the applicant if he or she has omitted any of:

(i) A translation of the international application, as filed, into the English language, if it was originally filed in another language (35 U.S.C. 371(c)(2));

(ii) The oath or declaration of the inventor (35 U.S.C. 371(c)(4) and § 1.497), if a declaration of inventorship in compliance with § 1.497 has not been previously submitted in the international application under PCT Rule 4.17(iv) within the time limits provided for in PCT Rule 26*ter*.1;

(iii) The search fee set forth in § 1.492(b);

(iv) The examination fee set forth in § 1.492(c); and

(v) Any application size fee required by § 1.492(j).

(2) A notice under paragraph (c)(1) of this section will set a period of time within which applicant must provide any omitted translation, oath or declaration of the inventor, search fee set forth in § 1.492(b), examination fee set forth in § 1.492(c), and any application size fee required by § 1.492(j) in order to avoid abandonment of the application.

(3) The payment of the processing fee set forth in § 1.492(i) is required for acceptance of an English translation later than the expiration of thirty months after the priority date. The payment of the surcharge set forth in § 1.492(h) is required for acceptance of the oath or declaration of the inventor later than the expiration of thirty months after the priority date.

(4) A ''Sequence Listing'' need not be translated if the ''Sequence Listing'' complies with PCT Rule 12.1(d) and the description complies with PCT Rule 5.2(b).

* * * * *

PART 41—PRACTICE BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

■ 22. The authority citation for 37 CFR Part 41 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), 3(a)(2)(A), 21, 23, 32, 41, 134, 135.

■ 23. Section 41.20 is amended by revising paragraph (b) to read as follows:

§ 41.20 Fees.

* * * * *

(b) *Appeal fees.*

(1) For filing a notice of appeal from the examiner to the Board:

By a small entity (§ 1.27(a) of this title)—$250.00.

By other than a small entity—$500.00.

(2) In addition to the fee for filing a notice of appeal, for filing a brief in support of an appeal:

By a small entity (§ 1.27(a) of this title)—$250.00.

By other than a small entity—$500.00.

(3) For filing a request for an oral hearing before the Board in an appeal under 35 U.S.C. 134:

By a small entity (§ 1.27(a) of this title)—$500.00.

By other than a small entity—$1,000.00.

Dated: January 18, 2005.

Jon W. Dudas,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 05–1377 Filed 1–26–05; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AL23

Loan Guaranty: Implementation of Public Law 107–103

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document affirms, with one modification, an amendment to the Department of Veterans Affairs (VA) loan guaranty regulations implementing sections 401 through 404 of the Veterans Education and Benefits Expansion Act of 2001. The amendment incorporates into the regulations the following statutory changes: an increase in the maximum amount of loan guaranty

entitlement from $50,750 to $60,000, a liberalization of the requirements regarding Memoranda of Understanding (MOU) between VA and Native American Tribes in order for their members to qualify for direct housing loans to Native American veterans, a revision of the requirement that loan instruments used in connection with VA guaranteed loans contain a statement that such loans are not assumable without prior VA approval, and an increase in the maximum specially adapted housing grant and in the special housing adaptations grant. Because these special housing grant amounts have been increased by subsequent legislation, this final rule reflects the current statutory limits of $50,000 and $10,000, respectively.

DATES: *Effective Date:* This rule is effective on January 27, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Robert D. Finneran, Assistant Director for Policy and Valuation (262), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, Washington, DC 20420, (202) 273–7368.

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. chapter 37, VA guarantees loans made by private lenders to veterans for the purchase, construction, and refinancing of homes owned and occupied by veterans. VA also makes direct housing loans to Native American veterans living on tribal trust land.

In addition, under 38 U.S.C. chapter 21, VA provides grants to certain severely disabled veterans with qualifying permanent and total service-connected disabilities to make adaptations to their homes that are necessary because of the nature of the veterans' disabilities.

Regulations detailing the procedures necessary for the Secretary to operate these programs are set forth in 38 CFR part 36. On February 10, 2003, VA published in the **Federal Register** at 68 FR 6625 an interim final rule implementing sections 401 through 404 of Pub. L. 107–103. Section 36.4302 of 38 CFR was amended to reflect an increase in the maximum guaranty on a housing loan made to eligible veterans from $50,750 to $60,000. Section 36.4527 of 38 CFR was amended to allow VA to make housing loans to a Native American veteran if the tribe has entered into an MOU with another Federal agency with regard to loans to Native Americans residing on tribal lands, so long as the Secretary of VA determines that the MOU substantially complies with VA's home loan requirements. Section 36.4308 of 38 CFR was amended to require that the statement that loans are not assumable without prior VA approval appear on at least one, rather than all, instruments evidencing the loan or the security therefor. It was also amended to eliminate the requirement that the notice be in capital letters and on the first page of the document. Title 38 CFR 36.4404 was amended to reflect the increased maximum grants VA may make to certain veterans with total and permanent service connected disabilities to assist those veterans in adapting housing to their special needs. At the time of publication of the interim final rule, the specially adapted housing grant had been increased from $43,000 to $48,000 and the special housing adaptations grant was increased from $8,250 to $9,250.

The interim final rule provided for a 60-day comment period that ended April 11, 2003. We received no comments. Based on the rationale set forth in the interim final rule we now affirm as a final rule the changes made to 38 CFR 36.4302, 36.4308, and 36.4527.

However, we are modifying the change made to § 36.4404 of 38 CFR by the interim final rule. Section 402 of Pub. L. 108–183, enacted December 16, 2003, further increased the maximum specially adapted housing grant to $50,000 and the special housing adaptations grant to $10,000. This final rule reflects the current statutory limits.

Paperwork Reduction Act

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

Administrative Procedure Act

Changes to 38 CFR 36.4404 are being published without regard to the notice-and-comment and delayed-effective-date provisions of 5 U.S.C. 553 since they merely conform VA's existing rules to the statutory amendments made by Pub. L. 108–183. Accordingly, these changes involve interpretive rules exempt from the notice-and-comment and delayed-effective-date requirement of 5 U.S.C. 553(b) and (d).

Regulatory Flexibility Act

For the reasons set forth in the interim final rule, the Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. As explained in the interim final rule, this rule would have no such effect on State, local, or tribal governments, nor will it impose costs on the private sector.

The Catalog of Federal Domestic Assistance Program numbers are 64.114 and 64.119.

List of Subjects in 38 CFR Part 36

Condominiums, Flood insurance, Housing, Indians, Individuals with disabilities, Loan programs-housing and community development, Loan programs-Indians, Loan programs-veterans, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Veterans.

Approved: January 6, 2005.

Anthony J. Principi,

Secretary of Veterans Affairs.

■ Accordingly, the interim rule amending 38 CFR part 36, which was published in the **Federal Register** at 68 FR 6625 on February 10, 2003, is adopted as a final rule with the following changes.

PART 36—LOAN GUARANTY

■ 1. The authority citation for part 36 continues to read as follows:

Authority: 38 U.S.C. 501, 3701–3704, 3707, 3710–3714, 3719, 3720, 3729, 3762, unless otherwise noted.

■ 2. In § 36.4404, paragraph (a) introductory text, paragraph (b)(2), and the authority citation at the end of the section are revised to read as follows:

§ 36.4404 Computation of cost.

(a) *Computation of cost of housing unit.* Under section 2101(a) of chapter 21, for the purpose of computing the amount of benefits payable to a veteran-beneficiary, there may be included in the total cost to the veteran the following amount, not to exceed $50,000.

* * * * *

(b) * * *

(2) $10,000.

(Authority: 38 U.S. C. 2102)

[FR Doc. 05–1540 Filed 1–26–05; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7864–6]

Georgia: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Georgia has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization, and is authorizing the State's changes through this immediate final action. EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we get written comments which oppose this authorization during the comment period, the decision to authorize Georgia's changes to their hazardous waste program will take effect. If we get comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

DATES: This Final authorization will become effective on March 28, 2005, unless EPA receives adverse written comment by February 28, 2005. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Send written comments to Audrey E. Baker, Georgia Authorizations Coordinator, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960; (404) 562–8483. You may also e-mail your comments to *baker.audrey@epa.gov* or submit your comments at *http://www.regulations.gov.* We must receive your comments by February 28, 2005. You can view and copy Georgia's application from 8 a.m. to 4:30 p.m. at The Georgia Department of Natural Resources, Environmental Protection Division, 2 Martin Luther King, Jr. Drive, Suite 1154 East Tower, Atlanta, Georgia 30334–4910, and from 8:30 a.m. to 3:45 p.m. EPA Region 4, Library, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960, Phone number (404) 562–8190, John Wright, Librarian.

FOR FURTHER INFORMATION CONTACT: Audrey E. Baker, Georgia Authorizations Coordinator, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960; (404) 562–8483.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in This Rule?

We conclude that Georgia's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Georgia Final authorization to operate its hazardous waste program with the changes described in the authorization application. Georgia has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Georgia, including issuing permits, until the State is granted authorization to do so.

C. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in Georgia subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Georgia has enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, and require monitoring, tests, analyses or reports.
- Enforce RCRA requirements and suspend or revoke permits.
- Take enforcement actions regardless of whether the State has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations for which Georgia is being authorized by today's action are already effective, and are not changed by today's action.

D. Why Wasn't There a Proposed Rule Before Today's Rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State program changes.

E. What Happens if EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw that part of this rule but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal**

Register withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. What Has Georgia Previously Been Authorized for?

Georgia initially received Final authorization on August 7, 1984, effective August 21, 1984 (49 FR 31417), to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on July 7, 1986, effective September 18, 1986 (51 FR 24549), July 28, 1988, effective September 26, 1988 (53 FR 28383), July 24, 1990, effective September 24, 1990 (55 FR 30000), February 12, 1991, effective April 15, 1991 (56 FR 5656), May 11, 1992, effective July 10, 1992 (57 FR 20055), November 25, 1992, effective January 25, 1993 (57 FR 55466), February 26, 1993, effective April 27, 1993 (58 FR 11539), November 16, 1993, effective January 18, 1994 (58 FR 60388), April 26, 1994, effective June 27, 1994 (59 FR 21664), May 10, 1995, effective July 10, 1995 (60 FR 24790), August 30, 1995, effective October 30, 1995 (60 FR 45069), March 7, 1996, effective May 6, 1996 (61 FR 9108), September 18, 1998, effective November 17, 1998 (63 FR 49852), October 14, 1999, effective December 13, 1999 (64 FR 55629), November 28, 2000, effective March 30, 2001 (66 FR 8090), July 16, 2002, effective September 16, 2002 (67 FR 46600), November 19, 2002, effective January 21, 2003 (67 FR 69690), and July 18, 2003, effective September 16, 2003.

G. What Changes Are We Authorizing With Today's Action?

Georgia submitted a final complete program revision application, seeking authorization of their changes in accordance with 40 CFR 271.21. Georgia's revision consists of provisions promulgated July 1, 2001 through June 30, 2002, and July 1, 2002 through June 30, 2003, otherwise known as RCRA Clusters XII and XIII. The Georgia Board of Natural Resources adopted the rules for RCRA Cluster XII on December 4, 2002, which became effective December 30, 2002. The rules for RCRA Cluster XIII were adopted by the same board on January 28, 2004, and were effective February 22, 2004. We now make an immediate final decision, subject to receipt of written comments that oppose this action, that Georgia's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Therefore, we grant Georgia Final authorization for the following program changes:

Description of Federal requirement	**Federal Register**	Analogous State authority
Checklist 194, Hazardous Waste Identification Rule Corrections: Revisions to Mixture and Derived-From Rule.	October 3, 2001 66 FR 50332–50334 ..... December 3, 2001 66 FR 60153–60154	391–3–11–.07(1) Georgia Rule for Hazardous Waste Management
Checklist 195, Identification and Listing of Hazardous Waste: Inorganic Chemical Manufacturing Wastes; Land Disposal Restrictions for Newly Identified Wastes.	November 20, 2001 66 FR 58258–58300 ..... April 9, 2002 66 FR 17119–17120	391–3–11–.07(1), 391–.3–11–.16 Georgia Rules for Hazardous Waste Management
Checklist 196, CAMU Amendments	January 22, 2002 67 FR 2962–3029	391–3–11–.02(1), 391–3–11–.10(2) Georgia Rules for Hazardous Waste Management
Checklist 197, Interim Standards for Air Pollutants for Hazardous Waste Combustors.	February 13, 2002 67 FR 6792–6818	391–3–11–.10(1), 391–3–11–.10(2), 391–3–11–.10(3), 391–3–11–.11(3)(c), 391–3–11–.11(3)(h), 391–3–11–.11(10) Georgia Rules for Hazardous Waste Management
Checklist 198, Hazardous Air Pollutant Standards for Hazardous Waste Combustors.	February 14, 2002 67 FR 6968–6996	391–3–11.10(3), 391–3–11–.11(7)(d) Georgia Rules for Hazardous Waste Management
Checklist 199, Vacatur of Mineral Processing Spent Materials Being Reclaimed as Solid Wastes and TCLP Use with MGP Waste.	March 13, 2002 67 FR 11251–11254	391–3–11–.07(1) Georgia Rules for Hazardous Waste Management
Checklist 200, Zinc Fertilizer Made From Recycled Hazardous Secondary Material.	July 24, 2002 67 FR 48393–48415	391–3–11–.07(1), 391–3–11–.10(3), 391–3–11–.16 Georgia Rules for Hazardous Waste Management
Checklist 201, Land Disposal Restrictions: National Treatment Variance to Designate New Treatment Subcategories for Radioactively Contaminated Cadmium-, Mercury-, and Silver-Containing Batteries.	October 7, 2002 67 FR 62618–62625	391–3–11–.16 Georgia Rules for Hazardous Waste Management
Checklist 202, NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors-Corrections.	December 19, 2002 67 FR 77687–77692	391–3–11–.11(10), 391–3–11–.10(13) 391–3–11–.11(3)(h) Georgia Rules for Hazardous Waste Management

H. Where Are the Revised State Rules Different From the Federal Rules?

There are no State requirements in this program revision considered to be more stringent or broader in scope than the Federal requirements.

I. Who Handles Permits After the Authorization Takes Effect?

Georgia will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization until they expire or are terminated. We will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Georgia is not yet authorized.

J. What is Codification and is EPA Codifying Georgia's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart L for this authorization of Georgia's program changes until a later date.

K. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA section 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action 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 action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations 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.

Under RCRA section 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

This action will be effective March 28, 2005.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b), of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: January 6, 2005.

A. Stanley Meiburg,

Deputy Regional Administrator, Region 4.

[FR Doc. 05–1531 Filed 1–26–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041202339–4339–01; I.D. 011905B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2005 first seasonal allowance of the pollock interim total allowable catch (TAC) for Statistical Area 610 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 23, 2005, until superseded by the notice of 2005 and 2006 final harvest specifications of groundfish of the GOA, which will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (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 first seasonal allowance of the pollock interim TAC for Statistical Area 610 of the GOA is 3,747 metric tons (mt), as established by the 2005 interim harvest specifications for groundfish of the GOA (69 FR 74455, December 14, 2004).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2005 first seasonal allowance of the pollock interim TAC for Statistical Area 610 will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 3,547 mt, and is setting aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional

Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

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 closure of pollock in Statistical Area 610 of the GOA.

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: January 19, 2005.

John H. Dunnigan,

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

[FR Doc. 05–1461 Filed 1–21–05; 3:06 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 17
Thursday, January 27, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

[Docket No. PRM–20–22]

Northeast Ohio Regional Sewer District; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (dated August 2, 1993, Docket No. PRM–20–22) submitted by the Northeast Ohio Regional Sewer District (the District or the petitioner). The petitioner requested that NRC amend its regulations to require all licensees to provide no less than 24 hours advance notice to the appropriate sewage treatment plant before releasing radioactive material into a sanitary sewer system, and to exempt radioactive materials that enter the sanitary waste stream from the requirements regarding NRC approval for incineration. NRC is denying the petition because it has been determined that current NRC regulations for discharge of licensed material into sanitary sewer systems are adequate and that current regulations for NRC approval for treatment or disposal of licensed material by incineration are necessary to ensure the protection of public health and safety and the environment.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and the NRC's letter to the petitioner may be examined at the NRC Public Document Room, O1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

The NRC maintains an Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room Reference staff at 1–800–397–4209, (301) 415–4737, or by e-mail to *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Lydia Chang, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6319, e-mail *lwc1@nrc.gov*.

SUPPLEMENTARY INFORMATION:

The Petition

By letter dated August 2, 1993, the District submitted a petition for rulemaking to amend 10 CFR 20.303 (superceded by 20.2003) and 20.305 (superceded by 20.2004). The petitioner requested that NRC modify its regulations to require that all licensees provide no less than 24 hours advance notice to the appropriate sewage treatment plant before releasing radioactive material into a sanitary sewer system, and to exempt radioactive materials that enter the sanitary waste stream from the requirements regarding NRC approval for incineration. The petitioner stated that their Southerly Wastewater Treatment Center had been contaminated from releases of radioactive material containing cobalt-60 into its sanitary sewer system, resulting in costly characterization and remediation. The petitioner stated that the District was not the first sewage treatment authority to experience radioactive contamination and noted that NRC had documented radioactive contamination problems at other sewage treatment sites. The petitioner also stated that contamination may exist undetected at other sewage treatment plants and requested that the regulations be amended.

Public Comments on the Petition

A notice of receipt of the District's petition was published in the **Federal Register** (58 FR 54071; October 20, 1993). The public comment period closed on January 3, 1994. NRC received twelve comment letters in response to the petition prior to the closing date. Ten of the twelve comment letters addressed the District's request for NRC to amend its regulations to require that all licensees provide at least 24 hours advance notice to the appropriate sewage treatment plant before releasing radioactive material into a sanitary sewer system. Three commenters supported the District's request for providing a notification to the sewage treatment plant, but one commenter said that licensees and sewage treatment plant staff could agree on the provision of a report without making it a requirement in the Federal regulations. Six commenters did not support the District's request for such an amendment. Several comments said that such a requirement would be an unnecessary burden that would neither increase radiation safety nor reduce radiation exposures. Another commenter noted that it would be difficult to schedule ''batch'' releases because radioactive materials are used in continuous drug research and development processes, and, as such, discharges into the sanitary sewer are continuous as well. One commenter believed that no radioactive waste should be deposited in any sewer system by any licensee for any reason.

Eight of the twelve letters commented on the District's request to exempt radioactive materials that entered the sanitary waste stream from the requirements regarding NRC approval for incineration. Two commenters were supportive of this part of the petition. Four commenters were opposed to this request because they believed that it was another attempt to declare radioactive materials entering sanitary sewer systems as being ''Below Regulatory Concern,'' as the exemption would only increase contamination as in the already documented cases, and it would pose a serious threat to the health and safety of populations surrounding facilities that incinerate radioactive materials. Two commenters cited the need for additional NRC review/guidance on this issue in order to clarify at what point radioactive material is no longer under regulatory control.

NRC published an advance notice of proposed rulemaking (ANPR) in the **Federal Register** (59 FR 9146; February 25, 1994) to determine whether an amendment to its regulations governing the release of radioactive material from licensed facilities into sanitary sewer systems was needed, based on current sewage treatment technologies. The ANPR noted receipt of the petition for

rulemaking submitted by the District (PRM–20–22) and specifically requested comments on the two issues raised in the petition.

Twenty-one letters received in response to the ANPR included comments on the District's request for the NRC to amend its regulations to require that all licensees provide at least 24 hours advance notice to the appropriate sewage treatment plant before releasing radioactive material into a sanitary sewer system. Six of the twenty-one commenters supported a requirement for licensees to provide the sewage treatment plant with some type of reporting on the radioactive materials released into the sanitary sewer system. These commenters supported a wide range of reporting requirements—from the petitioner's request for a 24-hour advance notification before licensees release radioactive material, to monthly or annual discharge reports, to reports of releases that could be a threat to the publicly-owned treatment works (POTW) workers or the environment, to notification of large accidental releases.

Fifteen of the twenty-one commenters did not support such a requirement for licensees to provide at least 24-hour advance notice to the appropriate sewage treatment plant before releasing radioactive material into a sanitary sewer system. Several commenters said that a 24-hour advance notification would result in an unnecessary regulatory burden, with no additional radiation safety protection nor dose reduction. These commenters indicated that the existing regulations for discharges of licensed material maintain doses at or below the existing dose limits for members of the public and if licensees meet the ''as low as reasonably achievable'' (ALARA) goals, the 24-hour advance notification would be unnecessary. Several commenters noted that such notification would be impractical because most releases are continuous and involve very small quantities of radioactive material. For example, discharges from hospitals and medical facilities would change daily depending on the number of patients treated and types of treatment used.

Several commenters also noted that potentially there would be large cost implications and regulatory burdens associated with such notification. In addition, commenters were concerned about having these reports received and interpreted by sewage treatment plant personnel, rather than radiation safety specialists, resulting in potential misinterpretation of the data. Several commenters offered that such an NRC requirement for licensees to provide a 24-hour advance notification was unnecessary because local municipalities have authority over their local sewer district, already have requirements to follow the Clean Water Act, and may establish a pretreatment program for wastewater acceptance. One commenter noted that the usefulness of a 24-hour advance notification should be assessed after the new limits for sewer discharges are in place.

Six comment letters received in response to the ANPR included comments on the District's request that the NRC exempt materials that enter the sanitary waste stream from requirements for NRC approval prior to treatment or disposal of licensed material by incineration. Four commenters supported such an amendment because, given the radioisotopes and activities involved, the pathways for human exposure from radioactive wastes seem no more or less significant if the wastes are dispersed into water or air. If release into a sanitary sewer system is to be considered disposal, these commenters indicated, the limits should be set so that no further regulation of the radioactive material is needed after release into a sanitary sewer. One commenter did not support such an amendment because it would only serve to provide an open-ended system for radioactive material to pass into the environment and to the public without limitations or characterization. Another commenter supported sole use of concentration limits for measuring a licensee's limits for disposal of radioactive material into sanitary sewer systems.

Discussion

Regulatory Framework Relevant to the Petition

NRC regulations governing the discharge of licensed material by release into sanitary sewer systems and the treatment or disposal of licensed material by incineration can be found in 10 CFR 20.2003 and 20.2004, respectively. These regulations were published in the **Federal Register** (56 FR 23360; May 21, 1991) as part of an overall revision of NRC's standards for protection against radiation. The licensees were required to implement these regulations by January 1, 1993. Although the District filed its petition after the implementation date of the 1991 revision of 10 CFR part 20 regulations, the sewage sludge and ash from the District's Southerly Wastewater Treatment Center were contaminated prior to the implementation date.

As part of the 1991 revision of 10 CFR part 20 regulations, NRC examined several instances where radioactive material was detected in sewage treatment systems. The results of this examination led to modifications of the requirements for disposal of licensed material by release into sanitary sewer systems in 10 CFR 20.2003. Specifically, NRC removed the broad provision that allowed the disposal of dispersible materials into sanitary sewer system. The disposal of non-biological insoluble materials is no longer permitted because of potential reconcentration of these materials in the sanitary sewer system, sewage treatment plants, and sewage sludge. The current NRC regulations require that any licensed material discharged into a sanitary sewer system must be readily soluble (or is readily dispersible biological material) in water. In addition, the concentration limits for radionuclides released into a sanitary sewer system were reduced by a factor of 10 as part of an overall reduction in effluent release limits. The concentration limits were reduced because of past contamination incidents involving cobalt-60 and americium-241. The revised concentration limits, listed in Table 3 of the Appendix B to part 20, were an effort to reduce the public's exposure to radionuclides released into the sanitary sewer system. In addition, NRC recommends that licensees should set ALARA goals for effluents at a modest fraction (10 to 20 percent) of their allowable limits as stated in NRC Regulatory Guide 8.37, ''ALARA Levels for Effluents from Materials Facilities,'' dated July 1993. NRC also conducts periodic inspections to ensure that licensees are in compliance with NRC regulations.

A number of comments, received during the 1991 revision of 10 CFR Part 20, questioned the need for the requirements that incineration of radioactive material requires specific prior NRC approval. After these comments were analyzed and considered in developing the final rule, NRC did not revise the provision regarding Commission approval for treatment or disposal by incineration except for waste oil. In the ''Statements of Consideration'' for the final rule, NRC stated:

> Relaxation of the prior approval requirement for incineration was considered in connection with the amendments to part 20 of this final rule. The requirements for prior NRC approval of incineration remains in the amendments to part 20 in this final rule because the acceptability of incineration as a disposal option, except for exempted quantities of radioactive materials, must be determined on a site-specific basis considering: (1) Incinerator design, (2) the variable isotopic composition and activity of the material to be burned, and (3) potential human exposure to effluents, which may

require special calculational methods because of complex meteorologic conditions and other factors.

As part of the 1991 revision of 10 CFR part 20, it was authorized that a licensee may treat or dispose of licensed material contained in certain waste oil by incineration without prior NRC approval. In making this regulatory change, the NRC staff analyzed the type of radionuclides and their potential concentrations in waste oil, performed atmospheric dispersion modeling to characterize potential hazards from incineration, and evaluated the potential environmental impact. The regulatory basis for requirements in obtaining NRC approval prior to incineration is to ensure that NRC may evaluate the potential impact to the public health and safety and the environment on a case-by-case and site-specific basis. Hazards associated with incineration of sewage sludge will highly depend on the specific characteristic of the sludge such as the presence of radioactive materials, which could potentially have a broad spectrum of radionuclides and a wide range of concentration levels. The petitioner's request to incinerate sewage sludge without prior NRC approval is not supported by any detailed data, and has the potential to be inconsistent with the petitioner's basis for requesting an amendment to 10 CFR 20.2003. If petitioner is concerned with potential contamination of radioactive material in the sewage sludge, incineration of such sewage sludge without prior NRC approval would potentially not be protective to the public health and safety and the environment.

Surveys, Studies, and Reports Relevant to the Petition

In May 1992, the NRC issued the results of a scoping study in NUREG/CR–5814, ''Evaluation of Exposure Pathways to Man from Disposal of Radioactive Materials into Sanitary Sewer Systems,'' which evaluated the potential radiological doses to POTW workers and members of the public from exposure to radionuclides in sewage sludge. The first part of the analysis estimated the potential doses to workers for five known cases in which radioactive materials were detected at POTWs (Tonawanda, NY; Grand Island, NY; Royersford, PA; Oak Ridge, TN; and Washington, DC). Doses from the case studies were estimated to range from less than 10 microsieverts per year (μSv/yr) (1 millirem per year (mrem/yr)) to 930 μSv/yr (93 mrem/yr) for members of the public, using a deterministic scenario analysis and the reported radionuclide concentrations and/or discharges. The second part of the study estimated the maximum radiation exposures to POTW workers and others who could be affected by low levels of man-made radioactivity in wastewater. The quantities of radionuclides released into the sewer systems were assumed to be the maximum allowed under NRC regulations at the time. Estimates of the hypothetical, maximum exposures to workers ranged from zero to a dose roughly equal to natural background.

In May 1994, the U.S. General Accounting Office (GAO, now U.S. Government Accountability Office) issued a report, GAO/RCED–94–133, ''Nuclear Regulation: Action Needed to Control Radioactive Contamination at Sewage Treatment Plants,'' that described nine cases, including the District, where contamination was found in sewage sludge or ash or in wastewater collection systems. On the basis of the limited information available on radiation levels in sewage sludge and ash across the country, GAO concluded that the full extent of contamination nationwide is unknown. The GAO also concluded that the ''problem of radioactive contamination of sludge and ash in the reported cases was the result, in large part, of NRC's regulation, which was incorrectly based on the assumption that radioactive materials would flow through treatment systems and not concentrate.'' The GAO report did note that to address the problem of radioactive materials' concentrating in sludge and ash, the NRC has revised its regulation to reduce the concentration levels of the radioactive materials that licensees can discharge into sanitary sewer systems although the GAO report also pointed out that ''NRC does not know how effective this action will be.'' The GAO report stated that health implications of the exposure of treatment plant workers and the public to contaminated sludge, ash, and related by-products are unknown because neither the NRC nor the United States Environmental Protection Agency (EPA) knows (1) how much radioactive material may be in these products and (2) how these products might affect people.

In June 1994, a joint U.S. House of Representatives and Senate hearing (June 21, 1994; S. Hrg. 103–1034) was held to officially release and address questions raised in the GAO report. These hearings were prompted by concerns associated with elevated levels of radioactivity in incinerator ash at the Cleveland treatment plant referenced in the District's petition. The testimony presented by both NRC and EPA during the hearing noted that there was no indication of a widespread problem, and that the District's incident appeared to be an isolated event. However, at the hearing, NRC and EPA committed to jointly develop guidance for POTWs and to collect more data on the concentration of radioactive materials in samples of sewage sludge and ash from POTWs nationwide.

Between 1994 and 1997, Federal, State, and industry studies were conducted to assess reconcentration of radioactive materials that are released into sanitary sewer systems. In December 1994, the NRC published NUREG/CR–6289, ''Reconcentration of Radioactive Material Released to Sanitary Sewers in Accordance with 10 CFR Part 20.'' The objectives of this study were to: (1) Assess whether radioactive materials that are released into sanitary sewer systems undergo significant reconcentration within the wastewater treatment plant, and (2) determine the physical and/or chemical processes that may result in their reconcentration within the wastewater treatment plant. A review of the literature clearly demonstrated that some radioactive materials discharged into sanitary sewer systems are reconcentrated in sludge produced as a result of wastewater treatment. However, the report concluded that the available data were not sufficient to assess the adequacy of the requirements in 10 CFR 20.2003 in preventing occurrences of radionuclide concentrations in sewage sludge at levels which present undue risk to the public; nor is the available data sufficient to suggest strategies for changing that requirements.

In 1996, the Association of Metropolitan Sewerage Agencies (AMSA) conducted a limited survey of concentrations of radioactivity in sewage sludge and ash samples from some of its member POTWs. Samples were obtained from 55 wastewater treatment plants in 17 States. The most significant sources of radioactivity were potassium and radium isotopes, which are naturally occurring radioactive materials (NORM).

In December 1997, the Washington State Department of Health issued a report WDOH/320–013, ''The Presence of Radionuclides in Sewage Sludge and Their Effect on Human Health,'' that was based on sludge samples taken at six POTWs in the State. The report concluded that doses from radionuclides in sewage sludge are extremely low compared to background or to generally accepted regulatory dose limits, and that there is no indication that radioactive material in biosolids in the State of Washington poses a health risk.

The Interagency Steering Committee on Radiation Standards (ISCORS) was formed in 1995 to address inconsistencies, gaps, and overlaps in current radiation protection standards. In 1996, the Sewage Sludge Subcommittee of ISCORS was formed to coordinate efforts to address the recommendations in the 1994 GAO Report. Between 1998 and 2000, the EPA and NRC (through the ISCORS) jointly conducted a voluntary survey of POTW sewage sludge and ash to help assess the potential need for NRC and/or EPA regulatory decisions. Sludge and ash samples were analyzed from 313 POTWs, some of which had greater potential to receive releases of radionuclides from NRC and Agreement State licensees, and some of which were located in areas of the country with higher concentrations of NORM. Although the survey and sampling were biased towards facilities with greater potential for the presence of licensed material and NORM, ISCORS did not make a conclusion about the bias of the results. In November 2003, the results of the survey were published in a final report, NUREG–1775 ''ISCORS Assessment of Radioactivity in Sewage Sludge: Radiological Survey Results and Analysis.'' No widespread or nationwide public health concern was identified by the survey and no excessive concentrations of radioactivity were observed in sludge or ash. The results indicated that the majority of samples with elevated radioactivity were attributable to NORM, such as radium, rather than man-made sources. With the exception of NORM, most of the other samples were at or near the limit of detection. The results of this survey are consistent with the AMSA survey noted above.

The Sewage Sludge Subcommittee is in the process of finalizing a draft report, NUREG–1783, ''ISCORS Assessment of Radioactivity in Sewage Sludge: Modeling to Assess Radiation Doses.'' This report contains computer modeling information, seven different sewage sludge management scenarios, and doses calculated by using modeling process that converts known activity concentrations in sludge to potential doses to individuals. Using survey results with the dose modeling, the calculated doses showed that no widespread concern to public health and safety from potential radiation exposures associated with the handling, beneficial use, and disposal of sewage sludge containing radioactive materials, including NORM.

The Sewage Sludge Subcommittee is also in the process of finalizing a draft final report, EPA 832–R–03–002B, ''ISCORS Assessment of Radioactivity in Sewage Sludge: Recommendations on Management of Radioactive Materials in Sewage Sludge and Ash at Publicly Owned Treatment Works,'' November 2003. This report provides guidance to: (1) Alert POTW operators, and State and Federal regulators to the possibility of radioactive materials concentrating in sewage sludge and incinerator ash; (2) inform them how to determine whether there are elevated levels of radioactive materials in their sludge or ash; and (3) assist them in identifying actions for reducing potential radiation exposure from sewage and ash.

Reasons for Denial

NRC is denying the petition because it has been determined that current NRC regulations in 10 CFR 20.2003 and 20.2004 adequately ensure the protection of public health and safety and the environment.

With regard to the petitioner's request to amend 10 CFR 20.2003, NRC has reviewed the petitioner's rationale, the public comments on the petition and on the ANPR, and a number of relevant activities, surveys, and reports to determine whether there was a health and safety issue due to the reconcentration of radioactive materials in sewage sludge and ash, and if so, was the requested amendment for 24 hours advance notifications necessary to help prevent excessive exposures to workers and the public.

The current requirements in 10 CFR 20.2003 were not fully implemented at the time of contamination at the District's Southerly Wastewater Treatment Center. The NRC significantly decreased the concentration limits for radionuclides discharged into sanitary sewer systems as part of the 1991 revision of 10 CFR Part 20, and licensees were required to comply with the regulatory changes as of 1993. In addition to lowering the concentration limits, the disposal of non-biological insoluble materials was prohibited because of potential reconcentration of these materials in sanitary sewer systems, treatment plants, and sludge. NRC also has issued guidance to further reduce the effluent limits through use of ALARA goals. In addition, NRC conducts periodic inspections to ensure that licensees are in compliance with NRC regulations. Under this current regulatory framework, NRC expects that doses from release of licensed material into a sanitary sewer system are within regulatory limits.

The available data do not support the District's assertion that health and safety protection would be enhanced by advance notification from all licensees to the appropriate sewage treatment plant. The ISCORS final survey report shows that NORM constitutes the most significant levels of radioactive materials in POTWs, and therefore any notification requirement imposed on licensees will not effectively reduce the level of radioactive materials in POTW facilities. Effluent levels from NRC-licensed activities are established in order to maintain doses to the public at or below a pre-determined protective level. The ISCORS draft dose modeling report shows that calculated doses to POTW workers and the public are sufficiently low from discharge of the licensed material into sanitary sewer systems, based on radionuclide concentrations in the sewage sludge and the associated sewage sludge management practices.

NRC has determined that a requirement for an advance notification would impose an unnecessary regulatory burden on licensees, without a commensurate health and safety protection of the public. Such a requirement for advance notification would also be considered as an information request burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This burden is broadly defined, and any method of notification imposed by an Agreement State or the NRC, including telephonic or electronic, is applicable. The regulatory burden proposed by the District is large, due to the large number of licensees that discharge to sanitary sewer systems. In addition, there is no justification on how the notification would be used at the wastewater treatment plant to affect treatment operations in response to a discharge of licensed material to ensure protection of health and safety.

Finally, several commenters stated that it would be impractical, if not impossible, for all licensees to provide advance notices to the appropriate sewage treatment plant because of the nature of the process involved. Very small quantities of radioactive materials are continuously used at certain licensed facilities, such as drug research and development companies, and these radioactive materials are continuously discharged into sanitary sewer systems. Discharges from clinics and hospitals would have many fluctuations depending on the number of patients treated and the types of treatment used. It would be unreasonable to expect licensees to notify the sewage treatment facility prior to each discharge. It would also be equally unreasonable, in some cases, to expect licensees to collect

discharges in order to schedule for a batched discharge.

In summary, NRC has concluded that the public comments, data, analyses, reports, and petitioner's rationale do not justify the petitioner's request for a rulemaking to amend the regulations in 10 CFR 20.2003 to require that all licensees provide no less than 24 hours advance notification to the appropriate sewage treatment plant before releasing radioactive material into a sanitary sewer system. Such a rulemaking would impose unnecessary regulatory burden on licensees and does not appear to be warranted for the adequate protection of public health and safety and the common defense and security. Therefore, NRC is denying the petitioner's request to amend 10 CFR 20.2003.

With respect to the petitioner's request to amend 10 CFR 20.2004, NRC has reviewed the petitioner's rationale, the public comments on the petition, and the regulatory history on the requirements for NRC approval for incineration. NRC regulations in 10 CFR 20.2004 apply to either an NRC or an Agreement State licensee and generally do not apply to a POTW or its operations. POTWs are not required to obtain NRC approval for incineration of their sewage sludge, unless they possess an NRC or Agreement State license for possession of licensed radioactive material in the sewage sludge. Studies, surveys, and modeling efforts conducted to date indicate that releases of radioactive material from licensed facilities in accordance with 10 CFR 20.2003 generally do not reconstitute in sewage sludge in sufficient concentrations to pose a risk to public health and safety and thus it is unlikely that a POTW will be required to possess an NRC license for its sludge. Therefore, a change to 10 CFR 20.2004 regulations is not needed.

If a licensee incinerates licensed material, the staff continues to believe that the NRC approval requirements are necessary to have reasonable assurance that the public health and safety are adequately protected. Hazards associated with incinerating licensed material will highly depend on the specific characteristic of the matrix containing the licensed material. If a licensee incinerates the licensed material contained in the sewage sludge, many factors would have to be considered because the sewage sludge could potentially have a broad spectrum of radionuclides from various sources and a wide range of concentration levels. The potential hazards also highly depend on the case-specific incinerator design and site-specific exposure to the public and the environment. Even though the discharge requirements for 10 CFR 20.2003 were set to adequately protect public health and safety and the environment, different human exposure scenarios apply to the disposal of licensed material by incineration, even if those materials are discharged in compliance with another section of the regulations. NRC found that the acceptability of incineration as a disposal option, except for exempted quantities of radioactive materials, must be determined on a facility- and site-specific basis. NRC continues to believe that prior NRC approval for incineration is necessary to have reasonable assurance that the public health and safety are adequately protected. Therefore, NRC is also denying the petitioner's request to amend 10 CFR 20.2004 to explicitly exempt radioactive materials that enter the sanitary waste stream under 10 CFR 20.2003 from the requirements regarding NRC approval for incineration.

For the reasons cited in this document, NRC denies this petition.

Dated in Rockville, Maryland, this 21st day of January, 2005.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 05–1485 Filed 1–26–05; 8:45 am]

BILLING CODE 7590–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7864–5]

Georgia: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Georgia has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final authorization to Georgia. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we get written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send your written comments by February 28, 2005.

ADDRESSES: Send written comments to Audrey E. Baker, Authorizations Coordinator, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960; (404) 562–8483. You may also e-mail comments to *baker.audrey@epa.gov.* You can examine copies of the materials submitted by Georgia during normal business hours at the following locations: EPA Region 4 Library, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960, phone number: (404) 562–8190, John Wright, Librarian; or The Georgia Department of Natural Resources Environmental Protection Division, 2, Martin Luther King, Jr., Drive, Suite 1154 East Tower, Atlanta Georgia 30334–4910, phone number: (404) 656–7802.

FOR FURTHER INFORMATION CONTACT: Audrey E. Baker, Authorizations Coordinator, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960; (404) 562–8483.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the ''Rules and Regulations'' section of this **Federal Register**.

Dated: January 6, 2005.

A. Stanley Meiburg,

Deputy Regional Administrator, Region 4.

[FR Doc. 05–1532 Filed 1–26–05; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 70, No. 17
Thursday, January 27, 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

Submission for OMB Review; Comment Request

January 24, 2005.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) 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; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to the collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Pamela_Beverly_OIRA_Submission @OMB.EOP.GOV or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Research Service

Title: Food Stamp Nutrition Connection Resource Sharing Form.

OMB Control Number: 0518–0031.

Summary of Collection: In 2001, the United States Department of Agriculture's Food and Nutrition Service (FNS) established the Food Stamp Nutrition Connection to improve access to Food Stamp Program nutrition resources. The National Agricultural Library's Food and Nutrition Information Center (FNIC) currently develops and maintains this resource system. The voluntary ''Sharing Form'' would give Food Stamp nutrition education providers the opportunity to share their resources and learn about existing materials. Data collected using this form will help FNIC identify nutrition education and training resources for review and inclusion in an online database. FNS encourages, but does not require or mandate, state Food Stamp nutrition education programs to submit materials to FNIC for inclusion in the Food Stamp Nutrition Connection database.

Need and Use of the Information: FNIC will use the collected information to help build an online database of nutrition education and training materials. Food Stamp nutrition education providers could use this information to identify and obtain curricula, lesson plan, research, training tools and participant materials. The information will be collected using online and printed versions of the form. Failure to collect this information would significantly inhibit FNIC's ability to provide up-to-date information on existing nutrition education materials that are appropriate for Food Stamp nutrition education programs.

Description of Respondents: Not-for-profit institutions; Federal Government; State, Local or Tribal Government; Business or other for-profit.

Number of Respondents: 50.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 16.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 05–1518 Filed 1–26–05; 8:45 am]

BILLING CODE 3410–03–M

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Idaho Resource Advisory Committee Caribou-Targhee National Forest, Idaho Falls, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Caribou-Targhee National Forests' Eastern Idaho Resource Advisory Committee will meet Thursday, March 10, 2005 in Idaho Falls for a business meeting. The meeting is open to the public.

DATES: The business meeting will be held on March 10, 2005 from 10 a.m. to 3 p.m.

ADDRESSES: The meeting location is the Caribou-Targhee National Forest Headquarters Office, 1405 Hollipark Drive, Idaho Falls, Idaho 83402.

FOR FURTHER INFORMATION CONTACT: Jerry Reese, Caribou-Targhee National Forest Supervisor and Designated Federal Officer, at (208) 524–7500.

SUPPLEMENTARY INFORMATION: The business meeting on March 10, 2005, begins at 10 a.m., at the Caribou-Targhee National Forest Headquarters Office, 1405 Hollipark Drive, Idaho Falls, Idaho. Agenda topics will include looking at project proposals that have been sent in for the 2005 fiscal year and making decisions on those projects whether to invite to second meeting or dismiss project.

Dated: January 19, 2005.

Jerry B. Reese,

Caribou-Targhee Forest Supervisor.

[FR Doc. 05–1496 Filed 1–26–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–351–504, A–351–503, A–122–503, A–570–502, A–821–801, A–823–801, A–570–001]

Iron Construction Castings From Brazil, Canada and China; Solid Urea From Russia and Ukraine; and Potassium Permanganate From China; Extension of Time Limits for the Final Results of Sunset Reviews of Countervailing and Antidumping Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 27, 2005.

FOR FURTHER INFORMATION CONTACT: Martha Douthit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5050.

Extension of Preliminary and Final Results of Reviews

In accordance with section 751(c)(5)(B), the Department of Commerce (''the Department'') may extend the period of time for making its determination by not more than 90 days, if it determines that the review is extraordinarily complicated. As set forth in 751(c)(5)(C)(v) of the Tariff Act of 1930, as amended (''the Act''), the Department may treat a sunset review as extraordinarily complicated if it is a review of a transition order, as is the case in these proceedings. Therefore, the Department has determined, pursuant to section 751(c)(5)(C)(v) of the Act, that the sunset reviews of the countervailing duty order on iron construction castings from Brazil and the antidumping duty orders on iron construction castings from Brazil, Canada and China; solid urea from Russia and Ukraine; and potassium permanganate from China, are extraordinarily complicated and require additional time for the Department to complete its analysis. The Department's final results of these sunset reviews were originally scheduled for January 31, 2005. The Department will extend the deadlines in this proceedings and, as a result, intends to issue the final results of the sunset reviews on iron construction castings from Brazil, Canada and China; solid urea from Russia and Ukraine; and potassium permanganate from China on or about March 31, 2005, in accordance with section 751(c)(5)(B).

Dated: January 19, 2005.

Gary Taverman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–313 Filed 1–26–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–605]

Frozen Concentrated Orange Juice from Brazil; Initiation of Changed Circumstances Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is initiating a changed circumstances administrative review of the antidumping duty order on frozen concentrated orange juice (FCOJ) from Brazil (*see Notice of Antidumping Duty Order: Frozen Concentrated Orange Juice from Brazil* (52 FR 16426, May 5, 1987)) in response to a request from Louis Dreyfus Citrus Inc., a U.S. importer of FCOJ from Brazil, COINBRA–Frutesp, S.A. (COINBRA–Frutesp), a manufacturer/exporter of FCOJ from Brazil, and the affiliated companies of the Louis Dreyfus group (collectively ''Louis Dreyfus''). These entities have requested that the Department conduct a changed circumstances review to determine that COINBRA–Frutesp is the successor–in-interest to Coopercitrus Industrial Frutesp, S.A. (Frutesp), and as a result to find that FCOJ from Brazil manufactured and exported by COINBRA–Frutesp is not subject to the antidumping duty order on FCOJ from Brazil.

EFFECTIVE DATE: January 27, 2005.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood or Jill Pollack, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–3874 and (202) 482–4593, respectively.

SUPPLEMENTARY INFORMATION:

Background:

On May 5, 1987, the Department published in the **Federal Register** an antidumping duty order on FCOJ from Brazil covering all Brazilian producers except Sucocitrico Cultrale, S.A. *See Antidumping Duty Order; Frozen Concentrated Orange Juice from Brazil*, 52 FR 16426 (May 5, 1987). On October 21, 1991, the Department revoked the antidumping duty order with regard to Frutesp. *See Frozen Concentrated Orange Juice from Brazil; Final Results and Termination in Part of Antidumping Duty Administrative Review; Revocation in Part of Antidumping Duty Order*, 56 FR 52510 (Oct. 21, 1991).

In 1993, Louis Dreyfus purchased the shares and assets of Frutesp, and the following year Frutesp changed its name to COINBRA–Frutesp.

On August 3, 2004, Louis Dreyfus informed the Department that it controls, through its member companies, all the assets of COINBRA–Frutesp. In this submission, Louis Dreyfus requested an expedited changed circumstances review to determine that FCOJ from Brazil manufactured by Louis Dreyfus or its affiliates and exported by COINBRA–Frutesp is not subject to the antidumping duty order on FCOJ from Brazil.

On September 17 and November 5, 2004, we requested additional clarification from Louis Dreyfus with respect to the companies that are the subject of its request for a changed circumstances review. On September 20 and November 15, 2004, Louis Dreyfus clarified that it is requesting that COINBRA–Frutesp be designated as the successor–in-interest to Frutesp. According to Louis Dreyfus, this action is necessary because on March 18, 2004, U.S. Customs and Border Protection (CBP) informed Louis Dreyfus that entries of FCOJ manufactured by COINBRA–Frutesp are, in fact, subject to the antidumping duty order on FCOJ, and CBP is currently requiring the payment of cash deposits on such merchandise. Louis Dreyfus asserts that the CBP had not required cash deposits on COINBRA–Frutesp's exports prior to that time.

Scope of the Review

The merchandise covered by this order is FCOJ from Brazil, and is currently classifiable under item 2009.11.00 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS item number is provided for convenience and customs purposes. The Department's written description of the scope of the review remains dispositive.

Initiation of Changed Circumstances Review

Pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), the Department will conduct a changed circumstances review upon request from an interested party or receipt of information concerning an antidumping

duty order, when either of which shows changed circumstances sufficient to warrant a review of the order. Thus, in accordance with section 751(b) of the Act, the Department is initiating a changed circumstances review to determine whether COINBRA–Frutesp is the successor–in-interest to Frutesp for purposes of determining antidumping duty liability with respect to imports of FCOJ from Brazil produced and exported by COINBRA–Frutesp.

In making a successor–in-interest determination, the Department examines several factors including, but not limited to, changes in: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See, e.g., Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review: Polychloroprene Rubber From Japan*, 67 FR 58 (Jan. 2, 2002); *Brass Sheet and Strip from Canada: Final Results of Antidumping Duty Administrative Review*, 57 FR 20460, 20462 (May 13, 1992). While no single factor or combination of these factors will necessarily provide a dispositive indication of a successor–in-interest relationship, the Department will generally consider the new company to be the successor to the previous company if the new company's resulting operation is not materially dissimilar to that of its predecessor. *See, e.g., Fresh and Chilled Atlantic Salmon from Norway; Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 9979 (Mar. 1, 1999); *Industrial Phosphoric Acid from Israel; Final Results of Changed Circumstances Review*, 59 FR 6944 (Feb. 14, 1994). Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the former company, the Department will accord the new company the same antidumping treatment as its predecessor.

With regard to Frutesp, Louis Dreyfus claims that the production facilities and contractual relationships with suppliers and customers remained unchanged after Louis Dreyfus assumed control of this company. According to Louis Dreyfus, COINBRA–Frutesp and its assets have remained essentially the same as those of Frutesp for which the order was revoked. In addition, Louis Dreyfus states that changes in the corporate name and ownership are the only material aspects of COINBRA–Frutesp's business that have changed since the Department revoked the antidumping duty order with regard to Frutesp.

In this case, the Department finds that the information submitted by Louis Dreyfus provides sufficient evidence of changed circumstances to warrant a review to determine whether COINBRA–Frutesp is the successor–in-interest to Frutesp. Thus, in accordance with section 751(b)(1) of the Act, we are initiating a changed circumstances review based upon the information contained in Louis Dreyfus' submissions to determine whether the revocation of the order as to Frutesp should apply to merchandise manufactured and exported by COINBRA–Frutesp. Because it is the Department's practice to examine changes in management and customer base as part of its analysis in such a determination, and Louis Dreyfus has not addressed these factors, we are not conducting the changed circumstances review on an expedited basis.

The Department will publish in the **Federal Register** a notice of preliminary results of changed circumstances review, in accordance with 19 CFR 351.221(c)(3)(i) (2004), which will set forth the factual and legal conclusions upon which our preliminary results are based, and a description of any action proposed based on those results. Interested parties may submit comments for consideration in the Department's preliminary results not later than 60 days after publication of this notice. Responses to those comments may be submitted not later than 10 days following submission of the comments. All written comments must be submitted in accordance with 19 CFR 351.303 (2004), and must be served on all interested parties on the Department's service list in accordance with 19 CFR 351.303(f) (2004). The Department will also issue its final results of review within 270 days after the date on which the changed circumstances review is initiated, in accordance with 19 CFR 351.216(e) (2004), and will publish these results in the **Federal Register**.

The current requirement for a cash deposit of estimated antidumping duties on all subject merchandise will continue unless and until it is modified pursuant to the final results of this changed circumstances review.

This notice is in accordance with sections 751(b)(1) of the Act and 19 CFR 351.216 and 351.222 of the Department's regulations.

Dated: January 19, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–314 Filed 1–26–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011905F]

Proposed Information Collection; Comment Request; Coral Reef Conservation Program Administration

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 March 28, 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 Bill Millhouser 301–713–3155 x189.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Coral Reef Conservation Grant Program provides funds to broad-based applicants with experience in coral reef conservation to conduct activities to protect and conserve coral reef ecosystems. The information submitted is used to determine: (1) whether the applicant qualifies for a waiver of matching funds, and (2) if a proposed project is consistent with the coral reef conservation priorities of authorities with jurisdiction over the area where the project will be conducted.

II. Method of Collection

Information describing the eligibility requirements for a waiver of matching funds is described in the Announcement for Federal Funding Opportunity (FFO) for the NOAA Coral Reef Conservation Grant Program. The FFO can be obtained at *http://www.grants.gov* or *http://www.coralreef.noaa.gov/grants.html*. Respondents are encouraged to email their letters justifying the need for a waiver.

III. Data

OMB Number: 0648–0448.

Form Number: None.

Type of Review: Regular submission.

Affected Public: State, Local or Tribal Government; Federal Government; and Not-for-profit institutions.

Estimated Number of Respondents: 38.

Estimated Time Per Response: Match Waiver Request, 1 hour; and Proposal Comment, 1 hour.

Estimated Total Annual Burden Hours: 78.

Estimated Total Annual Cost to Public: $1,900.

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: January 18, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–1458 Filed 1–26–05; 8:45 am]

BILLING CODE 3510–08–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Consistency Appeal by Fernando E. Otero Rodriguez From an Objection by the Puerto Rico Planning Board

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (Commerce).

ACTION: Notice of closure—administrative appeal decision record.

SUMMARY: This announcement provides notice that the decision record has been closed for an administrative appeal filed with the Department of Commerce by Fernando E. Otero Rodriguez.

DATES: The decision record for the Fernando E. Otero Rodriguez administrative appeal will close as of the date of publication of this notice.

ADDRESSES: Materials from the appeal record are available at the Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Nancy Briscoe, Attorney-Adviser, NOAA Office of the General Counsel, 301–713–1219.

SUPPLEMENTARY INFORMATION: Fernando E. Otero Rodriguez (Appellant) has filed a notice of appeal with the Secretary of Commerce (Secretary) pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA), as amended, 16 U.S.C. 1456(c)(3)(A), and implemented regulations found at 15 CFR part 930, subpart H. Mr. Otero Rodriguez appeals an objection raised by the Puerto Rico Planning Board to a consistency certification contained within his application for a U.S. Army Corps of Engineers permit necessary to reconstruct a stilt house destroyed by Hurricane George. The proposed project is located within the maritime-terrestrial zone, territorial waters and submerged lands of the Commonwealth of Puerto Rico.

The CZMA requires a notice be published in the **Federal Register**, indicating the date on which the decision record has been closed. A final decision on this appeal must be issued no later than 90 days after publication of this notice. 16 U.S.C. 1465(a). The deadline may be extended by publishing, within the 90-day period, a subsequent notice explaining why a decision cannot be issued within this time frame. In this event, a final decision must be issued no later than 45 days after publication of the subsequent notice. 16 U.S.C. 1465(b).

For additional information about this appeal contact Nancy Briscoe, 301–713–1219.

(Federal Domestic Assistance Catalog No. 11.419 (Coastal Zone Management Program Assistance)

Dated: January 19, 2005.

James R. Walpole,

General Counsel.

[FR Doc. 05–1501 Filed 1–26–05; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Consistency Appeal by Luz Torres DeRosa From an Objection by the Puerto Rico Planning Board

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (Commerce).

ACTION: Notice of closure—administrative appeal decision record.

SUMMARY: This announcement provides notice that the decision record has been closed for an administrative appeal filed with the Department of Commerce by Luz Torres DeRosa.

DATES: The decision record for the Luz Torres DeRosa administrative appeal will close as of the date of publication of this notice.

ADDRESSES: Materials from the appeal record are available at the Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Nancy Brisco, Attorney-Adviser, NOAA Office of the General Counsel, 301–713–1219.

SUPPLEMENTARY INFORMATION: Luz Torres DeRosa (Appellant) has filed a notice of appeal with the Secretary of Commerce (Secretary) pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA), as amended, 16 U.S.C. 1456(c)(3)(A), and implementing regulations found at 15 CFR part 930, subpart H. Mrs. Torres appeals an objection raised by the Puerto Rico Planning Board to a consistency certification contained within her application for a U.S. Army Corps of Engineers permit necessary to reconstruct a stilt house destroyed by Hurricane George. The proposed project is located within the maritime-terrestrial zone, territorial waters and submerged lands of the Commonwealth of Puerto Rico.

