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Contents

Federal Register

Vol. 70, No. 50

Wednesday, March 16, 2005

Agriculture Department
See Animal and Plant Health Inspection Service
See Farm Service Agency
See Food and Nutrition Service
See Forest Service
See Rural Business-Cooperative Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 12836–12837

Alcohol, Tobacco, Firearms, and Explosives Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 12900

Animal and Plant Health Inspection Service
PROPOSED RULES
Viruses, serums, toxins, etc.:
Bovine virus diarrhea and bovine rhinotracheitis vaccines; standard requirements; withdrawn, 12814
Escherichia coli bacterins; standard requirement; withdrawn, 12813–12814

Antitrust Division
NOTICES
National cooperative research notifications:
Interchangeable Virtual Instruments Foundation, Inc., 12500
Network Centric Operations Industry Consortium Inc., 12500
PXI Systems Alliance, Inc., 12500
Water Heater Industry Joint Research and Development Consortium, 12501 [**Editorial Note**: These documents were indavertently placed under the Justice Department in the **Federal Register** table of contents on March 14, 2005.]

Army Department
See Engineers Corps

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 12888–12889

Coast Guard
RULES
Drawbridge operations:
Maine, 12805–12807
NOTICES
Organization, functions, and authority delegations:
Group Mobile and Marine Safety Office Mobile; consolidation into one command, Sector Miami, 12894–12895

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Defense Department
See Engineers Corps
See Navy Department
RULES
Civilian health and medical program of uniformed services (CHAMPUS):
TRICARE program—
Reserve Select, Transitional Assistance Management Program; and early eligibility for certain reserve component members; requirements and procedures, 12798–12805
NOTICES
Meetings:
Medicare-Eligible Retiree Health Care Board of Actuaries, 12854

Education Department
NOTICES
Privacy Act:
Computer matching program, 12856–12857
Special education and rehabilitative services:
Individuals with Disabilities Education Act (IDEA)—
Correspondence; quarterly list, 12857–12858

Employment and Training Administration
NOTICES
Adjustment assistance:
Arthur G. Russell Co., Inc., 12901
AVX Corp., 12901
G & H Machine Co., Inc., 12901
Marsh Advantage America, 12902
Metso Minerals Industries, Inc., 12902
Milliken & Co., 12902
Murray Engineering, Inc., 12902–12905
Parker Cone Co., 12905
Shirley's Sewvac, 12905
Solo Cup Co., 12905

Energy Department
See Energy Information Administration
See Federal Energy Regulatory Commission

Energy Information Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 12858–12860

Engineers Corps
NOTICES
Environmental statements; notice of intent:
St. Tammany Parish, LA; Timber Branch Subdivision Phase II, 12854–12855

Environmental Protection Agency
NOTICES
Air pollution control:
Citizens suits; proposed settlements—
American Lung Association of Metropolitan Chicago et al., 12869–12870
Meetings:
Scientific Counselors Board, 12870–12871
Pesticide, food, and feed additive petitions:
FMC Corp., 12874–12879
Syngenta Seeds, Inc.; correction, 12879–12880

Pesticide programs:
Risk assessments—
Napropamide, 12871–12874
Pesticide registration, cancellation, etc.:
Imazalil; correction, 12874
Pesticides; experimental use permits, etc.:
Syngenta Seeds, 12880–12881
Reports and guidance documents; availability, etc.:
Pesticides—
Adult mosquito control products; labeling statements, 12881–12882
Superfund; response and remedial actions, proposed settlements, etc.:
Riverhills Battery Site, FL, 12882–12883

Farm Service Agency
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 12837

Federal Aviation Administration
RULES
Airworthiness directives:
Boeing, 12790–12791
McDonnell Douglas, 12791–12793
PROPOSED RULES
Airworthiness directives:
AeroSpace Technologies of Australia Pty Ltd., 12819–12823
Airbus, 12816–12819
Boeing, 12815–12816

Federal Communications Commission
RULES
Radio stations; table of assignments:
Various States, 12807–12808
PROPOSED RULES
Common carrier services:
Prepaid calling card services, 12828–12832
Radio stations; table of assignments:
Arkansas, 12834–12835
California, 12832–12833
Florida, 12832
Texas, 12833
Various States, 12833–12834
NOTICES
Debarment notices; schools and libraries universal service support mechanism:
Weaver, John H., 12883–12884
Declaratory ruling petitions:
California Coalition of Agencies Serving the Deaf and Hard of Hearing, 12