The CZMA requires a notice be published in the **Federal Register,** indicating the date on which the decision recorded has been closed. A final decision on this appeal must be issued no later than 90 days after publication of this notice. 16 U.S.C. 1465(a). The deadline may be extended by publishing, within the 90-day period, a subsequent notice explaining why a decision cannot be issued within this time frame. In this event, a final

decision must be issued no later than 45 days after publication of the subsequent notice. 16 U.S.C. 1465(b).
(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance.)

For additional information about this appeal contact Nancy Briscoe, 301–713–1219.

Dated: January 19, 2005.

James R. Walpole,

General Counsel.

[FR Doc. 05–1502 Filed 1–26–05; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No.: 050121013–5013–01]

External Review of NOAA's Ecosystem Research and Science Enterprise

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of solicitation for members of a NOAA ecosystem research and science enterprise review panel.

SUMMARY: The Under Secretary of Commerce for Oceans and Atmosphere has requested the NOAA Science Advisory Board (SAB) to conduct an external review of NOAA's ecosystem research and science enterprise. The SAB is chartered under the Federal Advisory Committee Act and is the only Federal Advisory Committee with the responsibility to advise the Under Secretary on long- and short-range strategies for research, education, and application of science to resource management and environmental assessment and prediction. The SAB is forming an external panel to review and draft recommendations on the appropriateness of the mix of scientific activities conducted and/or sponsored by NOAA to its mission and on the organization of NOAA's ecosystem research and science enterprise.

Nominations to the panel are being solicited herein. The intent is to select from the nominees. However, the SAB retains the prerogative to name people to the review team that were not nominated if it deems it necessary to achieve the desired balance. Once selected, the SAB will post the review panel, with abridged resumes, at: *http://www.sab.noaa.gov/Doc/Documents.html.*

DATES: Nominations should be sent to the address specified and must be received by February 17, 2005.

ADDRESSES: Nominations should be submitted electronically to Dr. Michael Uhart (*Michael.Uhart@noaa.gov*) or mailed to Dr. Michael Uhart, Executive Director, SAB, NOAA, Rm. 11142, 1315 East-West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Uhart: (301) 713–9121, ext. 159.

SUPPLEMENTARY INFORMATION: Panel members shall not be employed or currently funded by NOAA. Nominations should describe the nominee's contact information and qualifications relative to the criteria given below, or include a resume. Anyone is eligible to nominate and self-nominations will be accepted. The external review team will have at least seven members with a variety of backgrounds (recognizing it will not be practical to have all backgrounds represented), with respect to:

1. Scientific disciplines of physical sciences, biological sciences (including fisheries science), and social sciences;

2. Experience in academia, within mission-oriented government agencies, Non-Governmental Organizations, and the private sector;

3. Familiarity with NOAA's mandates; and

4. Being a science provider to key generic groups of stakeholders, science interpreter to groups of stakeholders, science user, or stakeholder with a history of interaction with science providers.

The reviewers should have the following qualifications:

1. National and international recognition within their profession;

2. Knowledge of the scientific information needs to support NOAA's ecosystem stewardship missions, coupled with broad familiarity with NOAA's total mission;

3. Knowledge of, and experience with, the organization and management of complex mission-oriented scientific programs; and

4. No perceived or actual vested interest or conflict of interest that might undermine the credibility of the review.

It is of note that, except for qualification criteria 4, the criteria are not absolute requirements. The qualifications of individuals are expected to be outstanding enough with respect to one or more, but not necessarily all, of the criteria. Because of the limited size of the review panel, management organization expertise must include expertise on ecosystem science or the very special features of science applied to government decision-making.

The purpose of the review is to answer the following questions: (1) Is the mix of scientific activities conducted and/or sponsored by NOAA appropriate for its mission needs and (2) how should NOAA organize its ecosystem research and science enterprise? The framework for the review, including additional background, is posted at: *http://www.sab.noaa.gov/Doc/Documents.html.*

The review will be conducted and the final report presented to the SAB by November 2005. The review will involve up to three site visits, approximately five meetings and the drafting of the report of the panel's review.

Dated: January 21, 2005.

Louisa Koch,

Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 05–1480 Filed 1–26–05; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011905A]

Fisheries of the Gulf of Mexico; Southeastern Data, Assessment, and Review Gulf of Mexico Red Snapper Workshops

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

ACTION: Notice of the Southeastern Data, Assessment, and Review Gulf of Mexico Red Snapper (SEDAR) Review Workshop for Gulf of Mexico Red Snapper.

SUMMARY: The SEDAR process for the Gulf of Mexico red snapper consists of a series of three workshops: a data workshop, an assessment workshop, and a review workshop. The data and assessment workshops are completed. This document announces the schedule for the review workshop.

DATES: The review workshop will be held on April 4–7, 2005. The workshop may adjourn on or before April 7, 2005, at 6 p.m.

ADDRESSES: *Workshop address*: The review workshop will be held at the Country Inn and Suites, 315 Magazine Street, New Orleans, LA 70130; phone: (504)324–5400.

Council address: Gulf of Mexico Fishery Management Council (GMFMC), 3018 North U.S. Highway 301, Suite 1000, Tampa, FL 33619.

GMFMC e-mail address: *gulfcouncil@gulfcouncil.org.*

FOR FURTHER INFORMATION CONTACT: Mr. Steven Atran or Mr. Stu Kennedy, 813–228–2815 or 888–833–1844.

SUPPLEMENTARY INFORMATION:

Data and Assessment Workshops

The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR includes three workshops: (1) data workshop, (2) assessment workshop, and (3) review workshop. The product of the data workshop and the assessment workshop is a stock assessment report, which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment report is independently peer reviewed at the review workshop.

Review Workshop

The review workshop is an independent peer review of the assessment developed during the data and assessment workshops. Workshop panelists will review the assessment and produce a SEDAR Consensus Summary Report to document their consensus opinions and comments.

The products of the review workshop are a Consensus Summary Report, which reports Panel opinions regarding the strengths and weaknesses of the stock assessment and input data, and an Advisory Report, which summarizes the status of the stock. Participants for SEDAR workshops are appointed by the Regional Fishery Management Councils. Participants include data collectors, database managers, stock assessment scientists, biologists, fisheries researchers, fishermen, environmentalists, Council members, International experts, and staff of Councils, Commissions, and state and federal agencies.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Gulf of Mexico Fishery Management Council office (see **ADDRESSES**) at least five business days prior to each workshop.

Dated: January 19, 2005.

Emily Menashes,

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

[FR Doc. 05–1459 Filed 1–26–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012405A]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Groundfish Management Team (GMT) will hold a working meeting, which is open to the public.

DATES: The GMT meeting will be held Tuesday, February 15, 2005 from 1 p.m. until business for the day is completed. There will be a closed session on Tuesday, February 15, 2005 from 1 p.m. until 1:30 p.m. which is closed to all except GMT members, their designees, and others designated by the chair to discuss personnel matters. The GMT meeting will reconvene Wednesday, February 16 through Friday, February 18, from 8:30 a.m. until business for the day is completed.

ADDRESSES: The GMT meeting will be held at the Residence Inn by Marriott, Portland Downtown—Riverplace, Fremont Room, 2115 SW River Parkway, Portland, OR 97201. Telephone: 503–552–9500.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, Groundfish Management Coordinator; telephone: 503–820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the GMT meeting is to plan the GMT's annual schedule and strategies to effectively aid the Council in managing 2005 West Coast groundfish fisheries and Council initiatives expected to arise in 2005. Additionally, the GMT will discuss groundfish management measures in place for the winter and spring months, respond to assignments relating to implementation of the Council's groundfish strategic plan, discuss a new Pacific whiting stock assessment and develop recommended management measures for the 2005 whiting fishery, discuss implementation strategies for Groundfish Fishery Management Plan Amendment 18, develop new data management tools, and address other assignments relating to groundfish management. No management actions will be decided by the GMT. The GMT's role will be development of recommendations for consideration by the Council at its March meeting in Sacramento, California.

Although nonemergency issues not contained in the meeting agenda may come before the GMT for discussion, those issues may not be the subject of formal GMT action during this meeting. GMT 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 Fishery Conservation and Management Act, provided the public has been notified of the GMT's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at 503–820–2280 at least 5 days prior to the meeting date.

Dated: January 24, 2005.

Alan D. Risenhoover,

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

[FR Doc. E5–309 Filed 1–26–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011805F]

Western Pacific Fishery Management Council; Pelagics Plan Team; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council(Council) will hold a meeting of its Pelagics Plan Team (PPT) to discuss overfishing of Pacific bigeye tuna and to develop recommendations for future

management. The agenda for the meeting can be found under the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: The meeting will be held on February 10, 2005, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Council Office Conference Room, Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813; phone: 808–522–8220.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; phone: 808–522–8220.

SUPPLEMENTARY INFORMATION: The PPT will meet to discuss the following agenda items:

1. Introduction

2. First meeting of the Western and Central Pacific Fishery Management Commission

3. Fishery management options for Pacific bigeye and yellowfin tunas:

a. International fisheries

b. Domestic fisheries

4. Bigeye quota for the Eastern Tropical Pacific Ocean

5. Other business

The order in which the agenda items are addressed may change.

Although non-emergency issues not contained in this agenda may come before the PPT for discussion, those issues may not be the subject of formal action during these meetings. PPT action will be restricted to those issues specifically listed in this document and any issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting locations are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least five days prior to the meeting date.

Dated: January 21, 2005.

Emily Menashes,

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

[FR Doc. 05–1460 Filed 1–26–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Test and Training Sub-scale and Full-scale Aerial Targets will meet in closed session on February 8–9, 2005, March 14–16, 2005, and April 13–14, 2005, at SAIC, 4001 N. Fairfax Drive, Arlington, VA. The Task Force will also meet in closed session on March 14–16, 2005, at Pt. Mugu Naval Air Weapons Station, CA. This Task Force will review the future needs for sub-scale and full-scale aerial targets for developmental and operational testing.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. The Task Force should investigate future aerial threats as well as weapon and sensor capability in the 2005–2020 timeframe, to understand those characteristics necessary to provide effective threat representation. They should also review to what extent other alternatives including modeling and simulation can supplement live target test and training. The Task Force will assess the possibility of common aerial target configuration, control and use that can support testing needs of more than one system or complex system of systems across multiple Services. Included in the review should be the degree of fidelity in threat replication throughout the threat regime required for systems development and effective testing. The Task Force should consider testing needs across the full development cycle from concept development to operational test and evaluation and training.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. 2), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Dated: January 18, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–1462 Filed 1–26–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Transformation: A Midcourse Assessment (Summer Study 2005) will meet in closed session on February 14–15, 2005; March 24–25, 2005; April 11–12, 2005; and May 10–11, 2005, at IDA, 4850 Park Center Drive, Room 6709, Alexandria, VA. This Task Force will provide an assessment of the Department of Defense's (DoD) continuing transformation process, describing the current status of the DoD's transformation efforts, identify the appropriate transformation objectives, and recommend ways and means to meet the emerging and persistent challenges as identified in the 2004 National Defense Strategy.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will review and evaluate the Department's ability to provide information the Secretary of Defense's 2003 Transformation Planning Guidance (TPG) outlined a three-part strategy for transformation: Transformed culture, Transformed processes, and Transformed capabilities. Within the Department's transformation scope and strategy, the Study should consider the following: (1) Focus on important functional concepts and capabilities, such as logistics and battlespace awareness, which provide essential elements to implementing joint concepts; (2) define the scope of the problem and capabilities DoD requires to address challenges of international competitors seeking to develop and possess break though technical capabilities intended to supplant U.S. advantages in particular operational domains; (3) assess the adequacy and effectiveness of DoD's approaches to realize the potential advantages of net-centric operations; (4) focus on DoD's needs to evolving forces to cover the spectrum of military engagement and accomplish the full range of missions; (5) assess the suitability of the structure of the defense industry to the needs of transformation; (6) examine how to adapt DoD's culture to producing

personnel able to meet the high knowledge demands of interdependent joint, interagency, and multinational operations; and (7) study should evaluate progress made towards streamlining and reforming DoD's business processes.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. 2), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Dated: January 18, 2005.

Jeanette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–1464 Filed 1–26–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Management Oversight of Acquisition Organizations will meet in open session on January 31–February 1, 2005, at SAIC, 4001 N. Fairfax Drive, Arlington, VA. This Task Force should assess whether all major acquisition organizations within the Department have adequate management and oversight processes, including what changes might be necessary to implement such processes where needed.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will examine the oversight function with respect to Title 10 and military department regulations to ensure that proper checks and balances exist. The Task Force will review whether simplification of the acquisition structure could improve both efficiency and oversight.

FOR FURTHER INFORMATION CONTACT: LTC Scott Dolgoff, USA, Defense Science Board, 3140 Defense Pentagon, Room 3D865, Washington, DC 20301–3140, via e-mail at *scott.dolgoff@osd.mil,* or via phone at (703) 695–4158.

SUPPLEMENTARY INFORMATION: Members of the public who wish to attend the meeting must contract LTC Dolgoff no later than January 24, 2005, for further information about admission as seating is limited. Additionally, those who wish to make oral comments or deliver written comments should also request to be scheduled, and submit a written text of the comments by January 26, 2005, to allow time for distribution to Task Force members prior to the meeting. Individual oral comments will be limited to five minutes, with the total oral comment period not exceeding 30 minutes.

Dated: January 18, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–1465 Filed 1–26–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on 2005 Summer Study on Reducing Vulnerabilities to Weapons of Mass Destruction will meet in closed session on January 31–February 1, 2005; March 8–9, 2005; April 4–5, 2005; May 3–4, 2005; June 1–2, 2005; and June 28–29, 2005, at Strategic Analysis Inc., 3601 Wilson Boulevard, Arlington, VA. This Task Force will review a State's clanedestine employment of weapons of massed destruction (WMD) or the use of such capability by a terrorist.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force should develop national enterprise architecture to reduce vulnerabilities to WMD. The architecture should identify those areas where integration across modalities would pay off, as well as the issues that are uniquely tied to a single defense which may arise from new intelligence or other sources and adapt to different generations of WMD defense systems which will probably be procured under a spiral development model. An integrated WMD system would be able to assess from end-to-end the state of affairs in WMD.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. app. 2), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Dated: January 18, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–1478 Filed 1–26–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Smaller Learning Communities Program

AGENCY: Office of Vocational and Adult Education, Department of Education.

ACTION: Notice of proposed priorities, requirements, definitions, and selection criteria.

SUMMARY: The Assistant Secretary for Vocational and Adult Education proposes priorities, requirements, definitions, and selection criteria for a special competition under the Smaller Learning Communities (SLC) program. The Assistant Secretary may use these priorities, requirements, definitions and selection criteria for a special competition using a portion of fiscal year (FY) 2004 funds and also in future years. The priorities, requirements, definitions and selection criteria proposed in this notice will not be used for all FY SLC 2004 competitions. Projects funded using these priorities, requirements, definitions, and selection criteria would create and/or expand SLC activities as well as participate in a national research evaluation of supplemental reading programs. Another SLC competition will be conducted later this year, awarding additional FY 2004 funds, for projects that do not require participation in the national research evaluation. Requirements, priorities, definitions, and selection criteria for that competition will be proposed in a notice in the **Federal Register** at a later date.

We propose these priorities, requirements, definitions, and selection criteria to focus federal financial assistance on an identified national need for scientifically based data on supplemental reading programs for adolescents.

DATES: We must receive your comments on or before February 28, 2005.

ADDRESSES: Address all comments about these proposed priorities, requirements, definitions, and selection criteria to Matthew Fitzpatrick, 400 Maryland Avenue, SW., room 11120, Potomac Center Plaza, Washington, DC 20202–7120. If you prefer to send your comments through the Internet, use the following address: *matthew.fitzpatrick@ed.gov*.

You must include the term ''SLC Public Comment'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Matthew Fitzpatrick. Telephone: (202) 245–7809.

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:

Invitation To Comment

We invite you to submit comments regarding these proposed priorities, requirements, definitions, and selection criteria. To ensure that your comments have maximum effect in developing the notice of final priorities, requirements, definitions, and selection criteria, we urge you to identify clearly the specific proposed priority, requirement, definition, or selection criterion that each comment addresses.

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 these proposed priorities, requirements, definitions, and selection criteria. 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 these proposed priorities, requirements, definitions, and selection criteria at the U.S. Department of Education, Office of Vocational and Adult Education, room 11122, 550 12th Street, SW., 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 these proposed priorities, requirements, definitions, and selection criteria. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Background

Improving adolescent literacy is one of the major challenges facing high schools today. High school students must have strong literacy skills in order to acquire the knowledge and skills in English/language arts, mathematics, science, social studies, and other courses that they need in order to prepare for further learning, for careers, and for active participation in our democracy. Too many young people are now entering high school without these essential skills. At a time when they will soon enter high school, one-quarter of all eighth-grade students and more than 40 percent of those in urban schools scored below the basic level on the National Assessment of Education Progress (NAEP) in 2003. According to one estimate, at least one-third of entering ninth graders are at least two years behind grade level in their reading skills (Balfanz, *et al.*, 2002). Many of these young people become discouraged and drop out before they reach the twelfth grade. Large numbers of those who do persist through their senior year leave high school nearly as unprepared for the future as when they entered it. Twenty-eight percent of twelfth-grade public school students scored below the basic level on the NAEP 2002 reading assessment. These students face a bleak future in an economy and society that demands more than ever before, higher levels of reading, writing, and oral communication skills.

Recognizing the importance of improving the literacy skills of America's children and youth, President Bush established, as key priorities, the implementation of scientifically based approaches to reading in the early grades and the development of new knowledge about how best to help adolescents read well.

One ongoing initiative, the Adolescent Literacy Research Network, created by the Department's Office of Vocational and Adult Education (OVAE) and the Office of Special Education and Rehabilitative Services (OSERS) in collaboration with the National Institute of Child Health and Human Development (NICHD), supports six, five-year experimental research projects. These projects are examining cognitive, perceptual, behavioral, and other mechanisms that influence the development of reading and writing abilities during adolescence, as well as the extent to which interventions may narrow or close literacy gaps for adolescents.

While these and other long-term, scientifically based research studies promise to provide a stronger foundation for designing more effective literacy interventions for adolescents, a number of noteworthy supplemental reading programs for adolescents are already available and have attracted great attention from high school leaders concerned about the literacy skills of their freshman students. High schools that have created freshman academy SLCs to ease the transition of ninth-grade students to high school are among those most interested in addressing the needs of ninth graders who have reading skills that are significantly below grade level. Unfortunately, however, there is little or no scientifically based evidence that schools can consult to inform their decision-making regarding the selection and implementation of these reading programs.

In addition to this ongoing research initiative, to help fill this knowledge gap, the Department is now seeking to partner with local educational agencies (LEAs) in a national research evaluation that will examine the effectiveness of two supplemental reading programs that will be implemented within freshman academy SLCs. Section 5441(c)(2)(B) of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (ESEA), authorizes SLC funds to be used to ''research, develop, and implement * * * strategies for effective and innovative changes in curriculum and instruction, geared to challenging State academic content standards and State student academic achievement standards.'' The Department proposes in this notice to provide a new opportunity for interested LEAs that are implementing freshman academy SLCs to partner with us to evaluate the effectiveness of two promising supplemental reading programs for ninth-grade students whose reading skills are two to four years below grade level.

The Department's Institute of Education Sciences (IES) has awarded a contract to MDRC and the American Institutes of Research (AIR) to conduct

this supplemental reading program evaluation. AIR has solicited proposals from vendors of classroom-based supplemental reading programs that wish to participate in this initiative. The supplemental reading programs must be suitable for implementation within freshman academies, must be research-based, and must address all aspects of reading, from basic alphabetic skills to higher-level comprehension and writing. The programs must also consider issues of how to motivate adolescents to read. MDRC and AIR will convene an independent, expert panel to evaluate the programs submitted for consideration, assessing, particularly, the extent to which a program incorporates the features judged by experts in the field to be indicative of a high-quality adolescent reading program and the extent to which there is research-based evidence of the program's effectiveness. Based on the expert panel's recommendations, MDRC and AIR will select the two most promising programs for evaluation through this initiative. These programs will be identified and described in detail in the final notice inviting applications for this competition.

Interested LEAs that are selected to participate in this initiative will implement the supplemental reading programs during the 2005–06 and 2006–07 school years in high schools that have established freshman academy SLCs. Each high school will implement one of the two programs, serving first-time ninth-grade students whose reading skills are two to four years below grade level. Working with MDRC, the contractor selected to conduct the evaluation, each high school will select by lottery approximately 50 students from a pool of a minimum of 125 eligible students to participate in the supplemental reading program; the remaining students will be assigned to an elective course, study hall, or other activity in which they would otherwise participate. The evaluators will work with each LEA and high school to assess the effectiveness of the supplemental reading program. After the completion of the 2006–07 school year, participating high schools will have gained valuable data about the effectiveness of these supplemental reading programs in their schools. These data will help them to decide whether to expand the supplemental reading program to include all eligible students, or to select and implement another supplemental reading program.

The Department proposes to award 60-month grants using the priorities, requirements, definitions, and selection criteria proposed in this notice. In addition to supporting the other broader SLC activities at each participating high school, each grant will fully fund the costs of implementing the supplemental reading program, technical assistance from the program vendor, and the cost of participating in the evaluation.

The evaluation will provide researchers, policy-makers, school administrators, teachers, and parents throughout the United States important information about these supplemental reading programs and adolescent literacy development, and answer three important questions:

(1) Do specific supplemental literacy interventions supporting personalized and intensive instruction for striving ninth-grade readers significantly improve reading proficiency?

(2) What are the effects of supplemental reading programs on in-school outcomes such as attendance and course-taking behavior, and on longer-term outcomes such as student performance on State assessments in the tenth or eleventh grade?

(3) Which students benefit most from participation in the interventions?

LEAs and participating high schools would benefit in a number of ways from partnering with the Department in this initiative. They would make an important contribution to improving our now-limited knowledge of how we can help most effectively at-risk young people who enter high school with limited literacy skills. They would receive grant funds to support the implementation of a promising supplemental reading program and high-quality professional development for the teachers who will provide instruction. After the second year of the grant, once the research evaluation has been completed, participating schools would be free to expand the program to include all eligible students or implement a new program, if they choose. Finally, they would receive funds to support a broader SLC project that expands or creates new SLC structures and strategies in participating high schools. Those funds would be available for use throughout the 60-month grant period.

We will announce the final priorities, requirements, definitions and selection criteria in a notice in the **Federal Register**. We will determine the final priorities, requirements, definitions and selection criteria after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use these proposed priorities, requirements, definitions, and selection criteria, we invite applications through a notice in the **Federal Register**. When inviting applications we designate each 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)).

Priorities

Proposed Priorities

Proposed Priority 1—Participation in a National Research Evaluation That Assesses the Effectiveness of Supplemental Reading Programs in Freshman Academies

To be eligible for consideration under this priority, an applicant must:

(1) Apply on behalf of two or four large high schools that are currently implementing freshman academies;

(2) Provide documentation of the LEA's and schools' willingness to participate in a large-scale, national evaluation that uses scientifically based research methods. Each LEA must include in its application a letter from its research office or research board agreeing to meet the requirements of the research design, if such approval is needed according to local policies. If such approval is not required, each LEA must include in its application a letter from its superintendent and the principals of the high schools named in the application, agreeing to meet the requirements of the research design;

(3) Agree to implement two designated supplemental reading programs for striving ninth-grade readers, one in each school, in two or four eligible high schools, adhering strictly to the design of the reading program, with the understanding that the supplemental reading program will be one of two programs announced in the notice of final priorities and will be

chosen for the school by the contractor selected to conduct the evaluation;

(4) Agree to assign one language arts teacher in each participating high school—to participate in professional development necessary to implement the supplemental reading program (which may include travel to an off-site location); to teach the selected supplemental reading program to participating students for a minimum of 225 minutes per week for each week of the 2005–2006 and 2006–07 school years; and to complete any surveys and administer any student assessments required by the evaluation contractor;

(5) Assist the contractor in obtaining parental consent for students to participate in assessments and other data collections;

(6) Agree to provide, prior to the start of school years 2005–06 and 2006–07, for each participating high school, a list of at least 125 striving ninth-grade readers who are eligible to participate in the research study; work with the contractor to assign by lottery 50 of those students in each participating high school to the supplemental reading program and assign the remaining students to other activities that they would otherwise participate in, such as a study hall, electives, or other activity that does not involve supplemental reading instruction; provide students selected for the supplemental reading program with a minimum of 225 minutes per week of instruction in the supplemental reading program for each week of the school year; and allow enough flexibility in the schedules of all eligible students so that students who are not initially selected by lottery to participate in the supplemental reading program may be reassigned, at random, to the program if students who were initially selected for the program transfer to another school, drop out, or otherwise discontinue their participation in supplemental reading instruction during the school year.

Rationale: The terms and conditions of this proposed priority are required to implement the scientifically based research design of the research evaluation. The supplemental reading programs, for example, cannot be fairly and effectively evaluated if they are not implemented consistently across sites by well-trained instructors. Similarly, the evaluation design requires eligible students to be assigned randomly to participate in the designated supplemental reading programs so that the evaluation will provide clear and definitive information about the effectiveness of these programs. The design also requires that pairs of high schools implement the two supplemental reading programs so that the two programs can be evaluated under similar conditions. Though the characteristics of high schools within a single LEA may differ, they would each operate within the same policy context and under a similar set of circumstances and are likely to more closely resemble each other than high schools in other LEAs or states.

Proposed Priority 2—Number of Schools

The Secretary proposes a priority for applications from LEAs applying on behalf of four high schools that are implementing freshman academies and that commit to participate in the research study.

Rationale: For the purposes of the research evaluation, the Department will accept applications from LEAs applying on behalf of either four schools or two schools that are implementing freshman academies. Ideally, the LEAs studied in this research evaluation will be uniform in terms of the number of schools participating. Furthermore, maintaining the integrity of the random assignment process is more challenging with a larger number of districts. While the Department would like many districts to have the opportunity to participate, we must balance the potential benefits of more districts receiving the grants with the objective of conducting a rigorous study that will yield conclusive results about the effectiveness of the two supplemental reading programs that will be evaluated.

The Department, therefore, would prefer that all LEAs participating in this research evaluation implement the supplemental reading program in four high schools. However, in the interest of securing a suitable number of strong applications, the Department may implement proposed priority 2 as an invitational or competitive preference priority, in which case the Department will accept applications from LEAs applying on behalf of four or two high schools.

Requirements

Proposed Application Requirements

The Assistant Secretary proposes the following application requirements for this SLC competition. These proposed requirements are in addition to the content that all Smaller Learning Communities grant applicants must include in their applications as required by the program statute under title V, part D, subpart 4, section 5441(b) of the ESEA.

Eligibility

We propose that, to be considered for funding, an applicant must be an LEA (including schools funded by the Bureau of Indian Affairs and educational service agencies) that applies on behalf of two or four large public high schools that have implemented at least one freshman academy SLC by no later than the 2004–2005 school year.

Accordingly, LEAs must identify in their applications the names of the two or four large high schools proposed to participate in the research evaluation and the number of students enrolled in each school, disaggregated by grade level. We will not accept applications from LEAs on behalf of one, three, or more than four schools. We require that each school include grades 11 and 12 and have an enrollment of 1,000 or more students in grades 9 through 12.

Enrollment figures must be based upon data from the current school year or data from the most recently completed school year. We will not accept applications from LEAs applying on behalf of schools that are being constructed and do not have an active student enrollment at the time of application.

The LEA also must provide an assurance that the schools identified in their application: (1) Are implementing at least one freshman academy SLC during the 2004–05 school year; (2) will continue to implement at least one freshman academy SLC during the 2005–06 and 2006–07 school years; and (3) did not implement a classroom-based supplemental reading program for striving ninth-grade readers during the 2004–05 school year. For each school identified in the application, LEAs also must provide evidence that a minimum of 150 striving ninth-grade readers (as defined elsewhere in this notice) were enrolled at the school during each of the 2003–04 and 2004–05 school years. We will accept applications from LEAs whether or not they are applying on behalf of schools that have previously received funding under the Federal SLC program. Eligible schools would be those currently implementing freshman academy SLCs, though the freshman academies need not have been funded through a prior Federal SLC grant.

Rationale: The Department needs enrollment information to determine if each of the two or four schools identified in an application meets the proposed definition of a large high school and to ensure that an LEA is applying on behalf of a correct number of schools. Schools under construction do not have actual enrollment data to be used to determine eligibility and, therefore, may not apply. In addition, the research evaluation design requires that (i) LEAs implement the

supplemental reading programs in sets of two or four high schools; (ii) the supplemental reading programs are implemented within established freshman academy SLCs in high schools that have not implemented a classroom-based supplemental reading program or classes for striving ninth-grade readers; and (iii) each school has a minimum of 125 striving ninth-grade readers. While we recognize that no LEA can be certain of the skills and academic needs of the students who will enter a particular high school during the 2005–06 and 2006–07 school years, we believe that high schools whose two most recent freshman classes included at least 150 striving ninth-grade readers are more likely than other high schools to have the required minimum of 125 eligible students during the next two school years.

School Report Cards

We propose to require that LEAs provide, for each of the schools included in the application, the most recent ''report card'' produced by the State or the LEA to inform the public about the characteristics of the school and its students, including information about student academic achievement and other student outcomes. These ''report cards'' must include, at a minimum, the information that LEAs are required to report for each school under section 1111(h)(2)(B)(ii) of the ESEA: (1) Whether the school has been identified for school improvement; and (2) information that shows how the academic assessments and other indicators of adequate yearly progress compare to students in the LEA and the State, as well as performance of the school's students on the statewide assessment as a whole.

Rationale: The Department needs the ''report cards'' to verify the accuracy of the information the LEA provides in its application about student academic achievement and other student outcomes at each school.

Consortium Applications and Governing Authority

In an effort to encourage systemic, LEA-level reform efforts, we propose permitting an individual LEA to submit only one application on behalf of multiple schools. Accordingly, the LEA would be required to specify in its application which high schools it intends to fund.

In addition, we propose to require that an LEA applying for a grant under this competition apply only on behalf of a high school or high schools for which it has governing authority, unless the LEA is an educational service agency applying in the manner described in the section in this notice entitled *Educational Service Agencies*. An LEA, however, may form a consortium with another LEA with which it shares a geographical border and submit a joint application for funds. In such an instance, the consortium must apply on behalf of either two or four high schools, and follow the procedures for group applications described in 34 CFR 75.127 through 75.129 in the Education Department General Administrative Regulations (EDGAR). For example, an LEA that wishes to apply for a grant but only has one eligible high school may partner with a neighboring LEA, if the neighboring LEA has another eligible high school.

Rationale: These requirements are designed to ensure that each LEA that receives assistance under this program will manage and coordinate school-level planning and implementation activities as part of a single, coherent, LEA-wide reform strategy. These requirements will help LEAs make the most effective and efficient use of SLC resources and assist them in aligning SLC activities with other LEA-level initiatives, including the implementation of activities carried out under other programs funded by the ESEA and the Carl D. Perkins Vocational and Technical Education Act. In addition, a high school would have considerable difficulty implementing or expanding an SLC program without the active participation of its parent LEA.

Educational Service Agencies

We propose to permit an educational service agency to apply on behalf of eligible high schools only if the educational service agency includes in its application evidence that the entity that has governing authority over the eligible high school supports the application.

Rationale: Educational service agencies, which are included in the statutory definition of LEA, typically do not have governing authority over high schools they service. Generally, the administrative control or direction of a high school is invested in a public board of education or another public authority other than an educational service agency. We recognize that not all entities that have administrative control or direction of eligible high schools have the capacity to apply for and administer an SLC grant. Educational service agencies provide resources and expertise to assist districts and schools in performing functions that they otherwise could not, by themselves, perform efficiently or at all. Moreover, they are organized for the explicit purpose of providing education-related services to entities with governing authority over schools and their students.

Budget Information for Determination of Award

We propose that LEAs may receive up to $1,000,000 during the 60-month project period. This is an increase from the maximum range of awards ($550,000 to $770,000) that we established in the previous SLC program competitions, plus an additional $230,000 to cover additional expenses related to participation in the research evaluation.

In its budget calculations, each school would reserve $150,000 for implementation of the supplemental reading program during the 2005–06 school year and $80,000 for the implementation of the program during the 2006–07 school year. These funds will support the salary and benefits of one full-time equivalent teacher who will be responsible for providing the supplemental reading program instruction and performing administrative functions related to the conduct of the research evaluation, professional development and technical assistance provided by the program developer, and the purchase of curriculum and the technology necessary to deliver instruction. The remaining $770,000 will be available to support other activities related to the creation or expansion of smaller learning communities in the school. For one application, LEAs could receive up to $4,000,000. Grants would be designed to support participation in the research evaluation over the first two years of the project period, and a broader SLC project, including such activities as extensive redesign and improvement efforts, professional development, or direct student services, over five years.

Applicants would be required to provide detailed, yearly budget information for the total grant period requested. Understanding the unique complexities of implementing a program that affects a school's organization, physical design, curriculum, instruction, and preparation of teachers, we anticipate awarding the entire amount at the time of initial awards.

The actual size of awards would be based on a number of factors. These factors include the scope, quality, and comprehensiveness of the proposed program, and the range of awards indicated in the application notice.

Rationale: Requiring applicants to provide detailed, yearly budget information for the total grant period requested is necessary for us to determine appropriate grant amounts

based on the needs of the LEA and high schools.

Student Placement

We propose that applicants must include a description of how students will be selected or placed in the broader SLC project such that students will not be placed according to ability or any other measure, but will be placed at random or by student/parent choice and not pursuant to testing or other judgments.

Rationale: The Department needs this information to ensure that each funded project complies with the requirements of the statute regarding random assignment or student/parent choice for SLC placement of students. Section 5441(b)(13) of the ESEA requires applicants for SLC grants to describe the method of placing students in the SLC or SLCs, such that students are not placed according to ability or any other measure, but are placed at random or by student/parent choice and not pursuant to testing or other judgments. For instance, projects that place students in any SLC on the basis of their prior academic achievement or performance on an academic assessment are not eligible for assistance under this program. Note that the supplemental reading programs are not SLCs. Enrollment in a supplemental reading program would be contingent on student performance, but enrollment in broader SLCs funded through this program may not be based on ability.

Performance Indicators for the Broader SLC Project

We propose to require applicants to identify in their application specific performance indicators and annual performance objectives for these indicators and one core indicator. Specifically, we propose to require applicants to use the following performance indicators to measure the progress of each school:

(1) The percentage of students who score at the proficient and advanced levels on the mathematics assessments used by the State to measure adequate yearly progress under part A of title I of the ESEA, as well as these percentages disaggregated by the following subgroups:

(A) Major racial and ethnic groups;

(B) Students with disabilities;

(C) Students with limited English proficiency; and

(D) Economically disadvantaged students.

(2) At least two other appropriate indicators the LEA would identify, such as rates of average daily attendance, year-to-year retention, achievement and gains in English proficiency of limited English proficient students; incidence of school violence, drug and alcohol use, and disciplinary actions; or the percentage of students completing advanced placement courses or passing advanced placement tests.

Applicants must identify annual performance objectives for each indicator in their application.

Rationale: The fundamental purpose of SLCs is to improve the academic achievement of students and prepare them to participate successfully in postsecondary education or advanced training, the workforce, our democracy, and our communities. It is important, therefore, that projects measure their progress in improving student academic achievement and other related outcomes.

Evaluation of Broader SLC Projects

We propose to require each applicant to provide an assurance that it will support an evaluation of its broader SLC project that provides information to the project director and school personnel and that will be useful in gauging the project's progress and in identifying areas for improvement. We propose that each evaluation include an annual report for each of the five years of the project period and a final report that would be completed at the end of the fifth year. We would require grantees to submit each of these reports to the Department. We propose to require that the evaluation be conducted by an independent third party evaluator selected by the LEA whose role in the project is limited to conducting the evaluation.

Rationale: Implementing or expanding an SLC project is difficult and complex work that administrators, teachers, and other school personnel must carry out at the same time that they are carrying out other demanding, day-to-day responsibilities. An evaluation that provides regular feedback on the progress of implementation and its impact can help the project director and school personnel identify their successes and how they may need to revise their strategies to accomplish their goals. To be most useful, the evaluation should be objective and be carried out by an independent third party who has no other role in the implementation of the project.

Participation in the Research Evaluation

We propose to require each applicant to provide an assurance that it and each participating high school will take several actions to assist in implementing the research evaluation, including:

(1) The LEA must implement the supplemental reading program(s) adhering strictly to the design of the program(s), including purchasing all necessary instructional materials, technology, professional development, and student materials in sufficient time for the program(s) to be implemented at the start of the 2005–06 and 2006–07 school years.

(2) The LEA or the participating high school(s) must use a lottery to assign randomly 50 of the expected 125 or more students determined to be eligible to participate in the supplemental reading class and the remainder to serve as non-participants.

(3) The LEA must provide a language arts teacher for each participating high school who would receive professional development in the supplemental reading program (three days during Summer 2005 and two follow-up days during each of the 2005–2006 and 2006–2007 school years) and would teach the supplemental reading program to the participating students for a minimum of 225 minutes per week for each week of the 2005–2006 and 2006–07 school years. This teacher would complete four surveys (at the beginning and end of the 2005–2006 and 2006–2007 school years) to provide information on his or her preparation, professional development, and experiences.

(4) The LEA must administer, in conjunction with the contractor selected to conduct the evaluation, a diagnostic group assessment of reading skills at the beginning and the end of the ninth-grade year to assess whether or not those students participating and not participating in the supplemental reading program have made gains in reading skills. This reading assessment might also need to be administered again at the end of the tenth-grade year.

(5) The LEA must provide transcripts and State assessment data for the entire pool of eligible students for the 2005–06, 2006–07, 2007–08, and 2008–09 school years, in a manner and to the extent consistent with the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g; 34 CFR part 99).

(6) The LEA must designate a project coordinator who would participate in the professional development and serve as a resource and coordinator for teachers involved in the research study. This project coordinator would also work with the LEA's technology office (if necessary) and the curriculum developers to organize the purchase of computer equipment and software needed to implement the supplemental reading program. The project coordinator would not also be the

language arts teacher responsible for teaching the supplemental literacy program.

(7) The LEA and participating high schools must allow enough flexibility in developing the participating students' daily schedules to accommodate the supplemental literacy instruction, which might be scheduled as the typical 45-minute language arts period or as a larger block of 90 minutes for literacy instruction and practice.

(8) The LEA and participating high schools must allow the evaluation team to observe both the classrooms implementing the supplemental literacy program and other English or language arts classrooms in the school.

Rationale: The administration of a complex national research evaluation requires careful planning on the part of each LEA, high school, evaluator, and project director involved. It is essential that all schools participating in the study adhere to the research design to ensure that data collected from the project will be valid.

The use of a lottery to determine the participation of eligible students maintains the integrity of the comparison group. Each school's participation will require the efforts of a language arts teacher trained and dedicated to the faithful implementation of the research design. The language arts teacher will be responsible for working with the contractor selected to conduct the evaluation and administering group assessments of participating students. In a manner consistent with FERPA, the evaluator must have access to student transcripts and assessment data in order to gauge the effectiveness of the supplemental reading program.

High-Risk Status and Other Enforcement Mechanisms

Because the requirements listed in this notice are material requirements, we propose that failure to comply with any requirement or with any elements of the grantee's application would subject the grantee to administrative action, including but not limited to designation as a ''high-risk'' grantee, the imposition of special conditions, or termination of the grant. Circumstances that might cause the Department to take such action include, but are not limited to: The grantee's failure to implement the designated supplemental reading programs in a manner that adheres strictly to the design of the program; the grantee's failure to purchase all necessary instructional materials, technology, professional development, and student materials in sufficient time for the programs to be implemented at the start of the 2005–06 and 2006–07 school years; and the grantee's failure to adhere to any requirements or protocols established by the evaluator.

Rationale: Part of the Department's role in administering grant funds under the SLC program is to ensure that those taxpayer funds are used in a manner that is consistent with the aims of the grant program. To help ensure proper use of taxpayer funds, the Department reserves the right to use the enforcement actions listed above if a grantee fails to meet the requirements established by this notice and the law authorizing the SLC program.

Definitions

Proposed Definitions

In addition to the definitions set out in the authorizing statute and 34 CFR 77.1, we propose that the following definitions also apply to this special competition. We may apply these definitions in any year in which we run an SLC supplemental reading program competition.

Broader SLC Project means an SLC project at the site of the high school aside from and in addition to that high school's implementation of a supplemental reading program and participation in the research evaluation.

Freshman Academy means a form of SLC structure that groups ninth-grade students into an environment in which a core group of teachers and other adults within the school know the needs, interests, and aspirations of each ninth-grade student well, closely monitor each student's progress, and provide the academic and other support each student needs to transition to high school and succeed. Student enrollment in (or exclusion from) a freshman academy is not based on ability, testing, or measures other than ninth-grade status and student/parent choice or random assignment. A freshman academy differs from a simple grouping of ninth-graders in that it incorporates programs or strategies designed to ease the transition for students from the eighth grade to the high school. A freshman academy may include ninth-grade students exclusively or it may be part of an SLC, sometimes called a ''house,'' which groups together a small number of ninth- through twelfth-grade students for instruction by the same core group of academic teachers. The freshman academy refers only to the ninth-grade students in the house.

Large High School means an entity that includes grades 11 and 12 and has an enrollment of 1,000 or more students in grades 9 and above.

Research evaluation means the study of the effectiveness of supplemental reading programs that are implemented within freshman academies and that is being sponsored by the Department of Education and is described elsewhere in this notice.

Smaller Learning Community (or SLC) means an environment in which a core group of teachers and other adults within the school know the needs, interests, and aspirations of each student well, closely monitor each student's progress, and provide the academic and other support each student needs to succeed.

Striving Ninth-Grade Readers means those students who are enrolled in the ninth grade for the first time and who read English at a level that is two to four grades below their current grade level, as determined by an eighth-grade standardized test of reading. The term includes those students with limited English proficiency who are enrolled in ninth grade for the first time, who read English at a level that is two to four grades below their current grade level, and who took the State's eighth-grade standardized reading or language arts assessment with minimal accommodations (defined as having the test directions read to them orally, having access during the test to a dictionary, and/or being able to take the test without a time limit). The term does not include students with learning disabilities who have been designated to receive special education services in reading.

Selection Criteria

Proposed Selection Criteria

We propose that the following selection criteria be used to evaluate applications for new grants under this special competition. We may apply these criteria in any year in which we conduct an SLC supplemental reading program competition.

Need for Participation in the Supplemental Reading Program

In determining the need for participation in the supplemental reading program, we will consider the extent to which the applicant will—

(1) Involve schools that have the greatest need for assistance as indicated by such factors as: Student achievement scores in English or language arts; student achievement scores in other core curriculum areas; enrollment; attendance and dropout rates; incidents of violence, drug and alcohol use, and disciplinary actions; percentage of students who have limited English proficiency, come from low-income families, or are otherwise

disadvantaged; or other need factors as identified by the applicant;

(2) Address the needs it has identified in accordance with paragraph (1) through participation in the supplemental reading program activities; and

(3) Employ strategies and carry out activities in its implementation of broader SLC activities that address the needs it has identified in accordance with paragraph (1).

Foundation for Implementation of the Supplemental Reading Program

In determining the foundation for implementation of the supplemental reading program, we will consider the extent to which—

(1) Administrators, teachers, and other school staff within each school support the school's proposed involvement in the supplemental reading program and have been and will continue to be involved in its planning, development, and implementation, including, particularly, those teachers who will be directly affected by the proposed project;

(2) Parents, students, and other community stakeholders support the proposed implementation of the supplemental reading program and have been and will continue to be involved in its planning, development and implementation;

(3) The proposed implementation of the supplemental reading program is consistent with, and will advance, State and local initiatives to increase student achievement and narrow gaps in achievement between all students and students who are economically disadvantaged, students from major racial and ethnic groups, students with disabilities, or students with limited English proficiency;

(4) The applicant demonstrates that it has carried out sufficient planning and preparatory activities, outreach, and consultation with teachers, administrators and other stakeholders to enable it to participate effectively in the supplemental reading program at the beginning of the 2005–6 school year; and

(5) The applicant articulates a plan for using information gathered from the evaluation of the supplemental reading program to inform decision and policymaking at the LEA and school levels.

Quality of the Project Design for the Broader SLC Project

In determining the quality of the project design for the broader SLC project we will consider the extent to which—

(1) The applicant demonstrates a foundation for implementing the broader SLC project, creating or expanding SLC structures or strategies in the school environment, including demonstrating:

(A) That it has the support and involvement of administrators, teachers, and other school staff;

(B) That it has the support of parents, students, and other community stakeholders;

(C) The degree to which the proposed broader SLC project is consistent with, and will advance, State and local initiatives to increase student achievement and narrow gaps in achievement; and

(D) The degree to which the applicant has carried out sufficient planning and preparatory activities to enable it to implement the proposed broader SLC project at the beginning of the 2005–6 school year.

(2) The applicant will implement or expand strategies, new organizational structures, or other changes in practice that are likely to create an environment in which a core group of teachers and other adults within the school know the needs, interests, and aspirations of each student well, closely monitor each student's progress, and provide the academic and other support each student needs to succeed; and

(3) The applicant will provide high-quality professional development throughout the project period that advances the understanding of teachers, administrators, and other school staff of effective, research-based instructional strategies for improving the academic achievement of students, including, particularly, students with academic skills that are significantly below grade level; and provide the knowledge and skills they need to participate effectively in the development, expansion, or implementation of a smaller learning community.

Quality of the Management Plan

In determining the quality of the management plan for the proposed project, we consider the following factors—

(1) The adequacy of the proposed management plan to allow the participating schools to implement effectively the research evaluation and broader SLC project on time and within budget, including clearly defined responsibilities and detailed timelines and milestones for accomplishing project tasks;

(2) The extent to which time commitments of the project director and other key personnel, including the teachers who will be responsible for providing instruction in the supplemental reading program, are appropriate and adequate to implement effectively the supplemental reading program and broader SLC project;

(3) The qualifications, including relevant training and experience, of the project director, the program coordinator, the teachers who will be responsible for providing instruction in the supplemental reading program, and other key personnel who will be responsible for implementing the broader SLC project; and

(4) The adequacy of resources, including the extent to which the budget is adequate, the extent to which the budget provides sufficient funds for the implementation of the supplemental reading program, and the extent to which costs are directly related to the objectives and design of the research evaluation and broader SLC activities.

Quality of the Broader SLC Project Evaluation

In determining the quality of the broader SLC project evaluation to be conducted on the applicant's behalf by an independent, third party evaluator, we consider the following factors—

(1) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed broader SLC project;

(2) The extent to which the evaluation will collect and annually report accurate, valid, and reliable data for each of the required performance indicators, including student achievement data that are disaggregated for economically disadvantaged students, students from major racial and ethnic groups, students with disabilities, and students with limited English proficiency;

(3) The extent to which the evaluation will collect additional qualitative and quantitative data that will be useful in assessing the success and progress of implementation, including, at a minimum, accurate, valid, and reliable data for the additional performance indicators identified by the applicant in the application;

(4) The extent to which the methods of evaluation will provide timely and regular feedback to the LEA and the school on the success and progress of implementation and will identify areas for needed improvement; and

(5) The qualifications and relevant training and experience of the independent evaluator.

Executive Order 12866

This notice of proposed priorities, requirements, definitions, 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 proposed priorities, requirements, definitions, 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 proposed priorities, requirements, definitions, and selection criteria, we have determined that the benefits of the proposed priorities, requirements, definitions, 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.

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 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 84.215L Smaller Learning Communities Program)

Program Authority: 20 U.S.C. 7249.

Dated: January 21, 2005.

Susan Sclafani,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 05–1477 Filed 1–26–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services, Individuals With Disabilities Education Act, as Amended by the Individuals With Disabilities Education Improvement Act of 2004

ACTION: Notice of Public Meeting to seek comments and suggestions on regulatory issues under the Individuals with Disabilities Education Act (IDEA), as amended by the Individuals with Disabilities Education Improvement Act of 2004.

SUMMARY: The Secretary announces plans to hold the fifth of a series of public meetings to seek comments and suggestions from the public prior to developing and publishing proposed regulations to implement programs under the recently revised Individuals with Disabilities Education Act.

Date and Time of Public Meeting: Tuesday, February 15, 2005, from 3:30 p.m. to 5:30 p.m. and from 6:30 p.m. to 8:30 p.m.

ADDRESSES: Atlanta Public Schools, Frederick Douglass High School, 225 Hamilton E. Holmes Drive, NW., Atlanta, GA 30318.

FOR FURTHER INFORMATION CONTACT: Troy R. Justesen. Telephone: (202) 245–7468.

SUPPLEMENTARY INFORMATION:

Background

On December 3, 2004, the President signed into law Public Law 108–446, the Individuals with Disabilities Education Improvement Act of 2004, amending the Individuals with Disabilities Education Act (IDEA). Copies of the new law may be obtained at the following Web site: *http://www.ed.gov/about/offices/list/osers/osep/index.html*

Enactment of the new law provides an opportunity to consider improvements in the regulations implementing the IDEA (including both formula and discretionary grant programs) that would strengthen the Federal effort to ensure every child with a disability has available a free appropriate public education that—(1) is of high quality, and (2) is designed to achieve the high standards reflected in the No Child Left Behind Act and regulations.

The Office of Special Education and Rehabilitative Services will be holding a series of public meetings during the first few months of calendar year 2005 to seek input and suggestions for developing regulations, as needed, based on the Individuals with Disabilities Education Improvement Act of 2004.

This notice provides specific information about the fifth of these meetings, scheduled for Atlanta, GA (*see* ''Date and Time of Public Meeting'' earlier in this notice). Other meetings will be conducted in the following locations:

- Laramie, WY; and
- Washington, DC.

In subsequent **Federal Register** notices, we will notify you of the specific dates and locations of each of these meetings, as well as other relevant information.

Individuals who need accommodations for a disability in order to attend the meeting (*i.e.*, interpreting services, assistive listening devices, and material in alternative format) should notify the contact person listed under **FOR FURTHER INFORMATION CONTACT.** The meeting location is accessible to individuals with disabilities.

Dated: January 24, 2005.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E5–312 Filed 1–26–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER96–2495–024, ER97–4143–012, ER97–1238–019, ER98–2075–018, and ER98–542–014]

AEP Power Marketing, Inc., AEP Service Corporation, CSW Power Marketing, Inc., CSW Energy Services, Inc., Central and South West Services, Inc.; Notice of Compliance Filing

January 12, 2005.

Take notice that on January 3, 2005, American Electric Power Service Corporation, on behalf of AEP Power Marketing, Inc., AEP Service Corporation, CSW Power Marketing, Inc., CSW Energy Services, Inc., and Central and South West Services, Inc. (collectively, AEP) submitted revised market tariffs in compliance with the Commission's order issued on December 17, 2004, in Docket Nos. ER96–2495–020, *et al.*, 109 FERC ¶ 61,276 (2004).

AEP states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

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, 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 the parties in 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.

Comment Date: 5 p.m. eastern time on January 24, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–305 Filed 1–26–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER04–445–005, ER04–435–008, ER04–441–004, ER04–443–004]

California Independent System Operator Corporation, Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company; Notice of Compliance Filing

January 14, 2005.

Take notice that on January 5, 2005, California Independent System Operator Corporation (ISO), Pacific Gas and Electric Company (PG&E), San Diego Gas and Electric Company (SDG&E), and Southern California Edison Company (SCE) (collectively the Filing Parties) pursuant to section 205 of the Federal Power Act jointly submitted for filing a Standard Large Generator Interconnection Agreement in compliance with Order Nos. 2003 and 2003–A, and the Commission's July 30, 2004, ''Order Rejecting Order Nos. 2003 and 2003–A Compliance Filings,'' 108 FERC ¶ 61,104 (2004). The Filing Parties state that the Standard Large Generator Interconnection Agreement is intended to function as a stand alone *pro forma* agreement and is not intended to be incorporated into the tariffs of any of the Filing Parties.

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, 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 in 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.

Comment Date: 5 p.m. eastern time on January 26, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–307 Filed 1–26–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2543–063 and 2543–065]

Clark Fork and Blackfoot, LLC; Order Dismissing Application, Issuing Notice of Intent To Accept Surrender of License, and Providing Opportunity for Comments

January 19, 2005.

Before Commissioners: Pat Wood, III, Chairman; Nora Mead Brownell, Joseph T. Kelliher, and Suedeen G. Kelly.

1. In this order, we dismiss the application filed by Clark Fork and Blackfoot, LLC (CFB), licensee for the Milltown Hydroelectric Project No. 2543, to amend the project license by authorizing the permanent drawdown of the project reservoir and certain other actions. Because the entire project is contained within a site designated under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [1] (CERCLA, or Superfund Act), and the actions proposed to be taken under the amendment application would be taken pursuant to a remedial action plan recently adopted under CERCLA by the U.S. Environmental Protection Agency (EPA) and the State of Montana, the Commission concludes that Commission authorization is not required to conduct the activities that would be authorized by the license amendment. We also conclude that the public interest is best served if these actions are carried out solely under EPA's authorization. In addition, because EPA's plan calls for dismantling of the project, we are issuing notice of our intent to accept surrender of the license. Finally, we are providing an opportunity for interested entities to comment on our notice of intent to accept surrender of the license. This order serves the public interest by making clear that responsibility for clean up of the Superfund site rests with EPA, rather than with this Commission.

Background

2. On June 3, 1968, the Commission issued a license for the continued operation and maintenance of the 3.2-megawatt Milltown Project, located on the Clark Fork River in Missoula County, Montana.[2] The license had an

[1] 42 U.S.C. 9601, *et seq.*

[2] 39 FPC 908. The license was issued to Montana Power Company. In February 2002, the license was transferred from Montana Power Company to

Continued

effective date of May 1, 1965, and a termination date of December 31, 1993.

3. In 1983 EPA, pursuant to CERCLA, designated the Milltown Project site as the Milltown Reservoir Sediments Operable Unit of the Milltown Reservoir Sediments/Clark Fork River Superfund Site. The Superfund Site extends approximately 120 miles upstream from the project site to Butte, Montana. The reach of the Clark Fork River therein is contaminated by arsenic, copper, zinc, and other heavy metals, which have leached from now-closed mines in the vicinity of Butte. The project reservoir contains approximately 6.6 million cubic yards of contaminated silt.

4. EPA, the Montana Department of Environmental Quality, and others have been studying the site for many years in order to select a permanent clean-up plan (remedy selection). Solutions under consideration included such measures as capping and leaving the sediments in place, removing the sediments by dredging, and removing both the dam and the sediments. The Commission has several times amended the license to extend its term because the remedy selection has not been completed.[3] The most recent such amendment, issued April 14, 2004, extended the term of the license through December 31, 2009.[4]

5. In May 2004, EPA and Montana issued a Revised Proposed Plan (Proposed Plan) for the remedy selection. The Proposed Plan provided for the project to be dismantled, the contaminated sediments removed and shipped by rail to an existing repository for contaminated materials nearer to the mine sites, and the project site restored.[5]

6. In anticipation of a license surrender application by CFB, the Commission held issue scoping meetings on June 9, 2004, in Bonner, Montana, and on June 10, 2004, in Opportunity, Montana. The notice of scoping meetings[6] also solicited written comments, which were filed by several entities.[7]

7. On October 28, 2004, CFB filed an application to amend the license in order to begin implementing Stage 1 of the Proposed Plan, described below.

8. On December 13, 2004, PPL Montana LLC (PPLM), the licensee of the downstream Thompson Falls Project No. 1869, filed comments expressing its opposition to Commission action prior to PPLM being afforded an opportunity to be heard regarding its concerns with the amendment application, plus comments critical of the technical analysis included with the amendment application concerning the likelihood of contaminated sediments being carried downstream as a result of activities associated with the proposed amendment.

9. On December 20, 2004, EPA made a final remedy selection and issued its Record of Decision (Final Plan), pursuant to which the project will be dismantled and removed.

Discussion

10. Under the Final Plan, clean-up and site restoration is to proceed in three stages. In Stage 1, the licensee will partially draw down the reservoir. EPA will construct a temporary bypass channel for the river and use sheet piling to isolate the sediments from the flowing water, and construct a railroad spur and access roads in the drawn-down reservoir. Stage 1 will begin as soon as possible, and is expected to continue through September 2005. In Stage 2, EPA will ship most of the contaminated sediments by rail to an existing disposal site. It will then lower the reservoir further by removing the turbines from the powerhouse, and removing the powerhouse and most of the dam (*i.e.*, the spillway, radial gate, and the north abutment). In Stage 3, EPA will design and construct a new flood plain and channel to benefit fish, wildlife, and recreational uses.

11. EPA and the U.S. Department of Justice are negotiating with the current owners of the mine sites, who are responsible parties with respect to the costs of cleaning up the project site, and others, including the Natural Resource Trustees, with a view toward filing a consent decree in the United States District Court for the District of Montana. The consent decree would provide, among other things, for selection of the precise actions and activities related to the remediation and restoration of the project site. EPA indicates that the consent decree could be lodged with the court in late January 2005.[8] CFB's amendment application does not state when it would file an application to surrender the project license, but contemplates that a surrender application would address the effects of the actions to be completed in the subsequent stages of the remediation plan.[9]

12. CFB's license amendment application requested Commission authorization to commence Stage 1 activities in advance of EPA's now final remedy selection. These are: (1) CFB's lowering the project reservoir to a level approximately ten feet below full pool through the radial gate in the project dam to expose the area where contaminated sediment has accumulated; and (2) EPA's isolating the contaminated sediments from flowing water with sheet piling and constructing a bypass channel for the Clark Fork River. CFB states that no permanent alterations of the project structures are needed for Stage 1 activities. CFB would only need to shut down the generators and remove the boat barriers and trash booms at the dam. Stage 1 drawdown would begin during a low flow period of the winter months with the timing and drawdown rates controlled to prevent problems associated with ice. During the low flow winter period, the radial gate spillway would function as an ungated overflow structure. As flows increase in the spring, the panel-gate spillway gates and stanchions would be removed, enabling the panel-gate to serve as a second ungated overflow structure. Should it become necessary to refill the reservoir and/or resume generation for any reason, the panel-gates could be restored and the radial gate used to control the rate of refill.[10] CFB stated that the Stage 1 activities need to take place during the December 2004 to September 2005 time frame to ensure timely implementation of the then-proposed, but now final, Plan.[11]

13. Most of the entities who filed comments in response to the scoping meetings generally supported EPA's proposed plan, but alleged various deficiencies in EPA's analyses and in the Proposed Plan that they contend

Montana Power, LLC. *See* 94 FERC ¶ 62,265. Thereafter, Montana Power, LLC, changed its name to Clark Fork and Blackfoot, LLC. *See* 102 FERC ¶ 62,124 (2003).

[3] 50 FERC ¶ 61,139 (1989); 69 FERC ¶ 61,124 (1994); 91 FERC ¶ 61,280 (2000), *reh'g denied,* 92 FERC ¶ 61,231 (2000); 92 FERC ¶ 61,049 (2002); 105 FERC ¶ 61,048 (2003).

[4] 107 FERC ¶ 62,028.

[5] The Revised Proposed Plan included, in addition to the remediation plan, a site restoration plan under development by the U.S. Fish and Wildlife Service; Confederated Salish and Kootenai Tribes; and the State of Montana through the Department of Fish, Wildlife, and Parks and the Natural Resource Damage Program (Natural Resources Trustees).

[6] 69 FR 30,291 (May 27, 2004).

[7] PPL Montana, LLC; Avista Utilities; Clark Fork Coalition; Bonner Development Group; United States Department of the Interior; Clark Fork River Technical Assistance Committee; American Whitewater; Montana Historical Society; and Montana Department of Fish, Wildlife, and Parks.

[8] The Missoulian, Tuesday, December 21, 2004: *http://www.missoulian.com/articles/2004/12/21/news/top/newsd1.txt.*

[9] *See* letter filed July 29, 2004 requesting designation of CFB as the Commission's non-federal representative for consultation with the U.S. Fish and Wildlife Service under the Endangered Species Act at 1.

[10] Application pages A–3 to A–4.

[11] Initial Statement at 3.

should be addressed by the Commission in the context of a license surrender application. Others assert that any license surrender application would require compliance by the Commission with certain other statutes, such as the Endangered Species Act [12] and National Historic Preservation Act.[13]

14. The issue we confront here is whether the Commission should entertain a license amendment or surrender application where all of the activities to occur thereunder are components of a remediation and restoration plan developed by EPA and Montana under CERCLA. Section 121(e)(1) of CERCLA [14] provides that:

> No Federal, State, or local permit shall be required for the portion of any removal or remedial action conducted entirely onsite, where such remedial action is selected and carried out in compliance with this section.

15. CERCLA does not define the word ''permit,'' but we believe its meaning encompasses an amendment to an existing license and any other Commission authorization that would otherwise be required. We have found nothing in the legislative history of CERCLA to indicate that Congress intended for this broad language to be limited to instances where no other federal, state, or local permits already exist or would otherwise be required with respect to actions conducted on a Superfund site,[15] and our reading of the section comports with the only judicial decision of which we are aware construing section 121(e)(1). In *McClellan Ecological Seepage Situation* v. *Cheney*,[16] the court cited section 121(e)(1) in rejecting the plaintiff's contention that a permit was needed under the Resource Conservation and Recovery Act (RCRA) [17] to carry out certain hazardous waste remedial actions at a Superfund site at an Air Force base because all of the actions in question were to be taken in the context of remedial action under CERCLA.

16. The Final Plan, as described above, will result in the cessation of generation and complete removal of the project. EPA will implement, or direct the implementation of, all aspects of its plan, and has effective regulatory control over all aspects of the project. It is entirely within EPA's discretion to determine when to begin activities under the Final Plan. Under these unique circumstances (*i.e.*, a CERCLA site where the remediation plan provides for cessation of project generation and project removal), complete regulatory control transferred from the Commission to EPA when the Final Plan was adopted, and there is nothing left for the Commission to regulate. Thus, there is no longer a basis for Commission jurisdiction. That fact, in conjunction with the operation of CERCLA section 121(e), means that neither EPA nor CFB require any authorization from the Commission to implement the Final Plan. For this reason, it would not be appropriate for the Commission to entertain a license amendment application to commence EPA's plan. We will therefore dismiss the license amendment application.[18]

17. We also think this is an appropriate case in which to apply the doctrine of implied surrender, by which the Commission deems certain actions or events, typically removal of the generators or abandonment of the project facilities, to demonstrate the licensee's intent to surrender the license.[19] Here Stage 1 will result in the permanent cessation of generation and is clearly the first step in a process that will result in the complete removal of the project under EPA's authority. CFB's stated intention to file a surrender application is not relevant in light of the fact that CERCLA section 121(e) as applied to the facts of this case obviates the need to file such an application. We therefore deem it to be CFB's intention to surrender the project license.[20] In light of the foregoing, we are issuing in this order notice of our intent to accept surrender of the project license,[21] effective 45 days from the date of this order.[22]

18. Finally, so that we may consider the views of any interested parties prior to the date surrender becomes effective, we are providing 30 days for parties to file comments in response to our notice of intent to accept surrender of the project license.

The Commission orders: (A) The licensee amendment application filed on October 28, 2004 by Clark Fork and Blackfoot, LLC, for the Milltown Hydroelectric Project No. 2543 is dismissed.

(B) The Commission hereby issues notice of its intent to accept surrender of the project license, to be effective 45 days from the date of this order, unless otherwise ordered by the Commission in response to comments received pursuant to Ordering Paragraph (D).

(C) The 90-day notice requirement of 18 CFR 6.4 and of Article 23 of the project license are hereby waived.

(D) Interested entities may submit, within 30 days of the date of this order,

[12] 16 U.S.C. 1531–43.

[13] 16 U.S.C. 470–470w–6.

[14] 42 U.S.C. 9621(e)(1).

[15] The Conference Report discussion of section 121(e)(1) as enacted simply reiterates the language of the section. The Conference Report's discussion of the House and Senate bills shows however that the exemption from federal, state, and local permits in the section as enacted is more expansive than the exemptions that would have been provided under either the House or Senate bills. Under the House bill, on-site remedial actions would have required permits under the Clean Water Act, Clean Air Act, Safe Drinking Water Act, and state groundwater laws. Under the Senate bill, no Resource Conservation Recovery Act or Clean Water Act permit would be required for the portion of any response action conducted entirely on-site. H. Rep. No. 99–962, 1986 U.S. Code Cong. and Adm. News, 3276 at 3336–38 (1986).

[16] 763 F.Supp. 431 (E.D. Cal. 1989), vacated and remanded on other grounds, *McClellan Ecological Seepage Situation* v. *Perry*, 47 F.3d 325 (9th Cir. 1995), cert. denied, 516 U.S. 807. The case decided at 47 F.3d 325 held that CERCLA section 113(h), which denies federal courts jurisdiction (with a single exception not relevant here) to entertain challenges to removal or remedial actions selected under CERCLA, barred the plaintiffs' claims concerning RCRA and the Clean Water Act with regard to all activities being undertaken pursuant to the selected clean-up plan. In contrast, the court held that CERCLA section 113(h) did not bar the plaintiff's claims concerning non-compliance with RCRA as they pertained to clean-up activities not covered by the plan.

[17] 42 U.S.C. 6901–6991i.

[18] Because CFB's application is being dismissed, the Commission has not issued a public notice requesting interventions. Any request for rehearing of this order must be accompanied by a motion to intervene.

[19] FPA section 6, 16 U.S.C. 796, and 18 CFR 6.4. *See, e.g.*, New England Fish Co., 38 FERC ¶ 61,106 (1987), Pinedale Power and Light Co., 38 FERC ¶ 61,036 (1987), and Watervliet Paper Co., 35 FERC ¶ 61,030 (1986). The doctrine has been expanded to encompass a situation where co-licensees were not able to agree on whether or not to continue operating a project and the co-licensee that wished to operate the project was not able to do so without the cooperation of the other co-licensee. *See Fourth Branch Associates (Mechanicville)* v. *Niagara Mohawk Power Corp.,* 89 FERC ¶61,194 (1999), reh'g denied, 90 FERC ¶ 61,250 (2000), appeal dismissed, *Fourth Branch Associates* v. *FERC*, 253 F.3d 741 (D.C. Cir. 2001).

[20] Under ordinary circumstances, 18 CFR 6.4 would require 90 days notice prior to the effective date of license termination by implied surrender. A 90-day notice period is appropriate where the Commission is to consider what conditions, if any, to attach to acceptance of the surrender. Here, however, project retirement and removal will be entirely in the hands of EPA. We will therefore waive this provision of section 6.4, and will provide a 45-day notice period. Similarly, we will waive the 90-day notice requirement of Standard Article 23 of the project license, pertaining to implied surrender. *See* Montana Power Co., 39 FPC 908, Ordering Paragraph (C) at 911, and Standard Article 23, 37 FPC at 865.

[21] Subdocket P–2543–065 has been established for this proceeding.

[22] It is likewise appropriate for EPA, rather than this Commission, to determine the extent to which other federal statutes, such as NEPA and ESA, may apply to EPA's remediation and site restoration plan and, to the extent they do, for EPA to take any actions that may be required thereunder. In this regard, we note that CFB has been engaged in consultation as the Commission's non-federal representative with the U.S. Fish and Wildlife Service and the Montana State Historic Preservation Officer, based on its belief that the Commission would process a license amendment application. In this context, FWS has issued a Biological Opinion of the effects of EPA's remediation plan on bull trout and bald eagles. There appears to be no reason why these consultations may not continue, if necessary, under EPA's auspices.

comments and/or motions to intervene in the implied surrender proceeding.

(E) The Secretary is directed to promptly publish this order in the **Federal Register**.

By the Commission.

Linda Mitry,

Deputy Secretary.

[FR Doc. 05–1500 Filed 1–26–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER05–424–000]

PJM Interconnection, L.L.C.; Notice of Filing

January 12, 2005.

Take notice that on December 30, 2004, American Electric Power Service Corporation (AEPSC) submitted a filing in reference to the Commission's September 28, 2004, Order in Docket No. ER04–1068–000, 108 FERC ¶ 61,318 (2004).

AEPSC states that a copy of the filing was served upon parties to Docket No. ER04–1068, AEP's transmission service customers, PJM members, the Midwest ISO, and the state regulatory commissions exercising jurisdiction over AEP.

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, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

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

This filing is accessible 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.

Comment Date: 5 p.m. eastern time on January 21, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–306 Filed 1–26–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC05–36–000, et al.]

AES Western Wind, L.L.C., et al.; Electric Rate and Corporate Filings

January 18, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. AES Western Wind, L.L.C., Condon Wind Power, LLC, SeaWest Holdings, Inc.

[Docket No. EC05–36–000]

Take notice that on January 12, 2005, AES Western Wind, L.L.C., Condon Wind Power, LLC (Condon), and SeaWest Holdings, Inc. (collectively, Applicants) tendered for filing an application requesting all authorizations and approvals necessary under section 203 of the Federal Power Act, 16 U.S.C. 824b, for an indirect disposition of jurisdictional facilities in connection with the acquisition by AES Western Winds, an independent subsidiary of the AES Corporation, of 100 percent of the capital stock of SeaWest Holdings, which indirectly owns a 38.9 percent interest in Condon. Applicants state that Condon owns and operates a 49.8 MW wind-powered generating facility located near Condon, Oregon.

Comment Date: 5 p.m. eastern time on February 2, 2005.

2. Williams Production Company, LLC, Williams Energy Services, LLC, Williams Merchant Services Company, Inc., Williams Power Company

[Docket No. EC05–38–000]

Take notice that on January 13, 2005, Williams Production Company, LLC (Williams Production), Williams Energy Services, LLC (Williams Energy Services), Williams Merchant Services Company, Inc. (Williams Merchant) and Williams Power Company, Inc. (Williams Power) (collectively, Applicants) filed with the Commission an application, pursuant to section 203 of the Federal Power Act requesting Commission authorization to transfer jurisdictional facilities. Specifically, the Applicants request permission to distribute the shares of stock of Williams Generation Company—Hazleton currently held by Williams Production to: (a) Williams Energy Services, (b) Williams Merchant, and ultimately (c) Williams Power. The Applicants indicate that if approved by the Commission, Williams Power will become the direct parent Williams Generation Company—Hazleton.

Comment Date: 5 p.m. eastern time on February 4, 2005.

3. Klondike Wind Power II LLC

[Docket No. EG05–23–000]

Take notice that on January 13, 2005, Klondike Wind Power II LLC (Klondike II) filed an amendment to its application for Determination of Exempt Wholesale Generator Status filed on December 14, 2004, in the above-referenced docket number. Klondike II states that the December 14, 2004, application was inadvertently not served on several affected state commissions. The Certificate of Service attached to the January 13, 2005, filing indicates that Klondike II has served a stamped copy of the December 14, 2004, application on each of the affected state commissions that had not previously been served.

Comment Date: 5 p.m. eastern time on January 31, 2005.

4. Elk River Windfarm LLC

[Docket No. EG05–25–000]

Take notice that on January 13, 2005, Elk River Windfarm LLC (Elk River) filed an amendment to its application for Determination of Exempt Wholesale Generator Status filed on December 21, 2004, in the above-referenced docket number. Elk River states that the December 21, 2004, application was inadvertently not served on several affected state commissions. The Certificate of Service attached to the January 13, 2005, filing indicates that Elk River has served a stamped copy of the December 21, 2004, filing on each of the affected state commissions that had not previously been served.

Comment Date: 5 p.m. eastern time on February 3, 2005.

5. Sierra Pacific Resources Operating Companies

[Docket No. ER04–877–000]

Take notice that on January 10, 2005, the Sierra Pacific Resources Operating Companies filed a withdrawal of the unilateral amendment to Sierra Pacific Operating Companies, FERC Electric Tariff Revised Volume No. 1, Service Agreement No. 97 with Duke Energy North American, LLC and Duke Trading and Marketing, LLC, filed on May 27, 2004, in the above-referenced docket.

Comment Date: 5 p.m. eastern time on January 31, 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.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–304 Filed 1–26–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2004–0045; FRL–7864–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Region 7 Lead Education and Awareness Project in St. Louis, MO, EPA ICR Number 2161.01

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request for a new collection. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before February 28, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2004–0045, to (1) EPA online using EDOCKET (our preferred method), by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Patricia A. Scott, Mail Code ARTDRALI, Environmental Protection Agency, Region 7, 901 North Fifth Street, Kansas City, KS 66101; telephone number: (913) 551–7312; fax number: (913) 551–7844; email address: *scott.patriciaa@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On September 22, 2004, (69 FR 56754), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA has addressed the comments received.

EPA has established a public docket for this ICR under Docket ID No. OECA–2004–0045, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

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

Title: Region 7 Lead Education and Awareness Project in St. Louis, Missouri.

Abstract: EPA Region 7 and the Office of Compliance (OC) within the Office of Enforcement and Compliance Assurance (OECA) are planning to conduct a performance baseline survey and follow-up survey for the Lessors and Lessees sectors. OC is interested in having a baseline performance survey conducted and compliance assistance needs assessment for the Lessors sector. In addition, OC is interested in assessing the awareness and behavioral change of Lessees through a survey. There are three main purposes for these Lessor and Lessee surveys:

- To determine a baseline level of regulatory awareness of and compliance with the ''Residential Lead-Based Paint

Hazard Reduction Act of 1992'' (Title X) and the ''Requirements for Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards in Housing'' rule (Disclosure Rule), from which to measure the success of the Agency's compliance outreach efforts for reporting under the Government Performance and Results Act (GPRA). For key sectors for which EPA is planning to initiate compliance assistance, a baseline level of compliance and regulatory awareness is needed from which to measure future progress.

• To determine the effectiveness of the Department of Housing and Urban Development's (HUD) education and outreach efforts.

• To determine whether lessees are reading and understanding the Protect Your Family From Lead In Your Home pamphlet and whether they are implementing methods to reduce lead exposure as a result.

The EPA Region 7 is planning targeted Disclosure Rule inspections in high risk areas of St. Louis, Missouri during FY2005 and/or FY2006. The activities planned under the Statistically Valid Compliance Assistance Rate study are designed to determine the baseline rate of lessors' compliance with the Disclosure Rule and whether lessees are reading and understanding the Protect Your Family From Lead In Your Home pamphlet and implementing methods to reduce exposure to lead. The EPA would like to conduct statistically valid voluntary surveys with a sample size of approximately 150 respondents. These surveys will be used to establish a performance baseline at the start of the study. A follow-up survey will then be conducted to determine progress against the baseline.

The OECA has adopted a sector approach for many of its compliance assistance activities. The lessor sector is an example of a sector for which EPA has focused many of its compliance assistance activities. There is considerable debate as to the extent of regulatory compliance, the need for additional compliance assistance, and the effectiveness of compliance assistance methods and materials developed for this sector. The OECA would like to conduct a statistically valid voluntary survey and site-visit survey of a sample of lessor venues in areas of high risk for lead poisoning in St. Louis, Missouri to determine a performance snapshot of this sector which reflects current sector performance with respect to the Disclosure Rule. The surveys will be conducted as a voluntary blind sample (*i.e.*, the lessors' identities will be unknown to EPA and the lessors will participate voluntarily). The results of the survey will provide OECA with information on compliance assistance applicable to this sector and information from which to measure the success of OECA's compliance assistance programs for Government Performance and Results Act (GPRA) reporting purposes.

The EPA Region 7 will evaluate the need for educational outreach for an additional sector: lessees in areas of St. Louis, Missouri at high risk for lead poisoning. Sufficient data are not available in EPA's databases to evaluate the current rate at which lessees are reading the EPA pamphlet, Protect Your Family From Lead In Your Home, and are implementing behavioral changes to reduce lead exposure as a result. Therefore, OECA is interested in determining:

• The level of regulatory awareness and compliance in the lessor sector;

• Areas of noncompliance and root causes of noncompliance;

• The need for compliance assistance for the lessor sector

• The need for educational outreach for the lessee sector.

The OECA is soliciting comment on whether to conduct a statistically valid voluntary survey and site-visit survey of a sample of lessors and a site-visit survey of a sample of lessees in high risk areas of St. Louis.

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

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 1.5 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or other wise disclose the information.

Respondents/Affected Entities: Lessors conducting business in areas of high risk for lead poisoning in St. Louis, Missouri; Lessees living in areas of high risk for lead poisoning in St. Louis, Missouri.

Estimated Number of Respondents: Approximately 150 respondents in areas of high risk for lead poisoning in St. Louis Missouri.

Frequency of Response: Twice (EPA Region 7 will conduct a follow-up survey in FY2007).

Estimated Total Annual Hour Burden: 225 hours.

Estimated Total Annual Cost: $11,000, which includes $0 annual capital/startup and O&M costs, and $11,000 annual labor costs.

Dated: January 10, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–1529 Filed 1–26–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2004–0028; FRL–7864–3]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Assessment of Compliance Assistance Projects (Renewal), OMB Control Number 2020–0015, EPA ICR Number 1860.03

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on February 28, 2005. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before February 28, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2004–0028, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center, Environmental

Protection Agency, Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Hans Scheifele, Office of Compliance, Mail Code 2224A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–1459; fax number: (202) 564–0009; e-mail address: *scheifele.hans@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On August 18, 2004 (69 FR 51282), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OECA–2004–0028, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

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

Title: Assessment of Compliance Assistance Projects (Renewal)

Abstract: This information collection determines how well EPA compliance assistance tools and services meet customers needs and to assess the effectiveness of the assistance activities. This will be a voluntary collection of information to gauge customer satisfaction with the compliance assistance projects, measure any resulting changes in knowledge and/or behavior, and evaluate any environmental and human health impacts. EPA proposes to use assessment surveys to provide the agency with feedback on the compliance assistance documents, onsite visits, telephone assistance, web sites, and compliance assistance seminars and workshops delivered by headquarters and regional compliance assistance programs to the regulated community. This feedback will help EPA improve the quality and delivery of compliance assistance tools and services. This ICR will only provide anecdotal data for the purpose of informing EPA of the effectiveness of compliance assistance tools, and customer satisfaction with those tools. All assessments undertaken under this ICR will adhere to specific conditions to ensure that data is collected and used properly and efficiently. The information collection is voluntary, and will be limited to non-sensitive data concerning the quality of compliance assistance activities.

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

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 9 minutes per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Business or other for profit, Farms, Federal Government, or State, Local, and Tribal Government.

Estimated Number of Respondents: 25,776.

Frequency of Response: One time.

Estimated Total Annual Hour Burden: 3,973.

Estimated Total Annual Cost: $273,000, which includes $0 annual capital or O&M costs, and $273,000 annual labor costs.

Changes in the Estimates: There is a small change in the burden as we anticipate a higher response rate for pre/post test surveys as compared to phone and mail surveys.

Dated: January 10, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–1530 Filed 1–26–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7863–9]

Request for Nominations to the National and Governmental Advisory Committees to the U.S. Representative to the North American Commission for Environmental Cooperation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of request for nominations.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is inviting nominations of qualified candidates to be considered for appointment to fill vacancies on the National and Governmental Advisory Committees to the U.S. Representative to the North American Commission for Environmental Cooperation. Current vacancies on these committees are scheduled to be filled by May, so we

encourage nominations to be submitted by March 1, 2005.

ADDRESSES: Submit nominations to: Oscar Carrillo, Designated Federal Officer, Office of Cooperative Environmental Management, U.S. Environmental Protection Agency (1601–E), 1200 Pennsylvania Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Oscar Carrillo, Designated Federal Officer, U.S. Environmental Protection Agency (1601–E), Washington, DC 20004; telephone (202) 233–0072; fax (202) 233–0070; e-mail *carrillo.oscar@epa.gov*.

SUPPLEMENTARY INFORMATION: The National and Governmental Advisory Committees to the U.S. Government Representative to the North American Commission for Environmental Cooperation advise the Administrator of the EPA in the Administrator's capacity as the U.S. Representative to the Council of the North American Commission on Environmental Cooperation. The Committees are authorized under Articles 17 and 18 of the North American Agreement on Environmental Cooperation (NAAEC), the North American Free Trade Agreement (NAFTA) Implementation Act, Public Law 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 United States 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-profit entities, business and industry, and educational institutions. The Governmental Advisory Committee consists of 12 representatives from state, local, and tribal governments. Members are appointed by the EPA Administrator for a two-year term with the possibility of reappointment. The Committees usually meet 3 times annually and the average workload for Committee members is approximately 10 to 15 hours per month. Members serve on the Committees in a voluntary capacity. However, EPA provides reimbursement for travel expenses associated with official government business.

The following criteria will be used to evaluate nominees:

• Extensive professional knowledge of the subjects the Committees examine, including trade and the environment, the NAFTA, the NAAEC and the CEC.

• Represent a sector or group that is involved in the issues the Committees evaluate.

• Senior-level experience that will fill a need on the Committees for their particular expertise.

• A demonstrated ability to work in consensus building process with a wide range of representatives from diverse constituencies.

• Nominees will also be considered with regard to the mandates of the Federal Advisory Committee Act that require the Committees to maintain diversity across a broad range of constituencies, sectors, and groups.

Nominations for membership must include a cover letter and a resume describing the professional and education qualifications of the nominee and the nominee's current business address and daytime telephone number.

Dated: January 10, 2005.

Oscar Carrillo,

Designated Federal Officer.

[FR Doc. 05–1535 Filed 1–26–05; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Sub-Saharan Africa Advisory Committee (SAAC) of the Export-Import Bank of the United States (Export-Import Bank)

SUMMARY: The Sub-Saharan Africa Advisory Committee was established by Public Law 105–121, November 26, 1997, to advise the Board of Directors on the development and implementation of policies and programs designed to support the expansion of the Bank's financial commitments in Sub-Saharan Africa under the loan, guarantee and insurance programs of the Bank. Further, the committee shall make recommendations on how the Bank can facilitate greater support by U.S. commercial banks for trade with Sub-Saharan Africa.

Time and Place: February 16, 2005, at 9:30 a.m. to 12:30 p.m. The meeting will be held at the Export-Import Bank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

Agenda: Given the entire new membership on the advisory committee, the meeting will begin with an ethics briefing applicable to non-government appointees who serve on such a committee followed by a review of the 2004 Ex-Im Bank report to the U.S. Congress on the Bank's activities in sub-Saharan Africa specifically including a report on the September 2004 ''Increasing Capital Flows to Africa'' conference in Johannesburg co-sponsored with the Corporate Council on Africa; a review of the current year's business development efforts in the region; a status report on the Millennium Challenge Corporation as it relates to the selected African countries; and planning for the Africa panel session at the April 14–15 annual Ex-Im Bank meeting.

Public Participation: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to February 16, 2005, Barbara Ransom, Room 1241, 811 Vermont Avenue, NW., Washington, DC 20571, voice: (202) 565–3525 or TDD (202) 565–3377.

FOR FURTHER INFORMATION CONTACT: for further information, contact Barbara Ransom, Room 1241, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 565–3525.

Peter Saba,

General Counsel.

[FR Doc. 05–1520 Filed 1–26–05; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL ELECTION COMMISSION

[Notice 2005–1]

Filing Dates for the California Special Election in the 5th Congressional District

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: California has scheduled a special general election on March 8, 2005, to fill the U.S. House of Representatives seat in the Fifth Congressional District held by the late Representative Robert Matsui. Under California law, a majority winner in a special election is declared elected. Should no candidate achieve a majority vote, a special runoff election will be held on May 3, 2005, among the top vote-getters of each qualified political party, including qualified independent candidates.

Committees participating in the California special elections are required to file pre- and post-election reports. Filing dates for these reports are affected by whether one or two elections are held.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin R. Salley, Information Division, 999 E Street, NW., Washington, DC 20463; telephone: (202) 694–1100; toll free (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Principal Campaign Committees

All principal campaign committees of candidates who participate in the California Special General and Special Runoff Elections shall file a 12-day Pre-General Report on February 24, 2005; a Pre-Runoff Report on April 21, 2005; and a Post-Runoff Report on June 2, 2005. (*See* chart below for the closing date for each report).

All principal campaign committees of candidates in the Special General Election *only* shall file a 12-day Pre-General Report on February 24, 2005; and a Post-General Report on April 7, 2005. (*See* chart below for the closing date for each report).

Unauthorized Committees (PACs and Party Committees)

Political committees filing on a semiannual basis in 2005 are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the California Special General or Special Runoff Elections by the close of books for the applicable report(s). (*See* chart below for the closing date for each report).

Committees filing monthly that support candidates in the California Special General or Special Runoff Election should continue to file according to the monthly reporting schedule.

Disclosure of Electioneering Communications (Individuals and Other Unregistered Organizations)

As required by the Bipartisan Campaign Reform Act of 2002, the Federal Election Commission promulgated new electioneering communications rules governing television and radio communications that refer to a clearly identified federal candidate and are distributed within 60 days prior to a special general election (including a special general runoff). 11 CFR 100.29. The statute and regulations require, among other things, that individuals and other groups not registered with the FEC who make electioneering communications costing more than $10,000 in the aggregate in a calendar year disclose that activity to the Commission within 24 hours of the distribution of the communication. See 11 CFR 104.20.

The 60-day electioneering communications period in connection with the California Special General runs from January 7, 2005 through March 8, 2005. The 60-day electioneering communications period in connection with the California Special Runoff runs from March 4, 2005 through May 3, 2005.

CALENDAR OF REPORTING DATES FOR CALIFORNIA SPECIAL ELECTION

Report	Close of books [1]	Reg./cert. & overnight mailing date	Filing date
If only the Special General is held (03/08/05), committees involved must file:			
Pre-General	02/16/05	02/21/05	02/24/05
Post-General	03/31/05	04/07/05	04/07/05
April Quarterly		—waived—	
If two elections are held, committees involved only in the Special General (03/08/05) must file:			
Pre-General	02/16/05	02/21/05	02/24/05
April Quarterly	03/31/05	04/15/05	04/15/05
Committees involved in the Special General (03/08/05) and Special Runoff (05/03/05) must file:			
Pre-General	02/16/05	02/21/05	02/24/05
April Quarterly		—waived—	
Pre-Runoff	04/13/05	04/18/05	04/21/05
Post-Runoff	05/23/05	06/02/05	06/02/05
July Quarterly	06/30/05	07/15/05	07/15/05
Committees involved only in the Special Runoff (05/03/05) must file:			
Pre-Runoff	04/13/05	04/18/05	04/21/05
Post-Runoff	05/23/05	06/02/05	06/02/05
July Quarterly	06/30/05	07/15/05	07/15/05

[1] The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.

Dated: January 21, 2005.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 05–1558 Filed 1–26–05; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate

inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 22, 2005.

A. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Capitol Bancorp Ltd., Lansing, Michigan; to acquire 51 percent of the voting shares of Peoples State Bank, Jeffersonville, Georgia.

2. Centrue Financial Corporation, Kankakee, Illinois; to acquire 100 percent of the voting shares of Illinois Community Bancorp, Inc., Effingham, Illinois, and thereby indirectly acquire Illinois Community Bank, Effingham, Illinois.

Board of Governors of the Federal Reserve System, January 24, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–1544 Filed 1–26–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Revised Jurisdictional Thresholds for Section 8 of the Clayton Act

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission announces the revised thresholds for interlocking directorates required by the 1990 amendment of Section 8 of the Clayton Act. Section 8 prohibits, with certain exceptions, one person from serving as a director or officer of two competing corporations if two thresholds are met. Competitor corporations are covered by Section 8 if each one has capital, surplus, and undivided profits aggregating more than $10,000,000, with the exception that no corporation is covered if the competitive sales of either corporation are less than $1,000,000. Section 8(a)(5) requires the Federal Trade Commission to revise those thresholds annually, based on the change in gross national product. The new thresholds, which take effect immediately, are $21,327,000 for Section 8(a)(1), and $2,132,700 for Section 8(a)(2)(A).

EFFECTIVE DATE: January 27, 2005.

FOR FURTHER INFORMATION CONTACT: James F. Mongoven, Bureau of Competition, Office of Policy and Coordination, (202) 326–2879.

(Authority: 15 U.S.C. 19(a)(5)).

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 05–1499 Filed 1–26–05; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0121]

General Services Administration Acquisition Regulation; Information Collection; Industrial Funding Fee and Sales Reporting

AGENCY: Office of the Chief Acquisition Officer, GSA.

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration, has submitted to the Office of Management and Budget (OMB) a request to review and approve a renewal of a currently approved information collection requirement regarding industrial funding fee and sales reporting.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: February 28, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Nelson, Procurement Analyst, Contract Policy Division, at telephone (202) 501–1900 or via e-mail to *linda.nelson@gsa.gov*.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Ms. Jeanette Thornton, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to the Regulatory Secretariat (V), General Services Administration, Room 4035, 1800 F Street, NW., Washington, DC 20405. Please cite OMB Control No. 3090–0121, Industrial Funding Fee and Sales Reporting, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Background

GSA published a notice in the August 2, 2004, **Federal Register** to make this requirement available to the public and requested comments. One respondent submitted comments in response to the notice. The commenter believes that the information collection requirement for the industrial funding fee and sales reporting could be conducted every two years in order to save taxpayers dollars. In response, collection of the industrial funding fee and sales information every two-year jeopardizes the Government ability to effectively manage the Federal Supply Schedules Program. The Government collects the data quarterly in order to evaluate and monitor the effectiveness of the schedule program and to negotiate better prices based on volume, which saves taxpayers dollars. As a result of collecting the data quarterly, the Government has the ability to provide upon request current schedule sales information to the federal agencies and the public.

B. Annual Reporting Burden

Respondents: 15,710.

Responses Per Respondent: 20.

*Total Responses:*314,200.

Hours Per Response: .0833.

Total Burden Hours: 26,173.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (V), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 3090–0121, Industrial Funding Fee and Sales Reporting, in all correspondence.

Dated: January 19, 2005.

Laura Auletta,

Director, Contract Policy Division.

[FR Doc. 05–1537 Filed 1–26–05; 8:45 am]

BILLING CODE 6820–61–S

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0006]

General Services Administration Acquisition Regulation; Information Collection; GSAR Clause 552.237–71, Qualifications of Employees

AGENCY: Office of the Chief Acquisition Officer, GSA.

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve a renewal of a currently approved information collection requirement regarding GSAR Clause 552.237–71, qualifications of employees.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: March 28, 2005.

FOR FURTHER INFORMATION CONTACT: Julia Wise, Procurement Analyst, Contract Policy Division, at telephone (202) 208–1168 or via e-mail to *julia.wise@gsa.gov*.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Regulatory Secretariat (VIR), General Services Administration, Room 4035, 1800 F Street, NW., Washington, DC 20405. Please cite OMB Control No. 3090–0006, GSAR Clause 552.237–71, Qualifications of Employees, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration has various mission responsibilities related to the acquisition and provision of service contracts. These mission responsibilities generate requirements that are realized through the solicitation and award of service contracts for guards, childcare, cleaning, and maintenance. Individual solicitations and resulting contracts may impose unique information collection/reporting requirements on contractors, not required by regulation, but necessary to evaluate particular program accomplishments and measure success in meeting program objectives.

B. Annual Reporting Burden

Respondents: 15,496.
Total Responses: 15,496.
Hours Per Response: 1.
Total Burden Hours: 15,496.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 3090–0006, GSAR Clause 552.237–71, Qualifications of Employees, in all correspondence.

Dated: January 19, 2005.

Laura Auletta,

Director, Contract Policy Division.

[FR Doc. 05–1538 Filed 1–26–05; 8:45 am]

BILLING CODE 6820–61–S

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0197]

General Services Administration Acquisition Regulation; Information Collection; GSAR Provision 552.237–70, Qualifications of Offerors

AGENCY: Office of the Chief Acquisition Officer, GSA.

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration has submitted to the Office of Management and Budget (OMB) a request to review and approve a renewal of a currently approved information collection requirement regarding the qualifications of offerors. A request for public comments was published at 69 FR 65433, November 12, 2004. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: February 28, 2005.

FOR FURTHER INFORMATION CONTACT: Julia Wise, Procurement Analyst, Contract Policy Division, at telephone (202) 208–1168 or via e-mail to *julia.wise@gsa.gov*.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Ms. Jeanette Thornton, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to the Regulatory Secretariat (VIR), General Services Administration, Room 4035, 1800 F Street, NW., Washington, DC 20405. Please cite OMB Control No. 3090–0197, GSAR Provision 552.237–70, Qualifications of Offerors, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration (GSA) has various mission responsibilities related to the acquisition and provision of service contracts. These mission responsibilities generate requirements that are realized through the solicitation and award of contracts for building services. Individual solicitations and resulting contracts may impose unique information collection and reporting requirements on contractors not required by regulation, but necessary to evaluate particular program accomplishments and measure success in meeting program objectives.

B. Annual Reporting Burden

Respondents: 6794.
Responses Per Respondent: 1.
Hours Per Response: 1.
Total Burden Hours: 6794.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 3090–0197, GSAR Provision 552.237–70, Qualifications of Offerors, in all correspondence.

Dated: January 19, 2005.

Laura Auletta,

Director, Contract Policy Division.

[FR Doc. 05–1539 Filed 1–26–05; 8:45 am]

BILLING CODE 6820–61–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Correction to a Notice of Meetings

With this Notice, the following ''Study Section'' meeting published in

the **Federal Register** on December 27, 2004, Volume 69, Number 247, Page 77250, see also *http://a257.g.akamaitech.net/7/257/2422/06jun20041800/edocket.access.gpo.gov/2004/04-28187.htm*, reflect correct dates:

- Name of Subcommittee: Health Care Technology and Decision Sciences. Date: February 17, 2005.
- Name of Subcommittee: Health Research Dissemination and Implementation. Date: February 25, 2005.
- Name of Subcommittee: Health Systems Research. Date: February 24, 2005.
- Name of Subcommittee: Health Care Quality and Effectiveness Research. Date: February 24, 2005.

Dated: January 14, 2005.

Carolyn M. Clancy,

Director.

[FR Doc. 05–1484 Filed 1–26–05; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–05AY]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call (404) 371–5976 or send comments to Sandi Gambescia, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Economic Evaluation Of Walking Behavior In Sedentary Adults Age 50 Years And Older—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description of the Proposed Project and Data Collection

CDC is requesting approval of a pilot test to better understand the barriers to increased physical activity and the potential impact of modest financial incentives to promote walking among sedentary adults aged 50 years and older. The Behavioral Risk Factor Surveillance System (BRFSS) data reveal that Americans in general and older adults in particular do not meet minimum recommendations for levels of physical activity. Moderate increases in physical activity would decrease the incidence of diseases promoted by inactivity, including several types of cancer, diabetes, and heart disease. However, strategies that effectively motivate sedentary people to increase and maintain levels of regular physical activity have yet to be identified. CDC proposes to use this effort to investigate the impact of one type of intervention (financial incentives) on levels of physical activity.

CDC will conduct a stated preference (SP) survey to identify the barriers to leisure time physical activity and the size of the incentives necessary to overcome these barriers among sedentary adults age 50 and older. A pilot test of the impact of specific amounts of financial incentives on levels of walking among this population will also be conducted via a reveled preference (RP) survey in the Raleigh, North Carolina, metropolitan area.

The SP survey will be a one-time effort in which respondents belonging to an online survey panel will complete a computer survey over the Internet. In the RP portion of the project, a local sample of respondents will complete an identical survey on paper. The RP respondents will also wear a pedometer for 4 weeks and record the number of steps walked in a diary. Data will be collected from the diaries and from the 7-day history in each pedometer unit. Respondents will receive a modest incentive payment for the number of steps they walk above a predetermined floor and below a predetermined ceiling.

The results of the survey will be used to gauge the size of the incentives necessary to motivate behavior change in a real world setting. The results of the pilot test will provide initial evidence of the magnitude of the incentives necessary to increase levels of physical activity among a specific sample of older adults. The total costs and effectiveness (changes in physical activity) can then be compared to similar data emanating from other interventions designed to increase levels of physical activity. Statistical analysis of the SP survey and RP data will be used. Since neither form of data collection is based on a random sample, conclusions will be preliminary and not generalizable. The analysis will be used to evaluate whether further comprehensive research on this subject should be undertaken. There are no costs to respondents except their time to participate in the survey.

ANNUALIZED BURDEN TABLE

Respondents	Number of respondents	Number of responses per respondent	Avg. burden per response (in hrs)	Total burden hours
Online SP survey	500	1	25/60	208
RP survey	300	1	1.5	450
RP group—recording daily steps	300	4	20/60	400
Total				1058

Dated: January 14, 2005.

Betsey Dunaway,

Acting Reports Clearance Officer, Office of the Chief Science Officer, Centers for Disease Control and Prevention.

[FR Doc. 05–1492 Filed 1–26–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–05–0405X]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 371–5976 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Comprehensive Cancer Control: Implementation Case Study—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background

While much has been learned about the development of Comprehensive Cancer Control (CCC) plans, little is known about CCC grantee activities, organizational capacity, or essential elements of implementing CCC plans. CDC, through a contractor will evaluate the necessary components of the CCC Program. The evaluation consists of: (1) The design of a plan to evaluate the CCC Program; (2) an evaluation of grantee activities; (3) a nationwide assessment of capacity to plan, implement and evaluate CCC programs; and (4) a study of selected grantees' experiences implementing CCC plans. This project will focus on the fourth component of the evaluation.

Implementation case studies provide the opportunity to follow the relationships among needs identified in the planning process, goals and objectives established in the plan (priorities for action), and implemented activities. The goals of the proposed data collection are to document the process and activities CCC programs undertake to implement a CCC plan, and to document measures CCC programs use to assess how well a CCC plan is implemented.

The data will be collected via in-person interviews with key personnel in the implementation of CCC plans. Key personnel will include: Program directors, program staff in health departments and partner organizations, partner organization decision-makers, program evaluators, and representatives from non-partner organizations. Interviews will take place during one 3- to 4-day site visit to 10 sites. The program directors will also complete a packet of background information in preparation for the site visits. The only cost to respondents is their time. The total annual burden for this data collection is 145 hours.

ANNUALIZED BURDEN TABLE

Form		Type of respondents	Number of respondents	Number of responses per respondent	Avg. burden per response (in hours)
1	Interview	Program Directors	10	1	2
2	Interview	CCC Partners with General Knowledge	25	1	1
3	Interview	Partners with Focus Area Expertise	15	1	1.5
4	Interview	CCC Program Staff with General CCC Knowledge.	15	1	1
5	Interview	CCC Program Staff with Focus Area Experties.	15	1	1.5
6	Interview	Evaluators	10	1	1
7	Interview	Non-partners	20	1	1
8	Data Tables	Program Directors	5	1	2

Dated: January 21, 2005.

Betsey Dunaway,

Acting Reports Clearance Officer, Office of the Chief Science Officer, Centers for Disease Control and Prevention.

[FR Doc. 05–1493 Filed 1–26–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Request For Application 05032]

Capacity Building Assistance for Global HIV/AIDS Program Development Through Technical Assistance Collaboration With the National Association of State and Territorial AIDS Directors (NASTAD); Notice of Intent To Fund Single Eligibility Award

A. Purpose

The purpose of the program is to support capacity-building assistance for HIV/AIDS program development through technical assistance (TA) provided to GAP Program countries. The term ''capacity building assistance'' means the provision of information, technical assistance, training, and technology transfer for individuals and organizations to improve the delivery and effectiveness of HIV prevention, care and treatment services and interventions. This does not include the delivery of direct HIV prevention, care or treatment services and interventions.

The Catalog of Federal Domestic Assistance number for this program is 93.067.

B. Eligible Applicant

Assistance will be provided only to the National Alliance of State and

Territorial AIDS Directors (NASTAD) for this project. No other applications are solicited or will be accepted. This announcement and application will be sent to NASTAD.

NASTAD is the appropriate and only qualified agency to provide the services specified under this cooperative agreement because:

1. NASTAD is the only officially established organization that represents the State and Territorial AIDS Directors in all 50 U.S. States and all U.S. Territories. As such, it represent the officials from throughout the U.S. who have responsibility for designing, implementing, and evaluating HIV/AIDS prevention programs protecting the health of U.S. citizens against the threat of HIV and acquired immunodeficiency syndrome (AIDS). This places NASTAD in a unique position to act as a liaison between state and territorial HIV/AIDS prevention programs and GAP country public health officials. In addition, the same set of knowledge, skills, and abilities NASTAD has developed in working with State and Territorial AIDS Directors are of critical importance in improving the technical capacity of national AIDS control programs in African, Caribbean, Central and South American countries and India.

2. Health threats such as HIV are not confined by geographic boundaries. NASTAD was formed to promote coordination of HIV/AIDS prevention efforts among the States and territories. The organization is uniquely positioned to collaborate not only with national organizations, including Federal agencies, but also with national AIDS control program officials in GAP countries, on policy and program issues from a U.S. government model, multi-state perspective. In this collaboration NASTAD is positioned to monitor, assess, and improve HIV/AIDS prevention program design, implementation, and evaluation in GAP countries.

3. In the U.S., NASTAD coordinates the efforts of HIV/AIDS Prevention Program Directors, who work together with CDC to monitor the implementation of prevention programs across States and territories, assess the impact of prevention programs, share successes and challenges, monitor issues and obstacles to implementation of effective interventions, provide technical assistance and consult with CDC, one another, and other governmental and non-governmental prevention partners on these issues. Therefore NASTAD possesses unique knowledge and insight that can be applied to GAP country programs through the provision of technical assistance aimed at strengthening the ability of national AIDS control programs to develop HIV/AIDS programs based on the best practices of U.S. state and territory programs.

4. It is critical that NASTAD conducts these services since it represents the HIV/AIDS Program Directors who oversee and deliver HIV prevention, care and treatment policies, programs, and activities. Since NASTAD represents the HIV/AIDS Program Directors who have responsibility for HIV prevention, care and treatment within their jurisdictions, it is the only organization that can work collaboratively with individual AIDS Directors to provide multi-jurisdiction perspectives and translate knowledge, skills, and abilities to national AIDS control program officials in GAP countries.

5. NASTAD has already established mechanisms for communicating HIV/AIDS prevention, care and treatment information to the States and the political subdivisions of the States that carry out the National HIV/AIDS programs. They can use these mechanisms to exchange information between the States and public health officials in GAP countries to identify and develop effective HIV/AIDS information networks and dissemination systems. Because of their experience and established communications mechanisms, NASTAD is in a unique position to assist national AIDS control program officials with the dissemination of HIV/AIDS prevention, care and treatment information.

C. Funding

Approximately $2,000,000 is available in FY 2005 to fund this award. It is expected that the award will begin on or before April 1, 2005, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For technical questions about this program, contact: Ethleen Lloyd, Project Officer, CDC/NCHSTP/GAP, 1600 Clifton Road, NE (MS–E04), Atlanta, GA 30333, Telephone: (404) 639–6318, E-mail: *esl1@cdc.gov.*

Dated: January 21, 2005.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 05–1497 Filed 1–26–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Grants for Education Programs in Occupational Safety and Health, Request for Applications (RFA) OH–05–001

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Grants for Education Programs in Occupational Safety and Health, Request for Applications (RFA) OH–05–001.

Times and Dates: 7 p.m.–7:30 p.m., February 16, 2005 (Open). 7:30 p.m.–9 p.m., February 16, 2005 (Closed). 8 a.m.–5 p.m., February 17, 2005 (Closed). 8 a.m.–5 p.m., February 18, 2005 (Closed).

Place: Embassy Suites Hotels, 1900 Diagonal Road, Alexandria, VA 23114 telephone (703) 684–5900.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Request for Applications OH–05–001.

Contact Person for More Information: Charles Rafferty, PhD, Scientific Review Administrator, Office of Extramural Programs, National Institute for Occupational Safety and Health, CDC, 1600 Clifton Road, NE., MS–E74, Atlanta, GA 30333, Telephone (404) 498–2530.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: January 20, 2005.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 05–1489 Filed 1–26–05; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Statewide Automated Child Welfare Information System (SACWIS) Assessment Review Guide (SARGE).

OMB No.: 0970–0159.

Description: The Department of Health and Human Services cannot fulfill its obligation to effectively serve the nation's adoption and foster care populations, nor report meaningful and reliable information to Congress about the extent of problems facing these children or the effectiveness of assistance provided to this population, without access to timely and accurate information. Currently, SACWIS supports State efforts to meet the following Federal reporting requirements: The Adoption and Foster Care Analysis and Reporting System (AFCARS) required by section 479(b)(2) of the Social Security Act; the National Child Abuse and Neglect Data System (NCANDS); Child Abuse Prevention and Treatment Act (CAPTA); and the Chafee Independent Living Program. These systems also support state efforts to provide the information to conduct the Child and Family Service Reviews. Currently, forty-five States and the District of Columbia have developed, or are developing, a SACWIS with Federal financial participation. The purpose of these reviews is to ensure that all aspects of the project, as described in the approved Advance Planning Document, have been adequately completed, and conform to applicable regulations and policies.

To initiate a review, states will submit the completed SACWIS Assessment Review Guide (SARGE) and other documentation at the point that they have completed system development and the system is operational statewide. The additional documents submitted as part of this process should all be readily available to the state as a result of good project management practices.

The information collected in the SACWIS Assessment Review Guide will allow State and Federal officials to determine if the State's SACWIS meets the requirements for title IV–E Federal Financial Participation (FFP) defined at 45 CFR 1355.50. Additionally, other States will be able to use the documentation provided as part of this review process in their own system development efforts.

Respondents: State Title IV–E Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Review	3	1	250	750

Estimated Total Annual Burden Hours: 750.

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 Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *grjohnson@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: January 21, 2005.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 05–1521 Filed 1–26–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Notice of Appeal

AGENCY: Administration on Children, Youth and Families, ACF, DHHS.

SUMMARY: By designation of the Administration for Children and Families, a member of the Departmental Appeals Board has been appointed as the presiding officer for an appeal of the Administration for Children and Families' (ACF) disapproval of an amendment to the plan of the New York State Office of Children and Family Services for implementing title IV–E of the Social Security Act (Foster Care and Adoption Assistance). The purpose of this notice is to give interested parties an opportunity to participate.

Requests To Participate: Requests to participate as a party or as amicus curiae must be submitted to the Departmental Appeals Board in the form specified at 45 CFR 213.15 by February 11, 2005. Within that time, those persons, groups, or organizations seeking participation as parties or amici may file petitions or request extensions of time for submitting petitions to participate, and may also contact the Board to obtain copies of the briefs that the parties have filed.

FOR FURTHER INFORMATION CONTACT: Jeffrey Sacks, Staff Attorney, Departmental Appeals Board, Appellate Division, MS–6127, Room G–644, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201, telephone number (202) 565–0123, *jeffrey.sacks@hhs.gov*.

SUPPLEMENTARY INFORMATION: Notice of appeal is hereby given as set forth in the following letter, which has been sent to the New York State Office of Children and Family Services.

Alan A. Pfeffer, Assistant Deputy Counsel, New York State Office of Children and Family Services, Capital View Office Park, 52 Washington Street, Rensselaer, New York 12144–2796.

Counsel:

This letter is in response to the request of the New York State Office of

Children and Family Services (State) for a hearing to contest the Administration for Children and Families' (ACF) disapproval of an amendment to the State's plan for implementing title IV–E of the Social Security Act (Foster Care and Adoption Assistance).

The basis for the disapproval is that the plan amendment alters the eligibility criteria for title IV–E Foster Care in a manner that is inconsistent with the criteria at section 472 of the Social Security Act (Act) (42 U.S.C. 672).

Section 472(a) requires that each state with an approved plan under title IV–E make foster care maintenance payments with respect to a child who has been removed from his or her home and placed in foster care pursuant to a voluntary placement agreement or court order, and who would have been eligible for benefits under the former Aid to Families with Dependent Children (AFDC) program at former title IV–A of the Act (as in effect on July 16, 1996) in the month in which the agreement was entered or court proceedings initiated, or within six months prior to such month, if the child had still been in the home from which the child was removed.

The State's plan amendment (Transmittal No. 03–4) would alter the eligibility requirements with respect to whether the child must have been eligible for AFDC in the home from which he or she was removed, consistent with the holding of the U.S. Court of Appeals for the Ninth Circuit in *Rosales* v. *Thompson*, 321 F.3d 835 (9th Cir. 2003). That case involved a child who was removed from his parent's home and placed informally with a grandparent who later became the child's foster care parent upon entry of the court order legally removing the child from the parent's home. The child would not have been eligible for AFDC payments while in the parent's home, but was eligible in the grandparent's home. The court found that the child was eligible for title IV–E Foster Care, based on the child's eligibility for AFDC while residing informally in the grandparent's home.

ACF has determined that the holding in *Rosales* v. *Thompson* misinterprets the Act and conflicts with Department regulations and policy, and has declined to apply it with respect to states outside the Ninth Circuit. ACF has determined that the child's eligibility for AFDC must be based on the home of the parent or other specified relative who was the child's legal guardian and from which the child is legally removed, and not on the home of a specified relative with whom the child resides informally after the child has been physically removed from home of the child's parent or specified relative who was the child's legal guardian, but prior to the judicial determination or voluntary placement agreement legally removing the child from the home of the child's parent or other specified relative who was the child's legal guardian.

I have designated Donald F. Garrett, a member of the Departmental Appeals Board, as the presiding officer pursuant to 45 CFR 213.21. ACF and the State are now parties in this matter. 45 CFR 213.15(a). The parties have agreed that there are no disputed issues of fact, and that an in-person hearing is not necessary to resolve the State's request for reconsideration. Accordingly, the parties have agreed that the appeal be decided based on their written submissions.

A copy of this letter will appear as a notice in the **Federal Register** and any individual or group wishing to request recognition as a party will be entitled to file a petition pursuant to 45 CFR 213.15(b) with the Departmental Appeals Board within 15 days after that notice has been published. A copy of the petition should be served on each party of record at that time. The petition must explain how the issues to be considered have caused them injury and how their interest is within the zone of interests to be protected by the governing Federal statute. 45 CFR 213.15(b)(1). In addition, the petition must concisely state petitioner's interest in the proceeding, who will represent petitioner, and the issues on which petitioner wishes to participate. 45 CFR 213.15(b)(2). Additionally, if petitioner believes that there are disputed issues of fact which require an in-person hearing, petitioner should concisely specify the disputed issues of fact in the petition, and also state whether petitioner intends to present witnesses. Petitioners may also, within 15 days after this notice has been published, request extensions of the time for requesting participation for the purpose of obtaining and reviewing copies of the parties' written submissions.

Any party may, within 5 days of receipt of such petition, file comments thereon; the presiding officer will subsequently issue a ruling on whether and on what basis participation will be permitted.

Any interested person or organization wishing to participate as amicus curiae may also file a petition with the Board, which shall conform to the requirements at 45 CFR 213.15(c)(1). This petition, or a request for an extension of time to review the briefs, must be filed within 15 days after this notice has been published, to permit the presiding officer an adequate opportunity to consider and rule upon it.

Upon the conclusion of proceedings in this matter, the presiding officer will issue a proposed decision. I will then issue the final decision of the Department. 45 CFR 213.22, 213.32.

Any further inquiries, submissions, or correspondence regarding this matter should be filed in an original and two copies with Mr. Garrett at the Departmental Appeals Board, Appellate Division, MS–6127, Room G–644, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201. For convenience please refer to Board Docket No. A–04–82. Electronic inquiries, submissions, or correspondence may be submitted by sending electronic mail (e-mail) to Jeffrey Sacks, Departmental Appeals Board Staff Attorney, at *jeffrey.sacks@hhs.gov*. Submit comments as an ASCII file avoiding the use of special characters and any form of encryption. The Board also accepts comments and data on disks in Word, WordPerfect or ASCII file format. Identify all submissions by Board Docket No. A–04–82.

The record in this matter, including the parties' written submissions, is available for public inspection. Interested persons or organizations may contact Jeffrey Sacks, Board Staff Attorney, at 202–565–0123 (or at *jeffrey.sacks@hhs.gov*) to arrange for inspection and copying of the record. Each submission must include a statement that a copy of the submission has been sent to the other parties, identifying when and to whom the copy was sent. For convenience please refer to Board Docket No. A–04–82.

Dated: December 16, 2004.

Wade F. Horn,

Assistant Secretary for Children and Families.

[FR Doc. 05–1452 Filed 1–26–05; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Cellular, Tissue and Gene Therapies Advisory Committee (formerly the Biological Response Modifiers 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). At least one portion of the meeting will be closed to the public.

Name of Committee: Cellular, Tissue and Gene Therapies Advisory Committee (formerly the Biological Response Modifiers Advisory Committee).

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 3, 2005, from 8 a.m. to approximately 5:15 p.m. and on March 4, 2005, from 8 a.m. to approximately 2:30 p.m.

Location: Quality Suites, 3 Research Court, Rockville, MD.

Contact Person: Gail Dapolito or Rosanna L. Harvey, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512389. Please call the Information Line for up-to-date information on this meeting.

Agenda: On March 3 and 4, 2005, the Committee will discuss cellular therapies for repair and regeneration of joint surfaces. The Committee will also receive the following updates: (1) On March 3, 2005, in the afternoon, updates of research programs in the Center for Biologics Evaluation and Research and the Center for Drug Evaluation and Research; (2) on March 4, 2005, in the morning, update on the FDA Critical Path Initiative.

Procedure: On March 3, 2005, from 8 a.m. to approximately 4:45 p.m. and on March 4, 2005, from 8 a.m. to approximately 2:30 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 23, 2005. Oral presentations from the public will be scheduled on March 3, 2005, between approximately 11 a.m. and 11:30 a.m. and on March 4, 2005, between approximately 8:45 a.m. and 9:15 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 23, 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.

Closed Committee Deliberations: On March 3, 2005, from approximately 4:45 p.m. to 5:15 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The Committee will discuss research programs in the Center for Biologics Evaluation and Research and the Center for Drug Evaluation and Research.

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 Gail Dapolito 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: January 19, 2005.

Sheila Dearybury Walcoff,

Associate Commissioner for External Relations.

[FR Doc. 05–1473 Filed 1–26–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0366]

From Concept to Consumer: Center for Biologics Evaluation and Research Working With Stakeholders on Scientific Opportunities for Facilitating Development of Vaccines, Blood and Blood Products, and Cellular, Tissue, and Gene Therapies; Public Workshop; Reopening of the Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; reopening of the comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening until January 27, 2006, the comment period for the notice of public workshop and request for comments published in the **Federal Register** of August 31, 2004 (69 FR 53077). FDA is reopening the comment period to allow interested persons additional time to submit comments and to receive any new information.

DATES: Submit written or electronic comments by January 27, 2006.

ADDRESSES: Submit written comments 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*.

FOR FURTHER INFORMATION CONTACT: Astrid Szeto, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of August 31, 2004 (69 FR 53077) (August 2004 notice), FDA announced a public workshop entitled ''From Concept to Consumer: Center for Biologics Evaluation and Research Working With Stakeholders on Scientific Opportunities for Facilitating Development of Vaccines, Blood and Blood Products, and Cellular, Tissue, and Gene Therapies.'' The public workshop was held on October 7, 2004. The goal of the public workshop was to provide a forum for stakeholders to discuss opportunities for and potential approaches to the development of innovative scientific knowledge and tools to facilitate the development and availability of new biological products including vaccines, blood and blood products, and cellular, tissue, and gene therapies.

Interested persons were originally given until September 23, 2004, to comment on the topic of the workshop.

II. Request for Comments

Following publication of the August 2004 notice, FDA received several requests to allow interested persons additional time to comment. The requesters asserted that the time period of 23 days was insufficient to respond fully to FDA's specific requests for comments and to allow potential respondents to thoroughly evaluate and address pertinent issues.

III. How to Submit Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments to *http://www.fda.gov/dockets/ecomments* 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. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 19, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–1475 Filed 1–26–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Vaccines and Related Biological Products 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). At least one portion of the meeting will be closed to the public.

Name of Committee: Vaccines and Related Biological Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on February 16, 2005, from 8:30 a.m. to approximately 5 p.m., and on February 17, 2005, from 8:30 a.m. to approximately 2:05 p.m.

Location: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Christine Walsh or Denise Royster, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512391. Please call the Information Line for up-to-date information on this meeting.

Agenda: On February 16, 2005, the committee will review and discuss the selection of strains to be included in the influenza virus vaccine for the 2005-2006 season. On February 17, 2005, the committee will hear updates on FDA Critical Path Initiative and Research Programs in the Center for Biologics Evaluation and Research.

Procedure: On February 16, 2005, from 8:30 a.m. to 5 p.m. and on February 17, 2005, from 8:30 a.m. to 11:25 a.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 9, 2005. Oral presentations from the public will be scheduled between approximately 1 p.m. and 1:30 p.m. on February 16, 2005, and approximately 8:45 a.m. and 9:15 a.m. on February 17, 2005. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 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.

Closed Committee Deliberations: On February 17, 2005, from approximately 12 noon to 2:05 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)) and to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)). The committee will discuss individual Research Programs in the Center for Biologics Evaluation and Research and receive an update on a product under review.

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 Christine Walsh or Denise Royster at 301–827–0314 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: January 18, 2005.

Sheila Dearybury Walcoff,

Associate Commissioner for External Relations.

[FR Doc. 05–1474 Filed 1–26–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the second meeting of the Commission on Systemic Interoperability.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The mission of the Commission on Systemic Interoperability is to submit a report to the Secretary of Health and Human Services and to Congress on a comprehensive strategy for the adoption and implementation of health care information technology standards that includes a timeline and prioritization for such adoption and implementation. In developing that strategy, the Commission will consider: (1) The costs and benefits of the standards, both financial impact and quality improvement; (2) the current demand on industry resources to implement the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 and other electronic standards, including HIPAA standards; and (3) the most cost-effective and efficient means for industry to implement the standards.

Name of Committee: Commission on Systemic Interoperability (Teleconference).

Date: February 9, 2005.

Time: 3 p.m. to 4:30 p.m.

Agenda: Healthcare Information Technology Standards.

Place: National Library of Medicine, NIH, Conference Room B, Building 38, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Ms. Jane Griffith, Deputy Director, National Library of Medicine, National Institutes of Health, Building 38, Room 2E17, Bethesda, MD 20894, (301) 496–6661.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The comments should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

This notice is being published less than 15 days prior to the meeting due to scheduling conflicts.

Dated: January 21, 2005.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–1494 Filed 1–26–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

List of Drugs for Which Pediatric Studies Are Needed

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH) is providing notice of a ''List of Drugs for Which Pediatric Studies Are Needed.'' The NIH developed the list in consultation with the Food and Drug Administration (FDA) and pediatric experts, as mandated by the Best Pharmaceuticals for Children Act. This list adds to the previously published lists prioritizing drugs most in need of study for use by children to ensure the safety and efficacy of their medication. The NIH will update the list at least annually until the Act expires on October 1, 2007.

DATES: The list is effective upon publication.

FOR FURTHER INFORMATION CONTACT: Dr. Tamar Lasky, National Institute of Child Health and Human Development (NICHD), 6100 Executive Boulevard, Suite 5C01G, Bethesda, MD 20892–7510, e-mail *BestPharmaceuticals@mail.nih.gov,* telephone (301) 594–8670 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The NIH is providing notice of a ''List of Drugs for Which Pediatric Studies Are Needed,'' as authorized under Section 3, Pub. L. 107–109 (42 U.S.C. 409I). On January 4, 2002, President Bush signed into law the Best Pharmaceuticals for Children Act (BPCA). The BPCA mandates that not later than one year after the date of enactment, the NIH in consultation with the FDA and experts in pediatric research shall develop, prioritize, and publish an annual list of certain approved drugs for which pediatric studies are needed. For inclusion on the list, an approved drug must meet the following criteria: (1) There is an approved application under section 505(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)); (2) there is a submitted application that could be approved under the criteria of section 505(j) of the Federal Food, Drug, and Cosmetic Act; (3) there is no patent protection or market exclusivity protection under the Federal Food, Drug, and Cosmetic Act; or (4) there is a referral for inclusion on the list under section 505A(d)(4)(c); and additional studies are needed to assess the safety and effectiveness of the use of the drug in the pediatric population. The BPCA further stipulates that in developing and prioritizing the list, the NIH shall consider for each drug on the list: (1) The availability of information concerning the safe and effective use of the drug in the pediatric population; (2) whether additional information is needed; (3) whether new pediatric studies concerning the drug may produce health benefits in the pediatric population; and (4) whether reformulation of the drug is necessary. In developing this list, the NIH consulted with the FDA, the American Academy of Pediatrics, and other experts in pediatric research and practice. A preliminary list of drugs was drafted and categorized as a function of indication and use. The drugs were then prioritized based on frequency of use in the pediatric population, severity of the condition being treated, and potential for providing a health benefit in the pediatric population.

The following off-patent drugs were reviewed by expert consultants at an October 25 and 26, 2004, scientific meeting at NICHD and recommended for further study: Ivermectin for scabies; hydrocortisone valerate ointment and cream for dermatitis; hydrochlorothiazide for hypertension; ethambutol for tuberculosis; griseofulvin for tinea capitis; methadone for opiate addicted neonates; hydroxychloroquine for connective tissue disorders.

The following off-patent drugs were recommended for re-labeling based on evidence available in the literature: Acyclovir for herpetic infections.

The following off-patent drugs were recommended for systematic literature review and/or further consultation with scientific community to finalize scientific questions in need of study: Cyclosporine for heart transplant patients; clonidine for autism, attention deficit disorder; flecainide for life threatening ventricular arrhythmias.

The following on-patent drugs were referred to the NICHD by the Foundation for NIH, reviewed by expert consultants at the October 25 and 26, 2004, scientific meeting, and recommended for further study: Sevelamer for renal failure; morphine for analgesia.

The following on-patent drugs were recommended for systematic literature review and/or further consultation with the scientific community to finalize scientific questions in need of study: Bupropion for depression.

Dated: January 19, 2005.

Elias A. Zerhouni,

Director, National Institutes of Health.

[FR Doc. 05–1495 Filed 1–26–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Office for Civil Rights and Civil Liberties

[DHS–2005–0001]

Submission for New Information Collection, DHS Individual Complaint of Employment Discrimination Form (DHS 3090–1)

AGENCY: Office for Civil Rights and Civil Liberties, DHS.

ACTION: Notice; 30-day notice request for comments.

SUMMARY: The Department of Homeland Security, Office for Civil Rights and Civil Liberties has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on October 14, 2004 at 69 FR 61033–61034, allowing for a 60-day public comment period. No comments were received by DHS on this information collection. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until February 28, 2005. This process is conducted in accordance with 5 CFR 1320.10

ADDRESSES: *Submitting comments:* You may submit comments either electronically, or by mail or courier, or you may hand deliver in person. When submitting comments please only choose one of the methods listed below. It is not necessary to submit duplicate sets of comments by using more than one method of submission (*i.e.*, if you submit electronic comments then it is not necessary to submit comments by mail).

When submitting electronic comments you must include Docket No. DHS–2005–0001, and the Agency name, in the subject box.

When submitting comments by mail or courier, or hand delivery, you must

include the title of the notice and Docket No. DHS–2005–0001, at the beginning of the correspondence.

Submitting electronic comments: You may submit comments electronically by using one of the methods listed below. All comments received will be posted without change to *http://www.epa.gov/feddocket*, including any personal information provided.

- *EPA Federal Partner EDOCKET Web site:* The Department of Homeland Security and its agencies (excluding the United States Coast Guard and Transportation Security Administration) will use the EPA Federal Partner EDOCKET system at *http://www.epa.gov/feddocket* for submitting electronic comments. Follow instructions on that Web site for submitting electronic comments.
- *Federal eRulemaking Portal:* You may also submit electronic comments at *http://www.regulations.gov*. Follow the instructions at that Web site for submitting electronic comments.

Submitting comments by mail, hand delivery or courier:

- *Mail:* When submitting comments by mail, please send the comments to Office of Management and Budget, Attn: Desk Officer for Homeland Security, Office of Management and Budget, Room 10235, Washington, DC 20503; telephone 202–395–7316. To ensure proper handling, please reference Docket No. DHS–2005–0001 on your correspondence. This mailing address may also be used for submitting comments on paper, disk, or CD–ROM.
- *Hand Delivery/Courier:* The address for submitting comments by hand delivery or courier is the same as that for submitting comments by mail.

For additional instructions on submitting comments, see the **SUPPLEMENTARY INFORMATION** section of this document.

Viewing comments: You may view comments and background material at: *http://www.epa.gov/feddocket* or *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Mary McGoldrick, (202) 772–9921 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

Request for Comments

The Office of Management and Budget is particularly interested in comments which:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Analysis

Agency: Department of Homeland Security, Office for Civil Rights and Civil Liberties.

Title: DHS Individual complaint of Employment Discrimination Form (DHS 3090–1).

OMB No.: 1610—NEW.

Frequency: On Occasion.

Affected Public: Federal Government and Individuals or households.

Estimated Number of Respondents: 1,200.

Estimated Time Per Response: 30 minutes per response.

Total Burden Hours: 600.

Total Cost Burden: None.

Description: This form will allow a complainant to submit required information used by the Department to process an employment discrimination complaint with the Department of Homeland Security. The information contained in this form will allow the Department to accept, investigate and further process, or to dismiss issues.

Dated: January 21, 2005.

Steve Cooper,

Chief Information Officer.

[FR Doc. 05–1519 Filed 1–26–05; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[CGD05–04–225]

Implementation of Sector Baltimore

AGENCY: Coast Guard, DHS.

ACTION: Notice of organizational change.

SUMMARY: The Coast Guard announces the stand-up of Sector Baltimore. The Sector Baltimore Commanding Officer has the authority, responsibility and missions of the prior Activities Commander, Captain of the Port (COTP), Officer in Charge, Marine Inspection (OCMI), Federal On Scene Coordinator (FOSC), Federal Maritime Security Coordinator (FMSC), and Search and Rescue Mission Controller (SMC) Baltimore. The Coast Guard has established a continuity of operations whereby all previous practices and procedures will remain in effect until superseded by an authorized Coast Guard official and/or document.

DATES: This notice is effective January 27, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD05–04–225 and are available for inspection or copying at Fifth District Marine Safety, 431 Crawford Street, Portsmouth, VA 23704 between 7:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Commander Brian Hall, Fifth District Marine Safety Division at (757) 398–6691.

SUPPLEMENTARY INFORMATION:

Discussion of Notice

Sector Baltimore is located at 2401 Hawkins Point Road, Bldg. 70, Baltimore, MD 21226–1791 and contains a single Command Center. Sector Baltimore is composed of a Response Department, Prevention Department, and Logistics Department. All existing missions and functions performed by Activities Baltimore have been realigned under this new organizational structure as of January 1, 2005. Activities Baltimore no longer exists as an organizational entity. Sector Baltimore is responsible for all Coast Guard missions in the following zone: ''the boundary of Sector Baltimore Marine Inspection zone and Captain of the Port zone starts at a point at 75° 30.0′ W. longitude on the Delaware-Maryland boundary and proceeds along the Delaware-Maryland boundary West and North to the Pennsylvania boundary; thence West along the Pennsylvania-Maryland boundary to the West Virginia boundary; thence Southerly and Easterly along the Maryland-West Virginia boundary to the intersection of the Maryland-Virginia-West Virginia boundaries; thence Southwestward along the Loudoun County, Virginia boundary to the intersection with Fauquier County, Virginia; thence Easterly along the Loudoun County, Virginia boundary to the intersection with the Prince William County, Virginia boundary; thence Southerly along the Prince William County boundary to the intersection with Stafford County, Virginia; thence Easterly along the Prince William County, Virginia Boundary to the

Maryland-Virginia boundary as those boundaries are formed along the Southern bank of the Potomac River; thence Easterly along the Maryland-Virginia boundary as it proceeds across the Chesapeake Bay, Tangier and Pocomoke Sounds, Pocomoke River, and Delmarva Peninsula to a Point West of the Atlantic Coast on the Maryland-Virginia boundary at a point 75° 30.0′ W. longitude on the Maryland-Virginia boundary; thence Northerly to a point 75° 30.0′ W. longitude on the Delaware-Maryland boundary.'' A chart that depicts this area can be found on the Fifth District Web page at *http://www.uscg.mil/d5/D5_Units/Sectors.htm*.

The Sector Baltimore Commander is vested with all the rights, responsibilities, duties, and authority of a Group/Activities Commander and Commanding Officer, Marine Safety Office, as provided for in Coast Guard regulations, and is the successor in command to the Commanding Officer, Activities Baltimore. The Sector Baltimore Commander is designated: (a) Captain of the Port (COTP) for the Baltimore COTP zone; (b) Federal Maritime Security Coordinator (FMSC); (c) Federal On Scene Coordinator (FOSC) for the Baltimore COTP zone, consistent with the National Contingency Plan; (d) Officer In Charge of Marine Inspection (OCMI) for the Baltimore Marine Inspection Zone and, (e) Search and Rescue Mission Coordinator (SMC). The Deputy Sector Commander is designated alternate COTP, FMSC, FOSC, SMC and Acting OCMI. A continuity of operations order has been issued ensuring that all previous Activities Baltimore practices and procedures will remain in effect until superseded by Commander, Sector Baltimore. This continuity of operations order addresses existing COTP regulations, orders, directives and policies.

The following information is a list of updated command titles, addresses and points of contact to facilitate requests from the public and assist with entry into security or safety zones:

Name: Sector Baltimore.

Address: Commander, U.S. Coast Guard Sector Baltimore, 2401 Hawkins Point Road, Bldg. 70, Baltimore, MD 21226–1791.

Contact: General Number, (410) 576–2561, Sector Commander: CAPT C. Springer; Deputy Sector Commander: CDR J. Burton.

Chief, Prevention Department: (410) 576–2586, Chief, Response Department: (410) 576–2525, Chief, Logistics Department: (410) 576–2546.

Dated: January 18, 2005.

Sally Brice-O'Hara,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 05–1508 Filed 1–26–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4922–N–06]

Privacy Act of 1974; Notice of Matching Program: Matching Tenant Data in Assisted Housing Programs

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice of a computer matching program between the Department of Housing and Urban Development (HUD) and the United States Postal Service (USPS).

SUMMARY: Pursuant to the Computer Matching and Privacy Protection Act of 1988, as amended, and the Office of Management and Budget's (OMB) Guidance on the statute, HUD is updating its notice of a matching program involving comparisons between income data provided by applicants or participants in HUD's assisted housing programs and independent sources of income information. The matching program will be carried out to detect inappropriate (excessive or insufficient) housing assistance under the National Housing Act, the United States Housing Act of 1937, section 101 of the Housing and Community Development Act of 1965, the Native American Housing Assistance and Self-Determination Act of 1996, and the Quality Housing and Work Responsibility Act of 1998. The program provides for the verification of the matching results and the initiation of appropriate administrative or legal actions.

This notice supplements the overview of computer matching for HUD's assisted housing programs published in the **Federal Register** on March 9, 2004 (69 FR 11033) and the **Federal Register** notice dated October 25, 2004 (69 FR 62281). The March notice describes HUD's program for computer matching of its tenant data to: (a) The Social Security Administration's (SSA's) earned income and the Internal Revenue Service's (IRS's) unearned income data, (b) SSA's wage, social security, supplemental security income and special veterans benefits data, and (c) State Wage Information Collection Agencies' (SWICAs'') wage and unemployment benefit claim information. The **Federal Register** Notice published on October 25, 2004 (69 FR 62281) described HUD's program for computer matching of its tenant data with the Office of Personnel Management, specifically its employee and retiree databases. This notice describes HUD's program for computer matching of its tenant data to the payroll records of the United States Postal Service.

DATES: *Effective Date:* Computer matching is expected to begin on February 28, 2005, unless comments are received which will result in a contrary determination, or 40 days from the date a computer matching agreement is signed, whichever is later.

Comments Due Date: February 28, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: For Privacy Act: Jeanette Smith, Departmental Privacy Act Officer, Room P8001, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–3000, telephone number (202) 708–2374. A telecommunications device for hearing- and speech-impaired individuals (TTY) is available at 1–800–877–8339 (Federal Information Relay Service).

For further information from recipient agency: Bryan Saddler, Counsel to the Inspector General, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 8260, Washington, DC 20410, (202) 708–1613.

SUPPLEMENTARY INFORMATION: The Computer Matching and Privacy Protection Act (CMPPA) of 1988, an amendment to the Privacy Act of 1974 (5 U.S.C. 552a), OMB's guidance on this statute entitled ''Final Guidance Interpreting the Provisions of Public Law 100–503, the CMPPA of 1988'' (OMB Guidance), and OMB Circular No. A–130 requires publication of notices of computer matching programs. Appendix I to OMB's Revision of Circular No. A–130, ''Transmittal Memorandum No. 4, Management of Federal Information Resources,'' prescribes federal agency

responsibilities for maintaining records about individuals. In compliance with the CMPPA and Appendix I to OMB Circular No. A–130, copies of this notice are being provided to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and OMB's Office of Information and Regulatory Affairs.

I. Authority

This matching program is being conducted pursuant to section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (42 U.S.C. 3544); section 165 of the Housing and Community Development Act of 1987 (42 U.S.C. 3543); the National Housing Act (12 U.S.C. 1701–1750g); the United States Housing Act of 1937 (42 U.S.C. 1437–1437z); section 101 of the Housing and Community Development Act of 1965 (12 U.S.C. 1701s); the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*); and the Quality Housing and Work Responsibility Act of 1998 (42 U.S.C. 1437a(f)); the Inspector General Act of 1978 (5 U.S.C. App. 3); and 39 U.S.C. sec. 404.

The Stewart B. McKinney Homeless Assistance Amendments Act of 1988 authorizes HUD and Public Housing Agencies (but not private owners/management agents for subsidized multifamily projects (hereafter collectively referred to as ''POAs'')) to request wage and claim information from SWICAs responsible for administering State unemployment laws in order to undertake computer matching. This Act authorizes HUD to require applicants and participants to sign a consent form authorizing HUD or the POA to request wage and claim information from the SWICAs.

The Housing and Community Development Act of 1987 authorizes HUD to require applicants and participants (as well as members of their household six years of age and older) in HUD-administered programs involving rental assistance to disclose to HUD their social security numbers (SSNs) as a condition of initial or continuing eligibility for participation in the programs.

The Quality Housing and Work Responsibility Act of 1998 (QHWRA), section 508(d), 42 U.S.C. 1437a(f) authorizes the Secretary of HUD to require disclosure by the tenant to the public housing agency of income information received by the tenant from HUD as part of income verification procedures of HUD. The QHWRA was amended by Public Law 106–74, which extended the disclosure requirements to participants in section 8, section 202, and section 811 assistance programs. The participants are required to disclose the HUD-provided income information to owners responsible for determining the participants' eligibility or level of benefits.

The Inspector General Act authorizes the HUD Inspector General to undertake programs to detect and prevent fraud and abuse in all HUD programs.

Section 404 of Title 39, United States Code, gives the USPS the power to investigate postal offenses and civil matters relating to the Postal Service. It is USPS policy that each employee will not engage in criminal, dishonest, disgraceful, or immoral activity, or other conduct prejudicial to the Postal Service. The USPS also expects that each employee will pay every just financial obligation in a proper and timely manner. The obtainment of benefits by misrepresentation or failure to pay just debts owed is considered unacceptable conduct for a Postal Service employee.

The USPS's disclosure of income data on current and retired federal employees is authorized by subsection (b)(3) of the Privacy Act of 1974, 5 U.S.C. 552a(b)(3). The disclosures from the USPS 050.020 system of records will be made pursuant to routine use ''20''. ((USPS 050.020, Finance Records–Payroll System), last published on February 23, 1999, 64 FR 8876, and last published fully on October 26, 1989, 54 FR 43652). The routine uses permit disclosure to agencies to help eliminate fraud and abuse in federal benefits programs.

II. Objectives To Be Met by the Matching Program

HUD's primary objective in implementing the computer matching program is to increase the availability of rental assistance to individuals who meet the requirements of the rental assistance programs. Other objectives include determining the appropriate level of rental assistance, and deterring and correcting abuse in assisted housing programs. In meeting these objectives HUD also is carrying out a responsibility under 42 U.S.C. 1437f(K) to ensure that income data provided to POAs by household members is complete and accurate.

HUD's various assisted housing programs, available through POAs, require that applicants meet certain income and other criteria to be eligible for rental assistance. In addition, tenants generally are required to report the amounts and sources of their income at least annually. However, under the QHWRA of 1998, public housing agencies may now offer tenants the option to pay a flat rent, or an income-based rent. Those tenants who select a flat rent will be required to recertify income at least every three years. In addition, the Changes to the Admissions and Occupancy Final Rule (March 29, 2000, 65 FR 16692;) specified that household composition must be recertified annually for tenants who select a flat rent and/or income-based rent.

The matching program identifies tenants receiving inappropriate (excessive or insufficient) rental assistance resulting from under or over-reported household income. When excessive rental assistance amounts are identified, some tenants move out of assisted housing units; other tenants agree to repay excessive rental assistance. These actions may increase rental assistance or number of units available to serve other beneficiaries of HUD programs. When tenants continue to be eligible for rental assistance, but at a reduced level, the tenants will be required to increase their contributions toward rent.

III. Program Description

This computer matching program, to the extent that it involves the use of SSA, IRS or SWICA data is fully described at 69 FR 11033, March 9, 2004. With respect to OPM data, the computer matching program is described at 69 FR 62281, October 25, 2004. The objectives of this matching program will be accomplished by comparing income data for individuals participating in HUD's assisted housing programs and subsidized multifamily housing programs with wage, benefit, and salary data maintained by USPS in its systems of records known as the 050.020, Finance Records-Payroll System. This system of records was last amended and published at 64 FR 8876, February 23, 1999, and last published fully at 54 FR 43652, October 26, 1989. The routine uses permit disclosure to agencies to help improve the integrity of the federal benefits programs and prevent overpayment, in sum, to eliminate fraud and abuse in federal benefits programs. The common identifier that we will use is the tenant's and employee's social security number. Using that identifier, HUD and the USPS will compare the USPS payroll data to tenant-reported income data included in HUD's systems of records known as the Tenant Assistance and Contract Verification Data (HUD/H–11) and the Public and Indian Housing Information Center (HUD/PIH–4). The notices for these systems were

published at 65 FR 52777, August 30, 2000 and 67 FR 20986, April 29, 2002 respectively. The tenant income comparisons identify, based on criteria established by HUD, tenants whose incomes require further verification to determine if the tenants received appropriate levels of rental assistance.

A. Income Verification

Any match (*i.e.*, a ''hit'') will be further reviewed by HUD, the POA, or the HUD Office of Inspector General (OIG) to determine whether the income reported by tenants to the POA is correct and complies with HUD and POA requirements. Specifically, current or prior wage information and other data will be sought directly from employers.

B. Administrative or Legal Actions

Regarding all the matching described in this notice, HUD anticipates that POAs will take appropriate action in consultation with tenants to: (1) Resolve income disparities between tenant-reported and independent income source data, and (2) use correct income amounts in determining housing rental assistance.

POAs must compute the rent in full compliance with all applicable occupancy regulations. POAs must ensure that they use the correct income and correctly compute the rent.

The POAs may not suspend, terminate, reduce, or make a final denial of any housing assistance to any tenant as the result of information produced by this matching program until: (a) the tenant has received notice from the POA of its findings and informing the tenant of the opportunity to contest such findings and (b) either the notice period provided in applicable regulations of the program, or 30 days, whichever is later, has expired. In most cases, POAs will resolve income discrepancies in consultation with tenants.

Additionally, serious violations, which POAs, HUD Program staff, or HUD OIG verify, should be referred for full investigation and appropriate civil and/or criminal proceedings.

IV. Records To Be Matched

This computer matching program, to the extent that it involves the use of SSA, IRS or SWICA data is fully described at 69 FR 11033, March 9, 2004. With respect to OPM data, the program is described at 69 FR 62281, October 25, 2004. The match under this notice, between the HUD/H–11 and HUD/PIH–4 data and USPS 050.020 data, will involve tenant records obtained directly from POAs and subsidized multifamily projects included in HUD/H–11, Tenant Assistance and Contract Verification Data and HUD/PIH–4, Public and Indian Housing Information Center Files. These records contain information about individuals who are participants in the federal low income and Section 8 housing assistance programs. The USPS will provide HUD with data from the USPS 050.020 payroll system of records. These records include current and former employees.

The tenant records (one record for each family member) includes these data elements: (1) SSNs for each family member; (2) family control number to identify each tenant with a particular family; (3) Head of Household Indicator; (4) Last Name, First Name, Middle Initial, and Address for household; (5) Sex; (6) Birth Date; (7) Reported Income by source, description and amount; (8) Program Code; and (9) Recertification Date. For matched employee SSNs (*i.e.*, ''hits''), USPS will provide HUD with the following information from USPS 050.020 records, name, SSN, Date of Birth, home address, employment status, the amount of Annual Salary. In addition, HUD will use the Submitting Office Number (SON) Master File to obtain the address of the agencies so that employer verification letters can be sent to such agencies. This information includes: SON, Agency Code and sub-element, SON name and address, zip code, and File Date.

V. Period of the Match

The computer matching program will be conducted according to agreements between HUD and the SSA, IRS, OPM, SWICA, and the USPS. The computer matching agreements for the planned matches will terminate either when the purpose of the computer matching program is accomplished, or 18 months from the date the agreement is signed, whichever comes first.

The agreements may be extended for one 12-month period, with the mutual agreement of all involved parties, if the following conditions are met:

(1) Within 3 months of the expiration date, all Data Integrity Boards review the agreement, find that the program will be conducted without change, and find a continued favorable examination of benefit/cost results; and

(2) All parties certify that the program has been conducted in compliance with the agreement. The agreement may be terminated, prior to accomplishment of the computer matching purpose or 18 months from the date the agreement is signed (whichever comes first), by the mutual agreement of all involved parties within 30 days of written notice.

Dated: January 10, 2005.

Darlene F. Williams,

Chief Information Officer.

[FR Doc. 05–1455 Filed 1–26–05; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Invasive Species Advisory Committee

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of public meetings of the Invasive Species Advisory Committee.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of meetings of the Invasive Species Advisory Committee. The purpose of the Advisory Committee is to provide advice to the National Invasive Species Council, as authorized by Executive Order 13112, on a broad array of issues related to preventing the introduction of invasive species and providing for their control and minimizing the economic, ecological, and human health impacts that invasive species cause. The Council is co-chaired by the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Commerce. The duty of the Council is to provide national leadership regarding invasive species issues. The purpose of a meeting on February 16–18, 2005, is to convene the full Advisory Committee; and to discuss implementation of action items outlined in the National Invasive Species Management Plan, which was finalized on January 18, 2001.

DATES: Meeting of Invasive Species Advisory Committee: Wednesday, February 16, 2005, through Friday, February 18, 2005; beginning at 8 a.m. each day.

ADDRESSES: Hilton Washington—Silver Spring Hotel, 8727 Colesville Road, Silver Spring, Maryland 20910. Meeting will be held all three days in the Maryland Ball Room.

FOR FURTHER INFORMATION CONTACT: Kelsey Brantley, National Invasive Species Council Program Analyst; Phone: (202) 513–7243; Fax: (202) 371–1751.

Dated: January 21, 2005.

Christopher P. Dionigi,

Domestic Assistant Director, National Invasive Species Council.

[FR Doc. 05–1469 Filed 1–26–05; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Class III Gaming Compacts.

SUMMARY: This notice publishes the Approval of the Tribal-State Compacts between the Absentee Shawnee Tribe, Comanche Nation, Miami Tribe and the Cherokee Nation of Oklahoma and the State of Oklahoma.

EFFECTIVE DATE: January 27, 2005.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of the approved Tribal State compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Principal Deputy Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Class III gaming compacts between the Absentee Shawnee Tribe, Comanche Nation, Miami Tribe and the Cherokee Nation of Oklahoma and the State of Oklahoma. These Compacts authorize Indian tribes to engage in certain Class III gaming activities, provides for certain geographical exclusivity, limits the number of gaming machines at existing racetracks, and prohibits non-tribal operation of certain machines and covered games.

Michael D. Olsen,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 05–1468 Filed 1–26–05; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–200–0777–XZ–241A]

Notice of Meeting, Front Range Resource Advisory Council (Colorado)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Front Range Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held March 2, 2005, from 9:15 a.m. to 4 p.m.

ADDRESSES: Holy Cross Abbey Community Center, 2951 E. Highway 50, Canon City, Colorado 81212.

FOR FURTHER INFORMATION CONTACT: Ken Smith, (719) 269–8500.

SUPPLEMENTARY INFORMATION: The 15 member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in the Royal Gorge Field Office and San Luis Valley, Colorado. Planned agenda topics include: Manager updates on current land management issues; BLM law enforcement partnerships in Colorado and a travel management plan update. All meetings are open to the public. The public is encouraged to make oral comments to the Council at 9:30 a.m. or written statements may be submitted for the Councils consideration. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Summary minutes for the Council Meeting will be maintained in the Royal Gorge Field Office and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting. Meeting Minutes and agenda (10 days prior to each meeting) are also available at: *http://www.blm.gov/rac/co/frrac/co_fr.htm.*

Dated: January 21, 2005.

Roy L. Masinton,

Royal Gorge Field Manager.

[FR Doc. 05–1491 Filed 1–26–05; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–069–1020–XZ–037E]

Notice of Relocation/Change of Address/Office Closure; Montana

AGENCY: Bureau of Land Management; Interior.

ACTION: Notice.

SUMMARY: Notice is given that on February 24, 2005, the Bureau of Land Management's Lewistown Field Office will relocate/move to a new location at 220 Cattail Drive.

EFFECTIVE DATE: February 24, 2005.

FOR FURTHER INFORMATION CONTACT: June Bailey, Lewistown Field Manager, 406/583–7461, BLM Lewistown Field Office, 1160 Airport Road, Lewistown, Montana 59457.

SUPPLEMENTARY INFORMATION: On February 24, 2005, the BLM Lewistown Field Office will move/relocate to 220 Cattail Drive, Lewistown, Montana 59457. The following business practices will be in effect from February 24 through March 1, 2005.

(A) The old office will be closed on February 24–28, 2005. There will be no over-the-counter transactions or phone business during this period. The official records (case files, maps, plats, etc.) will not be available for pubic inspection. Emergency calls may be directed to (406) 538–7461 or (406) 366–1535.

(B) The shipping address will change. Effective February 25, 2005, all shipments should be sent to: 220 Cattail Drive, Lewistown, Montana 59457. The general mail address will remain the same: P.O. Box 1160, Lewistown, Montana 59457.

(C) The main office telephone number will remain the same: (406) 538–7461.

(D) The BLM Lewistown Field Office will resume full services on March 1, 2005, at 220 Cattail Drive, Lewistown, Montana 59457.

Dated: January 21, 2005.

June Bailey,

Lewistown Field Manager.

[FR Doc. 05–1512 Filed 1–26–05; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–040–1430–EU; SDM 87107]

Notice of Realty Action, Direct Sale of Public Lands, Lawrence County, SD; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management published a document in the **Federal Register** of August 28, 2003, concerning a Notice of Realty Action for a Direct Sale of Public Lands. The document contained an incorrect legal description.

FOR FURTHER INFORMATION CONTACT: Kym Dowdle, 406–896–5046.

Correction

In the **Federal Register** of August 28, 2003, in FR Doc. 03–22059 on Page 51796, in the first column, correct the

legal description of ''T. 4. N., R 3 E.,'' to read: ''T. 5 N., R 2 E.,''.

Dated: January 12, 2005.

Howard A. Lemm,

Deputy State Director, Division of Resources.

[FR Doc. 05–1476 Filed 1–26–05; 8:45 am]

BILLING CODE 4310–AG–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–494]

In the Matter of Certain Automotive Measuring Devices, Products Containing Same, and Bezels for Such Devices; Notice of Issuance of a Limited Exclusion Order and a Cease and Desist Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a limited exclusion order and a cease and desist order in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3115. Copies of the public version of the IDs 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 June 20, 2003, based on a complaint filed by Auto Meter Products, Inc. (''Auto Meter'') of Sycamore, Illinois. 68 FR 37023. The complaint alleged violations of section 337 of the Tariff Act of 1930 in the importation and sale of certain automotive measuring devices, products containing same, and bezels for such devices, by reason of infringement of U.S. Registered Trademark Nos. 1,732,643 and 1,497,472, and U.S. Supplemental Register No. 1,903,908, and infringement of the complainant's trade dress. The complaint alleged that twelve respondents violated section 337. Subsequently, seven more firms were added as respondents. 68 FR 75280 (Dec 30, 2003); 69 FR 2732 (January 20, 2004).

The investigation was terminated as to all respondents on the basis of consent orders and/or settlement agreements except as to the following five respondents who have been found in default: Tenzo R, dba Autotech Systems and Accessories, of Santa Clarita, California (''Tenzo''); Auto Gauge Co., Ltd., of Taipei, Taiwan (''AGT''); Dynamik Exhaust Industry Co., Ltd., of Taipei, Taiwan (''Dynamik''); Modern Work, Inc. of Taipei, Taiwan (''Modern Work''), and LPL Trans Trade Co. of Taipei, Taiwan (''LPL'') (collectively, ''defaulting respondents'').

Having determined that a violation of section 337 has occurred, and having reviewed the record in this investigation, including the written submissions of the parties, the Commission has made its determination on the issues of remedy, the public interest, and bonding. The Commission has determined that the appropriate form of relief is (1) a limited exclusion order prohibiting the unlicensed entry of automotive measuring devices and products containing same, and bezels for such devices, that misappropriate Auto Meter's trade dresses and infringe its trademarks and that are manufactured abroad by or on behalf of, or imported by or on behalf of, the defaulting respondents; and (2) a cease and desist order directed to the U.S. respondent Tenzo. Specifically, the limited exclusion order prohibits the above described importation by respondents AGT and Dynamik with respect to the Logo Trademark, the Auto Gage Trademark, the Super Bezel trademark and trade dress, and the Monster Tachometer trade dress. The limited exclusion order prohibits such importation by respondent Tenzo with respect to the Super Bezel and Monster Tachometer trade dresses. It also prohibits such importation by respondent Modern Work with respect to the Monster Tachometer trade dress, and by respondent LPL with respect to the Super Bezel trade dress. The cease and desist order mandates that the U.S. respondent Tenzo cease and desist from conducting any of the following activities in the United States: importing, selling, advertising, distributing, marketing, consigning, transferring (except for exportation), offering for sale in the United States, and soliciting U.S. agents or distributors for certain automotive measuring devices and products containing same, and bezels for such devices, in violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337.

The Commission has further determined that the public interest factors enumerated in section 337(g)(1), 19 U.S.C. 1337(g)(1), do not preclude issuance of the limited exclusion order and the cease and desist order, and that the bond during the Presidential review period shall be in the amount of 100 percent of the entered value of the imported articles.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.16 of the Commission's Rules of Practice and Procedure (19 CFR 210.16).

Issued: January 24, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–1486 Filed 1–26–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–1063–1068 (Final)]

Certain Frozen or Canned Warmwater Shrimp and Prawns From Brazil, China, Ecuador, India, Thailand, and Vietnam

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Brazil, China, Ecuador, India, Thailand, and Vietnam of certain non-canned warmwater shrimp and prawns, provided for in subheadings 0306.13.00 and 1605.20.10 of the Harmonized Tariff Schedule of the United States (HTSUS), that have been found by the Department of Commerce (Commerce) to be sold in

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

the United States at less than fair value (LTFV).[2]

The Commission further determines that an industry in the United States is not materially injured by reason of imports from China, Thailand, and Vietnam of canned warmwater shrimp and prawns, provided for in subheading 1605.20.10 of the HTSUS, that have been found by Commerce to be sold in the United States at LTFV.[3] The Commission also determines that imports from Brazil, Ecuador, and India of canned warmwater shrimp and prawns are negligible.

Background

The Commission instituted these investigations effective December 31, 2003, following receipt of a petition filed with the Commission and Commerce by the Ad Hoc Shrimp Trade Action Committee, Washington, DC; the Versaggi Shrimp Corp., Tampa, FL; and the Indian River Shrimp Co., Chauvin, LA. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of certain frozen or canned warmwater shrimp and prawns from Brazil, China, Ecuador, India, Thailand, and Vietnam were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of August 19, 2004 (69 FR 51472). The hearing was held in Washington, DC, on December 1, 2004, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on January 21, 2005. The views of the Commission are contained in USITC Publication 3748 (January 2005), entitled Certain Frozen or Canned Warmwater Shrimp and Prawns from Brazil, China, Ecuador, India, Thailand, and Vietnam: Investigations Nos. 1063–1068 (Final).

By order of the Commission.

Issued: January 21, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–1487 Filed 1–26–05; 8:45 am]

BILLING CODE 7020–02–P

[2] The Commission further determines that critical circumstances do not exist with respect to those imports of the subject merchandise from China that were subject to the affirmative critical circumstances determination by the Department of Commerce.

[3] Chairman Koplan and Commissioner Lane determine that an industry in the United States is materially injured by reason of imports of certain frozen or canned warmwater shrimp or prawns from Brazil, China, Ecuador, India, Thailand, and Vietnam that were found by Commerce to be sold in the United States at LTFV.

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–376, 377, & 379 and 731–TA–788–793 (Review)]

Certain Stainless Steel Plate From Belgium, Canada, Italy, Korea, South Africa, and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject reviews.

EFFECTIVE DATE: January 21, 2005.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180) or Douglas Corkran (202–205–3057), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: Effective August 26, 2004, the Commission established a schedule for the conduct of the subject reviews (69 FR 53946, September 3, 2004). Subsequently, counsel for domestic interested parties requested that the Commission reschedule its hearing from Tuesday, March 29 to Wednesday, March 30, 2005, to avoid travel during a holiday period.[1] Counsel suggested no other change to the schedule. In light of the justification provided by counsel, and absent objection from any other party, the Commission is revising its schedule. The Commission's hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on March 30, 2005. The Commission's original schedule is otherwise unchanged.

For further information concerning these reviews see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: January 21, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–1488 Filed 1–26–05; 8:45 am]

BILLING CODE 7020–02–P

[1] Letter from Collier Shannon Scott, filed on behalf of Allegheny Ludlum Corp., North American Stainless, AK Steel Corp., the United Steelworkers of America, AFL–CIO/CLC, the Local 3303 United Auto Workers (formerly the Butler Armco Independent Union), and the Zanesville Armco Independent Organization, Inc., dated December 20, 2004.

INTERNATIONAL TRADE COMMISSION

[USITC SE–05–002]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: February 2, 2005, at 11 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436, telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: None.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–1069 (Final) (Outboard Engines from Japan)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before February 17, 2005.)
5. Outstanding action jackets: (1) Document No. GC–04–152: Concerning administrative matters.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: January 24, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–1580 Filed 1–25–05; 11:46 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–05–003]

Government in the Sunshine Act Meeting Notice

ACTION: Cancellation of Government in the Sunshine Meeting.

AGENCY: United States International Trade Commission.

ORIGINAL TIME AND DATE: January 26, 2005, at 2 p.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436, telephone: (202) 205–2000.

In accordance with 19 CFR 201.35(d)(1), the Commission has determined to cancel the Government in the Sunshine meeting which was scheduled for January 26, 2005. The Commission will reschedule this meeting at a future date. Earlier announcement of this cancellation was not possible.

Issued: January 25, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–1642 Filed 1–25–05; 2:42 pm]

BILLING CODE 7020–02–P

OFFICE OF MANAGEMENT AND BUDGET

Acquisition Advisory Panel

AGENCY: Executive Office of the President, Office of Management and Budget.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the Acquisition Advisory Panel established in accordance with the Services Acquisition Reform Act of 2003 will meet on February 9, 2005 at 9 a.m., eastern time. Location for the meeting will be the Truman Room of the White House Conference Center, 726 Jackson Place, NW., Washington, DC 20503. The meeting is open to the public and written statements may be filed with the panel. Due to limited availability of seating, members of the public will be admitted on a first-come, first-served basis. This is the first meeting of the panel, and will be organizational in nature. Discussion of substantive procurement-related topics is not anticipated.

SUPPLEMENTARY INFORMATION: The purpose of the panel is to provide independent advice and recommendations to the Office of Federal Procurement Policy and Congress pursuant to Section 1423 of the Service Acquisition Reform Act of 2003. The panel's charter is to review Federal contracting laws, regulations, and government-wide policies, including the use of commercial practices, performance-based contracting, performance of acquisition functions across agency lines of responsibility, and government-wide contracts.

Requests for additional information or written statements should be directed to Ms. Laura Auletta, Designated Federal Officer, at *laura.auletta@gsa.gov* or (202) 208–7279.

Dated: January 21, 2005.

David H. Safavian,

Administrator for Federal Procurement Policy.

[FR Doc. 05–1566 Filed 1–26–05; 8:45 am]

BILLING CODE 3110–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of OPM decisions granting authority to make appointments under Schedules A, B and C in the excepted service as required by 5 CFR 6.6 and 213.103.

FOR FURTHER INFORMATION CONTACT: Mrs. Quasette Crowner, Chief, Executive Resources Group, Center for Leadership and Executive Resources Policy, Division for Strategic Human Resources Policy, (202) 606–1579.

SUPPLEMENTARY INFORMATION: Appearing in the listing below are the individual authorities established under Schedule C between December 1, 2004, and December 31, 2004. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 is published each year.

Schedule A

No Schedule A's for December 2004.

Schedule B

No Schedule B's for December 2004.

Schedule C

The following Schedule C appointments were approved for December 2004:

Section 213.3303 Executive Office of the President

Office of Management and Budget

BOGS60026 Confidential Assistant to the Associate Director for General Government Programs. Effective December 21, 2004.

BOGS60141 Deputy to the Associate Director for Legislative Affairs (Senate). Effective December 29, 2004.

Section 213.3304 Department of State

DSGS60803 Public Affairs Specialist to the Office Director, Office to Monitor and Combat Trafficking In Persons. Effective December 10, 2004.

DSGS60804 Staff Assistant to the Deputy Assistant Secretary for Equal Employment Opportunity. Effective December 16, 2004.

Section 213.3305 Department of the Treasury

DYGS60317 Public Affairs Specialist to the Director, Public Affairs. Effective December 17, 2004.

Section 213.3306 Department of Defense

DDGS16837 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison. Effective December 8, 2004.

DDGS16849 Program Support Specialist to the Deputy Assistant Secretary of Defense (Internal Communications). Effective December 14, 2004.

DDGS16851 Personal and Confidential Assistant to the Under Secretary of Defense (Comptroller). Effective December 29, 2004.

Section 213.3308 Department of the Navy

DNGS60069 Staff Assistant to the Under Secretary of the Navy. Effective December 8, 2004.

Section 213.3310 Department of Justice

DJGS00444 Associate Director to the Director, Office of Intergovernmental and Public Liaison. Effective December 10, 2004.

DJGS00208 Confidential Assistant to the Director, Office of Public Affairs. Effective December 21, 2004.

Section 213.3311 Department of Homeland Security

DMGS00285 Policy Analyst to the Special Assistant to the Secretary

(Private Sector). Effective December 2, 2004.

DMGS00286 Staff Assistant to the Officer of Civil Rights and Civil Liberties. Effective December 3, 2004.

DMGS00279 Briefing Coordinator to the Executive Secretary. Effective December 7, 2004.

DMGS00282 Writer-Editor to the Executive Secretary. Effective December 7, 2004.

DMOT00224 Director of Legislative Affairs for Transportation Security Administration to the Administrator, Transportation Security Administration. Effective December 7, 2004.

DMGS00289 Program Analyst to the Special Assistant to the Secretary (Private Sector). Effective December 21, 2004.

DMGS00292 Legislative Assistant to the Assistant Secretary for Legislative Affairs. Effective December 30, 2004.

Section 213.3312 Department of the Interior

DIGS61026 Deputy Director, External and Intergovernmental Affairs to the Director, External and Intergovernmental Affairs. Effective December 28, 2004.

DIGS61027 Special Assistant to the Associate Deputy Secretary. Effective December 28, 2004.

Section 213.3314 Department of Commerce

DCGS00160 Confidential Assistant to the Assistant Secretary and Director General of United States Commercial Services. Effective December 2, 2004.

DCGS00465 Confidential Assistant to the Director, Office of White House Liaison. Effective December 10, 2004.

Section 213.3315 Department of Labor

DLGS60273 Special Assistant to the Assistant Secretary for Administration and Management. Effective December 21, 2004.

Section 213.3316 Department of Health and Human Services

DHGS00011 Special Assistant to the Assistant Secretary for Legislation. Effective December 17, 2004.

Section 213.3325 United States Tax Court

JCGS60048 Secretary (Confidential Assistant) to the Chief Judge. Effective December 3, 2004.

Section 213.3332 Small Business Administration

SBGS00540 Director of Small Business Administration's Center for Faith-Based and Community Initiatives to the Chief of Staff and Chief Operating Officer. Effective December 10, 2004.

Section 213.3384 Department of Housing and Urban Development

DUGS60543 Staff Assistant to the Assistant Secretary for Administration/Chief Information Officer/Chief Human Capital Officer. Effective December 21, 2004.

Section 213.3393 Pension Benefit Guaranty Corporation

BGSL00039 Executive Director to the Chairman. Effective December 17, 2004.

Section 213.3394 Department of Transportation

DTGS60288 Associate Director for Governmental Affairs to the Assistant Secretary for Governmental Affairs. Effective December 9, 2004.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P. 218.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 05–1456 Filed 1–26–05; 8:45 am]

BILLING CODE 6325–39–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26725; 812–13047]

AIG SunAmerica Asset Management Corp., et al.; Notice of Application

January 21, 2005.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 12(d)(3) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

APPLICANTS: AIG SunAmerica Asset Management Corp. (''AIG SAAMCo'') and Variable Annuity Life Insurance Company (''VALIC,'' and together with AIG SAAMCo, the ''Advisers'').

SUMMARY OF APPLICATION: Applicants request an order to permit any existing and future registered investment company or series that offers principal protection (''Principal Protection'') and has as its investment adviser an Adviser or other registered investment adviser that is in the control of, controlled by, or under common control with an Adviser (collectively, the ''Funds'') to enter into an arrangement with any entity that now or in the future is in control of, controlled by, or under common control with, an Adviser (an ''AIG Affiliate'') to provide Principal Protection to the Fund, or to serve as a hedging counterparty (''Hedging Counterparty'') where an unaffiliated third party providing Principal Protection to the Fund seeks to enter into a derivatives contract or reinsurance contract with an AIG Affiliate to hedge all or a portion of the risks under the Principal Protection arrangement.[1]

FILING DATES: The application was filed on November 25, 2003 and amended on October 26, 2004.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 15, 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 who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, Robert M. Zakem, Esq., AIG SunAmerica Asset Management Corp., Harborside Financial Center, 3200 Plaza Five, Jersey City, NJ 07311.

FOR FURTHER INFORMATION CONTACT: Shannon Conaty, Attorney-Adviser, at (202) 942–0527, or Michael W. Mundt, Senior Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. AIG SAAMCo, a Delaware corporation, is registered with the Commission under the Investment Advisers Act of 1940 (the ''Advisers

[1] All existing entities currently intending to rely on the requested order have been named as applicants. Any other existing and future entity that relies on the order will comply with the terms and conditions of the application.

Act'') and serves as investment adviser to nine registered investment companies. It is an indirect, wholly-owned subsidiary of AIG SunAmerica Inc., a financial services company and wholly-owned subsidiary of American International Group, Inc., (''AIG''). VALIC, a Texas company and indirect wholly-owned subsidiary of AIG, is registered with the Commission under the Advisers Act and serves as investment adviser to two registered investment companies. Each Fund will be registered under the Act as, or be a series of, a management investment company.

2. Each Fund proposes to provide Principal Protection, pursuant to which shareholders who hold their Fund shares for a prescribed period of time (the ''Protection Period'')[2] will be able, at the end of the period (the ''Maturity Date''), to redeem their shares and receive no less than the amount of their initial investment, subject to certain adjustments (the ''Protected Amount''). Applicants state that Principal Protection will be achieved primarily through the use of a mathematical formula that allocates assets based on the ''constant proportion portfolio insurance'' model (the ''Formula'').[3] In addition to using the Formula, the Fund may also enter into a financial guarantee agreement, warranty agreement or other principal protection agreement[4] or may acquire an insurance policy (each a ''Protection Agreement''), in order to ensure that the Fund can meet its obligation to pay each redeeming shareholder the Protected Amount on the Maturity Date.[5] The entity providing Principal Protection (''Protection Provider'') may be a bank, brokerage firm, insurance company, financial services firm or other financial institution. In certain cases, the Protection Provider may seek to hedge all or a portion of its risks by entering into a derivatives contract or reinsurance contract (''Hedging Transaction'') with a Hedging Counterparty. Each Fund will pay a fee to the Protection Provider, typically equal to a percentage of the Fund's average daily net assets.

3. Each Protection Agreement will require the Protection Provider to pay the Fund an amount equal to any shortfall between the aggregate Protected Amount and the net asset value (''NAV'') of the Fund on the Maturity Date (the ''Shortfall Amount''). Under the terms of each Protection Agreement, the Fund will be required to manage its assets within certain investment parameters, based in large part on the asset allocations determined by the Formula. If the Fund fails to comply with these allocations or upon the occurrence of certain other conditions (''Trigger Event''), the Protection Provider may cause the Fund to defease its portfolio and allocate all of its assets to the Fund's Protection Component (a ''Defeasance Event'').

4. A Protection Agreement and the fee for the Protection Agreement will be subject to approval by the Board of Directors or Trustees of each Fund (the ''Board''), including a majority of those Directors or Trustees who are not interested persons of a Fund or an Adviser, as defined in section 2(a)(19) of the Act (the ''Independent Trustees''). In the event that a Fund wishes to consider entering into a Protection Agreement with an AIG Affiliate, or with a Protection Provider that is otherwise not an affiliated person of the Fund or its Adviser, or an affiliated person of such a person (an ''Unaffiliated Provider''), but that wants to use an AIG Affiliate as its Hedging Counterparty (each, an ''Affiliated Protection Arrangement''), the Adviser will be required to conduct a bidding process to select the Protection Provider. Applicants state that the Adviser will initially solicit at least three other bids in addition to the bid relating to an Affiliated Protection Arrangement, then will engage in negotiations with all of the bidders. At the end of the negotiation process, all bidders who wish to participate will submit final bids. All final bids will be due at the same time and no bidder will be permitted to change its final bid once submitted. After final bids are submitted, no bidder, including an AIG Affiliate, will have access to any competing bids until after the Protection Agreement is entered into by the Fund. In order for the Adviser to recommend the bid relating to an Affiliated Protection Arrangement, the Fund must have also received at least two bona fide final bids that are not Affiliated Protection Arrangements.[6] The Adviser will evaluate final bids and recommend a bid for acceptance by the Board, together with an explanation of the basis for this recommendation and a summary of the material terms of any bids that were rejected. Applicants state that in addition to cost, other factors such as creditworthiness will be significant in the Adviser's evaluation of bids, and thus, the Adviser may recommend to the Board a Protection Provider who does not submit the bid with the lowest fee rate.[7] A majority of the Board, including a majority of the Independent Trustees, must approve the acceptance of a bid involving an Affiliated Protection Arrangement, as well as the general terms of the proposed Protection Arrangement. Upon the conclusion of the Adviser's negotiation of the Affiliated Protection Arrangement, the Board must approve the final Protection Agreement, and determine that the terms of the Affiliated Protection Arrangement, as so finalized, are not materially different from the terms of the accepted bid.

5. The Board will exercise oversight responsibilities in connection with any Protection Agreement and will establish a special committee (the ''Committee''), a majority of the members of which will be Independent Trustees, if the Fund enters into an Affiliated Protection Arrangement. If a Trigger Event or a Defeasance Event occurs under the Protection Agreement (each, a

[2] The life of a Fund offering Principal Protection will generally be divided into three time periods: (a) An initial offering period during which the Fund will sell shares to the public; (b) the Protection Period during which the Fund will not normally offer its shares to the public and the Fund's assets will be invested pursuant to the Formula (as defined below); and (c) a period after the Maturity Date (the ''Post-Protection Period''), during which the Fund will offer its shares on a continuous basis and pursue an objective that does not include Principal Protection, or alternatively, will wind up and cease operations or may commence a new principal protection cycle.

[3] The objective of the Formula is to maximize the allocation of a Fund's assets that may be invested for purposes other than Principal Protection (the ''Portfolio Component''), thus gaining exposure to one or more sectors of the securities or other markets, while attempting to minimize the risk that the assets and return of the Fund will be insufficient to redeem a shareholder's account on the Maturity Date for an amount at least equal to the initial value of that shareholder's investment (a ''shortfall'') by investing a portion of the Fund's assets in fixed income securities (the ''Protection Component'').

[4] Other principal protection agreements may take the form of a swap agreement or other privately negotiated derivatives contract with similar economic characteristics requiring the Protection Provider (as defined below) to make payments to the Fund in the event of a shortfall.

[5] The Protected Amount may be reduced (a) to the extent the Fund incurs extraordinary expenses, such as litigation expenses, which are not covered by the Protection Agreement, (b) if the Adviser is required to make payments to the Protection Provider and/or the Fund (''Adviser Payment'') under the Protection Agreement as a result of its own negligence or certain other disabling conduct and there is a dispute regarding such payment, or (c) as otherwise described in the Protection Agreement, subject in each case to appropriate prospectus disclosure. The Protected Amount will not be reduced by the Fund's ordinary fees and expenses, including its advisory fees.

[6] If an Unaffiliated Provider submits multiple bids, each with a different Hedging Counterparty, each submission will constitute a separate bid.

[7] If the Protection Provider recommended by the Adviser does not propose the lowest fee to provide Principal Protection and the Board approves a Protection Agreement with such Protection Provider, the Board minutes will reflect the reasons why the Protection Provider requiring the higher fee was approved.

''Protection Event'') or if the Adviser decides to attempt to cure the circumstances leading to a Protection Event pursuant to the terms of the Protection Agreement, the Adviser will be required to notify the Committee as soon as practicable, and absent special circumstances, before a decision is reached by the Protection Provider and the Adviser as to how to effect any cure. On or about the Maturity Date, the Board will review information comparing the aggregate Protected Amount with the Fund's total NAV on the Maturity Date, and will review and approve the amount of any Shortfall Amount to be submitted for payment to the Protection Provider under the Protection Agreement (including the amount of any required Adviser Payment to the Fund) (the ''Approved Shortfall Amount'').

Applicants' Legal Analysis

A. Section 12(d)(3) of the Act

1. Section 12(d)(3) of the Act generally prohibits a registered investment company from acquiring any security issued by any person who is a broker, dealer, investment adviser, or engaged in the business of underwriting. Rule 12d3–1 under the Act exempts certain transactions from the prohibition of section 12(d)(3) if certain conditions are met. One of these conditions, set forth in rule 12d3–1(c), provides that the exemption provided by the rule is not available when the issuer of the securities is the investment adviser, promoter, or principal underwriter of the investment company, or any affiliated person of such entities. In addition, rule 12d3–1(b) does not permit a registered investment company to (i) own more than five percent of a class of equity securities of an issuer that is engaged in securities-related activities; (ii) own more than ten percent of such an issuer's debt securities; or (iii) invest more than five percent of the value of its total assets in the securities of any such issuer. Section 6(c) of the Act authorizes the Commission to exempt any person or transaction from any provision of the Act to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

2. Applicants state that by virtue of entering into an Affiliated Protection Arrangement with an AIG Affiliate that is a broker, dealer, underwriter or investment adviser to a registered investment company or an investment adviser registered under the Investment Advisers Act, a Fund may be deemed to have acquired a security from the AIG Affiliate.[8] In addition, applicants state that it is possible that a Protection Agreement entered into by the Fund (whether pursuant to an Affiliated Protection Agreement or otherwise) may represent more than ten percent of the debt securities of a Protection Provider that is involved in securities-related activities or more than five percent of the total assets of the Fund. Therefore, applicants seek an exemption from section 12(d)(3) to the extent necessary to permit the Fund to enter into Affiliated Protection Arrangements with an AIG Affiliate or a Protection Agreement with another Protection Provider that is involved in securities-related activities.

3. Applicants state that section 12(d)(3) was intended to prevent investment companies from exposing their assets to the entrepreneurial risks of securities-related businesses and to prevent reciprocal practices between investment companies and securities-related businesses. Applicants assert that the proposed transactions are consistent with the policy and intent underlying section 12(d)(3). In terms of the risk-preventing element of section 12(d)(3), applicants state that the Adviser and Board, when evaluating the credentials of a prospective Protection Provider, will take into account the Protection Provider's (and any parent guarantor's) creditworthiness, any ratings assigned by a nationally recognized statistical ratings organization (''NRSRO''), and the availability of audited financial statements. Applicants state that the purpose of the Fund's Protection Agreement is to provide Principal Protection for the Fund, not to reward an AIG Affiliate (or any other broker-dealer) for sales of Fund shares. Moreover, applicants believe that the conditions set forth in the application will ensure that each Fund is operated in the interests of its shareholders and not in the interests of an AIG Affiliate or any other Protection Provider.

B. Section 17(a) of the Act

1. Section 17(a)(1) and (2) of the Act generally prohibit the promoter or principal underwriter, or any affiliated person of the promoter or principal underwriter, of a registered investment company, acting as principal, knowingly to sell or purchase any security or other property to or from such investment company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include, among other things: (a) Any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% of more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote by such other person; and (c) any person directly or indirectly controlling, controlled by, or under common control with, such other person. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from the terms of section 17(a) if evidence establishes that the terms of the proposed transaction are reasonable and fair and do not involve overreaching, and the proposed transaction is consistent with the policies of the registered investment company involved and the purposes of the Act.

2. Applicants state that depending on the structure of a Protection Agreement, it might be deemed to be a security or other property, and the Fund's entering into a Protection Agreement with an AIG Affiliate might be deemed to be the acquisition of a security or other property from an AIG Affiliate. In addition, applicants state that if an AIG Affiliate were to serve as a Hedging Counterparty to an Unaffiliated Provider, the AIG Affiliate might under certain circumstances be deemed to be indirectly involved in the sale of a security or other property to the Fund. Applicants request an exemption under sections 6(c) and 17(b) to permit the proposed transactions.

3. Applicants submit that the involvement of an AIG Affiliate in an Affiliated Protection Arrangement will benefit a Fund and its shareholders given the expertise of the AIG Affiliates in structuring and providing credit enhancements for Principal Protection arrangements, and the alignment of interests that exist between the AIG Affiliates and the Funds. Applicants argue that the relationship of a Fund and Unaffiliated Provider may be more adversarial, with the protection of the Unaffiliated Provider's rights and remedies being of paramount importance to the Unaffiliated Provider, which could result in the Unaffiliated Provider exhibiting a greater willingness to declare a Defeasance Event or to rely on a clause permitting it to avoid liability to the Fund than would an AIG Affiliate in similar circumstances. Applicants argue that an AIG Affiliate

[8] Applicants state that depending on the structure of the Protection Agreement, while certain types of Protection Agreements would not meet the definition of ''security'' contained in section 2(a)(36) of the Act such as insurance contracts, certain types of derivative agreements may be deemed to constitute securities.

may assume a greater risk to itself by avoiding a Defeasance Event and allowing a greater portion of the Fund's assets to remain invested in the Portfolio Component for the same fee charged by an Unaffiliated Provider. Applicants also argue that the use of an AIG Affiliate as Protection Provider may lower the cost of Principal Protection since there is a limited universe of Protection Providers with which a Fund may enter into a Protection Agreement. In addition, because an AIG Affiliate may have a greater comfort level with the Formula and certain investment strategies to be used by the Advisers than an Unaffiliated Provider, applicants state that this may allow the AIG Affiliate to enter into a Hedging Transaction with an Unaffiliated Provider for a lower fee or spread than would be available through a counterparty unaffiliated with the Fund.

4. Applicants submit that the conditions applicable to each Affiliated Protection Arrangement will ensure that such arrangement will be reasonable and fair to each Fund and that no AIG Affiliate will be able to engage in overreaching. Applicants state that a Fund will not be able to participate in an Affiliated Protection Arrangement until after a bidding process has been completed in which the Fund receives at least two bona fide final bids for Principal Protection from an Unaffiliated Provider not seeking to hedge with an AIG Affiliate, and that an AIG Affiliate will not have an unfair advantage over other bidders in winning the bid. A Fund may not accept a bid or subsequently enter into an Affiliated Protection Arrangement unless it has been approved by the Fund's Board, including a majority of Independent Trustees, who must determine that entering into the Affiliated Protection Arrangement is in the best interests of the Fund and its shareholders and meets the standards specified in section 17(b) of the Act. In addition, applicants state that if a Fund enters into an Affiliated Protection Arrangement, the Fund's Board will establish a Committee to represent the Fund's interests if a Protection Event should occur. Lastly, applicants state that the Board will approve the Approved Shortfall Amount to be submitted for payment to the Affiliated Protection Provider and that the Fund will not accept a lesser amount in settlement of its claim without a further Commission exemptive order.

5. Applicants submit that an Affiliated Protection Arrangement will be consistent with the policies of each Fund, as recited its registration statement. Applicants further submit that an Affiliated Protection Arrangement, subject to the conditions set forth in the application, will be consistent with the purposes fairly intended by the policy and provisions of the Act and will be in the best interests of each Fund and its shareholders.

C. Section 17(d) of the Act

1. Section 17(d) of the Act and rule 17d–1 under the Act generally prohibit any affiliated person of, or principal underwriter for, a registered investment company, or any affiliated person of, or principal underwriter, acting as principal, from effecting any transaction in connection with any joint enterprise or other arrangement or profit-sharing plan in which the investment company participates, unless an application regarding the joint transaction has been filed with the Commission and granted by order. Under rule 17d–1, in passing upon such applications, the Commission considers whether the participation of the registered investment company in the joint transaction is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different or less advantageous than that of other participants.

2. Applicants state that the fee paid to an AIG Affiliate pursuant to an Affiliated Protection Arrangement (either by the Fund directly under a Protection Agreement or indirectly through a Hedging Transaction) may be deemed to involve a joint enterprise or joint arrangement or profit-sharing plan under section 17(d) and rule 17d–1 because an AIG Affiliate may be in control of, controlled by or under common control with the Adviser of a Fund, and the AIG Affiliate's compensation as the Protection Provider or Hedging Counterparty will be based on the Fund's assets. In addition, the AIG Affiliate might make a profit or suffer a loss depending on the performance of the Fund. Applicants also state that an Affiliated Protection Arrangement could be deemed to involve a joint enterprise or joint arrangement because of the coordination and possible ongoing negotiations between a Fund and an AIG Affiliate in managing the Fund's risk exposure.[9] Applicants thus request an order pursuant to section 17(d) and rule 17d–1.

3. Applicants state that the purpose of section 17(d) is to avoid overreaching by and unfair advantage to insiders. Applicants submit that the conditions proposed in the application will ensure that a Fund and its shareholders are treated fairly and not taken advantage of by an AIG Affiliate. Applicants submit that a Fund and its shareholders will benefit from the participation of an AIG Affiliate in an Affiliated Protection Arrangement. For these reasons, applicants state that the proposed arrangement satisfies the standards of section 17(d) and rule 17d–1.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. Prior to recommending to the Board that a Fund enter into an Affiliated Protection Arrangement, the Adviser will conduct a competitive bidding process in which the Adviser solicits bids on at least three Protection Agreements that would not constitute Affiliated Protection Arrangements. At a reasonable amount of time prior to the date bids are to be submitted, the Adviser will solicit bids by supplying prospective bidders with a bid invitation letter that includes any requirement for a potential Protection Provider (and its parent guarantor, if any) to include audited financial statements in the Fund's registration statement, a copy of the relevant sections of a draft prospectus of the Fund, and a term sheet containing the principal terms of a proposed Protection Agreement. Initial bids will be due at the same time, and no bidder will have access to any competing bids prior to its own submission. After initial bids are received, the Adviser will negotiate in good faith with each of the bidders to obtain more favorable terms for the Fund. During these negotiations, all bidders will have access to equal information about competing bids. At the end of this process, all bidders who wish to participate will submit final bids. All such final bids will be due at the same time, and no bidder will be permitted to change its final bid once submitted. After the final bids are submitted, no bidder, including an AIG Affiliate, will have access to any competing bids until after the Protection Agreement is entered into by the Fund. A Fund may not enter into an Affiliated Protection Arrangement unless two bona fide final bids have been received for Protection Agreements that would not constitute Affiliated Protection Arrangements.

[9] For example, applicants state that an AIG Affiliate could seek to request that a Fund's assets be invested not to seek to maximize the Fund's return, but in a manner designed to protect the AIG Affiliate's interest by over-allocating the Fund's assets to the Protection Component so as to minimize the risk that an AIG Affiliate would be called upon to make a payment under an Affiliated Protection Arrangement.

2. If the Adviser recommends that the Board approve an Affiliated Protection Arrangement, the Adviser must provide the Board with an explanation of the basis for its recommendation and a summary of the material terms of any bids that were rejected.

3. The Fund's Board, including a majority of Independent Trustees, must approve the acceptance of a bid involving an Affiliated Protection Arrangement, as well as the general terms of the proposed Protection Agreement. In evaluating the final bids and the recommendations from the Adviser, the Board will consider, among other things: (i) The fee rate to be charged by a potential Protection Provider; (ii) the structure and potential limitations of the proposed Principal Protection arrangement and any legal, regulatory or tax implications of such arrangement; (iii) the credit rating (if any) and financial condition of the potential Protection Provider (and, if applicable, its parent guarantor), including any ratings assigned by any NRSRO; and (iv) the experience of the potential Protection Provider in providing Principal Protection, including in particular to registered investment companies. If the Affiliated Protection Arrangement approved by the Board does not reflect the lowest fee submitted in a proposal to provide the Principal Protection, the Board will reflect in its minutes the reasons why the higher cost option was selected.

4. Upon the conclusion of the Adviser's negotiations of the Affiliated Protection Arrangement, including the Protection Agreement, the Fund's Board, including a majority of Independent Trustees, must approve the final Protection Agreement and determine that the terms of the final Affiliated Protection Arrangement, as so finalized, are not materially different from the terms of the accepted bid. The Board, including a majority of its Independent Trustees, will also determine that entering into the Affiliated Protection Arrangement is in the best interests of the Fund and its shareholders and meets the standards specified in section 17(b) of the Act. The Board will reflect these findings and their basis in its minutes.

5. If an AIG Affiliate is chosen as the Protection Provider or Hedging Counterparty, it will not charge a higher fee for its Protection Agreement or Hedging Transaction than it would charge for similar agreements or transactions for unaffiliated parties that are similarly situated to the Fund. Any AIG Affiliate acting as Hedging Counterparty will not be directly compensated by the Fund and the Fund will not be a party to any Hedging Transaction.

6. In the event the Fund enters into an Affiliated Protection Arrangement, the Board will establish a Committee, a majority of whose members will be Independent Trustees, to represent the Fund in any negotiations relating to a Protection Event. If a Protection Event occurs under the Protection Agreement or if the Adviser decides to attempt to cure the circumstances leading to a Protection Event pursuant to the terms of the Protection Agreement, the Adviser will notify the Committee as soon as practicable, and, absent special circumstances, before a decision is reached by the Protection Provider and the Adviser as to how to effect any cure. All Protection Events will be brought to the attention of the full Board at the next regularly scheduled Board meeting.

7. The Adviser will present a report to the Board, at least quarterly, comparing the actual asset allocation of the Fund's portfolio with the allocation required under the Protection Agreement, describing any Protection Events, and summarizing any negotiations that were the subject of the previous condition.

8. At the conclusion of the Protection Period, the Adviser of a Fund will report to the Fund's Board any Shortfall Amount potentially covered under an Affiliated Protection Arrangement (including, for this purpose, the amount of any required Adviser Payment). The Board, including a majority of Independent Trustees, will evaluate the Shortfall Amount and will determine the amount of the Approved Shortfall Amount under the Protection Agreement to be submitted to the Protection Provider. The Fund will not settle any claim under the Protection Agreement for less than the full Approved Shortfall Amount determined by the Board without obtaining a further exemptive order from the Commission.

9. Prior to a Fund's reliance on the order, the Fund's Board will satisfy the fund governance standards as defined in rule 0–1(a)(7) under the Act, except that the Independent Trustees must be represented by independent legal counsel within the meaning of rule 0–1 under the Act.

10. The Adviser, under the supervision of the Board, will maintain sufficient records to verify compliance with the conditions of the order. Such records will include, without limitation: (i) An explanation of the basis upon which the Adviser selected prospective bidders; (ii) a list of all bidders to whom a bid invitation letter was sent and copies of the bid invitation letters and accompanying materials; (iii) copies of all initial and final bids received, including the winning bid; (iv) records of the negotiations with bidders between their initial and final bids; (v) the materials provided to the Board in connection with the Adviser's recommendation regarding the Protection Agreement; (vi) the final price and terms of the Protection Agreement with an explanation of the reason the arrangement is considered an Affiliated Protection Arrangement; and (vii) records of any negotiations with the Protection Providers related to the occurrence of a Protection Event and the satisfaction of any obligations under a Protection Agreement. All such records will be maintained for a period ending not less than six years after the conclusion of the Protection Period, the first two years in an easily accessible place, and will be available for inspection by the staff of the Commission.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–310 Filed 1–26–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of January 31, 2005:

A Closed Meeting will be held on Thursday, February 3, 2005, at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (6), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Campos, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the Closed Meeting scheduled for Thursday, February 3, 2005, will be:

Formal orders of investigations;

Institution and settlement of injunctive actions; and

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: January 25, 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–1579 Filed 1–25–05; 11:46 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27940]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

January 21, 2005.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by February 15, 2005, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After February 15, 2005, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Cinergy Corporation (70–10254)

Cinergy Corp., a registered holding company (''Cinergy''), and its subsidiary The Cincinnati Gas & Electric Company, an exempt public utility holding company (''CG&E''; and together with Cinergy, ''Declarants''), both at 139 East Fourth Street, Cincinnati, OH 45202, have jointly filed a declaration (''Declaration'') pursuant to Sections 12(b), 12(d) and 12(f) of the Act and rules 43, 44, 45 and 54 under the Act.

CG&E proposes to transfer to its subsidiary, The Union Light, Heat and Power Company (''ULH&P''), CG&E's ownership interest in three electric generating facilities, including certain realty and other improvements, equipment, assets, properties, facilities and rights (collectively, the ''Plants'') (the ''Transfer'').

I. Background

Cinergy, through CG&E, ULH&P and PSI Energy, Inc. (''PSI''), provides retail electric and natural gas service to customers in southwestern Ohio, northern Kentucky and most of Indiana. In addition, Cinergy has numerous non-utility subsidiaries. As of June 30, 2004, Cinergy reported consolidated total assets of approximately $14.0 billion and consolidated total operating revenues of approximately $2.3 billion. Cinergy directly holds all the outstanding common stock of CG&E.

CG&E is a combination electric and gas public utility holding company formed under Ohio law. CG&E claims an exemption from the provisions of the Act under Section 3(a)(2) pursuant to rule 2. CG&E is engaged in the production, transmission, distribution and sale of electric energy and the sale and transportation of natural gas in the southwestern portion of Ohio and, through ULH&P, northern Kentucky. The area served with electricity, gas, or both is approximately 3,200 square miles, has an estimated population of two million people, and includes the cities of Cincinnati and Middletown in Ohio and Covington and Newport in Kentucky.

The Public Utilities Commission of Ohio (''PUCO'') regulates CG&E's retail sales of electricity and natural gas. CG&E's wholesale power sales and transmission services are regulated by the Federal Energy Regulatory Commission (''FERC'') under the Federal Power Act. CG&E currently provides ULH&P full requirements electric service under a long-term power sales agreement, FERC Rate Schedule No. 56. As of June 30, 2004, CG&E reported consolidated total operating revenues of approximately $1.3 billion and consolidated total assets of approximately $5.9 billion.

ULH&P, formed under Kentucky law, is a direct wholly-owned subsidiary of CG&E. ULH&P is engaged in the transmission, distribution, and sale of electric energy and the sale and transportation of natural gas in northern Kentucky. The area it serves with electricity and gas covers approximately 500 square miles, has an estimated population of 330,000 people, and includes the cities of Covington and Newport, Kentucky. ULH&P owns no electric generating facilities. It historically has relied on CG&E for its full requirements of electric supply to serve its retail customers. ULH&P's retail sales of electricity and of natural gas are regulated by the Kentucky Public Service Commission (''KPSC''). ULH&P has no wholesale customers. As of June 30, 2004, ULH&P reported total operating revenues of approximately $187 million and total assets of approximately $444 million.

The KPSC has issued an order approving the acquisitions by ULH&P. Declarants state that, pursuant to Ohio's electric customer choice legislation which went into effect in January 2001, PUCO has no approval authority over the sale of the Plants by CG&E or otherwise with respect to the Transfer.

II. Proposed Transfer

The three electric generating stations that are the subject of the Transfer are: East Bend Generating Station (''East Bend''); the Miami Fort Unit 6 (''Miami Fort 6''); and Woodsdale Generating Station (''Woodsdale'').

East Bend is a 648 MW coal-fired base load station located in Rabbit Hash, Kentucky. East Bend is jointly owned by CG&E (69 percent) and The Dayton Power & Light Company (''DP&L'') (31 percent). CG&E proposes to transfer its entire ownership share (447 MW nameplate rating). At June 30, 2004, the net book value of CG&E's ownership interest in East Bend was approximately $200 million (including construction-work-in-progress (''CWIP'') costs of approximately $4.6 million).

Miami Fort 6 is a 168 MW coal-fired intermediate load generating unit located in North Bend, Ohio. Miami Fort 6 is wholly-owned by CG&E, but is part of the larger Miami Fort Generating Station, which is jointly owned by CG&E and DP&L. At June 30, 2004, Miami Fort 6 had a net book value of approximately $21 million (including CWIP of approximately $4.6 million).

Woodsdale is a 490 MW dual-fuel combustion-turbine peaking station that operates on either natural gas or propane and is located in Trenton,

Ohio. Woodsdale is wholly-owned by CG&E. At June 30, 2004, the net book value of Woodsdale was approximately $153 million (including CWIP of approximately $11 million).

CG&E will transfer the Plants at net book value at closing, plus CWIP and transaction costs. Declarants represent that as of June 30, 2004, the net book value of the Plants was approximately $353.8 million. CWIP, as of June 30, 2004, was approximately $20.2 million. Transaction costs will be approximately $4.9 million.

CG&E proposes to transfer its right, title and interest in and to the three electric generating stations, together in each case with certain realty and other improvements, equipment, assets, properties, facilities (*e.g.*, inventories of fuel, supplies, materials and spare parts) associated with or ancillary to each Plant. CG&E will retain all transmission facilities and generation step-up transformers or other FERC-jurisdictional facilities physically connected to the Plants.

Declarants state that the Plants are in good operating condition and are directly interconnected to the Cinergy joint transmission system. Following the Transfer, CG&E will continue to operate Miami Fort 6. UHL&P will operate East Bend and Woodsdale with assistance, provided at cost, from Cinergy Services, Inc. (Cinergy's service company subsidiary) in accordance with its utility service agreement and with assistance from CG&E, on an as-needed basis, pursuant to the exemption under rule 87(a)(3).

The Plants will be transferred pursuant to the terms of separate but substantially identical Asset Transfer Agreements.

At closing, ULH&P will compensate CG&E at cost for inventories of fuels, supplies, materials and spare parts of CG&E located at or in transit to the Plants. Also at closing, ULH&P will reimburse CG&E for the transaction costs incurred by CG&E or any of its affiliates in connection with the Transfer.

ULH&P will fund its acquisition of the Plants with debt and equity, in reliance on existing Commission authorization and/or the exemption for state commission-authorized financings under rule 52(a). ULH&P anticipates the equity to be additional common stock and the debt to be long term debt with an expected maturity of less than 40 years. ULH&P may issue some or all of that long term debt to CG&E.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–308 Filed 1–26–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51067; File No. SR–PCX–2004–132]

Self-Regulatory Organization; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 by the Pacific Exchange, Inc. Relating to Trading, Either by Listing or Pursuant to Unlisted Trading Privileges, Commodity-Based Trust Shares and Trading, Pursuant to Unlisted Trading Privileges, iShares® COMEX Gold Trust

January 21, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 28, 2004, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On January 13, 2005, PCX amended the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

[1] 15 U.S.C. 78s(b)(l).

[2] 17 CFR 240.19b–4.

[3] *See* Amendment No. 1, dated January 13, 2005 (''Amendment No. 1''). In Amendment No. 1, the Exchange proposed new PCXE Rules 8.201(g)–(i), which set forth certain restrictions on Equity Trading Permit (''ETP'') Holders acting as registered Market Makers in Commodity-Based Trust Shares, explained in further detail below. In addition, the Exchange proposed changes to Commentary .04 to PCXE Rule 8.201 for the purpose of clarifying that the Exchange will submit separate rule filings under Section 19(b)(2) of the Act in connection with the listing and/or trading of each Commodity-Based Trust Shares. Further, in Amendment No. 1 the Exchange represented that (1) as provided in the Registration Statement to the Trust, the trustee will charge a transaction fee in connection with the redemption and/or creation of Baskets; (2) Barclays Capital, Inc., the Initial Purchaser, will purchase 150,000 Shares of the Trust to compose the initial Baskets; and (3) the Exchange's surveillance procedures are adequate to properly monitor the trading of the Shares.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through its wholly owned subsidiary PCX Equities, Inc. (''PCXE'' or ''Corporation''), proposes to amend its rules governing the Archipelago Exchange (''ArcaEx''), the equities trading facility of PCXE. With this filing, PCX proposes new PCXE Rule 8.201 in order to permit trading, either by listing or pursuant to unlisted trading privileges (''UTP''), trust issued receipts based on commodity interests (''Commodity-Based Trust Shares'') and trading, pursuant to UTP, iShares® COMEX [4] Gold Trust Shares (''Gold Shares'').[5] The text of the proposed rule change is available at the PCX's Web site *http://www.pacificex.com/legal/legal_pending.html,* the PCX's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PCX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. PCX 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add new PCXE Rule 8.201 in order to permit trading, either by listing or pursuant to UTP, of Commodity-Based Trust Shares. The Exchange also proposes to trade pursuant to UTP the Gold Shares.

Introduction

PCXE Rule 8.201 will permit ArcaEx to list and trade Commodity-Based Trust Shares. Under the rule, for each series of Commodity-Based Trust Shares, the Exchange will submit for Commission review and approval a filing pursuant to

[4] COMEX is a division of the New York Mercantile Exchange, Inc. (''NYMEX'') where gold futures contracts are traded.

[5] Telephone conversation between Tania Blanford, Staff Attorney, Regulatory Policy, PCX, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 21, 2005 (regarding scope of proposed rule change).

Section 19(b) of the Act.[6] Proposed PCXE Rule 8.201(e) sets forth initial and continued listing and trading criteria for Commodity-Based Trust Shares on ArcaEx.[7] This rule proposal is based on the rules of the American Stock Exchange, LLC (''Amex'').[8]

The Exchange initially proposes to trade, pursuant to UTP, iShares® COMEX Gold Trust Shares that represent beneficial ownership interests in the net assets of the Trust consisting primarily of gold. As explained further herein, Gold Shares will be issued in baskets. Initially, each basket of 50,000 shares will correspond to 5,000 troy ounces of gold. Thus, each Gold Share will correspond to one-tenth of a troy ounce of gold.[9] The Gold Shares will conform to the initial and continued listing criteria under PCXE Rule 8.201(e). The Gold Trust will be formed under a depositary trust agreement, among Bank of New York (''BNY'') as Trustee, Barclays Global Investors, N.A. (''Barclays'') as the Sponsor, all depositors,[10] and the holders of Gold Shares.[11]

In effect, purchasing Gold Shares in the Trust will provide investors a new mechanism to participate in the gold market. The Trustee will not actively manage the gold held by the Trust. Information about the liquidity, depth, and pricing mechanisms of the international gold market, management and structure of the Trust, and description of the Gold Shares follows below.

[6] 15 U.S.C. 78s(b). Because of the nature of the Gold Trust, representing an interest in underlying gold, the Exchange's existing listing and trading rules that permit the listing and trading of TIRs pursuant to Rule 19b–4(e) under the Securities Act of 1934 (''Act'') (''Generic Listing Standards'') cannot be used to list or trade pursuant to UTP this product.

[7] Proposed PCXE Rule 8.201 for Commodity-Based Trust Shares tracks but is not identical to current PCXE Rule 8.200 relating to TIRs. The initial listing standards set forth in PCXE Rule 8.201 provide that the Exchange establish a minimum number of TIRs required to be outstanding at the time of the commencement of trading on the Exchange. As set forth in the section ''Criteria for Initial and Continued Listing,'' the Exchange represents the minimum number of Gold Shares required to be outstanding at the time of trading to be 150,000. *See* Amendment No. 1, *supra* note 3.

[8] *See* Securities Exchange Act Release No. 50792 (December 3, 2004) 69 FR 71446 (December 9, 2004) (SR–Amex–2004–38) (''Amex Notice''); Securities Exchange Act Release No. 51058 (January 19, 2005)(''Amex Order'').

[9] The amount of gold associated with each basket (and individual Gold Share) is expected to decrease over time as the Trust incurs and pays maintenance fees and other expenses.

[10] Barclays Capital, Inc., the Initial Purchaser, will purchase 150,000 Shares of the Trust to compose the initial Baskets. *See* Amendment No. 1, *supra* note 3.

[11] The Trust is not an investment company as defined in Section 3(a) of the Investment Company Act of 1940 (''1940 Act'').

Description of the Gold Market

In its filing with the Commission, the PCX made the following representations regarding the worldwide gold market, citing the proposal of the Amex to list the Gold Shares.[12] The gold market is a global marketplace consisting of both over-the-counter (''OTC'') transactions and exchange-traded products. The OTC market generally consists of transactions in spot, forwards, options and other derivatives, while exchange-traded transactions consist of futures and options on futures.

(a) The OTC Market

The OTC market trades on a 24-hour continuous basis and accounts for the substantial portion of global gold trading. Liquidity in the OTC market can vary from time to time during the course of the 24-hour trading day. Fluctuations in liquidity are reflected in adjustments to dealing spreads—the differential between a dealer's buy and sell prices. The period of greatest liquidity in the gold market is typically that time of day when trading in the European time zone overlaps with trading in the United States. This occurs when the OTC market trading in London, New York, and other centers coincides with futures and options trading on the COMEX.[13] This period lasts for approximately four (4) hours each New York business day morning.

The OTC market has no formal structure and no open-outcry meeting place. The main centers of the OTC market are in London, New York, and Zurich. Bullion dealers have offices around the world, and most of the world's major bullion dealers are either members or associate members of the London Bullion Market Association (''LBMA''), a trade association of participants in the London Bullion market.

There are no authoritative published figures for overall worldwide volume in gold trading. There are published sources that do suggest the significant size of the overall market. The LBMA publishes statistics compiled from the five (5) members offering clearing services.[14] The monthly average daily volume figures published by the LBMA for 2003 range from a high of 19 million to a low of 13.6 million troy ounces per day. Through September 2004, the monthly average daily volume has ranged from a high of 17 million to a low of 12.4 million. The COMEX also publishes price and volume statistics for transactions in contracts for the future delivery of gold. COMEX figures for 2003 indicate that the average daily volume for gold futures and options contracts was 4.89 million (48,943 contracts) and 1.7 million (17,241 contracts) troy ounces per day, respectively. Through October 2004, the average daily volume for gold futures and options was 6.08 million (60,817 contracts) and 2.01 million (20,173 contracts), respectively.[15]

(b) Futures Exchanges

The most significant gold futures exchanges are the COMEX division of the NYMEX and the Tokyo Commodity Exchange (''TOCOM'').[16] Trading on these exchanges is based on fixed delivery dates and transaction sizes for the futures and options contracts traded.

The daily settlement price for COMEX gold futures contracts is publicly available on the NYMEX Web site at *http://www.nymex.com*.[17] The Exchange

[12] *See* Amex Notice.

[13] The open outcry trading hours of the COMEX gold futures contract is from 8:20 a.m. to 1:30 p.m. New York time Monday through Friday. NYMEX ACCESS®, an electronic trading system, is open for trading on COMEX gold futures contracts from 2 p.m. Monday afternoon until 8 a.m. Friday morning New York time; and from 7 p.m. Sunday night until Monday morning at 8 a.m. New York time.

[14] Information regarding clearing volume estimates by the LBMA can be found at *http://www.lbma.org.uk/clearing_table.htm.* The three measures published by the LBMA are: volume, the amount of metal transferred on average each day measured in millions of troy ounces; value, measured in U.S. dollars, using the monthly average London PM fixing price; and the number of transfers, which is the average number recorded each day. The statistics exclude allocated and unallocated balance transfers where the sole purpose is for overnight credit and physical movements arranged by clearing members in locations other than London.

[15] Information regarding average daily volume estimates by the COMEX can be found at *http://www.nymex.com/jsp/markets.md_annual-volume6.jsp#2.* The statistics are based on gold futures contracts, each of which relates to 100 troy ounces of gold.

[16] There are other gold exchange markets, such as the Istanbul Gold Exchange, the Shanghai Gold Exchange and the Hong Kong Chinese Gold & Silver Exchange Society.

[17] The COMEX daily settlement price for each gold futures contract is established by a subcommittee of COMEX members shortly after the close of trading of regular trading on the COMEX. NYMEX Rule 3.43 sets forth the composition of the subcommittee requiring that it consist of three (3) members that represent the gold market. Specifically, the Rule calls for the subcommittee to include a floor broker, a floor trader, and one who represents the trade. Rule 3.02 provides restrictions on Committee members and others who possess material, non-public information. A Committee Member is prohibited from disclosing for any purpose other than the performance of official duties relating to the Committee, material, non-public information obtained as a result of such person's participation on the Committee. In addition, no person may trade for his own account or for or on behalf of any other account, in any commodity interest on the basis of any material, non-public information that such person knows was obtained from such Committee member in violation of Rule 3.02. Telephone conversation between

Continued

will provide a hyperlink on its Web site (*http://www.pacificex.com*), via the ArcaEx Web site (*http://www.archipelago.com*), to the NYMEX Web site for the purpose of disclosing gold futures contract pricing.[18] In addition, the PCX represents that COMEX gold futures prices, options on futures quotes, and last sale information are widely disseminated through a variety of market data vendors worldwide, including Bloomberg and Reuters. The PCX further represents that complete real-time data for COMEX gold futures and options is available by subscription from Reuters and Bloomberg. The NYMEX also provides delayed futures and options information on current and past trading sessions and market news free of charge on its Web site at *http://www.nymex.com.* The contract specifications for COMEX gold futures contracts are also available from the NYMEX at its Web site at *http://www.nymex.com,* as well as other financial informational sources.

(c) Gold Market Regulation

There is no direct regulation of the global OTC market in gold. However, indirect regulation of some of the overseas participants does occur. In the United Kingdom, responsibility for the regulation of financial market participants, including the major participating members of the LBMA, falls under the authority of the Financial Services Authority (''FSA'') as provided by the Financial Services and Market Act of 2000 (''FSM Act''). Under the FSM Act, all UK-based banks, together with other investment firms, are subject to a range of requirements, including fitness and properness, capital adequacy, liquidity, and systems and controls. The FSA is responsible for regulating investment products, including derivatives, and those who deal in investment products. Regulation of spot, commercial forwards, and deposits of gold and silver not covered by the FSM Act is provided for by The London Code of Conduct for Non-Investment Products, which was established by market participants in conjunction with the Bank of England, and is a voluntary code of conduct among market participants.

Participants in the U.S. OTC market for gold are generally regulated by their institutional supervisors, which regulate their activities in the other markets in which they operate. For example, participating banks are regulated by the banking authorities. In the U.S., the Commodity Futures Trading Commission (''CFTC''), an independent governmental agency with the mandate to regulate commodity futures and options markets in the U.S., regulates market participants and has established rules designed to prevent market manipulation, abusive trade practices, and fraud.

TOCOM has authority to perform financial and operational surveillance on its members' trading activities, scrutinize positions held by members and large-scale customers, and monitor price movements of futures markets by comparing them with cash and other derivative markets' prices.

Trust Management and Structure

Initially, the Exchange proposes to trade pursuant to UTP on ArcaEx Gold Shares, which represent units of fractional undivided beneficial interest in and ownership of the Trust. The purpose of the Trust is to hold gold bullion.[19] The Exchange states that the investment objective of the Trust is for the Gold Shares to reflect the performance of the price of gold, less the Trust's expenses.

The Trust is an investment trust and is not managed like a corporation or an active investment vehicle. The Trust has no board of directors or officers or persons acting in a similar capacity. The Exchange states that the Trust is not a registered investment company under the 1940 Act and is not required to register under such Act. The Sponsor (Barclays), Trustee (BNY), and Custodian (The Bank of Nova Scotia) are not affiliated with one another or with the Exchange.

Trust Expenses and Management Fees

Generally, the assets of the Trust (*e.g.*, gold bullion) will be sold to pay Trust expenses and management fees. These expenses and fees will reduce the value of an investor's Share as gold bullion is sold to pay such costs. Ordinary operating expenses of the Trust include (1) fees paid to the Sponsor, (2) fees paid to the Trustee, (3) fees paid to the Custodian, and (4) various Trust administration fees, including printing and mailing costs, legal and audit fees, registration fees, and Amex listing fees. The Trust's estimated ordinary operating expenses are accrued daily and reflected in the net asset value (''NAV'') of the Trust.

Description and Characteristics of the Gold Shares

(i) Liquidity

The Exchange represents that a minimum of 150,000 Gold Shares will be outstanding at the start of trading.[20] The minimum number of shares required to be outstanding at the start of trading is comparable to requirements that have been applied to previously listed series of trust issues receipts, Portfolio Depository Receipts and Index Fund Shares.

While the Gold Shares will trade on the Amex and ArcaEx until 4:15 p.m. New York time, liquidity in the OTC market for gold will be reduced after the close of the COMEX at 1:30 p.m. New York time when daily trading at COMEX and other world gold trading counters ends. Trading spreads and the resulting premium or discount on the Gold Shares may widen as a result of reduced liquidity in the OTC gold market. The Exchange does not believe that the Gold Shares will trade at a material discount or premium to the value of the underlying gold held by the Trust because of arbitrage opportunities.[21]

(ii) Creation and Redemption of Trust Shares

Gold Shares will be issued only in baskets of 50,000 shares or multiples thereof (such aggregation referred to as the ''Basket Aggregation'' or ''Basket''). The Trust will issue and redeem the Gold Shares on a continuous basis, by or through participants that have entered into participant agreements (each, an ''Authorized Participant'')[22] with the Sponsor, Barclays, and the Trustee, BNY, at the NAV per share next

Tania Blanford, Staff Attorney, Regulatory Policy, PCX, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 18, 2005.

[18] Telephone conversation between Tania Blanford, Staff Attorney, Regulatory Policy, PCX, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 19, 2005.

[19] The Commission has previously approved the listing of products for which the underlying was a commodity or otherwise was not a security trading on a regulated market. *See, e.g.*, Securities Exchange Act Release Nos. 19133 (October 14, 1982) (approving the listing of standardized options on foreign currencies); 36505 (November 22, 1995) (approving the listing of dollar-denominated delivery foreign currency options on the Japanese Yen); and 36165 (August 29, 1995) (approving listing standards for, among other things, currency and currency index warrants).

[20] *See* Amendment No. 1, *supra* note 3.

[21] PCX represents that Gold Shares will only trade on ArcaEx during Amex trading hours for this product of 9:30 a.m. to 4:15 p.m., New York time. These are the hours during which Amex disseminates the Indicative Trust Value. Telephone conversation between Tania Blanford, Staff Attorney, Regulatory Policy, PCX, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 21, 2005.

[22] An ''Authorized Participant'' is a person, who at the time of submitting to the trustee an order to create or redeem one or more Baskets, (i) is a registered broker-dealer, (ii) is a Depository Trust Company (''DTC'') Participant or an Indirect Participant, and (iii) has in effect a valid Authorized Participant Agreement.

determined after an order to purchase or redeem Gold Shares in a Basket Aggregation is received in proper form. Authorized Participants are the only persons that may place orders to create and redeem Baskets. Authorized Participants purchasing Baskets will be able to separate a Basket into individual Gold Shares for resale.

Basket Aggregations will be issued in exchange for a corresponding amount of gold, measured in fine ounces (the ''Basket Gold Amount''). The Basket Gold Amount will be determined at or about 4 p.m. each business day by the Trustee, BNY.[23] Initially, creation of a Basket will require delivery of 5,000 fine ounces of gold. This Basket Gold Amount will change from day to day and decrease over the life of the Trust due to the payment or accrual of fees and other expenses payable by the Trust. On each day that the Amex is open for regular trading, the BNY will adjust the quantity of gold constituting the Basket Gold Amount as appropriate to reflect sales of gold, any loss of gold that may occur, and accrued expenses.[24] The BNY will determine the Basket Gold Amount for a given business day by multiplying the NAV for each Gold Share by the number of Gold Shares in each Basket (50,000) and dividing the resulting product by that day's COMEX settlement price for the spot month gold futures contract. Authorized Participants that submitted an order prior to 4:00 p.m. to purchase a Basket must transfer the Basket Gold Amount to the Trust in exchange for a Basket.

Gold Shares are not individually redeemable, and Authorized Participants that wish to redeem a Basket (*i.e.*, 50,000 Gold Shares) will receive the Basket Gold Amount in exchange for each Basket surrendered. Upon the surrender of the Gold Shares and payment of the applicable Trustee's fee and any expenses, taxes or charges, the BNY will deliver to the redeeming Authorized Participant the amount of gold corresponding to the redeemed Baskets. Unless otherwise requested by the Authorized Participants, gold will then be delivered to the redeeming Authorized Participants in the form of physical bars only.[25] Thus, although Authorized Participants place orders to purchase or redeem Gold Shares throughout the trading day, the actual Basket Gold Amount is determined at 4 p.m. or shortly thereafter.

The Bank of Nova Scotia (''BNS'') will be the custodian for the Trust and responsible for safekeeping the gold.[26] Gold deposited with BNS must either (a) meet the requirements to be delivered in settlement of a COMEX gold futures contract pursuant to the rules adopted by the COMEX or (b) meet the specifications for weight, dimensions, fineness (or purity), identifying marks and appearance of gold bars as set forth in ''The Good Delivery Rules for Gold and Silver Bars'' published by the LBMA.

Shortly after 4 p.m. each business day, the BNY will determine the NAV for the Trust. The BNY will calculate the NAV by multiplying the fine ounces of gold held by the Trust (after gold has been sold for that day to pay that day's fees and expenses) by the daily settlement value of the COMEX spot month gold futures contract.[27] At any point in time, the spot month contract is the futures contract then closest to maturity. If a COMEX settlement price for a spot month gold futures contract is not announced, the Trustee will use the most recently announced spot month COMEX settlement price, unless the Trustee (BNY), in consultation with the Sponsor (Barclays), determines that such price is inappropriate. Once the value of the gold is determined, the BNY will then subtract all accrued fees (other than the fees to be computed by reference to the value of the Trust or its assets), expenses, and other liabilities of the Trust from the total value of gold and all other assets of the Trust. This adjusted NAV is then used to compute all fees (including the Trustee and Sponsor fees) that are calculated from the value of Trust assets. To determine the NAV, the BNY will subtract from the adjusted NAV the amount of accrued fees from the value of Trust assets. The BNY will calculate the NAV per share by dividing the NAV by the number of Gold Shares outstanding.

Availability of Information Regarding Gold Shares

The Web site for the Trust at *http://www.ishares.com,* which will be publicly accessible at no charge, will contain the following information about Gold Shares: (a) The prior business day's NAV, Basket Gold Amount, the reported closing price, and the present day's Indicative Basket Gold Amount; (b) the mid-point of the bid-ask price[28] in relation to the NAV as of the time the NAV is calculated (the ''Bid-Ask Price''); (c) calculation of the premium or discount of such price against such NAV; (d) data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges for each of the four (4) previous calendar quarters; (e) the Prospectus; and (f) other applicable quantitative information, such as expense ratios, trading volumes, and the total return of the Gold Shares.[29] The Exchange will provide a hyperlink on its Web site (*http://www.pacificex.com*), via the

[23] At the same time the BNY will also determine an ''Indicative Basket Gold Amount'' that Authorized Participants can use as an indicative amount of gold to be deposited for issuance of the Gold Shares on the next business day. The Trustee will disseminate daily the Indicative Basket Gold Amount on the Trust Web site. Because the creation/redemption process is based entirely on the physical delivery of gold (and does not contemplate a cash component), the actual number of fine ounces required for the Indicative Basket Gold Amount will not change intraday, even though the value of the Indicative Amount may change based on the market price of gold.

[24] The Trust's expense ratio, in the absence of any extraordinary expenses and liabilities, is established at 0.40% of the net assets of the Trust. As a result, the amount of gold by which the Basket Gold Amount will decrease each day will be predictable (*i.e.* 1/365th of the net asset value of the Trust multiplied by 0.40%).

[25] If the amount of gold corresponding to the Basket Gold Amount results in an amount that is less than a full gold bar denomination, the Authorized Participant has the ability to take and/or deliver fractional gold bar amounts. Telephone conversation between Tania Blanford, Staff Attorney, Regulatory Policy, PCX, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 18, 2005.

[26] If the total value of the Trust's gold held by the custodian exceeds $2 billion, then the custodian will be under no obligation to accept additional gold deliveries. In such a case, the Trustee will retain an additional custodian.

[27] As previously stated, the COMEX daily settlement price for each gold futures contract is established by a subcommittee of COMEX members shortly after the close of trading in New York. The daily settlement price for each contract (delivery month) is derived from the daily settlement price for the most active futures contract month that is not necessarily the spot month. This settlement price is the average of the highest and lowest priced trades reported during the last one (1) minute of trading during regular trading hours. For all other gold futures contract months (which may include the spot month), the settlement prices are determined by COMEX based upon differentials reflected in spread trades between adjacent months, such differentials being directly or indirectly related to the most active month. These differentials are the average of the highest and lowest spread trades (trades based upon the differential between the prices for two contract months) reported during the last fifteen (15) minutes of trading during regular trading hours. In the case that there were no such spread trades, the average of the bids and offers for spread transactions during that last fifteen (15) minute period are used. In the case where there are no bids and offers during that time, the contracts are settled at prices consistent with the differentials for other contract months that were settled by the first or second method. If the third method is used, the subcommittee of the COMEX members establishing those settlement prices provides a record of the differentials from other contract months that formed the basis for those settlements.

[28] The bid-ask price of Gold Shares is determined using the highest bid and lowest offer as of the time of calculation of the NAV.

[29] Telephone conversation between Tania Blanford, Staff Attorney, Regulatory Policy, PCX, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 19, 2005 (as to examples of ''other quantitative information'').

ArcaEx Web site (*http://www.archipelago.com*), to the Trust's Web site at *http://www.ishares.com.*[30]

The Exchange will also provide a hyperlink on its Web site (*http://www.pacificex.com*), via the ArcaEx Web site (*http://www.archipelago.com*), to the Amex Web site at *http://www.amex.com* on which Amex will make available daily trading volume, closing prices, and the NAV from the previous day of Gold Shares.[31] Amex will also disseminate during regular Amex trading hours from 9:30 a.m. to 4:15 p.m. New York time through the facilities of the Consolidated Tape Association (''CTA'') the last sale price for Gold Shares on a real-time basis.[32] In addition, Amex will disseminate each day the prior day's NAV and shares outstanding through the facilities of the CTA. Amex will also disseminate the Indicative Trust Value on a per Gold Share basis every 15 seconds through the facilities of the CTA during regular Amex trading hours of 9:30 a.m. to 4:15 p.m. New York time.[33] Shortly after 4 p.m. each business day, the BNY, Amex, and Barclays (Sponsor) will disseminate the NAV for the Gold Shares, the Basket Gold Amount (for orders placed during the day), and the Indicative Basket Gold Amount (for use by Authorized Participants contemplating placing orders the following business day). The Basket Gold Amount, the Indicative Basket Gold Amount, and the NAV are communicated by the BNY to all Authorized Participants via facsimile or electronic mail message and will be available on the Trust's Web site at *http://www.ishares.com.*

Information about Underlying Gold Holdings

There is a considerable amount of gold price and gold market information available on public Web sites and through professional and subscription services. In most instances, real-time information is only available for a fee, and information available free of charge is subject to delay (typically 20 minutes). The Exchange states that investors may obtain on a 24-hour basis gold pricing information based on the spot price for a troy ounce of gold from various financial information service providers, such as Reuters and Bloomberg. Reuters and Bloomberg provide at no charge on their Web sites delayed information regarding the spot price of gold and last sale prices of gold futures, as well as information about news and developments in the gold market. Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides information on gold prices directly from market participants. In addition, an organization named EBS provides an electronic trading platform to institutions such as bullion banks and dealers for the trading of spot gold, as well as a feed of live streaming prices to Reuters and Moneyline Telerate subscribers.

As previously stated, the Exchange states that complete real-time data for gold futures and options prices traded on the COMEX is available by subscription from Reuters and Bloomberg. The closing price and settlement prices of the COMEX gold futures contracts are publicly available from the NYMEX at *http://www.nymex.com,* automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. The NYMEX also provides delayed futures and options information on current and past trading sessions and market news free of charge on its Web site.

Criteria for Initial and Continued Listing

The Trust will be subject to the criteria in proposed PCXE Rule 8.201(e) for initial and continued trading of Gold Shares. The continued trading criteria provides for the removal from trading of the Gold Shares under any of the following circumstances:

(a) Following the initial twelve (12) month period from the date of commencement of trading of the Gold Shares: (i) If the Trust has more than sixty (60) days remaining until termination and there are fewer than fifty (50) record and/or beneficial holders of the Gold Shares for thirty (30) or more consecutive trading days; (ii) if the Trust has fewer than 50,000 Gold Shares issued and outstanding; or (iii) if the market value of all Gold Shares is less than $1,000,000.

(b) If the value of the underlying gold is no longer calculated or available on at least a 15 second delayed basis from a source unaffiliated with the sponsor, trust, custodian or the Exchange or the Exchange stops providing a hyperlink on its Web site to any such unaffiliated gold value.

(c) The Indicative Trust Value is no longer made available on at least a 15 second delayed basis.

(d) If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

ArcaEx Trading Rules and Policies

Gold Shares are equity securities subject to Exchange Rules governing the trading of equity securities, including among others, rules governing priority, parity and precedence of orders, and customer suitability (PCXE Rule 9.2). Initial equity margin requirements of 50% will apply to transactions in Gold Shares. Gold Shares will trade on ArcaEx during the Amex trading hours until 4:15 p.m. New York time, and will trade in a minimum price variation of $0.01 pursuant to PCXE Rule 7.6. Trading rules pertaining to odd-lot trading in Exchange equities (PCXE Rule 7.38) will also apply.[34]

Gold Shares will be deemed ''Eligible Securities,'' as defined in PCXE Rule 7.55(a)(3), for purposes of the Intermarket Trading System Plan and therefore will be subject to the trade-through provisions of PCXE Rule 7.56, which require that ETP Holders avoid initiating trade-throughs for ITS securities.

Unless exemptive or no-action relief is available, Gold Shares will be subject to the short sale requirements of Rule 10a–1 and Regulation SHO under the Act.[35] If exemptive or no-action relief is

[30] Telephone conversation between Tania Blanford, Staff Attorney, Regulatory Policy, PCX, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 19, 2005.

[31] *Id.*

[32] Telephone conversation between Tania Blanford, Staff Attorney, Regulatory Policy, PCX, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 19, 2005 (as to real-time dissemination of last sale price).

[33] The Indicative Trust Value will be calculated based on the estimated amount of gold required for creations and redemptions on that day (*e.g.*, Indicative Basket Gold Amount) and a price of gold derived from the most recently reported trade price in the active gold futures contract. The prices reported for the active contract month will be adjusted based on the prior day's spread differential between settlement values for that contract and the spot month contract. In the event that the spot month contract is also the active contract, the last sale price for the active contract will not be adjusted.

The Indicative Trust Value will not reflect changes to the price of gold between the close of trading at the COMEX, typically 1:30 p.m. New York time, and the open of trading on the NYMEX ACCESS market at 2 p.m. New York time. While the market for the gold futures is open for trading, the Indicative Trust Value can be expected to closely approximate the value per share of the Indicative Basket Gold Amount. The Indicative Trust Value on a per Gold Share basis disseminated during Amex trading hours should not be viewed as a real time update of the NAV, which is calculated only once a day.

[34] Rules applicable to the Amex Specialist trading of the Gold Shares, *e.g.*, Amex Rules 154, Commentary .04(c); 190; and 170, are not applicable to ETP Holders, functioning as market makers in the Gold Shares. Telephone conversation between Tania Blanford, Staff Attorney, Regulatory Policy, PCX, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 21, 2005.

[35] The Gold Trust has requested exemptive relief in connection with the trading of Gold Shares from the operation of certain short sale requirements of Rule 10a–1 and may seek no-action relief from Rule

provided, the Exchange will issue a notice detailing the terms of the exemption or relief.

PCXE has proposed Rule 8.201(g), which addresses potential conflicts of interest in connection with acting as a market maker in the Gold Shares. Specifically, Rule 8.201(g) will provide that an ETP Holder acting as a registered Market Maker in Commodity-Based Trust Shares is obligated to comply with PCXE Rule 7.26 pertaining to limitations on dealings when such Market Maker, or affiliate, engages in certain ''Other Business Activities.'' Such ''Other Business Activities'' will be deemed to include trading in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives. Pursuant to PCXE Rule 7.26, a Market Maker may engage in ''Other Business Activities'' only if there is an information barrier between the market making activities and the ''Other Business Activities.'' [36]

Surveillance

PCX represents that its surveillance procedures applicable to trading of Gold Shares on ArcaEx are adequate to deter manipulation and will be similar to those applicable to TIRs, exchange-traded funds (''ETFs'') currently trading on ArcaEx. In addition, the Exchange has entered into an Information Sharing Agreement with NYMEX for the purpose of providing information in connection with trading in or related to COMEX gold futures contracts.

Further, PCX has proposed new PCXE Rules 8.201(g)–(i), which set forth certain restrictions on ETP Holders acting as registered Market Makers in Commodity-Based Trust Shares to facilitate surveillance.[37] PCXE Rule 8.201(h) will require that the ETP Holder acting as a registered Market Maker in the Gold Shares provide the Exchange with information relating to its trading in physical gold, gold futures contracts, options on gold futures, or any other gold derivative.[38] PCXE Rule 8.201(i) will prohibit the ETP Holder acting as a registered Market Maker in the Gold Shares from using any material nonpublic information received from any person associated with an ETP Holder or employee of such person regarding trading by such person or employee in physical gold, gold futures contracts, options on gold futures, or any other gold derivatives (including the Gold Shares).[39] In addition, as stated above, PCXE Rule 8.201(g) will prohibit the ETP Holder acting as a registered Market Maker in the Gold Shares from being affiliated with a market maker in physical gold, gold futures, or options on gold futures unless adequate information barriers are in place, as provided in PCXE Rule 7.26.[40]

Information Circular

The Exchange will distribute an information circular (''Information Circular'') to its ETP Holders in connection with the trading of Gold Shares. The Information Circular will discuss the special characteristics and risks of trading this type of security. Specifically, the Information Circular, among other things, will discuss what the Gold Shares are, how a basket is created and redeemed, the requirement that ETP Holders deliver a prospectus to investors purchasing the Gold Shares prior to or concurrently with the confirmation of a transaction, applicable PCXE rules, dissemination information regarding the per share Indicative Trust Value, trading information, and applicable suitability rules. The Information Circular will also explain that the Gold Trust is subject to various fees and expenses described in the Registration Statement and that the number of ounces of gold required to create a basket or to be delivered upon redemption of a basket will gradually decrease over time because the Gold Shares comprising a basket will represent a decreasing amount of gold due to the sale of the Gold Trust's gold to pay Trust expenses. The Information Circular will also reference the fact that there is no regulated source of last sale information regarding physical gold and that the Commission has no jurisdiction over the trading of gold as a physical commodity.

The Information Circular will also notify ETP Holders about the procedures for purchases and redemptions of Gold Shares in baskets and that Gold Shares are not individually redeemable but are redeemable only in basket size aggregations or multiples thereof. The Information Circular will advise ETP Holders of their suitability obligations with respect to recommended transactions to customers in Gold Shares. The Information Circular will also discuss any relief, if granted, by the Commission or the staff from any rules under the Act.

The Information Circular will disclose that the NAV for Gold Shares will be disseminated shortly after 4 p.m. ET each trading day based on the COMEX daily settlement value, which is disseminated shortly after 1:30 p.m. ET each trading day.

Suitability

As stated, the Information Circular referenced above will inform ETP Holders of the characteristics of the Gold Trust and of applicable Exchange rules, as well as of the requirements of PCXE Rule 9.2.

Pursuant to PCXE Rule 9.2(a), every ETP Holder, through a general partner, a principal executive officer or a designated authorized person, shall use due diligence to learn the essential facts relative to every customer, every order, every account accepted or carried by such ETP Holder and every person holding power of attorney over any account accepted or carried by such ETP Holder.

Trading Halts

PCXE Rule 7.12 sets forth the trading parameters, *i.e.*, ''circuit breakers,'' applicable to Gold Shares during periods of extraordinary volatility. In addition to the parameters set forth in PCXE Rule 7.12, the Exchange will halt trading in Gold Shares if trading in the underlying COMEX gold futures contract is halted or suspended. Third, with respect to a halt in trading that is not specified above, the Exchange may also consider other relevant factors and the existence of unusual conditions or circumstances that may be detrimental to the maintenance of a fair and orderly market.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with

200(g) of Regulation SHO under the Act. *See* 17 CFR 240.10a–1; 17 CFR 240.200(g). The requested relief is currently pending with the Commission staff in the Division of Market Regulation. If granted, Gold Shares would be exempt from Rule 10a–1, permitting sales without regard to the ''tick'' requirements of Rule 10a–1. Rule 10a–1(a)(1)(i) provides that a short sale of an exchange-traded security may not be effected (i) below the last regular-way sale price (an ''uptick'') or (ii) at such price unless such price is above the next preceding different price at which a sale was reported (a ''zero-plus tick''). No-action relief from the marking requirements of Rule 200(g) of Regulation SHO would permit broker-dealers, subject to certain conditions, to mark short sales in the Gold Shares ''short,'' rather than ''short exempt.''

[36] Telephone conversation between Tania Blanford, Staff Attorney, Regulatory Policy, PCX, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on January 19, 2005.

[37] *See* Amendment No. 1, *supra* note 3. ETP Holders acting as registered Market Makers in Commodity-Based Trust Shares are not specialists. Nevertheless, to enhance PCX's surveillance capabilities, PCX has put in place the additional responsibilities set forth in PCXE Rules 8.201(g)–(i) to aid their surveillance of trading in this product.

[38] *Id.*

[39] *Id.*

[40] *Id.*

Section 6(b) of the Act,[41] in general, and furthers the objectives of Section 6(b)(5) of the Act,[42] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–PCX–2004–132 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–PCX–2004–132. 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 on PCX's Web site (*http://www.pacificex.com/legal/legal_pending.html*) and for inspection and copying at the principal offices of PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2004–132 and should be submitted on or before February 17, 2005.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the Act[43] and the rules and regulations thereunder applicable to a national securities exchange.[44]

A. Surveillance

Information sharing agreements with markets trading securities underlying a derivative product are an important part of a self-regulatory organization's ability to monitor for trading abuses in derivative products. Although an information sharing agreement with the OTC gold market is not possible, the Commission believes that the unique liquidity and depth of the gold market, together with the Exchange's information sharing agreement with NYMEX (of which COMEX is a division) and PCXE Rules 8.201(g)–(i) create the basis for PCX to monitor for fraudulent and manipulative practices in the trading of the Gold Shares.[45]

The OTC market for gold is extremely deep and liquid. The LBMA estimates that the monthly average daily volume figures published by the LBMA for 2003 range from a high of 19 million to a low of 13.6 million troy ounces per day.[46] In addition, COMEX figures for 2003 indicate that the average daily volume for gold futures contracts was 4.9 million ounces per day.[47]

Finally, PCXE Rule 8.201(h) will require that the ETP Holder acting as a registered Market Maker in the Gold Shares provide the Exchange with information relating to its trading in physical gold, gold futures contracts, options on gold futures, or any other gold derivative.[48] Although registered Market Makers on PCXE do not have the same informational advantages as specialists on Amex, the Exchange believes these reporting and record-keeping requirements will assist the Exchange in identifying situations potentially susceptible to manipulation. PCXE Rule 8.201(i) will prohibit the ETP Holder acting as a registered Market Maker in the Gold Shares from using any material nonpublic information received from any person associated with a member or employee of such person regarding trading by such person or employee in physical gold, gold futures contracts, options on gold futures, or any other gold derivatives (including the Gold Shares).[49] In addition, PCXE Rule 8.201(g) will prohibit the ETP Holder acting as a registered Market Maker in the Gold Shares from being affiliated with a market maker in physical gold, gold futures, or options on gold futures unless adequate information barriers are in place and approved by the Exchange.[50]

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[41] 15 U.S.C. 78f(b).

[42] 15 U.S.C. 78f(b)(5).

[43] 15 U.S.C. 78f(b).

[44] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[45] The Commission notes that it recently reached a similar conclusion with respect to a proposal by the New York Stock Exchange to list and trade trust shares that, as in the PCX proposal, correspond to a fixed amount of gold. *See* Securities Exchange Act Release No. 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004). In that recent order, the Commission noted that it had previously approved the listing and trading of foreign currency options, for which there is no self-regulatory organization or Commission surveillance of the underlying markets, on the basis that the magnitude of the underlying currency market militated against manipulations through inter-market trading activity. *See id.,* at 64619 (Securities Exchange Act Release Nos. 19133 (October 14, 1982) (approving the listing of standardized options on foreign currencies); 36505 (November 22, 1995) (approving the listing of dollar-denominated delivery foreign currency options on the Japanese Yen); and 36165 (August 29, 1995) (approving listing standards for, among other things, currency and currency index warrants).

[46] There are no authoritative published figures for overall worldwide volume in gold trading. The LBMA publishes statistics compiled from the six members offering clearing services. Information regarding clearing volume estimates by the LBMA can be found at *http://www.lbma.org.uk/clearing_table.htm.*

[47] Information regarding average daily volume estimates by the COMEX (a division of NYMEX) can be found at *http://www.nymex.com/jsp/markets/md_annual_volume6.jsp#2.* The statistics are based on gold futures contracts, each of which relates to 100 ounces of gold.

[48] *See* Amendment No. 1, *supra* note 3.

[49] *Id.*

[50] *Id.*

B. Dissemination of Information About the Gold Shares

The Commission finds that sufficient venues for obtaining reliable gold price information exist so that investors in the Gold Shares can adequately monitor the underlying spot market in gold relative to the NAV of their Gold Shares. As discussed more fully above, the Commission notes that there is a considerable amount of gold price and gold market information available 24 hours per day on public Web sites and through professional and subscription services. The PCX, via the ArcaEx Web site, will link to the Amex and Trust Web sites, which will provide trading information about the Gold Shares. For example, the Trustee will disseminate daily on the Trust Web site an estimated amount representing the Basket Gold Amount. The Amex will also disseminate through the CTA the Indicative Trust Value on a per share basis every 15 seconds during regular Amex trading hours of 9:30 a.m. to 4:15 p.m. New York time (except between 1:30 p.m. and 2 p.m., the time period from the close of regular trading of the COMEX gold futures contract and the start of trading of COMEX gold futures contracts on NYMEX ACCESS). The last sale price for Gold Shares will also be disseminated on a real-time basis through the facilities of CTA.

The Commission also notes that the Trust's Web site at *http://www.ishares.com* is and will be publicly accessible at no charge and will contain the NAV of the Gold Shares and the Basket Gold Amount as of the prior business day, the Bid-Ask Price, and a calculation of the premium or discount of the Bid-Ask Price in relation to the closing NAV. Additionally, the Trust's Web site will also provide data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges for each of the four previous calendar quarters, the Prospectus, and other applicable quantitative information. The Commission believes that dissemination of this information will facilitate transparency with respect to the Gold Shares and diminish the risk of manipulation or unfair informational advantage.

C. Listing and Trading

Further, the Commission finds that the Exchange's proposed rules and procedures for the listing and trading of the proposed Gold Shares are consistent with the Act. For example, Gold Shares will be subject to PCXE rules governing trading halts, responsibilities of the ETP Holders, and customer suitability requirements. In addition, the Gold Shares will be subject to PCXE Rule 8.201(e) for initial and continued trading of Gold Shares.

The Commission believes that listing and delisting criteria for the Gold Shares should help to maintain a minimum level of liquidity and therefore minimize the potential for manipulation of the Gold Shares. Finally, the Commission believes that the Exchange's Information Circular adequately will inform members and member organizations about the terms, characteristics, and risks in trading the Gold Shares.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**. The Exchange has requested accelerated approval because this product is similar to another product recently approved by the Commission for listing and trading on Amex.[51] The Commission believes that the Gold Shares will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the Gold Shares promptly. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[52] to approve the proposal, as amended, on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[53] that the proposed rule change (SR–PCX–2004–132), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[54]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–311 Filed 1–26–05; 8:45 am]

BILLING CODE 8010–01–P

[51] *See* Securities Exchange Act Release No. 51058 (January 19, 2005) (SR–Amex–2004–38), *supra,* note 9.

[52] 15 U.S.C. 78s(b)(2).

[53] *Id.*

[54] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4974]

Culturally Significant Objects Imported for Exhibition Determinations: ''Basquiat''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985; 22 U.S.C. 2459], Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition, ''Basquiat,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Brooklyn Museum, Brooklyn, New York, from on or about March 11, 2005, to on or about June 5, 2005, the Museum of Contemporary Art, Los Angeles, California, from on or about July 15, 2005, to on or about October 9, 2005, the Museum of Fine Arts, Houston, Texas, from on or about November 18, 2005, to on or about February 12, 2006, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information or a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, (202) 453–8052, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: January 21, 2005.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 05–1524 Filed 1–26–05; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4975]

Culturally Significant Objects Imported for Exhibition Determinations: ''Max Ernst: A Retrospective''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985; 22 U.S.C.

2459], Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition, ''Max Ernst: A Retrospective,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Metropolitan Museum of Art, New York, New York, from on or about April 4, 2005, to on or about July 10, 2005, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information or a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, (202) 453–8052, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: January 21, 2005.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 05–1525 Filed 1–26–05; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4976]

Culturally Significant Objects Imported for Exhibition Determinations: ''Toulouse-Lautrec and Montmartre''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Toulouse-Lautrec and Montmartre,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art, Washington, DC, from on or about March 26, 2005 to on or about June 12, 2005, and at the Art Institute of Chicago, Chicago, Illinois, from on or about July 16, 2005 to on or about October 10, 2005, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Wolodymyr R. Sulzynsky, the Office of the Legal Adviser, Department of State, (telephone: (202) 453–8050). The address is Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: January 19, 2005.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 05–1526 Filed 1–26–05; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4973]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Youth Leadership Program for Bosnia and Herzegovina

Announcement Type: New Grant.

Funding Opportunity Number: ECA/PE/C/PY–05–25.

Catalog of Federal Domestic Assistance Number: 00.000.

Key Dates:

Application Deadline: March 24, 2005.

Executive Summary: The Office of Citizen Exchanges, Youth Programs Division, of the Bureau of Educational and Cultural Affairs announces an open competition for Youth Leadership Program for Bosnia and Herzegovina. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to conduct a three- to four-week program in the United States focusing on leadership and civic education. The 18 participants will be secondary school students and teachers from Bosnia and Herzegovina.

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 the program above is provided through legislation.

Purpose: The Youth Leadership Program for Bosnia and Herzegovina has been implemented annually since 1999 by a partnership of the Office of Public Affairs (OPA) in the U.S. Embassy in Sarajevo and the U.S. grantee organization. Originally funded through the Support for East European Democracy (SEED) Act, it still holds the following as its key goals: (1) To provide a civic education program that helps the participants understand civic participation and the rights and responsibilities of citizens in a democracy; (2) to develop leadership skills among secondary school students appropriate to their needs; and (3) to build personal relationships among high school students and teachers from Bosnia and Herzegovina and the United States. A successful project will be one that nurtures a cadre of students and teachers to be actively engaged in addressing issues of concern in their schools and communities upon their return home and are equipped with the knowledge, skills, and confidence to become citizen activists.

Applicants should outline their capacity for doing projects of this nature, focusing on three areas of competency: (1) Provision of leadership and civic education programming, (2) age-appropriate programming for youth, and (3) work with individuals from Bosnia-Herzegovina or other areas that have experienced conflict and/or are emerging democracies. Applicants need not have a partner in Bosnia and Herzegovina, as the Office of Public Affairs (OPA) of the U.S. Embassy in Sarajevo will recruit and select the participants and provide a pre-departure orientation. The participants will be

recruited from selected cities in the Federation and in Republika Srpska.

Grants should begin in Summer 2005 and conclude approximately 16 months later, depending on when the applicant proposes to conduct follow-on activities.

The U.S. project activities should take place between February and May 2006. Applicants should propose the period of the exchange, but the exact timing of the project may be altered through the mutual agreement of the Department of State and the grant recipient. The program should be no less than three weeks and up to four weeks in duration.

The participants will be 15 high school students between the ages of 15 and 18 who have demonstrated leadership abilities in their schools and/or communities and who are high academic achievers, and three high school teachers who have demonstrated an interest in youth leadership and are expected to remain in positions where they can continue to work with youth. Participants will be proficient in the English language.

In pursuit of the goals outlined above, the program will include the following:

- A welcome orientation.
- Design and planning of activities that provide a substantive program on civic education and leadership through both academic and extracurricular components. Activities should take place in schools as much as possible and in the community. Community service and computer training will also be included. It is crucial that programming involve American participants wherever possible.
- Opportunities for the educators to work with their American peers and other professionals and volunteers to help them foster youth leadership, civic education, and community service programs at home.
- Logistical arrangements, homestays, disbursement of stipends/per diem, local travel, and travel between sites.
- A closing session to summarize the project's activities and prepare participants for their return home.
- Follow-on activities in Bosnia and Herzegovina after the participants have returned home designed to reinforce values and skills imparted during the U.S. program.

The proposal must demonstrate how the stated objectives will be met. The proposal narrative should also provide detailed information on the major program activities. Additional important program information and guidelines for preparing the narrative are included in the Project Objectives, Goals, and Implementation (POGI).

Programs must comply with J–1 visa regulations. Please refer to the other documents in the solicitation for further information.

II. Award Information

Type of Award: Grant Agreement.
Fiscal Year Funds: 2005.
Approximate Total Funding: $75,000.
Approximate Number of Awards: One.
Approximate Average Award: $75,000.
Anticipated Award Date: Pending availability of funds, the proposed start date is June 1, 2005.
Anticipated Project Completion Date: November 2006 (flexible).
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 that 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

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 $75,000 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.

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 Youth Programs Division, Office of Citizen Exchanges (ECA/PE/C/PY), U.S. Department of State, SA–44, 301 4th Street, SW., Room 568, Washington, DC 20547, telephone: (202) 203–7502, fax: (202) 203–7529, *NowlinJR@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/PE/C/PY–05–25 located at the top 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 Carolyn Lantz and refer to the Funding Opportunity Number, ECA/PE/C/PY–05–25, located at the top of this announcement 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 seven 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 Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the ''Responsible Officer'' for the program under the terms of 22 CFR part 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR part 62, organizations receiving grants under this RFGP will be third parties ''cooperating with or assisting the sponsor in the conduct of the sponsor's program.'' The actions of grantee program organizations shall be ''imputed to the sponsor in evaluating the sponsor's compliance with'' 22 CFR part 62. Therefore, the Bureau expects that any organization receiving a grant under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR part 62 *et seq.*

The Bureau of Educational and Cultural Affairs places great emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantee program organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should *explicitly state in writing* that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62. If your organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR part 62 *et seq.*, including the oversight of their 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.

The Office of Citizen Exchanges of 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.

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.)

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.

Budget Guidelines: The Bureau anticipates awarding one grant in an amount of approximately $75,000 to support program and administrative costs required to implement this program. Organizations with less than four years of experience in conducting international exchange programs are not eligible for this competition, since this program requires the expertise of an experienced organization that can demonstrate in its proposal narrative at least a four year track record in administering exchanges (see organizational capacity requirements under ''Purpose''). The Bureau encourages applicants to provide maximum levels of cost-sharing and funding from private sources in support of its programs.

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.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3e. *Submission Dates and Times:* Application Deadline Date: Thursday, March 24, 2005.

Explanation of Deadlines: In light of recent events and 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 six copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/PY–05–25, 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.3f. *Intergovernmental Review of Applications:* Executive Order 12372 does not apply to this program.

With the submission of the proposal package, please also submit the Executive Summary, Proposal Narrative, and Budget sections of the proposal as e-mail attachments in Microsoft Word and/or Excel to the program officer at *LantzCS@state.gov.* The Bureau will provide these files electronically to the Office of Public Affairs at the U.S. Embassy in Sarajevo for its review.

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. 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 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 the program idea:* Objectives should be reasonable, feasible, and flexible. The proposal should clearly demonstrate how the institution will meet the program's objectives and plan. The proposed program should be well developed, respond to design outlined in the solicitation, and demonstrate originality. It should be clearly and accurately written, substantive, and with sufficient detail.

2. *Program planning:* A detailed agenda and work plan should clearly

demonstrate how project objectives would be achieved. The agenda and plan should adhere to the program overview and guidelines described above. The substance of workshops, seminars, presentations, school-based activities, and/or site visits should be described in detail.

3. *Support of diversity:* The proposal should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity in program content. Applicants should demonstrate readiness to accommodate participants with physical disabilities.

4. *Institutional capacity and track record:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program goals. The proposal should demonstrate an institutional record, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by the Bureau's Office of Contracts. The Bureau will consider the past performance.

5. *Follow-on activities:* Proposals should provide a plan for a Bureau-supported follow-on visit by project staff to Bosnia and Herzegovina, plus a plan for continued follow-on activity, not necessarily with Bureau support, that insures that this program is not an isolated event.

6. *Project evaluation:* The proposal should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. The proposal should include a draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives. Please see Section IV.3d.3. of this announcement for more information.

7. *Cost-effectiveness and cost sharing:* The applicant should demonstrate efficient use of Bureau funds. 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. The proposal should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

8. *Value to U.S.-Bosnia and Herzegovina Relations:* The proposed project should receive positive assessments by the U.S. Department of State's geographic area desk and overseas officers of program need, potential impact, and significance in Bosnia and Herzegovina.

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* and *http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI.*

VI.3. Reporting Requirements

You must provide ECA with a hard copy original plus one copy of the following reports:

(1) Interim program and financial reports after each program phase.

(2) 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: Carolyn Lantz, Program Officer, Youth Programs Division, ECA/PE/C/PY, U.S. Department of State, 301 4th Street, SW., Room 568, Washington, DC 20547, telephone: (202) 203–7505, fax: (202) 203–7529, e-mail: *LantzCS@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C/PY–05–25.

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: January 19, 2005.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 05–1523 Filed 1–26–05; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 4977]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Partnerships for Learning (P4L) Thematic Youth Projects Initiative: Linking Individuals, Knowledge and Culture (LINC)

Announcement Type: New Grant.
Funding Opportunity Number: ECA/PE/C/PY–05–24.
Catalog of Federal Domestic Assistance Number: 00.000.
Key Dates:
Application Deadline: March 24, 2005.
Executive Summary: The Youth Programs Division, Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs, announces an open competition for projects under the P4L Thematic Youth Projects Initiative. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to implement projects for youth in the United States and countries with significant Muslim populations. These projects will involve an academic and cultural exploration of one of three themes and will promote mutual understanding through reciprocal exchanges of three- to six-weeks each.

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 the program above is provided through legislation.

Purpose: The Bureau of Educational and Cultural Affairs (ECA) and the Public Affairs Sections (PAS) of U.S. missions overseas are supporting the participation of youth in intensive, substantive exchanges under the P4L Thematic Youth Projects Initiative. This initiative encompasses cultural and civic exchanges as vehicles through which the successor generation can re-engage in a dialogue for greater understanding.

The Linking Individuals, Knowledge, and Culture (LINC) program is designed to foster mutual understanding between youth participants (ages 15–17) from the United States and from countries with significant Muslim populations through a three to six week reciprocal exchange program that will enhance the participants' knowledge of their host country's history, culture, and system of government. Projects will also be designed to foster dialogue and joint activities around one of three themes: (1) Religion, community, education, and political process; (2) governance, accountability, and transparency in civil society; or (3) conflict prevention and management. Through these people-to-people exchanges, the Bureau seeks to break down stereotypes that divide peoples, promote good governance, contribute to conflict prevention and management, and build respect for cultural expression and identity in a world that is experiencing rapid globalization.

The overarching goals of the P4L Thematic Youth Projects Initiative are:

1. To develop a sense of civic responsibility and commitment to enhancing cultural bridges among youth;
2. To promote mutual understanding between the United States and the people of other countries; and
3. To foster personal and institutional ties between participants and partner countries.

Each theme also has specific aims, as outlined below. Applicants should identify their own specific objectives and measurable outcomes based on these program goals and the project specifications provided in this solicitation.

ECA will accept proposals for either multiple-country or single-country projects. Applicants should present a rationale for a multiple-country application, and describe how participants from the various countries will interact with one another. Each application will be judged independently and proposals for a particular country or region will be compared only to proposals for the same country or region. Proposals that target countries/regions or themes not listed below will be deemed technically ineligible. No guarantee is made or implied that grants will be awarded in all themes and for all countries listed.

To qualify for these grants, a partner country must have a significant Muslim population (though the beneficiaries of the grant are in no way limited to the Muslim population) and must be in the following regions: The Middle East/North Africa, Sub-Saharan Africa, South Asia, and Southeast Asia; the only country in Europe/Eurasia that is eligible is Turkey. Programs with Afghanistan, Pakistan, and Iraq are restricted to one-way exchange visits to the United States. Organizations should consider U.S. Department of State travel advisories when selecting countries with which they would like to work.

Grants will support the travel of foreign students to the United States and Americans to the overseas partner countries. The minimum duration of stay is three weeks, but longer stays (up to six weeks) are possible under these grants. During the exchanges, the students will participate in activities designed to teach them about community life, citizen participation, and the culture of the host country. The program activities will introduce the visitors to the community—its leaders and institutions and the ways citizens participate in local government and the resolution of societal problems—and will include educational excursions that serve to enhance the visitors'' understanding of the history, culture, political institutions, ethnic diversity, and environment of the region. ECA requires participation in a community service project. Participants should also have opportunities to give presentations on their countries and cultures in community forums. Homestays will be the norm, although participants may spend a modest portion of their time as a group in a hotel or dormitory setting. *Note:* Delegations should have adults travel with them. These adults may be project staff, teachers, or chaperones. Applicants must demonstrate their capacity for conducting projects of this nature, focusing on three areas of competency: (1) Provision of programs aimed at achieving the goals and themes outlined in this document; (2) age-appropriate programming for the target audience; and (3) experience in working with the proposed partner country or countries. U.S. applicant organizations need to have the necessary capacity in the partner country, with either its own offices or a partner institution. The requisite capacity overseas includes the ability to recruit and select participants, organize substantive exchange activities for the American participants, provide follow-on activities, and handle the logistical and financial arrangements.

Themes: Applicants should select one of these themes for its program offering. Woven throughout the program activities should be guidance and training that help the youth participants develop leadership skills including, for

example, influential public speaking, team-building, critical thinking, and goal-setting, so that they are prepared to take action with what they have learned.

(1) *Religion, Community, Education, and Political Process:* ECA welcomes projects that will promote understanding of the role of religion and education in shaping community and political life in the United States and in participating countries. Proposed programs will promote greater communication among religious groups, students, and educators and will increase the participants' understanding of how community members and leaders interact in and influence society.

Programs should explore how religion and education can encourage openness, tolerance, respect, constructive dialogue, public service, and other ways to respect diversity while encouraging different communities to work together.

(2) *Governance, Accountability, and Transparency in Civil Society:* ECA welcomes proposals that will explore the issues of transparency, citizen involvement, and effective management in government and demonstrate how this can benefit government leaders, non-governmental entities, and individual citizens and promote economic wellbeing. Proposed programs will promote a respect for governance that is transparent and responsive to citizens' concerns and will increase understanding of ways that citizens can improve governance, fight corruption, and ensure accountability.

Projects should demonstrate for youth the principles of fair and transparent governance and should promote dialogue among youth on this theme. Projects must be culturally sensitive and address specific needs of the partner country or countries. Individual projects might have the young participants explore ways that a country's government, media, and NGOs can encourage and support the involvement of its citizenry, increase citizen trust, and expand the democratic process.

(3) *Conflict Prevention and Management:* Projects for this theme should educate youth about ways to prevent, manage, and resolve conflict. Proposed projects will help participants explore effective approaches for preventing and mitigating conflict between and within communities and will increase their understanding of the values underlying different conflict prevention and management techniques.

Proposals must demonstrate strong expertise in the target country and local community(ies) to address effectively the sensitive and competing interests of target populations. Applicants should demonstrate their knowledge of the community or groups experiencing conflict (ethnic, religious, border issues, environmental vs. business disputes, etc.) or that have the potential for conflict, and proposal narratives should outline specifically how the project will introduce dialogue and a serious exploration of conflict management approaches.

Guidelines: Grant periods should begin on or about July 1, 2005. The grant period may be between 12 and 18 months in duration.

The responsibilities of the grant recipient for each project will be:

(1) Recruitment and Selection

(a) Conduct an open, merit-based competition for exchange participants. The grantee organization and its overseas partner(s) will recruit, screen, and select the participants, in consultation with the Public Affairs Section (PAS) of American embassies or other USG representative offices overseas, with clearly identified criteria for the selection and a formal process. Students must be 15, 16, or 17 years of age at the time of the exchange, and should have at least one year of high school remaining after the exchange.

(b) Develop plans for outreach and recruitment of both students that will generate a strong pool of qualified candidates representing ethnic and socio-economic groups and geographic areas;

(c) Develop student application forms and an interview protocol, in consultation with ECA and our overseas representatives;

(d) Administer an effective English language screening process;

(e) Adult participants (such as teacher or community leaders who work with youth) may be selected to accompany the students on the exchange. We encourage the selection of adults who can contribute to the project theme and activities. We discourage allowing parents of exchange students to travel with them.

(f) Recommend the final participants and alternates (No invitations may be issued without ECA and/or PAS clearance).

(2) Preparation

(a) Contact participants before the program to provide them with program information, pre-departure materials, and to gather information about their specific interests;

(b) Facilitate the visa process, working with ECA and PAS;

(c) Conduct a pre-departure orientation for participants, including general and program-specific information;

(d) Make all round-trip international (complying with the Fly America Act) and domestic travel arrangements for the participants.

(3) Exchange Activities

(a) Design, plan, and implement an intensive and substantive three- to six-week long program on the stated themes. Exchange activities must promote program goals. Activities may be school- or community-based, as appropriate to the project.

(b) Recruit the participation of schools, volunteer and service organizations, local businesses, and local/state government agencies by providing a clear, written statement of program objectives, philosophy, and procedures;

(c) Recruit, screen and select local host families to offer homestays (lodging and meals) to the participants during their stay in the host community(ies) and to make other housing arrangements as needed;

(d) Orient host institutions, staff, and families to the goals of the program and to the cultures and sensitivities of the visitors;

(e) Arrange appropriate community, cultural, social, and civic activities, and make provisions for religious observance;

(f) Engage both foreign and U.S. participants in at least one community service activity (*e.g.*, visit to a food bank, a park clean-up) during their exchanges. The program should provide context for the participants—identifying community needs, volunteerism, charitable giving, etc.—and a debriefing so that the service activity is not an isolated event and helps participants see how they would apply the experience at home.

(g) Provide day-to-day monitoring of the program, preventing and dealing with any misunderstandings or adjustment issues that may arise;

(h) Provide a closing session to summarize the project activities, prepare participants for their return home, and to plan for the future.

(4) Follow-on Activities

(a) Conduct follow-on activities with program alumni, such as seminars and other gatherings and the provision of materials, to reinforce values and skills imparted during the exchange program and to help them apply what they have learned to serve their schools and communities;

(b) Applicants may present creative and effective ways to address the project themes, for both program participants and their peers, as a means to amplify the program impact. Follow-on

activities should be funded by both the Bureau grant and other non-Bureau sources.

(5) Work in consultation with ECA and PAS in the implementation of the program, provide timely reporting of progress to ECA and PAS, and comply with financial and program reporting requirements;

(6) Manage all financial aspects of the program, including stipend disbursements to the participants and management of sub-grant relationships with partner organizations;

(7) Design and implement an evaluation plan that assesses the impact of the program (See section IV.3d.3).

Proposal Contents: In the 20 page, one-sided, double-spaced narrative, please describe the proposed project in detail, including the themes, guidelines, and responsibilities outlined above. We recommend using the following outline to organize your narrative. Refer to the proposal review criteria in this document for further guidance.

(1) Vision.

(a) Statement of the applicant's objectives as they relate to the Department's goals.

(b) Measurable outcomes.

(2) Country selection—Provide an explanation for the selection of countries for inclusion in this program.

(3) Program Activities—Describe the recruitment, selection, orientation, and exchanges (thematic and academic elements, cultural activities, participant monitoring, logistics). Include a sample itinerary.

(4) Diversity—Describe how various aspects of the program (selection, exchange activities, etc.) will promote an understanding of geographic, ethnic, and socioeconomic diversity in the U.S. and the partner countries.

(5) Follow-on Activities—Describe programming provided for exchange alumni.

(6) Multiplier effect—Describe how the program design will ensure that the effects of the exchange activities extend to individuals beyond those who travel.

(7) Program Evaluation Plan—Describe the design and methodology.

(8) Organization Capacity and Program Management—Describe the organization and program staffing (identify individuals and their responsibilities, both in the U.S. and overseas), structure, and resources. Indicate plan for working with ECA and PAS.

(9) Work Plan/Time Frame.

Please include any attachments in Tab E of your proposal. Limit the attachments to those essential for completing an understanding of the proposal.

Programs must comply with J–1 visa regulations. Please refer to the Solicitation Package for further information.

II. Award Information

Type of Award: Grant Agreement.
Fiscal Year Funds: 2005.
Approximate Total Funding: $1,150,000.
Approximate Number of Awards: 5–10.
Floor of Award Range: $50,000.
Ceiling of Award Range: $250,000.
Anticipated Award Date: July 1, 2005.
Anticipated Project Completion Date: 12–18 months after start date, to be specified by applicant based on project plan.
Additional Information: Pending successful implementation of the projects and the availability of funds in subsequent fiscal years, ECA reserves the right to renew grants for up to two additional fiscal years before openly competing grants under this program 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 that 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

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

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 Youth Programs Division, ECA/PE/C/PY, U.S. Department of State, SA–44, 301 4th Street, SW., Room 568, Washington, DC 20547, (202) 203–7502, Fax (202) 203–7529, E-mail *NowlinJR@state.gov* to request a Solicitation Package. Please refer to the Program Title and the Funding Opportunity Number (ECA/PE/C/PY–05–24) located at the top 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.

Please specify Bureau Program Officer Carolyn Lantz and refer to the Funding Opportunity Number located at the top of this announcement 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 eight 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 form that 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 Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the ''Responsible Officer'' for the program under the terms of 22 CFR part 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR part 62, organizations receiving grants under this RFGP will be third parties ''cooperating with or assisting the sponsor in the conduct of the sponsor's program.'' The actions of grantee program organizations shall be ''imputed to the sponsor in evaluating the sponsor's compliance with'' 22 CFR part 62. Therefore, the Bureau expects that any organization receiving a grant under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR part 62 *et seq.*

The Bureau of Educational and Cultural Affairs places great emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantee program organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should *explicitly state in writing* that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62. If your organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR part 62 *et seq.*, including the oversight of their 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.

The Office of Citizen Exchanges of 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.

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.)

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.3e. Budget Guidelines. Please take the following information into consideration when preparing your budget.

IV.3e.1. Applicants must submit a comprehensive budget for the entire program. Grant requests must not be less than $50,000 nor greater than $250,000. Eligible organizations with less than four years of experience in conducting international exchange programs will be limited to a grant maximum of $60,000. There are no specific country allocations. The Bureau anticipates awarding multiple grants; the exact number of grants will be based on the number and quality of the submitted proposals. 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. Proposal budgets must include 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.

Suggested program costs include, but are not limited to, the following:

- Staff travel.
- Participant travel (international, domestic, local ground transportation).
- Orientation.
- Cultural activities.
- Food and lodging.
- Follow-on activities.
- Evaluation.
- Stipends or allowances.
- Justifiable expenses directly related to program activities.

Consultants may be used to provide specialized expertise or to make presentations. Honoraria should not exceed $250 per day. Organizations are encouraged to cost-share any rates that exceed that amount.

Please note that there are no fees for the J–1 visas that foreign participants will use to enter the United States; there may be visa fees for the U.S. travelers. Applicants should budget for travel to the nearest U.S. embassy or consulate for visa interviews.

Exchange participants will be enrolled in the Bureau's Accident and Sickness Program for Exchanges (ASPE). Applicants need not include travel insurance costs in their budgets.

While there is no rigid ratio of administrative to program costs, the Bureau urges applicants to keep administrative costs as low and reasonable as possible. Proposals should show strong administrative cost sharing contributions from the applicant, the in-country partner, and other sources.

Please refer to the PSI for allowable costs and complete budget guidelines and formatting instructions.

IV.3f. Submission Dates and Times: Application Deadline Date: Thursday, March 24, 2005.

Explanation of Deadlines: In light of recent events and 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, one fully-tabbed copy, and seven copies of the application with Tabs A–E (for a total of 9 copies, bound with large binder clips) should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/PY–05–24, 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.

With the submission of the proposal package, please also submit the Executive Summary, Proposal Narrative, and Budget sections of the proposal as e-mail attachments in Microsoft Word and/or Excel to the program officer at *LantzCS@state.gov*. The Bureau will provide these files electronically to the Public Affairs Sections at the relevant U.S. embassies for their review.

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. 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 grants 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 the program idea:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission. Proposals should display an understanding of the goals of the program. Exchange activities should ensure efficient use of program resources. Proposals will demonstrate a commitment to excellence and creativity in the implementation and management of the program. Proposed projects should receive positive assessments by the U.S. Department of State's geographic area desk and overseas officers of program need, potential impact, and significance in the partner countries.

2. *Program planning:* Objectives should be reasonable, feasible, flexible, and respond to the priorities outlined in this announcement. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan. A detailed agenda and relevant work plan will demonstrate substantive undertakings and logistical capacity. The agenda and plan should adhere to the program overview and guidelines described above and will show the timetable by which major tasks will be completed. The substance of workshops and exchange activities should be described in detail and included as an attachment. The responsibilities of partner organizations will be clearly delineated.

3. *Support of diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

4. *Institutional capacity:* Applicants should demonstrate knowledge of each country's educational environment and the capacity to recruit, select, and orient U.S. and foreign exchange students. Proposals should include (1) the institution's mission and date of establishment; (2) detailed information about proposed in-country partners; (3) an outline of prior awards for work in the region; and (4) descriptions of experienced personnel who will implement the program. Institutional resources should be adequate and appropriate to achieve the project's goals. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

5. *Project evaluation:* Proposals should include a plan and methodology to evaluate the project's successes and challenges, both as the activities unfold and at the end of the program. The evaluation plan should show a clear link between program objectives and expected outcomes, and should include a description of performance indicators and measurement tools. Applicants should provide draft questionnaires or other techniques for use in surveying participants to facilitate the demonstration of results. Applicants will indicate their willingness to submit periodic progress reports in accordance with the program office's expectations.

6. *Follow-on and sustainability:* Proposals should provide a strategy for the use of alumni to work together to further the impact of the program both within the context of the grant (with Bureau support) and after its completion (without the Bureau's financial support).

7. *Multiplier effect:* The program design should include efforts to expand the impact of the exchanges beyond just those who travel. Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and the establishment of long-term institutional and individual linkages.

8. *Cost-effectiveness/Cost sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. While lower ''per participant'' figures will be more competitive, the Bureau expects all figures to be realistic. All other items should be necessary and appropriate. Proposals should maximize cost sharing through other private sector support as well as institutional direct funding contributions.

VI. Award Administration Information

VI.1a. 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* and *http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI*.

VI.3. Reporting Requirements

You must provide ECA with a hard copy original plus one copy of the following reports:

(1) A final program and financial report no more than 90 days after the expiration of the award;

(2) Interim reports, as required in the Bureau grant agreement.

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.

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. The ECA Program Officer must receive final schedules for in-country and U.S. activities at least three working days prior to the official opening of the activity.

VII. Agency Contacts

For questions about this announcement, contact: Carolyn Lantz, Program Officer, Youth Programs Division, ECA/PE/C/PY, Room 568, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, (202) 203–7505, fax (202) 203–7529, e-mail *LantzCS@state.gov*.

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C/PY–05–24.

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: January 19, 2005.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 05–1527 Filed 1–26–05; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 4933]

Announcement of Meetings of the International Telecommunication Advisory Committee

SUMMARY: The International Telecommunication Advisory Committee will meet in February, March, April, and May to prepare for meetings of CITEL Permanent Consultative Committee I (PCC I), CITEL Permanent Executive Committee (COM/CITEL) and ITU World Telecommunication Development Conference (WTDC) Regional Preparatory Meetings. Members of the public will be admitted to the extent that seating is available, and may join in the discussions, subject to the instructions of the Chair.

The International Telecommunication Advisory Committee (ITAC) will meet on Wednesday, February 23, 2005, 2 p.m.–4 p.m., at a location in the Washington, DC area to prepare for the April meeting of CITEL Permanent Consultative Committee I (Telecommunication Standardization). Other meetings will be held on March 9, March 23 and April 5. A detailed agenda will be published on the e-mail reflector *pcci-citel@eblist.state.gov.* People desiring to attend the meeting who are not on this list may request the information from the Secretariat at *minardje@state.gov.*

The International Telecommunication Advisory Committee (ITAC) will meet on Wednesday, April 27, Monday, May 9 and Wednesday, May 25, 2–4 p.m. at a location in the Washington, DC area, to prepare for meetings of CITEL's Permanent Executive Committee (COM/CITEL)from June 1–3, 2005. A detailed agenda will be published on the e-mail reflector *pcci-citel@eblist.state.gov* and *pccii-citel@eblist.state.gov.* People desiring to attend the meeting who are not on these lists may request the information from the Secretariat at *minardje@state.gov.*

The International Telecommunication Advisory Committee (ITAC) will meet on Thursday, February 10, March 3, March 17 and March 31, from 10 a.m.–12 p.m. All four meetings will be at the Department of State, Room 2533A, 2201 C Street, Washington, DC. There will be no conference bridge. Entrance to the Department of State is controlled; people intending to attend a meeting at the Department of State should send their clearance data by fax to (202) 647–7407 or e-mail to *mccorklend@state.gov* not later than 24 hours before the meeting. Please include the name of the meeting, your name, social security number, date of birth and organizational affiliation. One of the following valid photo identifications will be required for admittance: U.S. driver's license with your picture on it, U.S. passport, or U.S. Government identification. Directions to the meeting location may be obtained by calling the ITAC Secretariat at 202 647–2592 or e-mail to *mccorklend@state.gov.*

Dated: January 18, 2005.

Anne Jillson,

Foreign Affairs Officer, International Communications and Information Policy, Department of State.

[FR Doc. 05–1522 Filed 1–26–05; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property Monroe Regional Airport, Monroe, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invites public comment on the release of land at Monroe Regional Airport under the provisions of section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before February 11, 2005.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Lacey D. Spriggs, Manager, Federal Aviation Administration, Southwest Region, Airports Division, Louisiana/New Mexico Airports Development Office, ASW–640, Forth Worth, Texas 76193–0640.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mayor James E. Mayo at the following address: Office of the Mayor, 400 Lee Joyner Expressway, Monroe, LA 71202.

FOR FURTHER INFORMATION CONTACT: Lacey P. Spriggs, Manager, Federal Aviation Administration, LA/NM

Airports Development Office, ASW–640, 2601 Meacham Blvd., Forth Worth, Texas 76193–0640.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: THe FAA invites public comment on the request to release property at the Monroe Regional Airport under the provisions of the AIR 21.

On January 10, 2005, the FAA determined that the request to release property at Monroe Regional Airport submitted by the City of Monroe met the procedural requirements of the Federal Aviation Regulations, part 155. The FAA may approve the request, in whole or in part, no later than February 14, 2005.

The following is a brief overview of the request:

The City of Monroe, Louisiana, requests the release of 1.0 acre of airport property. The release of property will allow for construction of a new facility to house a radio station and office space for Media Ministries, Inc., to proceed. The sale is estimated to provide $33,000.00 whereas the proceeds will go for construction of various projects to include but not limited to a Department of Environmental Quality-approved washrack for aircraft and/or airport equipment, fencing to prevent entrance of wildlife and dump truck for maintenance of safety and drainage areas.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Monroe Regional Airport, Monroe, Louisiana.

Issued in Forth Worth, Texas on January 10, 2005.

Rich Marinelli,

Acting Manager, Airports Division.

[FR Doc. 05–1470 Filed 1–26–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity To Self-Correct Annual Authorizations for Commercial Air Tour Operators Over National Parks and Tribal Lands Within or Abutting National Parks

AGENCY: Federal Aviation Administration (FAA).

ACTION: Notice

SUMMARY: On October 25, 2002, the Federal Aviation Administration (FAA) published the final rule for Title 14, Code of Federal Regulations (14 CFR) part 136, National Parks Air Tour Management (67 FR 65662). The rule became effective on January 23, 2003. In accordance with the provisions of the National Parks Air Tour Management Act of 2000, the final rule stated that the commercial air tour operators granted interim operating authority (IOA) would be published in the **Federal Register** for notice and the opportunity for comment. Based on information received from multiple sources and our own review, the FAA believes there may be some errors in the number of commercial air tours initially reported to the FAA. Thus, the FAA believes it is in the public interest to provide an opportunity for air tour operators to review and self-correct their annual authorizations prior to issuing the statutorily required notice. This notice announces the self-correcting opportunity and procedure. Responses should be provided to the contact person below by February 21, 2005.

FOR FURTHER INFORMATION CONTACT: Gene Kirkendall, Air Transportation Division (AFS–200W), Flight Standards Service, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–8166; e-mail: *Gene.Kirkendall@FAA.GOV.*

SUPPLEMENTARY INFORMATION: On October 25, 2002, the FAA published a final rule in Title 14, Code of Federal Regulations (14 CFR) part 136, National Parks Air Tour Management (67 FR 65662) to fulfill the mandate of The National Parks Air Tour Management Act of 2000 (the Act), enacted on April 5, 2000. This final rule (part 136) completed the definition of ''commercial air tour operation'' by establishing the altitude (5,000 feet above ground level) below which an operator flying over a national park for the purpose of sightseeing would be classified as a commercial air tour operator. The rule also codified provisions of the Act. In accordance with 14 CFR 136.7(b), before commencing commercial air tour operations over a unit of the national park system, or tribal lands within or abutting a national park, a commercial air tour operator is required to apply to the Administrator for authority to conduct the operations over the park or tribal lands. Title 14 CFR 136.11(a) states that upon application, the Administrator shall grant interim operating authority (IOA) to a commercial air tour operator for commercial air tour operations over a national park or tribal land for which the operator is an existing commercial air tour operator. Consistent with the Act, 14 CFR 136.11(b)(3) also states that IOAs granted under that section would be published in the **Federal Register** to provide notice and opportunity for comment.

Based on information received from multiple sources and our own review, the FAA believes there may be some errors in the number of commercial air tours initially reported. Consequently, prior to issuing this required notice, the FAA wants to provide an opportunity for air tour operators to review and correct, if necessary, the FAA's current IOA database. There are several reasons why errors could have unintentionally occurred, such as: (1) Operators were not required to keep records of the number of commercial air tours conducted over national parks prior to the adoption of the Act; (2) there was a 2½-year time lapse between the passage of the Act and the effective date of the rule; and (3) there appears to have been confusion over how to report information, especially for operators flying over more than one park. With regard to the third reason, a number of operators reported operations for more than one park by stating the number of total flights and then listing the parks separately. This alone may have led to over-reporting the number of commercial air tours over national parks.

Thus, the FAA has issued individual letters to each operator in the FAA's Air Tour database notifying them that they should confirm and correct if necessary, their allocation numbers for each park by February 21, 2005. If the operator notices that the number of allocations granted over a park as shown in their operations specifications is incorrect, they should notify the FAA by letter or e-mail of the correct amount. Self-correcting letters may be sent to Gene Kirkendall, Air Transportation Division, AFS–200W, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, or e-mailed to *Gene Kirkendall@faa.gov.* There is no penalty for self-correcting. Any operator not receiving an individual letter from the FAA is hereby noticed through publication that they should confirm their commercial air tour interim operating authority allocations. Operators also should notify the contact person in this notice if they did not receive an individual letter. Operators not submitting a change will be deemed to have confirmed the number originally reported to the FAA and issued as IOAs.

When confirming status and the number of flights issued for each operator, please keep in mind the following principles:

(1) Only operators that conducted operations at any time during the 12-month period prior to April 5, 2000 (the date of enactment of the Act), qualify as existing operators. Only operators reporting to us as existing operators should have received IOA. In situations where an operator has a question about its existing operator status, it should contact its local Flight Standards District Office (FSDO) and receive confirmation from the FSDO as to its status. The FAA has received several questions regarding corporations that qualified as existing air tour operators and then experienced a change in business management during the time lapse. Whether these operators qualify as existing operators will be decided on a case-by-case basis by the FAA.

(2) The number to be published in the **Federal Register** must reflect only the number of commercial air tour flights conducted by an operator over a particular park within either (1) the 12-month period prior to April 5, 2000; or (2) the average number of flights per 12-month period for the 3-year period prior to April 5, 2000, and for seasonal operations, the number of flights so used during the season or seasons covered by that 12-month period. The number should not include desired increases above the allowed historical number of new entrant requests. Operators should not have received increases or new entrant authority through this IOA grant. Such requests will be handled through a separate process by FAA and the National Park Service.

(3) Operators should receive an IOA that reflects the actual number of commercial air tours that were conducted during the relevant time period set forth in the statute and the rule. Operators needing to self-correct should identify each park and the number of flights for each park, including whether the flight was part of a circuit, and if so, what parks were included in that circuit. For instance, operators flying over more than one park between takeoff and landing should identify those flights as circuit tours. Thus, if the operator flew over three parks during the same flight (takoff to landing) in 100 flights, then the operator should specify this to the best of its ability. If the operator flew 100 flights with each flight going over one park of three different authorized parks, then the operator should so specify.

Operators are hereby notified that after February 21, 2005, the FAA will prepare a final listing of all existing commercial air tour operators receiving IOAs and the number of flights per park and publish the revised list in the **Federal Register** for comment, as required by statute. If comments are received in response to that publication that provide substantive information that an operator does not qualify under the law as an existing operator or has erroneously reported the number of flights flown over a park, the FAA may investigate and take corrective action, if necessary, to bring the operator into compliance with the law.

As operator reexamine their records for confirmation in response to this letter, they are encouraged to keep supporting information in their files in case questions subsequently arise that merit investigation. Operators may voluntarily provide such supporting information at this time to FAA but are not required to do so.

The IOA information provided to the FAA will be used solely to determine and confirm the appropriate allocation for IOAs and will not be used to determine noise impacts to national park resources.

Dated: Issued in Washington, DC on January 19, 2005.

John M. Allen,

Acting Director, Flight Standards Service.

[FR Doc. 05–1471 Filed 1–26–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 05–10–C–00–PLN To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Pellston Regional Airport, Pellston, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Pellston Regional Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before February 28, 2005.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Detroit Airports District Office, 1677 South Wayne Road, Suite 107, Romulus, Michigan 48174.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Kelly Atkins, Airport Manager of the Pellston Regional Airport at the following address: U.S. 31 North, Pellston, Michigan 49769.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Pellston Regional Airport under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Jason Watt, Program Manager, FAA, Detroit Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174, (734) 229–2906. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Pellston Regional Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On January 7, 2005, the FAA determined that the application to impose and use the revenue from a PFC submitted by Pellston Regional Airport was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 7, 2005.

The following is a brief overview of the application.

Proposed charge effective date: July 1, 2011.

Proposed charge expiration date: July 1, 2013.

Level of the proposed PFC: $4.50.

Total estimated PFC revenue: $280,750.

Brief description of proposed projects: Apron Expansion to the North, Terminal Area Drainage Improvements, Reconstruction of Apron, Animal Control/Security Fencing, Parking Lot Rehabilitation and Reconfiguration, Snow Removal Equipment, Land Acquisition for Ely Road, Relocation of Ely Road, Master Plan Study, Purchase Generator, Apron Expansion to the South, and Expansion of Terminal Building.

Class or classes of air carriers, which the public agency has requested, not be required to collect PFCs: Air Taxi/Commercial Service Operators filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Pellston Regional Airport.

Issued in Des Plaines, Illinois on January 18, 2005.

Elliott Black,

Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 05–1472 Filed 1–26–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: St. Clair County, MI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for proposed improvements to the United States Port of Entry plaza for the Blue Water Bridge in St. Clair County, Michigan.

FOR FURTHER INFORMATION CONTACT: Mr. James Kirschensteiner, Assistant Division Administrator, Federal Highway Administration, 315 W. Allegan Street, Room 201, Lansing, Michigan 48933, telephone: (517) 702–1835.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Michigan Department of Transportation (MDOT) is preparing an Environmental Impact Statement (EIS) to evaluate alternatives for potential improvements to the United States Border Plaza at the Blue Water Bridge. Invitations are being sent to other Federal agencies to become cooperating agencies in the development of the environmental impact statement for he subject project.

The Blue Water Bridge is a major passenger and commercial border crossing between the United States and Canada and is the termination point for I–94/I–69 in the United States and for Highway 402 in Canada. MDOT owns and operates the Blue Water Bridge in conjunction with the Canadian Blue Water Bridge Authority (BWBA). MDOT also owns and operates the Blue Water Bridge Border Plaza. Several agencies of the Department of Homeland Security (DHS) operate on the United States Plaza. These agencies are responsible for inspecting vehicles, goods, and people entering the United States and include: the Bureau of Customs and Border Protection (CBP), the United States Department of Agriculture (USDA), and the Food and Drug Administration (FDA). The inspection agencies lease facilities on the United States Plaza from MDOT through the General Services Administration (GSA), which serves as the Federal-leasing agent. MDOT collects tolls from vehicles departing the United States for Canada on the plaza.

The study area is located within the City of Port Huron and Port Huron Township. The study area consists of approximately 30 blocks (195 acres) of urban land use surrounding the existing plaza and ramps, and its extends to the west along I–94/I–69 for approximately 2.2 miles. The study areas includes the existing plaza, the Black River Bridge, the Water Street interchange, and locations for off-site inspection facilities, located north of I–94/I–69 and west of the Water Street interchange.

In September 2002, this project started as an Environmental Assessment (EA) and has proceeded through the scoping phase, Purpose and Need documentation, and alternatives development. Two resource agency meetings and three public information meetings were held during this time. As a result of identified potentially significant impacts, FHWA and MDOT have concluded that an Environmental Impact Statement should be completed.

A range of plaza and transportation improvement alternatives will be analyzed within the recommended study area. Reasonable alternatives under consideration include: (1) Taking no-action, (2) expanding the existing plaza location in the City of Port Huron, and (3) Relocating the major plaza functions to off-site plaza location in Port Huron township.

Agencies and citizen involvement will continue to be solicited throughout this process. A public meeting and a public hearing will be held on the Draft Environmental Impact Statement (DEIS). Public notice will be given of the time and place of the hearing. The DEIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments of questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: January 12, 2005.

James J. Steele,

Division Administrator, Lansing, Michigan.

[FR Doc. 05–1556 Filed 1–26–05; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms, and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** notice with a 60-day comment period was published on August, 11, 2004, Volume 69, Number 154, page numbers 48906 and 48907.

This document describes two collections of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be submitted on or before February 28, 2005.

FOR FURTHER INFORMATION CONTACT: Michael J. Jordan, National Highway Traffic Safety Administration (NVS–216), 400 Seventh Street, SW., (Room 2318), Washington, DC 20590. Mr. Jordan's telephone number is (202) 493–0576.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: Voluntary Child Safety Seat Registration Form.

OMB Control Number: 2127–0576.

Type of Request: Renewal of an Existing Collection of Information.

Abstract: Chapter 301 of Title 49 of the United States provides that if either NHTSA or a manufacturer determines that motor vehicles or items of motor vehicle equipment contain a defect that relates to motor vehicle safety or fail to comply with an applicable Federal Motor Vehicle Safety Standard, the manufacturer must notify owners and purchasers of the defect or noncompliance and must provide a

remedy without charge. Pursuant to 49 CFR Part 577, defect and noncompliance notification for equipment items, including child restraint systems (CRS), must be sent by first class mail to the most recent purchaser known to the manufacturer. To increase the likelihood that CRS manufacturers will be aware of the identity of purchasers, NHTSA adopted S5.8 of Federal Motor Vehicle Safety Standard No. 213, to require manufacturers to include a postage-paid form with each CRS so the purchaser can register with the manufacturer. In addition to the registration form supplied by the manufacturer, NHTSA has implemented a CRS registration system to assist those individuals who have either lost the registration form that came with the CRS or purchased a previously owned CRS. In the absence of a registration system, many owners of child passenger safety seats would not be notified of safety defects and noncompliance issues, and would not have the defects and noncompliance issues remedied, because the manufacturer would not be aware of their identities.

Affected Public: Individuals and Households.

Estimated Total Annual Burden: 567 hours.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued on: January 19, 2005.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 05–1466 Filed 1–26–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2005–20132]

Federal Motor Vehicle Safety Standards; Lives Saved by the Federal Motor Vehicle Safety Standards and Their Costs; Technical Reports

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for comments on technical reports.

SUMMARY: This notice announces NHTSA's publication of three technical reports estimating how many lives have been saved by vehicle safety technologies meeting the Federal Motor Vehicle Safety Standards, and their costs. The reports' titles are: *Lives Saved by the Federal Motor Vehicle Safety Standards and Other Vehicle Safety Technologies, 1960–2002, Passenger Cars and Light Trucks; Cost and Weight Added by the Federal Motor Vehicle Safety Standards for Model Years 1968–2001 in Passenger Cars and Light Trucks;* and *Cost Per Life Saved by the Federal Motor Vehicle Safety Standards.*

DATES: Comments must be received no later than May 27, 2005.

ADDRESSES: *Report:* The entire reports are available on the Internet for viewing on line in PDF format, and their summaries in HTML format at *http://www.nhtsa.dot.gov/cars/rules/regrev/evaluate.* You may also obtain copies of the reports free of charge by sending a self-addressed mailing label to Charles Kahane (NPO–131), National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

Comments: You may submit comments (identified by DOT DMS Docket Number NHTSA–2005–20132) by any of the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- 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.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

You may call Docket Management at (202) 366–9324 and visit the Docket from 10 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Charles Kahane, Chief, Evaluation Division, NPO–131, National Center for Statistics and Analysis, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2560. Fax: (202) 366–2559. E-mail: *ckahane@nhtsa.dot.gov.*

For information about NHTSA's evaluations of the effectiveness of existing regulations and programs: Visit the NHTSA Web site at *http://www.nhtsa.dot.gov/cars/rules/regrev/evaluate.*

SUPPLEMENTARY INFORMATION: NHTSA began to evaluate the effectiveness of its Federal Motor Vehicle Safety Standards (FMVSS) in 1975. By October 2004, NHTSA had evaluated the effectiveness of virtually all the life-saving technologies introduced in passenger cars or in light trucks (including pickup trucks, sport utility vehicles and vans) from about 1960 up through the later 1990's. A statistical model estimates the number of lives saved from 1960 to 2002 by the combination of these life-saving technologies. Fatality Analysis Reporting System (FARS) data for 1975–2002 document the actual crash fatalities in vehicles that, especially in recent years, include many safety technologies. Using NHTSA's published effectiveness estimates, the model estimates how many people would have died if the vehicles had not been equipped with any of the safety technologies. In addition to equipment meeting specific FMVSS, the model tallies lives saved by installations in advance of the FMVSS, back to 1960, and by non-compulsory improvements, such as the redesign of mid and lower instrument panels. FARS data have been available since 1975, but an extension of the model allows estimates of lives saved in 1960–1974.

Vehicle safety technologies saved an estimated 328,551 lives from 1960 through 2002. The annual number of lives saved grew quite steadily from 115 in 1960, when a small number of people used lap belts, to 24,561 in 2002, when most cars and light trucks were equipped with numerous modern safety technologies and belt use on the road achieved 75 percent.

NHTSA likewise began to evaluate the cost of the FMVSS in 1975. Detailed engineering ''teardown'' analyses for representative samples of vehicles

estimate how much specific FMVSS add to the weight and the retail price of a vehicle. This process is also known as ''reverse engineering.'' By July 2004, NHTSA had evaluated virtually all the cost- and weight-adding technologies introduced by 2001 in passenger cars or in light trucks in response to the FMVSS. The agency estimated the cost and weight added by all the FMVSS, and by each individual FMVSS, to model year 2001 passenger cars and light trucks, and also in all earlier model years, back to 1968. NHTSA estimates that the FMVSS added an average of $839 (in 2002 dollars) and 125 pounds to the average passenger car in model year 2001. Approximately four percent of the cost and four percent of the weight of an average new passenger car could be attributed to the FMVSS. An average of $711 (in 2002 dollars) and 86 pounds was added to the average light truck in model year 2001. Approximately three percent of the cost and two percent of the weight of an average new truck could be attributed to the FMVSS.

NHTSA has evaluated both the life-saving benefits and the consumer cost for a substantial ''core'' group of safety technologies for passenger cars and light trucks. In 2002, these technologies added an estimated $11,353,000,000 (in 2002 dollars) to the cost of new cars and light trucks of that model year. They saved an estimated 20,851 lives in the cars and light trucks on the road during that calendar year. That amounts to $544,482 per life saved in 2002.

How Can I Influence NHTSA's Thinking on This Subject?

NHTSA welcomes public review of the technical report and invites reviewers to submit comments about the data and the statistical methods used in the analyses. NHTSA will submit to the Docket a response to the comments and, if appropriate, additional analyses that supplement or revise the technical report.

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the Docket number of this document (NHTSA–2005–20132) in your comments.

Your primary comments must not be more than 15 pages long (49 CFR 553.21). However, you may attach additional documents to your primary comments. There is no limit on the length of the attachments.

Please send two paper copies of your comments to Docket Management, submit them electronically, fax them, or use the Federal eRulemaking Portal. The mailing address is U.S. Department of Transportation Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. If you submit your comments electronically, log onto the Dockets Management System Web site at *http://dms.dot.gov* and click on ''Help'' to obtain instructions. The fax number is 1–202–493–2251. To use the Federal eRulemaking Portal, go to *http://www.regulations.gov* and follow the online instructions for submitting comments.

We also request, but do not require you to send a copy to Charles Kahane, Evaluation Division, NPO–131, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW., Washington, DC 20590 (alternatively, fax to (202) 366–2559 or e-mail to *ckahane@nhtsa.dot.gov*). He can check if your comments have been received at the Docket and he can expedite their review by NHTSA.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, send three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NCC–01, National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street, SW., Washington, DC 20590. Include a cover letter supplying the information specified in our confidential business information regulation (49 CFR part 512).

In addition, send two copies from which you have deleted the claimed confidential business information to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit them electronically.

Will the Agency Consider Late Comments?

In our response, we will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES.** To the extent possible, we will also consider comments that Docket Management receives after that date.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

How Can I Read the Comments Submitted by Other People?

You may read the comments by visiting Docket Management in person at Room PL–401, 400 Seventh Street, SW., Washington, DC from 10 a.m. to 5 p.m., Monday through Friday.

You may also see the comments on the Internet by taking the following steps:

A. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov*).

B. On that page, click on ''Simple Search.''

C. On the next page (*http://dms.dot.gov/search/searchFormSimple.cfm/*) type in the five-digit Docket number shown at the beginning of this Notice (20132). Click on ''Search.''

D. On the next page, which contains Docket summary information for the Docket you selected, click on the desired comments. You may also download the comments.

Authority: 49 U.S.C. 30111, 30168; delegation of authority at 49 CFR 1.50 and 501.8.

Joseph S. Carra,

Associate Administrator for the National Center for Statistics and Analysis.

[FR Doc. 05–1467 Filed 1–26–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–04–18975; Notice No. 04–009]

Safety Advisory: Unauthorized Marking of Compressed Gas Cylinders

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Safety advisory notice.

SUMMARY: This is to notify the public that RSPA has determined that a number of DOT specification compressed gas cylinders seized by the State of Maine, Department of Environmental Protection (MDEP), may have been marked as requalified in

accordance with the HMR when the cylinders were not subjected to testing. During property seizure proceedings, MDEP took possession of numerous cylinders owned by Harry J. Smith, Jr., and his daughter, Dawn Smith, of Meddybemps, Maine, in accordance with a state mandated environmental clean-up of the Smiths' property. RSPA has gathered evidence that suggests the high-pressure DOT specification industrial gas cylinders owned by the Smiths may have been marked, certified and returned to service when the cylinders had not been properly requalified in accordance with the Hazardous Materials Regulations (HMR).

A hydrostatic retest and visual inspection are used to verify the structural integrity of compressed gas cylinders. If a hydrostatic retest and visual inspection are not performed within the time period required by the HMR, cylinders with compromised structural integrity may be returned to service when they should be condemned. Extensive property damage, serious personal injury, or death could result from rupture of a cylinder.

SUPPLEMENTARY INFORMATION: Through its investigation, RSPA believes that an undetermined number of DOT specifications cylinders owned by the Smiths may have been marked as having been requalified in accordance with the HMR, without being properly requalifed by an authorized retest facility. The HMR require that a cylinder requalification facility hold a current Retester Identification Number (RIN) issued by RSPA. The Smiths have never applied for or received a RIN, therefore they are not an authorized cylinder requalification facility.

Cylinders in the Smiths' possession were marked as having been requalified years after the corresponding RIN numbers had expired. RINs that expire and are not renewed by the authorized holder are never reissued to any other party. So far, RSPA discovered at least four examples of expired RIN markings during the course of its investigation. These RINs are as follows: (1) RIN B773, which expired on August 28, 1995 and was not renewed by the RIN holder, was marked on a cylinder represented as having been requalified in June 1999 and on a cylinder represented as having been requalified in July 1999; (2) RIN B775, which expired on December 4, 1991 and was not renewed, was marked on a cylinder represented as having been requalified in August 1999; (3) RIN B872, which expired on July 31, 1995 and was not renewed, was marked on cylinders represented as having been requalified in May 2000, May 2001, July 2001 and January 2002; and (4) A012, which expired on November 7, 1998 and was not renewed, was marked on a cylinder represented as having been requalified in September 1999.

The RIN and date of retest are marked on the shoulders of cylinders in the following pattern:

A 8

M Y

30

M is the month of retest (*e.g.*, 12), and Y is the year of the retest (*e.g.*, 04).

A RIN is read in a clockwise manner. For example, the above RIN pattern is for RIN A803.

This safety advisory covers all high-pressure DOT specification cylinders obtained from the Smiths or serviced by the Smiths at any time in the past. These cylinders may pose a safety risk to the public and should be considered unsafe for use in hazardous materials service until requalified by an authorized retest facility. Furthermore, cylinders described in this safety advisory must not be filled with a hazardous material unless the cylinders are first properly retested by an authorized retest facility. A list of authorized requalification facilities sorted by state or by RIN number may be obtained at RSPA's Web site: *http://hazmat.dot.gov/files/approvals/hydro/hydro_retesters.htm*.

FOR FURTHER INFORMATION CONTACT: Anthony Lima, Senior Hazardous Materials Enforcement Specialist, Eastern Region, Office of Hazardous Materials Enforcement, Research and Special Programs Administration, U.S. Department of Transportation, 820 Bear Tavern Road, Suite 306, West Trenton, NJ 08628. Telephone: (609) 989–2252.

Issued in Washington, DC on January 21, 2005.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 05–1507 Filed 1–26–05; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 656]

Motor Carrier Bureaus—Periodic Review Proceeding

AGENCY: Surface Transportation Board.

ACTION: Changes to prior notice issued in this proceeding and extension of filing dates.

SUMMARY: The Surface Transportation Board is correcting its notice served on December 13, 2004, and published in the **Federal Register** on December 17, 2004, to inform the public that Board authorization has not expired for the bureau agreements of two motor carrier rate bureaus—the Nationwide Bulk Trucking Association, Inc., and the Machinery Haulers Association, Inc. The Board is also amending its procedural schedule set forth in that notice to extend the deadlines for filing comments, by approximately 2 weeks, as shown below.

DATES: Opening comments may be filed by the motor carrier bureaus and any interested member of the public by March 2, 2005. Reply comments may be filed by April 1, 2005. Rebuttal comments may be filed by April 21, 2005.

ADDRESSES: Any filing submitted in this proceeding must refer to STB Ex Parte No. 656 and must be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should comply with the instructions found on the Board's *http://www.stb.dot.gov* Web site, at the ''E-FILING'' link. Any person submitting a filing in the traditional paper format should send an original and 10 paper copies of the filing (and also an IBM-compatible floppy disk with any textual submission in any version of either Microsoft Word or WordPerfect) to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. Because all comments will be posted to the Board's Web site, persons filing them with the Board need not serve them on other participants but must furnish a hard copy on request to any participant.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 565–1609. (Federal Information Relay Service for the hearing impaired: 1–800–877–8339.)

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. 13703, the Board may authorize motor carriers (including motor carriers of passengers and household goods) to enter into ''bureau'' agreements for the collective establishment of rates, fares,

classifications, and certain ancillary activities. Board authorization immunizes activities taken under the approved agreements from the antitrust laws. Under section 13703(c), the Board must, every 5 years, institute a proceeding to review the motor carrier bureau agreements previously approved under section 13703 and shall change the conditions of approval of an agreement or terminate it when necessary to protect the public interest. Invoking this provision in a notice served on December 13, 2004, and published in the **Federal Register** at 69 FR 75597 on December 17, 2004, the Board commenced the statutorily required review proceeding.

In its notice, the Board expressed a desire to update its records as to which bureaus are still operating. The Board stated that its records indicate that approvals for the agreements of the following bureaus have expired for lack of timely compliance with the conditions on renewal imposed by the Board during the prior review cycle: [1] Machinery Haulers Association, Inc.; Motor Carriers Traffic Association; Nationwide Bulk Trucking Association, Inc.; New England Motor Rate Bureau; and Willamette Tariff Bureau, Inc. The Board asked each affected bureau to notify the agency if its records are incorrect.

On December 29, 2004, two of the aforementioned bureaus—the Nationwide Bulk Trucking Association, Inc., and the Machinery Haulers Association, Inc.—filed information showing that the Board's prior assessment of their compliance status was incorrect and that, therefore, Board authorization of their bureau agreements has not expired. By this notice, the Board is notifying the public that its records have been corrected to show that the antitrust immunity for these bureaus continues in force.

Concerning the extension of the deadlines for comments, the Board is taking this action at the request of the National Motor Freight Traffic Association and its subsidiary, the National Classification Committee, by motion filed on January 6, 2005. They state that the extension is necessary to provide sufficient time to make sure that their comments properly reflect the views of their members.

[1] In *EC–MAC Motor Carriers Service Association, Inc., et al.*, STB Section 5a Application No. 118 (Sub-No. 2), *et al.* (STB served Oct. 16, 2003), the Board summarily approved the agreements of certain bureaus after noting their full compliance with the required conditions, and, for other bureaus, the Board listed the specific steps required for individual bureau compliance.

Board filings, decisions, and notices are available on its Web site at *http://www.stb.dot.gov*.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: January 19, 2005.

By the Board, Chairman Nober, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams,

Secretary.

[FR Doc. 05–1401 Filed 1–26–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 19, 2005.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before February 28, 2005, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1624.

Notice Number: Notice 98–52.

Regulation Project Number: REG–108639–99 Final.

Type of Review: Extension.

Title: Notice 98–52 Cash or Deferred Arrangements: Nondiscrimination; REG–108639 Final Retirement Plans; Cash or Deferred Arrangements Under Section 401(k) and Matching Contributions or Employee Contributions Under Section 401(m).

Description: Section 1433(a) of the Small Business Job Protection Act of 1996 requires that the Service provide nondiscriminatory safe harbors with respect to section 401(k)(12) and section 401(m)(11) for plan years beginning after December 31, 1998. This notice implements that statutory requirement.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 60,000.

Estimated Burden Hours Respondent: 1 hour, 20 minutes.

Frequency of response: On occasion.

Estimated Total Reporting Burden: 80,000 hour.

OMB Number: 1545–1640.

Regulation Project Number: REG–104492–98 NPRM.

Type of Review: Extension.

Title: Mark to Market Accounting for Dealers in Commodities and Traders in Securities or Commodities.

Description: The collection of information in this proposed regulation is required by the Internal Revenue Service to determine whether an exemption from mark-to-market treatment is properly claimed. This information will be used to make that determination upon audit of taxpayers' books and records. The likely record keepers are businesses or other for-profit institution.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents: 1,000.

Estimated Burden Hours Respondent: 1 hour.

Estimated Total Reporting Burden: 1,000 hours.

OMB Number: 1545–1739.

Form Number: IRS Forms 9460 and 9477.

Type of Review: Extension.

Title: Tax Forms Inventory Report.

Description: These forms are designed to collect tax forms inventory information from post offices, libraries, and other entities that distribute federal tax forms. Data is collected detailing the quantities and types of tax forms remaining at the end of the filing season. This data is combined with shipment data for each account and used to establish forms distribution guidelines for the following year. Source data is collected to verify that the different entities received tax forms with the correct code.

Respondents: Business or other for-profit, Not-for-profit institutions, Federal Government.

Estimated Number of Respondents: 14,000.

Estimated Burden Hours Respondent: Form 9460—10 minutes, Form 9477—15 minutes.

Frequency of response: Annually.

Estimated Total Reporting Burden: 1 hour.

OMB Number: 1545–1770.

Regulation Project Number: REG–115054–01.

Type of Review: Extension.

Title: REG–115054–01 Final Treatment of Community Income for Certain Individuals Not Filing Join Returns.

Description: The regulations provide rules to determine how community income is treated under section 66 for certain married individuals in community property states who do not file joint individual Federal income tax returns. The regulations also reflect changes in the law made by the IRS Restructuring and Reform Act of 1998.

Respondents: Individuals or households.

Estimated Number of Respondents: 1.

Estimated Burden Hours Respondent: 1 hour.

Frequency of response: On occasion.

Estimated Total Reporting Burden: 1 hour.

OMB Number: 1545–1896.

Form Number: IRS Form 13551.

Type of Review: Extension.

Title: Application to Participate in the IRS Acceptance Agent Program.

Description: Form 13551 is used to gather information to determine applicant's eligibility in the Acceptance Agent Program.

Respondents: Business or other for-profit, Not-for-profit institutions, Federal Government, State, Local, or Tribal Government.

Estimated Number of Respondents: 12,825.

Estimated Burden Hours Respondent: 30 minutes.

Frequency of response: On occasion.

Estimated Total Reporting Burden: 6,413.

Clearance Officer: Paul H. Finger (202) 622–4078 , Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 05–1510 Filed 1–26–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: Financial Institution Agreement and Application Forms for Designation as a Treasury Tax and Loan Depositary and Resolution

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the forms ''Financial Institution Agreement and Application Forms for Designation as a Treasury Tax and Loan Depositary and Resolution.''

DATES: Written comments should be received on or before March 28, 2005.

ADDRESSES: Direct all written comments to Financial Management Service, 3700 East West Highway, Records and Information Management Program Staff, Room 135, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Laura Carrico, Treasury Investment Program Team, 401 14th Street, SW., Room 303F, Washington, DC 20227, (202) 874–7119.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below:

Title: Financial Institution Agreement and Application Forms for Designation as a Treasury Tax and Loan Depositary and Resolution.

OMB Number: 1510–0052.

Form Number: FMS 458 and FMS 459.

Abstract: Financial institutions are required to complete an Agreement and Application to participate in the Federal Tax Deposit/Treasury Tax and Loan Program. The approved application designates the depositary as an authorized recipient of taxpayers' deposits for Federal taxes.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 450.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 225.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: January 21, 2005.

Gary Grippo,

Assistant Commissioner, Federal Finance.

[FR Doc. 05–1528 Filed 1–26–05; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Homeless Veterans; Cancellation of Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the previously announced meeting for the Advisory Committee on Homeless Veterans scheduled for February 16–19, 2005, in San Juan, Puerto Rico, has been cancelled.

If there are any questions on the cancellation notice or comments on issues affecting homeless veterans, please contact Mr. Peter Dougherty, Designated Federal Officer, at (202) 273–5764. Written comments can be sent to the Committee at the following address: Advisory Committee on Homeless Veterans, Homeless Veterans Programs Office (075D), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: January 19, 2005.

By direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 05–1542 Filed 1–26–05; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Professional Certification and Licensure Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Professional Certification and Licensure Advisory Committee has

scheduled a meeting for Friday, February 18, 2005, at the Department of Veterans Affairs, Veterans Benefits Administration. The meeting will be held in conference room 542, 1800 G Street, NW., Washington, DC, from 8:30 a.m. to 4 p.m. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the requirements of organizations or entities offering licensing and certification tests to individuals for which payment for such tests may be made under chapters 30, 32, 34, or 35 of title 38, United States Code.

The meeting will begin with opening remarks by Ms. Sandra Winborne, Committee chair. During the morning session, there will be a presentation on the usage of the license and certification test reimbursement benefit; a discussion about possible outreach activities; and old business. The afternoon session will include any statements from the public; old business, and any new business.

Interested persons may file written statements to the Committee before the meeting, or within 10 days after the meeting, with Mr. Giles Larrabee, Designated Federal Officer, Department of Veterans Affairs, Veterans Benefits Administration (225B), 810 Vermont Avenue, NW., Washington, DC 20420. Oral statements from the public will be heard at 1 p.m. on February 18, 2005. Anyone wishing to attend the meeting should contact Mr. Giles Larrabee or Mr. Michael Yunker at (202) 273–7187.

Dated: January 19, 2005.

By direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 05–1543 Filed 1–26–05; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of amendment to system of records.

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e), notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records entitled ''National Prosthetic Patient Database (NPPD)–VA'' (33VA113) as set forth in the **Federal Register**, 40 FR 38095 (Aug. 26, 1975) and last amended in the **Federal Register**, 66 FR 20033–34 (Apr. 18, 2001). VA is amending the Routine Uses of Records Maintained in the System, including Categories of Users and the Purposes of Such Uses. VA is republishing the system notice in its entirety.

DATES: Comments on the amendment of this system of records must be received no later than February 28, 2005. If no public comment is received, the amended system will become effective February 28, 2005.

ADDRESSES: Written comments concerning the proposed amended system of records may be submitted by: Mail or hand-delivery to Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; fax to (202) 273–9026; or e-mail to *VAregulations@mail.va.gov*. All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: Veterans Health Administration (VHA) Privacy Act Officer (19F2), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (727) 320–1839.

SUPPLEMENTARY INFORMATION: Information in this system of records is used to furnish administrative and clinical statistical procurement and prescription information, including total cost and summary of activity, including equipment usage, data to VA and other health care providers, both Federal and non-Federal, to aid in furthering the improvement of health care, research and education. The National Prosthetic Patient Database (NPPD) will generate data to provide ad-hoc reporting for clinical and management departments; provide insight into stations' purchasing practices and utilization of contracts; improve budget management; conduct reviews of prescribing practices/best practices; help to develop consistency in the way that service is provided; and help to establish consistent policies and procedures.

VA is amending the following routine use disclosures of information to be maintained in the system:

- Routine use number one (1) is being amended in its entirety. VA must be able to disclose information within its possession on its own initiative that pertains to a violation of law to the appropriate authorities in order for them to investigate and enforce those laws. VA may disclose the names and home addresses of veterans and their dependents only to Federal entities with law enforcement responsibilities under 38 U.S.C. 5701(a) and (f). Accordingly, VA has so limited this routine use as follows:

> VA may disclose information on its own initiative any information in this system, except the names and home addresses of veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, state, local, tribal or foreign agency charged with the responsibility of investigating or prosecuting such violations, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

The Privacy Act permits VA to disclose information about individuals without their consent for a routine use when the information will be used for a purpose that is compatible with the purpose for which we collected the information. In the routine use disclosure described above, the recipient of the information will use the information in connection with a matter relating to one of VA's programs or to provide a benefit to VA, or, alternatively, disclosure is required by law or would permit VA to notify appropriate entities about conduct of individuals in this system of records.

Under section 264, Subtitle F of Title II of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. 104–191, 100 Stat. 1936, 2033–34 (1996), the United States Department of Health and Human Services (HHS) published a final rule, as amended, establishing Standards for Privacy of Individually-Identifiable Health Information, 45 CFR Parts 160 and 164. VHA may not disclose individually-identifiable health information (as defined in HIPAA, 42 U.S.C. 1320(d)(6), and corresponding Privacy Rule, 45 CFR 164.501) pursuant to a routine use unless either: (a) The disclosure is required by law, or (b) the disclosure is also permitted or required by the HHS Privacy Rule. The disclosures of individually-identifiable health information contemplated in the routine uses published in this amended system of records notice are permitted under the Privacy Rule. However, to also have authority to make such disclosures under the Privacy Act, VA

must publish these routine uses. Consequently, VA is publishing these routine uses and is adding a preliminary paragraph to the routine uses portion of the system of records notice stating that any disclosure pursuant to the routine uses in this system of records notice must be either required by law or permitted by the Privacy Rule before VHA may disclose the covered information.

The Report of Intent to Publish an Amended System of Records Notice and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB, 61 FR 6428, (Feb. 20, 1996).

Approved: January 7, 2005.

Anthony J. Principi,

Secretary of Veterans Affairs.

33VA113

SYSTEM NAME:

National Prosthetic Patient Database (NPPD)–VA.

SYSTEM LOCATION:

Records are maintained in Department of Veterans Affairs (VA) medical center databases. Extracts are maintained at the Austin Automation Center (AAC), Austin, Texas, and Hines Information Service Center, Hines, Illinois. VA health care facility address locations are listed in VA Appendix I of the Biennial Privacy Act Issuances publication.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Contracted fabricators of prosthetic and orthotic appliances; vendors and manufacturers of durable medical equipment and sensory-neural aids; medical supply companies; VA beneficiaries; and VA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

VA field facility ordering the orthotic device; Patient Identification Number; Health Care Financing Administration Common Procedure Coding System (HCPCS); item purchased/issued to patient; cost; quantity; type of issue (initial/replace/repair/spare); patient eligibility category (service-connected, prisoner of war, aid and attendance); responsible VA procurement officer or representative; order creation date; order close/delivery date; calculated processing days; transaction/purchase order number; type of form used to purchase item (VAF 2421, PC2421, VAF 2529, VAF 2914, etc.); and vendor/contractor name. All other patient information, *i.e.*, name, address, telephone number, can be retrieved by prosthetic program officials in VA Central Office by using the unique Patient Identification Number assigned to the patient in NPPD.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, Section 527.

PURPOSE(S):

The records or information in this system will be used to furnish administrative and clinical statistical procurement and prescription information, including total cost and summary of activity, including equipment usage, data to VA and other health care providers, both Federal and non-Federal, to aid in furthering the improvement of health care, research and education.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

VA may disclose protected health information pursuant to the following routine uses where required by law, or required or permitted by 45 CFR Parts 160 and 164.

1. VA may disclose on its own initiative any information in this system, except the names and home addresses of veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

2. To furnish administrative and clinical statistical procurement and prescription information, including total cost and summary of activity, including equipment usage, data to VA and other health care providers, both Federal and non-Federal, to aid in furthering the improvement of health care, research and education.

3. To provide statistical and other information in response to legitimate and reasonable requests as approved by appropriate VA authorities.

4. Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

5. Disclosure may be made to National Archives and Records Administration (NARA) and General Services Administration (GSA) in records management inspections conducted under authority of Title 44 United States Code.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Compact and magnetic disk.

RETRIEVABILITY:

Indexed by Patient Identification Number for VA prosthetic personnel.

SAFEGUARDS:

1. Access to VA working and storage areas is restricted to VA employees on a ''need to know'' basis. Generally, VA file areas are locked after normal duty hours and are protected from outside access by the Federal Protective Service. Strict control measures are enforced to ensure that disclosure is limited to a ''need to know'' basis. Physical access to the AAC is generally restricted to AAC staff, Central Office employees, custodial personnel, Federal Protective Service and authorized operational personnel through electronic locking devices. All other persons gaining access to the computer rooms are escorted.

2. Access to computer rooms at health care facilities is generally limited by appropriate locking devices and restricted to authorized VA employees and vendor personnel. Automated data processing peripheral devices are placed in secure areas (areas that are locked or have limited access) or are otherwise protected. Information in the Veterans Health Information System and Technology Architecture (VistA) may be accessed by authorized VA employees. Access to file information is controlled at two levels; the systems recognize authorized employees by a series of individually-unique passwords/codes as a part of each data message, and the employees are limited to only that information in the file which is needed in the performance of their official duties. Access to information stored on automated storage media at other VA locations is controlled by individually-unique passwords/codes.

RETENTION AND DISPOSAL:

Regardless of the record medium, records will be maintained and disposed of in accordance with the record disposition authority approved by the Archivist of the United States under National Archives Job No. N1–15–01–4.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Consultant, Prosthetic and Sensory Aids Service Strategic Healthcare Group (113), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

NOTIFICATION PROCEDURE:

Individuals seeking information concerning the existence and content of a record pertaining to themselves must submit a written request or apply in person to the VA health care facility where they received the orthotic/prosthetic device/appliance/equipment. All inquiries must reasonably identify the records involved and the approximate date that medical care was provided. Inquiries should include the individual's full name, and identifying characteristics.

RECORD ACCESS PROCEDURES:

Individuals seeking information regarding access to and contesting of a VA prosthetic-related record may write, call, or visit the VA facility where medical care was provided.

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures above.)

RECORD SOURCE CATEGORIES:

VistA-VA (79VA19), Patient Medical Records-VA (24VA19), and veterans' records.

[FR Doc. 05–1541 Filed 1–26–05; 8:45 am]

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Federal Register

Thursday,

January 27, 2005

Part II

Department of Homeland Security

8 CFR Part 214

Petitions for Aliens to Perform Temporary Nonagricultural Services or Labor (H–2B); Proposed Rule

Department of Labor

Employment and Training Adminstration

20 CFR Part 655

Post-Adjudication Audits of H–2B Petitions in All Occupations Other Than Excepted Occupations in the United States; Proposed Rule

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 214

[DHS No. 2004–0033]

RIN 1615–AA82

Petitions for Aliens To Perform Temporary Nonagricultural Services or Labor (H–2B)

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Proposed rule.

SUMMARY: An H–2B alien is someone who comes temporarily to the United States to perform temporary nonagricultural labor or services. The Department of Homeland Security (DHS), after consulting with the Department of Labor (DOL) and the Department of State (DOS), is proposing significant changes to its regulations that are designed to increase the effectiveness of the H–2B nonimmigrant classification. This proposed rule will facilitate use of the H–2B program by United States employers who are unable to find United States workers to perform the temporary labor or services for which the H–2B nonimmigrant is sought. Through this proposed rule, DHS has created a one-step application process whereby certain U.S. employers seeking H–2B temporary workers now will only be required to file one application—the Form I–129, Petition for Nonimmigrant Worker, which will include a modified H supplement containing certain labor attestations. With limited exceptions, U.S. employers will no longer need to file for or receive a labor certification from the Department of Labor. In addition, DHS is reducing significantly the paper-based application process by now requiring that most Form I–129 petitions (including the H supplement) be submitted to USCIS electronically, through e-filing. DHS anticipates that this one-step process and the e-filing will enhance the effectiveness of the H–2B program, reduce costs and delays associated with separate USCIS petition adjudication and DOL labor certification processes, and will match a U.S. employer with a qualified H–2B worker in a more timely fashion. Finally, this proposed rule makes changes that will maintain the integrity of the program through enforcement mechanisms while retaining the current definition of the word ''temporary'' in 8 CFR 214.2(h)(6)(ii) in order to ensure continued availability of the program to its traditional users. These proposals will increase the efficiency of the program by eliminating certain regulatory barriers, and improve Government coordination.

DATES: Written comments must be submitted on or before February 28, 2005.

ADDRESSES: You may submit comments, identified by RIN 1615–AA82 or DHS Docket DHS–2004–0033 by one of the following methods:

- EPA Federal Partner EDOCKET Web site: *http://www.epa.gov/feddocket*. Follow the instructions for submitting comments on the Web site.
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E-mail: *rfs.regs@dhs.gov*. When submitting comments electronically, please include RIN 1615–AA82 or DHS–2004–0033 in the subject line of the message.
- Mail/Hand-delivered/Courier: Director, Regulatory Management Division, Department of Homeland Security, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529.

Instructions: All submissions received must include the DHS–2004–0033 or RIN 1615–AA82. All comments received will be posted without change to *http://www.epa.gov/feddocket*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document below.

Docket: For access to the docket to read background documents or comments received, go to *http://www.epa.gov/feddocket*. You may also access the Federal eRulemaking Portal at *http://www.regulations.gov*. Submitted comments may also be inspected at Regulatory Management Division, Department of Homeland Security, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC, Monday through Friday, except Federal holidays. Arrangements to inspect submitted comments should be made in advance by calling (202) 514–3291.

FOR FURTHER INFORMATION CONTACT: Kevin J. Cummings, Adjudications Officer, Office of Program and Regulation Development, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529, telephone (202) 353–8177.

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. DHS also invites comments that relate to the economic, environmental, or federalism affects that might result from this proposed rule. Comments that will provide the most assistance to DHS in developing these procedures will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change. See **ADDRESSES** above for information on how to submit comments.

What Is an H–2B Nonimmigrant?

Section 101(a)(15)(h)(ii)(b) of the Immigration and Nationality Act (Act) describes an H–2B alien as an alien coming temporarily to the United States to perform temporary nonagricultural labor or services. This definition is reflected at 8 CFR 214.2(h)(1)(ii)(D) and (h)(6)(i).

Why Is DHS Proposing To Issue This Regulation?

The H–2B program has existed without substantial modification since 1952. In 1990, Congress attached a limitation on the number of H–2B workers but otherwise the program has not changed to accommodate employers' needs or to offer worker protections. After consulting with DOL and DOS and reviewing the definitions and procedures currently used to regulate the H–2B program, DHS has determined that the H–2B process should be modified to reduce unnecessary burdens that hinder petitioning employers' ability to effectively use this visa category. The current rules require employers to obtain temporary labor certification from the Secretary of Labor before obtaining permission to engage an H–2B worker. The delays in processing applications for labor certification combined with the relatively short period of time for which the worker will be available under current rules have discouraged use of the program. This rule will remove existing regulatory barriers and thus likely lead to more efficiency in the H–2B program.

What Is the Current Petitioning Process for an H–2B Nonimmigrant?

Section 214(c) of the Act provides that the Secretary of Homeland Security, after consultation with appropriate

entities of the Government and upon petition of the importing employer, will determine whether an alien may be imported as a H–2B nonimmigrant temporary worker. 8 U.S.C. 1184(c)(1). Historically, the consultation requirement has been accomplished by receiving a labor certification from DOL; however, the nature of the consultation is not defined in the statute.

The current regulation at 8 CFR 214.2(h)(6) provides that a petitioner seeking to employ an H–2B nonimmigrant must establish that the alien will not displace United States workers who are capable of performing such services or labor and that the employment of the alien will not adversely affect the wages and working conditions of United States workers. An employer may not file a petition for an H–2B temporary worker unless that employer has obtained a labor certification from the Secretary of Labor. To obtain a labor certification, a prospective employer must test the labor market and, in addition, pay the alien a salary that will not adversely affect the United States labor market. A petitioner must demonstrate that the need for the temporary services or labor is a one-time occurrence, a seasonal need, a peakload need, or an intermittent need. In general, the period of the petitioner's need must be less than one year. Extensions beyond the one-year period of time can be approved in extraordinary circumstances. In determining whether a petitioner's need is temporary, U.S. Citizenship and Immigration Services (USCIS) examines the nature of the petitioner's need, not the nature of the beneficiary's proposed duties.

What Changes Is DHS Proposing in This Rule?

To better accommodate the needs of United States employers that utilize the H–2B program, DHS is proposing a number of significant changes to the H–2B classification.

First, DHS is proposing to amend 8 CFR 214.2(h)(2) to require most employers seeking an H–2B temporary worker to submit an attestation that meets the requirements of DOL regulations. Currently, an employer seeking a temporary worker is required to file the Form I–129 with USCIS. This form consists of a basic petition and different supplements that apply to the various visa categories. Therefore, an employer petitioning for an H–2B worker currently is required to file an I–129 along with the I–129 H supplement. This rule proposes to revise the current I–129 H supplement to include an attestation from the employer. Employers will not be required to submit a separate form, as previously required with the labor certification. Under this rule, the revised I–129 H supplement, that includes the attestation information required under DOL regulations (20 CFR 655 subpart A), will be filed along with the Form I–129 to the USCIS. In a small number of cases, DOL's regulations may require other labor documentation. DHS and DOL have consulted and have jointly determined that the proposed attestation developed by DOL satisfies the consultation mandate of section 214(c) of the Act.

Second, DHS is proposing that most employers seeking an H–2B temporary worker file the Form I–129 and H supplement through e-filing. This is a significant change that will significantly reduce the paper-based application process and now require that most Form I–129 petitions (including the H supplement) be submitted to USCIS electronically, through e-filing. Employers who may continue to file paper petitions are those in the logging, entertainment, and professional athletics industries, as well as those H–2B employers in Guam. However, these employers are encouraged to utilize e-filing when submitting Form I–129 petitions, although these employers will still be required to submit the appropriate ''paper'' temporary labor certification to the service center with jurisdiction over the area of intended employment.

DHS believes the e-filing process will ensure expeditious processing of H–2B petitions and limit the number of potentially incomplete attestations. In addition, it will ease the filing burden on most petitioning employers. Through e-filing, USCIS also will be able to capture statistics more effectively and analyze H–2B program data to identify areas that need improvement as well as any fraud or abuse that may lead to future administrative, civil or criminal enforcement actions against H–2B petitioners and/or aliens.

DHS recognizes that the transition to electronic submissions of H–2B petitions, while an effective method for streamlining the application process and enhancing the effectiveness of the H–2B program, also requires parallel safeguards and protections to address potential abuse or fraud in the e-filing process. DHS notes that the submission of materially false, fictitious, or fraudulent statements to the government already constitutes a violation of 18 U.S.C. 1001. Anyone convicted of a violation of this provision may be fined and/or imprisoned for not more than 5 years. To safeguard the e-filing process, DHS is incorporating a personal identification number (PIN) and password requirement for applications or petitions submitted electronically. This requirement will be in effect within the DHS electronic filing system prior to the effective date of the H–2B process change and it will be extended to this proposed H–2B process once the process is finalized. DHS is soliciting comments on the e-filing process for H–2B petitions, the use of information collected through the e-filing process for future administrative, civil or criminal enforcement actions, and the types of additional safeguards that should be adopted as part of the e-filing process.

DHS is considering the use of Public Key Infrastructure (PKI) as an additional safeguard to the e-filing process, and encourages the public to provide comments regarding the feasibility of using PKI to this end. DHS also is considering requiring the use of other safeguards in order to authenticate the identity of a party making an electronic submission and to maintain the integrity of the process. DHS is soliciting comments on (1) alternative safeguards that may be appropriate, and (2) the risks that might be associated with an inability to authenticate submissions.

Third, DHS is proposing to amend 8 CFR 214.2(h)(11)(i)(A) to require an employer to provide notification to USCIS within 30 days of the date that the employer terminates the alien's employment or the alien leaves the employment. This will ensure that an approved H–2B petition filed by an employer is closed out when the basis for the alien's status terminates and that USCIS is made aware of the change in employment status. DHS also may develop a process whereby employers may provide notification of termination electronically, through e-filing, rather than forwarding a paper notice to the appropriate USCIS service center. DHS is soliciting comments on this proposal.

Fourth, DHS is proposing to add new paragraphs to 8 CFR 214.2(h)(6)(iii), (F) and (G), and new language to 8 CFR 214.2(h)(11)(iii)(A)(2) that establish a process for USCIS to deny or revoke approval of a Form I–129 if USCIS determines that the statements on the Form I–129 petition are inaccurate, fraudulent, or misrepresented a material fact. Upon such a determination, USCIS may deny the petition pursuant to 8 CFR 214.2(h)(10) or initiate revocation proceedings pursuant to 8 CFR 214.2(h)(11)(iii)(B).

Fifth, DHS is proposing to add a new provision at 8 CFR 214.2(h)(20) to establish a process whereby USCIS will deny, for a specified period of time, all petitions (immigrant and nonimmigrant)

filed by an employer, based upon a finding by DOL that an employer has not complied with attestation conditions (known as debarment). In a separate rulemaking, at 20 CFR 655.13, DOL is proposing an audit and debarment process for employers who are found not to have complied with the required elements of the H–2B attestation. If DOL determines that an employer violated the conditions of the attestation and recommends the employer be debarred for a specified period of time, upon notice from DOL, USCIS will accept DOL's recommendation and debar the petitioner from filing any immigrant or nonimmigrant petitions under new paragraph (h)(20). USCIS notes that it may decide to debar a petitioning employer for a longer period than that recommended by DOL. This additional measure will encourage petitioner compliance with the proposed attestation requirements of the H–2B program. DHS is soliciting comments on whether debarments recommended by DOL should extend to an entity related to the U.S. employer (*e.g.*, an affiliate or successor entity).

Sixth, DHS would like to develop a self-initiated debarment process, separate from the DOL audit and debarment process, which will allow USCIS to debar the petitioner upon a finding by USCIS that the petitioner's statements in the Form I–129 petition are inaccurate, fraudulent, or misrepresent a material fact. Unlike the DOL debarment process, which will be based on random and selected audits of the Form I–129 H Supplements that accompany approved H–2B petitions, USCIS will initiate proceedings when it independently receives information, including through the petition adjudication process or separate investigation (administrative, civil or criminal), indicating that the petitioner's statements in the Form I–129 petition are inaccurate, fraudulent, or misrepresent a material fact (*e.g.*, USCIS receives evidence that the ''U.S. employer'' filing the Form I–129 petition actually is not a real company or an organization licensed to do business in the United States). DHS is soliciting comments on process, including suggestions on the type of administrative process and procedures that should be adopted for determining that a petitioner should be debarred, the appellate process and whether all immigrant and nonimmigrant petitions should be subject to debarment. DHS also is soliciting comments on whether debarments determined through the USCIS self-initiated process should extend to an entity related to the U.S. employer (*e.g.*, an affiliate or successor entity).

Seventh, DHS is amending the current regulations relating to the use of agents as petitioners for H–2B temporary workers. The current regulation at 8 CFR 214.2(h)(2)(i)(F) allows U.S. agents to file petitions in cases involving workers who are traditionally self-employed or who use agents to arrange short-term employment with numerous employers, or in the case of foreign employers. In addition, the current regulations at 8 CFR 214.2(h)(2)(i)(F) and (h)(6)(iii)(B) permit foreign employers to use U.S. agents to petition for H–2B temporary workers. This rule proposes to no longer allow the filing of H–2B petitions by agents.

This change is necessary in light of the transition from a labor-certification to an attestation-based petition process for most H–2B petitioning employers. In order to ensure the integrity of the H–2B attestation process, H–2B attestations must be made by the employer, not by a recruiting agent. In addition, DHS believes that it will be easier for USCIS to take action against an employing petitioner, who is making the attestations required under the DOL regulations at 20 CFR 655, subpart A, than against an agent. DHS notes that this is not restricting the use of agents to recruit workers but is instead requiring only that the employer directly petition for the H–2B temporary worker.

Eighth, this rule proposes to codify the current numerical counting procedures for the H–2B classification. Title 8 CFR 214.2(h)(8)(ii)(A) already provides that requests for petition extension or extension of an H–2B alien's stay shall not count against the numerical cap. DHS is amending 8 CFR 214.2(h)(8)(ii) by adding a new paragraph (G) to reflect that, for purposes of the H–2B numerical cap, USCIS will not count amendments to previously approved petitions or petitions for aliens who already hold H–2B status and are seeking to change employers or add a new or additional employer (*e.g.*, concurrent employment). An amended H–2B petition is required in instances where there has been a material change in the terms and conditions of employment or the alien's eligibility for the classification (*e.g.*, a material change in the duties performed by the alien). *See* 8 CFR 214.2(h)(2)(i)(E). USCIS is also further amending 8 CFR 214.2 by adding a new paragraph (h)(8)(ii)(H) to state that an H–2B nonimmigrant who is employed (or has received an offer of employment) as a fish roe processor, a fish roe technician, or a supervisor of fish roe processing, shall not be subject to the numerical limitation in a given fiscal year. USCIS is adding new paragraph (h)(8)(ii)(H) to comport with section 14006 of the 2005 Department of Defense Appropriations Act, 2005 (Pub. L. 108–287, August 5, 2004).

Ninth, DHS is proposing to amend 8 CFR 214.2(h)(2)(iii) to require that employers seeking a certain number of aliens to fill H–2B positions only specify the number of positions sought and not name the individual alien on all initial H–2B petitions (*i.e.*, unnamed beneficiaries), unless the beneficiary already is in the United States. DHS is requiring beneficiaries who are already in the United States to be named, as USCIS is responsible for adjudication of the beneficiary's eligibility for H–2B status in such instances. USCIS will require a named beneficiary in all petitions where USCIS is responsible for adjudication of the beneficiary's eligibility for H–2B status.

DHS is soliciting comments from the public on whether USCIS should require all H–2B beneficiaries to be named, as such a requirement would assist DHS in maintaining an accurate count of the number of aliens granted H–2B visas or accorded H–2B status each fiscal year.

The beneficiary of a Form I–129 who was previously in H–2B status for a maximum 3-year period is eligible for a subsequent maximum authorized period of admission (up to one year initially with possible extensions up to 3 years) only if the alien has been outside the United States for a period of 6 months prior to filing of the petition.

Tenth, this rule proposes to amend 8 CFR 214.2(h)(9)(i)(B) to reflect that an H–2B petition, if submitted via e-filing, may not be filed more than 60 days prior to the date of actual need for the beneficiary's services. DOL is concurrently proposing regulations stating that recruitment must occur within 60 days of filing. To ensure accuracy of the labor market test, DHS is proposing to also limit advance filings of H–2B petitions to a maximum period of 60 days. In light of the new streamlined procedures proposed in the DOL and DHS companion rules, DHS is confident that 60 days is a sufficient amount of time to process the H–2B petition and enable the beneficiary to obtain a visa or be accorded H–2B status. DHS solicits comments from the public regarding this change.

Finally, in the event that an employer has submitted an application for change of status, an extension of status, or a petition that requests named beneficiaries and the security check

generates adverse information on a beneficiary who is part of a multiple-beneficiary petition, DHS is proposing to amend 8 CFR 214.2(h)(9)(i)(A) to create a process that will allow for issuance of a partial approval notice to allow the petitioning employer to receive authorization to employ the remainder of the requested H–2B workers. USCIS will continue to process the petitions of the remaining workers to completion.

Is DOL Proposing any Changes to the Temporary Labor Certification Process?

Yes. DOL will propose in a separate rulemaking to terminate the existing labor certification process for most H–2B employment, with certain exceptions. These exceptions are employers seeking H–2B workers in logging, the entertainment industry, and professional athletics. DOL has traditionally applied a unique process for workers who fall within these well-defined exceptions and DOL does not intend to modify these unique processes at this time. For all other H–2B employment, instead of the current labor certification process, elements of the H–2B labor certification will be incorporated into an attestation that will be made to the U.S. Government in accordance with DOL regulations. The attestation will be filed electronically, through e-filing, with the Form I–129 petition because the attestation will be contained in the Form I–129 H supplement. Employers will not be required to submit a separate form, as previously required with the labor certification. Employers who may continue to file paper petitions are those in the logging, entertainment, and professional athletics industries, as well as those H–2B employers in Guam. These employers are encouraged to utilize e-filing when submitting Form I–129 petitions, although these employers will still be required to submit the appropriate ''paper'' temporary labor certification to the service center with jurisdiction over the area of intended employment. DOL will also propose in a separate rulemaking an audit and debarment process for employers who are found not to have complied with the required elements of the attestation.

What Is the Proposed Attestation Process?

The attestation process for the H–2B classification will be similar to the process currently used for the H–1B nonimmigrant classification. However, the H–2B attestation will be submitted to USCIS through e-filing. The attestation will be contained in the Form I–129 H supplement and most employers will not be required to submit a separate form, as previously required with the labor certification. The terms of the attestation are set forth at 20 CFR 655 subpart A. Given that the Form I–129 H supplement is currently required to be submitted with the I–129 petition, DHS is proposing that Form I–129 (including the H supplement that contains the required attestations) be submitted to USCIS through e-filing. This process will ensure that all required elements of the attestation are completed before USCIS adjudicates the petition. In cases where an employer is still required to submit a labor certification (*i.e.*, for employment in Guam and for other employment as designated by DOL in its regulations), the paper labor certification must be submitted to the appropriate USCIS service center regardless of whether the petition was e-filed or not.

What Will Be the Required Elements of the Attestation?

The elements of the attestation must meet the DOL requirements set forth at 20 CFR 655, subpart A. If the attestation is complete, and the H–2B petition is otherwise approvable, the H–2B petition may be approved for the length of time specified by the petitioner or determined by USCIS as meeting the petitioner's temporary need, a period that may last for up to one year. Approval of the H–2B petition will constitute evidence that the attestation (included in the Form I–129 H Supplement) also has been accepted and relied upon for purposes of supporting the Form I–129 petition. The validity of the petition and the beneficiary's authorized period of stay may be extended in increments of up to one year, for a maximum period of 3 years, but may not be extended for any time beyond the 3-year period. An employer must submit a new Form I–129 H supplement (which includes the attestation) with each new Form I–129 petition.

Will the Changes to the Temporary Labor Certification Process Cover All H–2B Employment?

No. First, it should be noted that DOL has no jurisdiction over Guam with respect to labor certification; therefore the Governor of Guam will retain his authority to issue labor certifications without modification. It has not been demonstrated to DHS that the employment situation in Guam requires DHS to modify the current labor certification provisions for prospective employers in Guam. In addition, the new attestation process will be required only for those employers designated by DOL at 20 CFR 655.3. Employers in the logging, entertainment, and professional athletics industries are not required to submit an attestation, but must submit a paper labor certification to the USCIS service center with jurisdiction over the area of intended employment.

What Is the Period of Petition Validity?

The USCIS service center director may approve an H–2B petition for the length of time specified by the petitioner or determined by USCIS as meeting the petitioner's need, which in certain instances may last for up to one year. The period of validity of the petition and the beneficiary's authorized period of stay may be extended for additional periods of time, as determined by USCIS based on the specific circumstances of the employer, but the petitioner may not be authorized to employ the beneficiary beyond the beneficiary's maximum period of authorized stay (up to one year initially with possible extensions up to 3 years). An employer must submit a new Form I–129 H supplement (which includes the attestation) in order to extend the period of validity of a petition and to obtain an extension of stay for the beneficiary. For petitions filed for employment in Guam, or for petitions requiring labor certification, the maximum period of admission will remain one year and extensions of stay may be granted for an individual worker, in increments of one year, for a maximum period of 3 years.

How Will USCIS Process Petitions With Multiple Named Beneficiaries When One of the Beneficiaries Takes Longer Than the Others or a Security Check Uncovers Adverse Information About One of the Beneficiaries?

DHS is proposing to amend 8 CFR 214.2(h)(9)(i)(A) to create a process that will allow for issuance of a partial approval notice in the event that an employer has requested named beneficiaries (for beneficiaries who already are in the United States) and a mandatory security check on one or more of the requested beneficiaries takes longer than the others or a security check uncovers adverse information about one of the beneficiaries.

Accordingly, DHS is proposing to amend 8 CFR 214.2(h)(9)(i)(A) so that, in the event a security check takes more time for one or more beneficiaries on a multiple-beneficiary petition, or a security check uncovers adverse information about one of the beneficiaries, USCIS may issue a partial approval notice to the petitioner that will name which beneficiaries are authorized for H–2B status and

employment, but exclude the name of the beneficiary whose law enforcement checks remain pending. This process will allow USCIS to process H–2B petitions more efficiently for the majority of beneficiaries.

Will an Employer Be Permitted To Substitute the Names of Beneficiaries on a Petition Before USCIS Issues a Partial Approval Notice?

No. In order to ensure that petitions are processed as expeditiously as possible, USCIS will make every attempt to issue a partial approval notice without prior notification or contact with the petitioning employer. The proposal to expedite processing in this manner will not allow a petitioning employer to substitute beneficiaries on a pending petition.

Will an Employer Still Be Permitted To Substitute Beneficiaries on a Petition After USCIS Partial Approval but Prior to an Alien's Admission to the United States?

Yes. This process does not require amendments to the current substitution process at 8 CFR 214.2(h)(2)(iv), which allow for substitution of beneficiaries on an approved petition, if an employer requests named beneficiaries.

Will an Employer Be Permitted To Substitute Beneficiaries Who Are Already in the United States in H–2B Status Into a Previously Approved Petition?

No. DHS is concerned that such a substitution would undermine other proposals in the rule that are intended to strengthen employer reporting requirements. If an employer were allowed to make post-admission substitutions without notification to USCIS, it would limit the ability of USCIS to maintain accurate information concerning the whereabouts and activities of nonimmigrants under the H–2B category. In addition, such substitution would circumvent the required background checks that are currently run on individuals at the time of visa issuance and at the time of admission. Therefore, DHS is amending language at 8 CFR 214.2(h)(2)(i)(D) and 8 CFR 214.2(h)(2)(iii) to clarify that an employer will only be permitted to hire H–2B nonimmigrants who are within the United States if the employer files a new H–2B petition naming the beneficiary or beneficiaries.

How Will DHS and DOL Monitor and Ensure the Integrity of the H–2B Program?

DHS and DOL (through separate rulemaking) are proposing several amendments that will allow both departments to monitor and ensure the integrity of the H–2B program, including DOL random and selected audits of H–2B petitions, and debarment of employers who have made willful misrepresentations in the H–2B petition or failed to comply with the attestation requirements as required by DOL regulations.

DHS is proposing to amend the regulations at 8 CFR 214.2(h)(6)(iii)(B) to require that all United States employers petition directly for the H–2B beneficiary. This amendment will preclude United States agents and/or recruiters acting as agents from filing on behalf of United States employers. DHS is proposing to amend 8 CFR 214.2(h)(6)(iii)(D) to ensure that USCIS processes are coordinated with the results of random and selected audits of attestations that the Secretary of Labor will conduct pursuant to regulations to be issued by DOL. Also, if USCIS determines that an employer has failed to comply with an attestation, USCIS may deny the petition pursuant to 8 CFR 214.2(h)(10) or initiate revocation proceedings pursuant to 8 CFR 214.2(h)(11).

In addition, DHS notes that there are other laws that protect U.S. workers such as the Fair Labor Standards Act and section 274A of the Act, respectively, as well as anti-discrimination statutes.

DOL, through separate rulemaking at 20 CFR part 655, subpart A, will propose to conduct random and selected audits of attestations that have been submitted with the Form I–129 petition to determine whether the information provided by the employer is accurate and is in compliance with the relevant regulations.

DHS is proposing to add a new paragraph (h)(20) to establish a process whereby USCIS will deny all petitions (immigrant and nonimmigrant) filed by an employer for a specified period of time, based upon a finding by DOL that an employer has not complied with attestation conditions (this is known as debarment). In a separate rulemaking, at 20 CFR 655.13, DOL is proposing an audit and debarment process for employers who are found not to have complied with the required elements of the H–2B attestation. If DOL determines that an employer violated the conditions of the attestation and recommends the employer be debarred from filing future attestations for a specified period of time, upon notice from DOL, USCIS will accept DOL's recommendation and debar the petitioner from filing all petitions under new paragraph (h)(20). This process is similar to the H–1B debarment process under section 212(n)(2)(C) of the Act. The proposed regulation provides that DOL will recommend, through its hearing procedures, a period of debarment based on the severity of the violation when it notifies USCIS that a violation has occurred. USCIS will accord considerable weight to this recommendation when it determines the appropriate period of debarment for the employer. The period of debarment imposed by USCIS will be at least the minimum period recommended by DOL, but USCIS may choose to impose a longer period of debarment.

As mentioned previously, USCIS is also proposing to establish a self-initiated debarment process separate from the DOL audit and debarment process. DHS solicits comments on the administrative process and penalties associated with this debarment process, including the appellate process.

DHS also is considering establishing administrative penalties for program abusers such as requiring recruitment reports with labor attestations. DHS welcomes comments and suggestions on whether DHS should establish administrative penalties and, if so, the type of administrative penalties that should be imposed on non-compliant H–2B employers.

Regulatory Flexibility Act

DHS has reviewed this regulation in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. Although this rule may affect small entities, it is intended to help employers by eliminating certain regulatory barriers in hiring H–2B workers. This rule removes the burdensome labor certification process and replaces it with a simpler attestation process for H–2B workers that will facilitate processing within the H–2B program.

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

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

Executive Order 12866

This rule is considered by DHS to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget (OMB) for review.

DHS has considered both the costs and the benefits of this rule as required in Executive Order 12866 section (b)(6) and has determined that the benefits of this regulation outweigh any costs. That determination is as follows: This proposal is necessary to improve U.S. employers' use of the H–2B program and access to necessary workers in a timely fashion. The current H–2B program requires a U.S. employer to submit to a two-step process, involving two separate agencies, before it can obtain a foreign worker. Petitioning employers must first file a labor certification application with DOL and DOL must approve the labor certification before the employer may file a petition with USCIS for approval based on the labor certification. The processing time and inherent delays associated with this two-step process negatively impact U.S. employers' ability to achieve optimal staffing levels in the time needed to meet their needs. In addition to time delays, the two-step process imposes additional costs in the form of paperwork and correspondence with two agencies.

By including the attestation in the Form I–129 H supplement, DHS has created a one-step process where certain U.S. employers seeking H–2B temporary workers now only will be required to file one application package—the Form I–129 with the Form I–129 H supplement—with one agency, DHS. This one-step process benefits employers by reducing costs and delays associated with separate USCIS petition adjudication and DOL labor certification processes, thereby allowing the employer to be matched with a qualified H–2B worker in a more timely fashion. The one-step process also alleviates processing costs to the agencies due to separate filing requirements. Finally, these changes enhance the effectiveness of the H–2B program while maintaining integrity through enforcement by DOL and DHS with debarment processes for non-compliant H–2B employers. In addition to consolidating the filing process, this rule would make the actual submission of the necessary information itself easier (for eligible employers) by incorporating the required attestations into the Form I–129 H Supplement and permitting petitioning employers to file the required Form I–129 petition (including the H supplement) electronically, through e-filing.

In addition, because this rule proposes to cease requiring named beneficiaries for workers not in the United States, within the context of USCIS processing, this rule will further alleviate processing delays that result when USCIS performs background checks on each named H–2B beneficiary. DOS currently performs background checks on all beneficiaries before visa issuance, so this process retains all requisite security measures while eliminating duplication of work between USCIS and DOS.

There are no new costs to the public associated with this rule. No new or additional requirements are being created by this rule. Though the revisions to the Form I–129 H Supplement to include attestations as required under DOL regulations (20 CFR part 655, subpart A), are considered a new information collection under the Paperwork Reduction Act, these revisions will not create any additional burden on petitioning U.S. employers. In fact, the revisions reduce the current paperwork burden for such employers by removing the requirement that certain U.S. employers seeking an H–2B temporary work comply with a two-step filing process to obtain temporary labor in this visa category.

Executive Order 13132

The rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988 Civil Justice Reform

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

Paperwork Reduction Act

Employers are currently required to file a Form I–129 with the H supplement when petitioning for H–2B workers. This proposed rule revises the current H supplement to require petitioners to attest to certain information on the H Supplement when petitioning USCIS for H–2B workers. This attestation is made to the U.S. Government in accordance with DOL regulations, and is provided to USCIS as a part of the H Supplement with the Form I–129 petition filing in order to streamline processing. Under the Paperwork Reduction Act of 1995, OMB considers the attestation an information collection requirement subject to review. Accordingly, this information collection has been submitted to OMB for review. Written comments are encouraged and will be accepted until March 28, 2005. When submitting comments on the information collection, your comments 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 the information on those who are to respond, including through the use of any and all appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Revision.

(2) *Title of Form/Collection:* H Supplement to USCIS Form I–129, Petition for Nonimmigrant Worker.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* H Supplement to USCIS Form I–129, U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Individuals. The H Supplement to Form I–129 is required evidence for an employer petitioning for an alien to come to the U.S. temporarily to perform services or labor as an H–1B, H–2A, H–2B or H–3 nonimmigrant worker.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 368,948 inclusive of all I–129 filings at 2.75 hours per response.

(6) *An estimate of the total of public burden (in hours) associated with the collection:* Approximately 1,014,607 burden hours inclusive of all I–129 filings.

All comments and suggestions or questions regarding additional information should be directed to the Department of Homeland Security, U.S. Citizenship and Immigration Services, Regulatory Management Division, 111 Massachusetts Avenue, 3rd Floor, Washington, DC 20529; Attention: Richard A. Sloan, Director, 202–514–3291.

List of Subjects in 8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

Accordingly, part 214 of chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1185 (pursuant to Executive Order 13323, published January 2, 2004), 1186a, 1187, 1221, 1281, 1282, 1301–1305; 1372; 1379; 1731–32; sec. 14006, Pub. L. 108–287; sec. 643, Pub. L. 104–208; 110 Stat. 3009–708; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901, note, and 1931, note, respectively.

2. Section 214.2 is amended by:

a. Revising paragraph (h)(1)(ii)(D);

b. Revising paragraphs (h)(2)(i)(A), (C), and (D);

c. Revising the term ''A United States agent'' to read: ''Except in the case of a petition for an H–2B worker, a United States agent'' at the beginning of paragraph (h)(2)(i)(F), introductory text;

d. Revising paragraphs (h)(2)(ii) and (iii);

e. Revising paragraphs (h)(6)(iii)(A), (B), (C), (D) and (E);

f. Adding new paragraphs (h)(6)(iii)(F) and (G);

g. Revising paragraph (h)(6)(iv);

h. Revising paragraphs (h)(6)(vi)(A), (B), (C) and (D);

i. Adding new paragraphs (h)(8)(ii)(G) and (H);

j. Revising paragraphs (h)(9)(i)(A) and (B), (h)(9)(iii)(B)(*1*) and (h)(9)(iii)(B)(*2*)(*i*) and (*ii*);

k. Adding introductory text to paragraph (h)(11)(i);

l. Revising paragraphs (h)(11)(i)(A) and (h)(11)(iii)(A)(*2*);

m. Revising paragraph (h)(13)(iv);

n. Revising paragraph (h)(15)(ii)(C);

o. Redesignating paragraph (h)(15)(ii)(D) as (h)(15)(ii)(E) and by adding a new paragraph (h)(15)(ii)(D); and by

p. Adding a new paragraph (h)(20).

The revisions and additions read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(h) * * *

(1) * * *

(ii) * * *

(D) An H–2B classification applies to an alien who is coming temporarily to the United States to perform nonagricultural work of a temporary or seasonal nature, if unemployed persons capable of performing such service or labor cannot be found in this country. This classification does not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession. The temporary or permanent nature of the services or labor to be performed shall be determined by the USCIS. This classification also requires a labor certification or attestation, as prescribed by the Department of Labor at 20 CFR 655.3.

* * * * *

(2) *Petitions*—(i) *Filing of petitions*—(A) *General.* A United States employer seeking to classify an alien as an H–1B, H–2A, H–2B, or H–3 temporary employee shall file a petition on Form I–129, Petition for Nonimmigrant Worker with the Form I–129 H supplement, only with the service center which has jurisdiction in the area where the alien will perform services, or receive training, even in emergent situations, except as provided in this paragraph. With the exception of employers seeking H–2B workers in logging, the entertainment industry, and professional athletics, a United States employer seeking to classify an alien as an H–2B temporary employee shall file electronically, through e-filing, the Form I–129 petition with H Supplement as provided in 8 CFR 214.2(h)(6)(iii)(C). For U.S. employers seeking H–2B temporary workers in logging, the entertainment industry, and professional athletics, the U.S. employer may e-file the Form I–129, or file the paper Form I–129 with the required temporary labor certification to the USCIS service center that has jurisdiction over the area where the alien will perform services. Regardless of which filing option U.S. employers in logging, the entertainment industry, and professional athletics choose, such employers will still be required to submit a paper temporary labor certification to the USCIS service center with jurisdiction over the area of intended employment. A United States employer seeking to classify an alien as an H–1C nonimmigrant registered nurse shall file a petition on Form I–129 at the Vermont Service Center. Petitions in Guam and the Virgin Islands, and petitions involving special filing situations as determined by USCIS Headquarters, shall be filed with the local USCIS office or a designated USCIS office. The petitioner may submit a legible photocopy of a document in support of the visa petition in lieu of the original document. However, the original document shall be submitted if requested by the USCIS.

* * * * *

(C) *Services or training for more than one employer.* If the beneficiary will perform nonagricultural services for, or receive training from more than one United States employer, each employer must file a separate petition, the Form I–129 with H Supplement, and, if required, a labor certification with the service center that has jurisdiction over the area where the alien will perform services or receive training.

(D) *Change of employers.* If the alien is in the United States and seeks to change employers, the prospective new employer (except in the case of H–2As), must file a petition on Form I–129, with the fee required in 8 CFR 103.7(b)(1) and, if required, with a labor certification, naming the beneficiary, and requesting classification and extension of the alien's stay in the United States. A prospective new employer may not substitute an alien who is within the United States into any previously approved petition. If the new petition is approved, the extension of stay may be granted for the validity of the approved petition. The validity of the petition and the alien's extension of stay must conform to the limits on the alien's temporary stay that are prescribed in 8 CFR 214.2(h)(13). The

alien is not authorized to begin the employment with the new petitioner until the petition is approved.

* * * * *

(ii) *Multiple beneficiaries.* More than one beneficiary may be included in an H–1C, H–2A, H–2B, or H–3 petition, and a labor certification or attestation for H–2B petitions, if the beneficiaries will be performing the same service, or receiving the same training, for the same period of time, and in the same location.

(iii) *Named beneficiaries.* An H–2B petition shall not include the name(s) of the beneficiary(ies) at the time of filing, unless the beneficiary is within the United States. For employment that requires labor certification, if all of the beneficiaries covered by an H–2B labor certification have not been identified at the time a petition is filed, multiple petitions may be filed at different times with a copy of the same labor certification; however, each petition must have been filed within 90 days of certification. Each petition must reference all previously filed petitions for that labor certification. For H–2B employment that requires an attestation, a U.S. employer must file a new Form I–129 H Supplement with each petition filed on behalf of name beneficiaries. The Form I–129 H Supplement must reflect the same number of beneficiaries that are being requested on the H–2B petition. An initial H–2A petition may contain both named and unnamed beneficiaries and the total number of beneficiaries must agree with the number of positions on the labor certification request. The number stated on the labor certification or Form I–129 H Supplement does not need to agree with the number of aliens requested on a subsequent request for extension.

* * * * *

(6) * * *

(iii) * * *

(A) With the exceptions of employment for which the Department of Labor provides labor certification, when filing a petition with the director to classify an alien as an H–2B worker, the petitioner shall submit an H Supplement, that includes an attestation that complies with 20 CFR part 655, subpart A, for each United States metropolitan statistical area in which a beneficiary will be employed. In the territory of Guam, the petitioning employer shall apply for temporary labor certification with the Governor of Guam. For other employment for which the Department of Labor requires labor certification, the petitioning employer shall apply for temporary labor certification with the Secretary of Labor. The labor certification or Form I–129 H Supplement shall be considered sufficient evidence that no United States workers capable of performing the temporary services or labor are available and that the alien's employment will not adversely affect the wages and working conditions of similarly employed United States workers.

(B) An H–2B petition may only be filed by the employer seeking to hire an individual as an H–2B temporary worker. An agent may not file an H–2B petition on behalf of any employer. The petitioning employer shall consider available United States workers for the temporary services or labor, and shall offer terms and conditions of employment which are consistent with the nature of the occupation, activity, and industry in the United States.

(C) The petitioner may not file an H–2B petition unless the United States petitioner has submitted a Form I–129 H Supplement or otherwise has applied for and received the appropriate labor certification as prescribed by the Department of Labor at 20 CFR 655.3. H–2B petitions must be filed electronically with the Form I–129 and H supplement through e-filing at the appropriate DHS website, unless the application requires a DOL temporary labor certification. A new H supplement must be filed with each Form I–129 petition and must reflect the same number of workers requested on the Form I–129 petition. All applications for labor certification or I–129 H supplements must be filed within the time limits prescribed or accepted by each category.

(D) The Governor of Guam shall separately establish procedures for providing temporary labor certifications. Furthermore, the Secretary of Labor shall separately establish procedures for providing temporary labor certifications for employers seeking H–2B workers in logging, the entertainment industry, and professional athletics. The Secretary of Labor may implement a program to conduct random and selected audits to ensure the integrity of the attestation portion of the I–129 H supplement and to ensure compliance with the relevant regulatory provisions.

(E) For petitions that require a labor certification from the Governor of Guam for employment in Guam or from the Secretary of Labor for other employment, as prescribed by the Department of Labor at 20 CFR 655.3, the petitioner may file a paper Form I–129 with the required paper labor certification to the appropriate USCIS service center with jurisdiction over the area where the alien will perform services.

(F) The certification from the Governor of Guam or the Secretary of Labor is advisory in nature and does not establish the temporary nature of the position or the beneficiary's eligibility. The service center director may deny the H–2B petition, pursuant to 8 CFR 214.2(h)(10) if the director determines that the statements on the Form I–129 petition were inaccurate, fraudulent, or misrepresented a material fact.

(G) The service center director may institute revocation proceedings as described in paragraph (h)(11) of this section if the director determines that the statements on the Form I–129 petition were inaccurate, fraudulent, or misrepresented a material fact.

(iv) *Labor certifications for H–2B employment*—(A) *Labor certifications.* For H–2B employment requiring a labor certification, an H–2B petition for temporary employment shall be accompanied by:

(*1*) A certification from the Secretary of Labor stating that qualified workers in the United States are not available and that the alien's employment will not adversely affect wages and working conditions of similarly employed United States workers; or

(*2*) A notice stating the reasons why such certification cannot be made. Such notice shall address the availability of United States workers in the occupation and the prevailing wages and working conditions of United States workers in the occupation.

(B) *Attachment to a petition requiring labor certification.* If the petitioner receives a notice from the Secretary of Labor that certification cannot be made, a petition containing countervailing evidence must be filed with the service center director. The evidence must show that qualified workers in the United States are not available, and that the terms and conditions of employment are consistent with the nature of the occupation, activity, and industry in the United States. All such evidence submitted shall be considered in adjudicating the petition. The countervailing evidence presented by the petitioner shall be in writing and shall address availability of United States workers, the prevailing wage rate for the occupation in the United States, and each of the reasons why the Secretary of Labor could not grant a labor certification. The petitioner may also submit other appropriate information in support of the petition. The director, at his or her discretion, may require additional supporting evidence.

(C) *U.S. Virgin Islands.* Labor certifications filed under section 101(a)(15)(H)(ii)(b) of the Act for

employment in the United States Virgin Islands may be approved only for entertainers and athletes and only for periods not to exceed 45 days.

(D) *Validity period for labor certifications.* The Secretary of Labor may issue a temporary labor certification for a period up to one year.

* * * * *

(vi) * * *

(A) *Labor certification or notice.* A temporary labor certification or a notice that certification cannot be made issued by the Governor of Guam in the case of employment in Guam; a temporary labor certification or notice that certification cannot be made issued by the Secretary of Labor in the case of employment for which labor certification is required;

(B) *Countervailing evidence.* Evidence to rebut the Governor of Guam's or, in the case of employment for which the Department of Labor requires labor certification, the Secretary of Labor's notice that certification cannot be made;

(C) *Alien's qualifications.* Documentation that the alien qualifies for the job offer as specified in the application for labor certification or petition (including the H supplement), except in petitions where the labor certification or petition (including the H supplement) requires no education, training, experience, or special requirements of the beneficiary; and

(D) *Statement of need.* A statement describing in detail the temporary situation or conditions which make it necessary to bring the alien to the United States and whether the need is a one-time occurrence, seasonal, peakload, or intermittent and lasting less than one year. If the need is seasonal, peakload, or intermittent, the statement shall indicate whether the situation or conditions are expected to be recurrent. The statement shall be made on the Form I–129 H supplement, which must be filed concurrently with the H–2B petition.

* * * * *

(8) * * *

(ii) * * *

(G) USCIS will not count towards the numerical limitation in a given fiscal year petitions requesting extensions of H–2B status, amendments to previously approved H–2B petitions, or petitions for aliens who already hold H–2B status and are seeking to change employers or add an additional employer (*i.e.* concurrent employment).

(H) The numerical limitation in a given fiscal year shall not apply to an H–2B nonimmigrant who is employed (or has received an offer of employment) as a fish roe processor, a fish roe technician, or a supervisor of fish roe processing.

(9) * * *

(i) * * *

(A) If a petitioner has requested named beneficiaries because the beneficiaries are within the United States, the approval notice shall include the name of each beneficiary approved for that classification. Further, all approval notices shall include the requested classification and the petition's period of validity. A petition for more than one beneficiary and/or multiple services may be approved in whole or in part. In the event that a security check for one of the requested beneficiaries takes more time than is required for the other beneficiaries on a multiple-beneficiary petition, USCIS may issue a partial approval notice without notifying the petitioner of the specific information relating to the beneficiary(ies) not included on the approval notice. The approval notice shall identify only those beneficiaries approved for classification under section 101(a)(15)(H) of the Act.

(B) An H–2B petition, if submitted via e-filing, may not be filed more than 60 days prior to the date of actual need for the beneficiary's services.

* * * * *

(iii) * * *

(B) * * *

(*1*)(*i*) *General.* Except as provided in paragraph (h)(9)(iii)(B)(*1*)(*ii*) of this section, the approval of a petition to accord an alien a classification under section 101(a)(15)(ii)(b) of the Act shall be valid for the length of time as determined by the USCIS as meeting the petitioner's need, not to exceed a period of up to one year.

(*ii*) *Labor certification attached.* If a certification by the Governor of Guam or the Secretary of Labor is attached to a petition to accord an alien a classification under section 101(a)(15)(H)(ii)(b) of the Act, the approval of the petition may be valid for a period of up to one year.

(*2*) * * *

(*i*) *Countervailing evidence.* If a petition is submitted containing a notice from the Governor of Guam that certification cannot be made, and is not accompanied by countervailing evidence, the petitioner shall be informed that he or she may submit the countervailing evidence in accordance with paragraph (h)(6)(iii)(E) of this section.

(*ii*) *Approval.* In any case where the service center director decides that approval of the H–2B petition is warranted despite the issuance of a notice by the Governor of Guam that certification cannot be made, the approval shall be certified by the service center director to the Director, Administrative Appeals Office, pursuant to 8 CFR 103.4. In emergent situations, the certification may be presented by telephone to the Director, Administrative Appeals Office, Headquarters. If approved, the petition is valid for the period of established need not to exceed one year. There is no appeal from a decision that has been certified to the Director, Administrative Appeals Office.

* * * * *

(11) * * *

(i) *General.* The service center director may revoke a petition at any time, even after the expiration of the approval of the petition.

(A) The petitioner shall immediately notify USCIS of any changes in the terms and conditions of employment of a beneficiary which may affect eligibility under section 101(a)(15)(H) of the Act and 8 CFR 214.2(h). A new Form I–129 H supplement and an amended petition on Form I–129 shall be filed when the petitioner continues to employ the beneficiary. If the petitioner no longer employs the beneficiary, the petitioner shall report explaining the change(s) within 30 days, unless the reason the beneficiary is no longer employed is due solely to the expiration of his or her period of authorized admission as an H nonimmigrant. The notification shall include the name of the petitioner and beneficiary, the receipt number for the approved petition, whether the beneficiary began employment with the petitioner, the dates the beneficiary was employed by the petitioner, if applicable, and a statement of the reason the beneficiary is no longer employed by the petitioner.

* * * * *

(iii) * * *

(A) * * *

(*2*) The statement of facts contained in the petition were not true and correct or the assertions made in the labor attestation were inaccurate, fraudulent, or misrepresented a material fact; or

* * * * *

(13) * * *

(iv) *H–2B and H–3 limitation on admission.* An H–2B alien who has spent 3 years in the United States under section 101(a)(15)(H) and/or (L) of the Act; an H–3 alien participant in a special education program who has spent 18 months in the United States under section 101(a)(15)(H) and/or (L) of the Act; and an H–3 alien trainee who has spent 24 months in the United States under section 101(a)(15)(H) and/or (L) of the Act is not eligible for an extension, change status, or readmission

to the United States under section 101(a)(15)(H) and/or (L) of the Act unless the alien has resided and been physically present outside the United States for the immediate prior 6 months.

* * * * *

(15) * * *

(ii) * * *

(C) *H–2A extension of stay.* An extension of stay for the beneficiary of an H–2A petition may be authorized for a period of up to one year, but not beyond the validity of the temporary labor certification, except as provided for in 8 CFR 214.2(h)(5)(x).

(D) *H–2B extension of stay.* For employment on Guam and for other groups requiring labor certification, an extension of stay for the beneficiary of an H–2B petition may be authorized for the validity of the labor certification or for a period of up to one year. For all other H–2B petitions, an extension of stay may be authorized for the petition validity period or for a period of up to one year. In all cases, the alien's total period of stay as an H–2B worker may not exceed 3 years, except that in the Virgin Islands, the alien's total period of stay may not exceed 45 days.

* * * * *

(20) *Debarments.* Upon notification to USCIS that the Secretary of Labor has made a finding that the petitioning employer has violated the H–2B attestation requirements, the USCIS will not approve immigrant petitions under section 204 of the Act or nonimmigrant petitions under section 214(c) of the Act for at least the minimum period of time recommended by the Secretary of Labor.

* * * * *

Dated: January 13, 2005.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 05–1240 Filed 1–26–05; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

RIN 1205–AB36

Post-Adjudication Audits of H–2B Petitions in All Occupations Other Than Excepted Occupations in the United States

AGENCIES: Employment and Training Administration, Labor.

ACTION: Proposed rule; request for comments.

SUMMARY: An H–2B nonimmigrant is admitted temporarily to the United States to perform temporary nonagricultural labor or services. The Department of Labor's Employment and Training Administration (DOL or ETA) and the Department of Homeland Security (DHS) simultaneously are proposing changes to the procedures for the issuance of H–2B visas. Under this proposed rule, H–2B petitions filed with DHS, with the exception of workers in logging, the entertainment industry, or professional athletics, will require employers to satisfy specific attestations concerning labor market issues. These attestations have been developed by the DOL and are included in this rule and are incorporated in the DHS regulation. In addition, the DOL will receive information on petitions that have been approved and received final adjudication from the DHS. The DOL will be conducting post-adjudication audits of attestations submitted in support of selected approved H–2B petitions received from the DHS.

DATES: Interested persons are invited to submit written comments on the proposed rule on or before February 28, 2005.

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN) 1205–AB36, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the website instructions for submitting comments.
- E-mail: Comments may be submitted by e-mail to *H2B.Comments@dol.gov.* Include RIN 1205–AB36 in the subject line of the message.
- U.S. Mail: Submit written comments to the Assistant Secretary, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4312, Washington, DC 20210, Attention: William Carlson, Chief, Division of Foreign Labor Certification. Because of security measures, mail directed to Washington, DC is sometimes delayed. We will only consider comments postmarked by the U.S. Postal Service or other delivery service on or before the deadline for comments.

Instructions: All submissions received must include the RIN 1205–AB36 for this rulemaking. Receipt of submissions will not be acknowledged. Because DOL continues to experience occasional delays in receiving postal mail in the Washington, DC area, commenters using mail are encouraged to submit any comments early.

Comments will be available for public inspection during normal business hours at the address listed above for mailed comments. Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers. Copies of this proposed rule may be obtained in alternative formats (*e.g.*, large print, Braille, audiotape, or disk) upon request. To schedule an appointment to review the comments and/or to obtain the proposed rule in an alternative format, contact the Division of Foreign Labor Certification at (202) 693–3010 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: William Carlson, Chief, Division of Foreign Labor Certification, Employment and Training Administration, 200 Constitution Avenue, NW., Room C–4312, Washington, DC 20210, telephone: (202) 693–3010 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Currently, 20 CFR part 655, subpart A, provides that a petitioner seeking to employ an H–2B nonimmigrant must establish that employment of the alien will not adversely affect United States workers who are capable of performing such services or labor and the employment of the alien will not adversely affect the wages and working conditions of similarly employed United States workers. A petitioner may not file a petition with the DHS for an H–2B temporary worker unless the employer has applied for and received a labor certification from DOL or the Governor of Guam, as appropriate. In order to obtain a labor certification, a prospective employer must test the United States labor market and, in addition, agree to pay the alien a salary that will not adversely affect the wages of United States workers similarly employed. A petitioner must demonstrate that the need for the temporary services or labor is a one-time occurrence, a seasonal need, a peak load need, or an intermittent need. The period of the petitioner's need must be less than one year.

II. Proposal

1. Process

Under the redesigned H–2B program, the DHS will continue to administer the petition adjudication process. However, the employer now will be required to conduct recruitment before filing its petition. The employer also will be required to submit, as part of its petition, attestations concerning labor

market tests and related issues. The required attestation elements are set forth in this proposed regulation. The intent of this proposal is to ensure there will not be an adverse affect on the wages and working conditions of U.S. workers similarly employed. An employer is expected to have assembled supporting documentation specified in the regulation and will be required to provide the documentation in the event the attestations included in the Form I–129 petition are audited by the DOL. Although the required attestations are included in this proposed regulation, they are part of the required evidence to be submitted in support of a Form I–129 petition, which will be adjudicated by the DHS.

The majority of the items on the attestation form will require the employer to check ''yes'' or ''no'' as a response. These questions and other information required by the attestation form elicit information similar to that required by the current labor certification process. For example, the wage offered on the attestation form must be equal to or greater than the prevailing wage for the occupation in the area of intended employment.

Upon final adjudication from the DHS, the DOL will conduct audits of attestations contained in certain approved H–2B petitions. Specifically, the DOL will audit a sample of approved attestations. Audited attestations will be identified through a process of pre-selection and/or randomly drawn samples. In such audits, the DOL will limit its examination to whether the employer has complied with all required attestations. Employers will be expected to have documentation available supporting their attestations and will be required to provide this supporting documentation to the DOL within 30 days from notice of audit. In the event the DOL determines an employer (1) has misrepresented a material fact or has made a fraudulent statement in its attestation, or (2) has failed to comply with the terms of the attestations contained in its petition, the DOL, after notice to the employer and providing an opportunity for a hearing, may make a finding that the employer be debarred for a period of up to three years. Once such a finding has been issued, the DOL will notify the DHS of this determination. The DHS, in accordance with 8 CFR 214.2(h)(20), will not approve immigrant petitions under section 204 of the Immigration and Nationality Act (Act) or nonimmigrant petitions under section 214(c) of the Act for at least the minimum period of time recommended by the DOL.

2. Excepted Occupations Subject to Special Procedures

Historically, employers seeking H–2B workers in logging, the entertainment industry, or professional athletics have followed special procedures. Those procedures will remain intact under the new H–2B process.

3. Nature of the Attestation

An employer must attest that:

(1) The employer is offering, and will offer during the period of authorized employment, to pay H–2B workers no less than the prevailing wage as determined by the Occupational Employment Statistics (OES) survey for the occupational classification in the area of intended employment;

(2) The employer will provide working conditions that are normal to workers similarly employed in the area of intended employment;

(3) There is not a strike, lockout, or work stoppage in the course of a labor dispute in the occupational classification in the place of employment;

(4) The employer has placed a job order with America's Job Bank (AJB), has placed a Sunday advertisement in a newspaper of general circulation, or an advertisement in an appropriate trade journal, and has notified the appropriate union(s), if applicable, and the employer was unsuccessful in locating qualified United States applicants for the job opportunity and has rejected United States workers only for lawful job-related reasons;

(5) The employer has agreed to comply with all Federal, state or local laws applicable to the job opportunity; and

(6) The employer will notify the DHS within 30 days when the employment of an H–2B worker has terminated.

4. Prevailing Wage

Employers filing petitions will be required to utilize the prevailing wage information available on the DOL's Online Wage Library (OWL), which is accessible via the DOL's Web site at *http://www.flcdatacenter.com/owl.asp.*

Section 212(p)(3) and (4) of the Immigration and Nationality Act (8 U.S.C. 1182(p)(3) and (4)) as added by the Consolidated Appropriations Act, 2005, provides that for prevailing wage surveys in the permanent alien labor certification program (and the H–1B and H–1B1 programs) the survey shall provide at least four levels of wages commensurate with experience, education, and the level of supervision. Although this statutory provision does not necessarily apply to H–2B labor certifications, it has been DOL's practice to treat prevailing wage determinations the same under the H–2B program as under the permanent labor certification program. This is consistent with the proposed rule below and we request public comment on this issue.

III. Executive Order 12866

Although this proposed rule is not economically significant, the Office of Management and Budget has reviewed the proposed rule. The proposed program will not have an economic impact of $100 million or more because it does not require the initial filing of documents with the DOL.

IV. Regulatory Flexibility Act

We have notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to the Regulatory Flexibility Act (RFA) at 5 U.S.C. 605(b), that the proposed rule will not have a significant economic impact on a substantial number of small entities. The factual basis for that certification is as follows: The proposed rule would affect only those employers seeking nonimmigrant H–2B workers for employment in the United States. Based on past filing data, the DOL estimates in the upcoming year approximately 5,000 employers will file approximately 7,000 attestations for nonimmigrant H–2B workers. Several employers will file multiple attestations in a year. We do not inquire about the size of the employer; however, the number of small entities that file attestations in the upcoming year will be less than the total number of 5,000 employer-applicants and significantly below the potential universe of small businesses to which the program is open. Because applications come from employers in all industry segments, we consider all small businesses as the appropriate universe for comparison purposes. According to the Small Business Administration's publication *The Regulatory Flexibility Act—An Implementation Guide for Federal Agencies,* there were 22,400,000 small businesses in the United States in 2001. If the universe consists of all small businesses, the 5,000 businesses that file for attestations would represent less than 0.01 percent of all small businesses. The DOL asserts that 0.01 percent is not a substantial number of small entities.

Moreover, the DOL does not believe this rule will have a significant economic impact. The DOL estimates that under the current regulation, a business spends approximately one hour to prepare the necessary ETA 750,

Part A. This equates to approximately 7,000 hours under the current regulation. Under the proposed rule the employer will spend substantially less time completing the attestation form. Therefore, the proposed rule establishes no additional economic burden on small entities, since the recruitment activities and required wage and benefit levels are no different from those required under the existing program, other than to require that the activities be attested to rather than be part of a process of applying for certification. The DOL does not believe small businesses will have to incur additional costs to perform this additional requirement. See General Administration Letter No. 1–95, 60 FR 7216 (February 7, 1995). Further, the filing burden is lessened by this rulemaking, since applicants no longer would have to file applications with State Workforce Agencies (SWAs) or have their applications adjudicated by DOL. The DOL welcomes comments on this RFA certification. The DOL is particularly interested in comments concerning the universe of small businesses and the assumption that small businesses will not incur any additional economic burden as a result of this proposal.

V. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

VI. Small Business Regulatory Enforcement Fairness Act of 1996

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

VII. Executive Order 13132

This proposed rule will not have a substantial direct effect on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, we have determined this rule does not have sufficient federalism implications to warrant the preparation of a summary impact statement.

VIII. Assessment of Federal Regulations and Policies on Families

The proposed regulation does not affect family well-being.

IX. Paperwork Reduction Act

The information collection requirements necessary to administer the program are contained in the DHS regulations. The redesigned H–2B program will result in a significant reduction in the paperwork burden on employers that use the program. Only the electronic form required by the DHS will have to be submitted by employers, unless they are applying for the excepted occupations. For non-excepted occupations employers will no longer have to submit an application form (ETA 750, *Application for Permanent Employment Certification*) to the DOL; nor will these employers have to submit any recruitment information to the DOL before their petition can be adjudicated by DHS. Employers, however, will be required to maintain and make available for review all documentation supporting their attestations.

X. Catalogue of Federal Domestic Assistance Number

This program is listed in the *Catalogue of Federal Domestic Assistance* at Number 17.203, ''Certification for Alien Workers.''

List of Subjects in 20 CFR Part 655

Administrative practice and procedure, Agriculture, Aliens, Crewmembers, Employment, Forest and forest products, Health professions, Employment and training, Enforcement, Fraud, Guam, Immigration, Labor, Longshore work, Migrant labor, Penalties, Reporting requirements, Unemployment, Students, Wages and working conditions.

Accordingly, we propose that part 655 of Chapter V of title 20 of the Code of Federal Regulations be amended as follows:

PART 655—TEMPORARY EMPLOYMENT OF ALIENS IN THE UNITED STATES

1. The authority citation for part 655 continues to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(H)(i) and (ii), 1182(m), (n) and (t), 1184, 1188, and 1288(c) and (d); 29 U.S.C. 49 *et seq.*; sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2102 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); Title IV, Pub. L. 105–277, 112 Stat. 2681; and 8 CFR 213.2(h)(4)(i).

Section 655.00 issued under 8 U.S.C. 1101(a)(15)(H)(ii), 1184, and 1188; 29 U.S.C. 49 *et seq.*; and 8 CFR 214.2(h)(4)(i).

Subparts A and C issued under 8 U.S.C. 1101(a)(15)(H)(ii)(b) and 1184; 29 U.S.C. 49 *et seq.*; and 8 CFR 214.2(h)(5)(i).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184, and 1188; and 29 U.S.C. 49 *et seq.*

Subparts D and E issued under 8 U.S.C. 1101(a)(15)(H)(i)(a), 1182(m), and 1184; 29 U.S.C. 49 *et seq.*; and sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2103 (8 U.S.C. 1182 note).

Subparts F and G issued under 8 U.S.C. 1184 and 1288(c); and 29 U.S.C. 49 *et seq.*

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b) and (b1), 1182(n), 1182(t) and 1184; 29 U.S.C. 49 *et seq.*; sec 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1182 note); and Title IV, Pub. L. 105–277, 112 Stat. 2681.

Subparts J and K issued under 29 U.S.C. 49 *et seq.*; and sec 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note).

Subparts L and M issued under 8 U.S.C. 1101(a)(15)(H)(1)(c), 1182(m), and 1184, 29 U.S.C. 49 *et seq.*, Pub. L. 106–95, 113 Stat. 1312.

2. Part 655, subpart A, is revised to read as follows:

Subpart A—Post-Adjudication Audits of H–2B Petitions in All Occupations Other Than Excepted Occupations in the United States

Sec.

Subpart A—Post-Adjudication Audits of H–2B Petitions in All Occupations Other Than Excepted Occupations in the United States

§ 655.1 What is the purpose and scope of subpart A?

This subpart contains the attestations that will be required for employers to file H–2B petitions with the Department of Homeland Security (DHS). This subpart also sets forth the procedures governing the Department of Labor's (DOL or ETA) post-adjudication audit process for H–2B attestations in occupations other than logging, entertainment, or professional athletics. In addition, it describes the process by which the DOL, after notice to the employer and providing an opportunity for a hearing, may make a finding that an employer be debarred for a period of up to three years if the employer fails to comply with the terms of attestations contained in its H–2B petition or misrepresented a material fact. Once such a finding has been issued, the DOL will notify the DHS of this determination.

§ 655.2 Which Federal agencies are involved in the H–2B program?

Three Federal agencies (Department of Labor, Department of Homeland Security, and Department of State) are involved in the process relating to H–2B employment in the United States. Employers seeking to import H–2B workers, with the exception of workers in logging, the entertainment industry, or professional athletics, will only file a petition with the DHS. That petition will require, among other evidence, attestations concerning the employer's labor market tests and related issues.

§ 655.3 What are the excepted occupations?

Certain occupations are not subject to the attestation requirements in §§ 655.5 through 655.10:

(a) Employers seeking to employ workers in logging shall follow the procedures set forth in subpart C of this part.

(b) Employers seeking to employ professional athletes as defined in section 212(a)(5)(A)(iii)(II) of the Immigration and Nationality Act shall continue to file directly with the Chief, Division of Foreign Labor Certification, Employment and Training Administration, U.S. Department of Labor, and pursuant to policy guidelines.

(c) Employers seeking to employ workers in the entertainment industry shall continue to file pursuant to ETA policy guidelines.

§ 655.4 What is the requirement regarding record retention?

The employer shall maintain all supporting documentation for its attestations for a period of three years from the date of filing. This documentation shall include resumes received and the written results of all recruitment efforts undertaken, as well as any other information noted in this regulation required to support the attestations.

§ 655.5 What is the attestation regarding wages?

An employer seeking to employ H–2B workers shall attest that, for the entire period of authorized employment, H–2B workers will be paid at least the prevailing wage for the occupation in the area of intended employment.

(a) *Determining the prevailing wage.* The prevailing wage shall be determined by the Occupational Employment Statistics (OES) survey (if any) for the occupation in the area of intended employment. An employer shall obtain the prevailing wage through the DOL's On-Line Wage Library (OWL), a web-based service which can be accessed via the DOL's Web site at *http://www.flcdatacenter.com/owl.asp.* The data on this site are drawn from the wage component of the OES survey, conducted by the Bureau of Labor Statistics.

(b) *Minimum wage laws.* A prevailing wage determination for H–2B purposes made under this section shall not permit an employer to pay a wage lower than that required under any other applicable Federal, state or local law.

(c) *Wage ranges.* Where the employer pays a range of wages to individuals in an occupational classification or among individuals with similar experience and qualifications for the specific employment in question, a range is considered to meet the prevailing wage requirement so long as the bottom of the wage range is at least the prevailing wage rate.

§ 655.6 What is the attestation regarding working conditions?

An employer seeking to employ H–2B workers shall attest that it is offering working conditions normal to workers similarly employed in the area of intended employment.

§ 655.7 What is the attestation regarding strikes and lockouts?

An employer seeking to employ H–2B workers shall attest that there is not, at the time the attestation is filed, a strike, lockout, or work stoppage in the course of a labor dispute in the occupational classification in the place of employment.

§ 655.8 What is the attestation regarding the recruitment of U.S. workers?

(a) *Recruitment attestation.* An employer seeking to employ H–2B workers shall attest that it conducted the required recruitment prior to filing the attestation and was unsuccessful in locating qualified U.S. applicants for the job opportunity for which certification is sought and has rejected U.S. workers only for lawful job-related reasons.

(b) *Required recruiting efforts.* Within 60 days, but no less than 20 days, prior to filing the attestation the employer must:

(1) Place a job order with America's Job Bank (AJB),

(2) Contact the appropriate union(s), if unions are customarily used as a recruitment source in the area or industry, and

(3) Place a Sunday advertisement in a newspaper of general circulation or an advertisement in an appropriate trade journal and in the area of intended employment.

(c) *Contents of advertisement.* The text of the advertisement shall:

(1) Name the employer;

(2) Direct applicants to report or send resumes, as appropriate for the occupation, to the employer;

(3) Provide a description of the vacancy specific enough to apprise U.S. workers of the job opportunity for which certification is sought;

(4) Describe the geographic area with enough specificity to apprise applicants of any travel requirements and where applicants will likely have to reside to perform the job opportunity;

(5) State the rate of pay which must equal or exceed the prevailing wage for the occupation in the area of intended employment; and

(6) Offer wages, terms, and conditions of employment which are no less favorable than those offered to the alien.

(d) *Recruitment results.* The employer shall maintain written results of its recruitment which:

(1) Identify each recruitment source by name;

(2) State the name, address, and telephone number of each U.S. worker who applied for the job;

(3) Include applicant resumes, if submitted to the employer; and

(4) Explain the lawful job-related reasons for not hiring each U.S. worker.

§ 655.9 What is the attestation regarding compliance with Federal, state and local laws?

An employer seeking to employ H–2B workers shall attest that, during the period of employment, it will comply with all Federal, state or local laws applicable to the employment opportunity.

§ 655.10 What is the attestation regarding notification to the DHS on termination of employment of H–2B workers?

An employer seeking to employ H–2B workers shall attest that, upon the termination of employment of H–2B worker(s) employed under the attestation, the employer will notify the DHS in writing of the termination of employment within 30 days.

§ 655.11 What may the DOL audit?

Upon final adjudication from the DHS, the DOL will conduct audits of attestations contained in certain approved H–2B petitions. Specifically, the DOL will audit a sample of approved attestations. Audited attestations will be identified through a process of pre-selection and/or randomly drawn samples. The DOL will limit its examination to whether the employer has complied with labor market tests and other related elements of the attestations.

§ 655.12 What are employer responsibilities during the audit?

Employers should retain all documentation supporting their attestations, and are required to provide this supporting documentation to the DOL within 30 days from notice of audit. The DOL may request employers to provide supplemental information as necessary to complete the audit. Failure to cooperate with the audit process, including providing documentation within the specified time period, may result in a finding that the employer be debarred for a period of up to three years.

§ 655.13 What actions may the DOL take as a result of the audit?

(a) The Chief, Division of Foreign Labor Certification or his/her designee, will notify the employer of the finding that the employer is to be debarred for a period of up to three years if the employer:

(1) Has misrepresented a material fact or has made a fraudulent statement in its attestations,

(2) Has failed to comply with the terms of the attestations contained in its petition, or

(3) Failed to cooperate in the audit process pursuant to § 655.12.

(b) The notice in paragraph (a) of this section shall be in writing, shall state the reason for the debarment finding, and shall offer the employer an opportunity to request review before an Administrative Law Judge. The notice shall state that in order to obtain such a review or hearing, the employer, within 30 calendar days of the date of the notice, shall file a written request to the Office of Administrative Law Judges, 800 K Street, NW., Suite 400, Washington, DC 20001–8002, and simultaneously serve a copy to the Chief, Division of Foreign Labor Certification or his/her designee. If such a review is requested, the hearing shall be conducted pursuant to the procedures set forth in 29 CFR part 18.

(c) Whenever an employer has requested an administrative review before an Administrative Law Judge of a debarment finding, the Chief, Division of Foreign Labor Certification or his/her designee, shall immediately assemble an indexed Appeal File. The Chief, Division of Foreign Labor Certification or his/her designee, shall send a copy of the Appeal File to the Office of Administrative Law Judges. The Administrative Law Judge shall affirm, reverse, or modify the Chief, Division of Foreign Labor Certification's determination, and the Administrative Law Judge's decision shall be provided to the employer, the Chief, Division of Foreign Labor Certification, and the DHS. The Administrative Law Judge's decision shall be the final decision of the DOL, unless appealed to the Administrative Review Board within 30 days.

(d) After completion of the appeal process, the DOL will inform the DHS of the findings, as appropriate, for debarment.

Signed in Washington, DC, this 18th day of January, 2005.

Emily Stover DeRocco,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 05–1222 Filed 1–26–05; 8:45 am]

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January 27, 2005

Part III

Department of Housing and Urban Development

24 CFR Part 1000

Extension of Minimum Funding Under the Indian Housing Block Grant Program; Interim Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 1000

[Docket No. FR–4825–I–03; HUD–2005–0001]

RIN 2577–AC43

Extension of Minimum Funding Under the Indian Housing Block Grant Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule provides authority for Indian tribes to receive a minimum grant amount under the need component of the Indian Housing Block Grant (IHBG) Formula for Fiscal Years 2005 and 2006. The minimum funding provision currently in effect in HUD's regulations limited authority for receipt of a minimum grant amount to Fiscal Year 2004. HUD and Indian tribes, through negotiated rulemaking procedures, have developed a proposed rule to address ways to improve and clarify the IHBG Formula regulations, including the minimum funding provisions. The reinstatement of the authority for minimum grant amounts in Fiscal Years 2005 and 2006 will avoid hardship to the affected tribes until the revised minimum funding provisions contained in the negotiated proposed rule are issued as a final rule and become effective.

DATES: *Effective Date:* February 28, 2005.

Comment Due Date: March 28, 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 eRulemaking Portal at *http://www.regulations.gov;* or
- The HUD electronic Web site at *http://www.epa.gov/feddocket.* Follow the link entitled ''View Open HUD Dockets.'' Commenters should follow the instructions provided on that site to submit comments electronically.

Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title. All comments and communications submitted will be available 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: Rodger Boyd, Deputy Assistant Secretary for Native American Programs, Room 4126, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0001; telephone (202) 401–7914 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (NAHASDA) streamlined the way that housing assistance is provided to Native Americans. NAHASDA eliminated several separate assistance programs and replaced them with a single block grant program, known as the Indian Housing Block Grant (IHBG) Program. In addition to simplifying the process of providing housing assistance, the purpose of NAHASDA is to provide federal assistance for Indian tribes in a manner that recognizes the right of Indian self-determination and tribal self-governance.

The regulations governing the IHBG Program are found in part 1000 of HUD's regulations in title 24 of the Code of Federal Regulations. The part 1000 regulations were established as part of a March 12, 1998, final rule implementing NAHASDA. In accordance with section 106 of NAHASDA, HUD developed the March 12, 1998, final rule with active tribal participation and using the procedures of the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561–570).

Under the IHBG Program, HUD makes assistance available to tribes for Indian housing activities. The amount of assistance made available to each Indian tribe is determined using a formula (IHBG Formula) that was developed as part of the NAHASDA negotiated rulemaking process. A regulatory description of the IHBG Formula is located in subpart D of 24 CFR part 1000 (§§ 1000.301–1000.340). The IHBG Formula consists of two components: (1) Need and (2) formula current assisted stock (FCAS). Generally, the amount of funding for a tribe is the sum of the need component and the FCAS component, subject to a minimum funding amount authorized by § 1000.328.

The minimum funding provision at § 1000.328 provides that in the first year of NAHASDA participation, an Indian tribe whose allocation is less than $50,000 under the need component of the formula shall have its need component of the grant adjusted to $50,000. In subsequent fiscal years, an Indian tribe whose allocation is less than $25,000 under the need component of the formula shall have its need component of the grant adjusted to $25,000. As originally adopted by the negotiated rulemaking committee and reflected in the March 12, 1998, final rule, § 1000.328 provided that minimum funding under the need component would not extend beyond Fiscal Year 2002.

Section 1000.328 also specifies that the need for the minimum funding provisions will be reviewed in accordance with § 1000.306. Section 1000.306 provides that the IHBG Formula be reviewed within five years after promulgation to determine whether any changes are needed. The negotiated rulemaking committee intended that the IHBG Formula would be reviewed before expiration of the minimum funding provision.

In accordance with § 1000.306, HUD established a negotiated rulemaking committee for the purposes of reviewing and developing changes to the regulations governing the IHBG Formula, including the minimum funding provisions. However, the work of the committee continued beyond Fiscal Year 2002 and the expiration of the minimum funding provisions. Accordingly, on June 24, 2003 (68 FR 37660), HUD published an interim rule extending the minimum funding under the need component through Fiscal Year 2003 in order to avoid hardship to the affected Indian tribes. The interim rule provided for a 60-day public comment period. HUD received no comments in response to the interim rule. On June 17, 2004 (69 FR 34020), HUD published a second interim rule extending the minimum funding requirement for Fiscal Year 2004. The June 17, 2004, interim rule also provided for a 60-day public comment period, and HUD did not receive any public comments on the interim rule.

The negotiated rulemaking committee has completed its work on development of the proposed rule. HUD anticipates that the negotiated proposed rule will be published within the next few months. However, because a rule implementing these regulatory changes was not published prior to the end of Fiscal Year 2004, HUD has determined that an additional extension is required for the minimum funding provision of § 1000.328. If action is not taken now to extend the minimum funding provision,

Indian tribes, especially small Indian tribes, would be affected by the lapse of the minimum funding provision.

II. This Interim Rule

The interim rule authorizes for Fiscal Years 2005 and 2006 the provision in § 1000.328 with respect to the minimum funding amount under the need component of the IHBG for tribes returning for their second or subsequent year's grant. The provision with respect to the $50,000 an Indian tribe receives in its first year of funding under the IHBG Program is not revised by this interim rule. That provision, unlike the minimum funding amount for returning Indian tribes, has no expiration date. Accordingly, this rule applies only to the minimum grant amount that returning Indian tribes may receive.

The reinstatement of the authority for minimum grant amounts in Fiscal Years 2005 and 2006 will avoid unnecessary hardship to the many Indian tribes until the revised minimum funding provisions contained in the negotiated proposed rule are issued as a final rule and become effective. Once effective, the minimum funding provisions established by the negotiated final rule will supersede the current regulations. In the interim, affected tribes will not suffer a financial loss because of the expiration of the minimum funding provision in the current regulation.

III. Justification for Interim Rulemaking

Generally, HUD publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. Part 10, however, does provide in § 10.1 for exceptions from that general rule where HUD finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is ''impracticable, unnecessary, or contrary to the public interest.''

HUD finds that good cause exists to publish this interim rule for effect without first soliciting public comment. The rule will allow a minimum amount of funding to continue to Indian tribes without a significant lapse in time during which the tribes would be foreclosed from receiving funds entirely or would receive a significant reduction in funds. The funding meets a critical need of many tribes, which would go unmet during the time that it otherwise would take to publish a rule for effect. Further, as noted above in this preamble, this interim rule follows publication of two HUD interim rules published on June 24, 2003, and June 17, 2004, which similarly extended the IHBG minimum funding provisions. The rules were non-controversial and welcomed by Indian tribes. Although both interim rules invited public comments, HUD did not receive any public comments on the extension of the minimum funding provisions. HUD, however, solicits public comment on this rule.

IV. Findings and Certifications

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This interim rule does not impose any federal mandate on any state, local, or tribal government or the private sector within the meaning of UMRA.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made for the June 24, 2003, interim rule, in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). That finding remains applicable to this interim rule and is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

Impact on Small Entities

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. This interim rule does not impose any new or modify existing regulatory requirements. Rather, the rule is exclusively concerned with extending the minimum funding provisions under the need component of the IHBG Formula. To the extent the interim rule has any impact on small entities, it will be to the benefit of small Indian tribes that are the primary beneficiaries of the minimum funding provisions. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance Number for the IHBG Program is 14.867.

List of Subjects in 24 CFR Part 1000

Aged, Community development block grants, Grant programs-housing and community development, Grant programs-Indians, Indians, Individuals with disabilities, Public Housing, Reporting and recordkeeping requirements.

■ Accordingly, HUD amends 24 CFR part 1000 as follows:

PART 1000—NATIVE AMERICAN HOUSING ACTIVITIES

■ 1. The authority citation for 24 CFR part 1000 continues to read as follows:

Authority: 25 U.S.C. 4101 *et seq.*; 42 U.S.C. 3535(d).

■ 2. Revise § 1000.328 to read as follows:

§ 1000.328 What is the minimum amount an Indian tribe can receive under the need component of the formula?

In the first year of NAHASDA participation, an Indian tribe whose allocation is less than $50,000 under the need component of the formula shall have its need component of the grant adjusted to $50,000. The Indian tribe's IHP shall contain a certification of the need for the $50,000 funding. In subsequent years, but not to extend beyond Federal Fiscal Year 2006, an Indian tribe whose allocation is less than $25,000 under the need component of the formula shall have its need component of the grant adjusted to $25,000. The need for this section will be reviewed in accordance with § 1000.306.

Dated: January 5, 2005.

Michael M. Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 05–1454 Filed 1–26–05; 8:45 am]

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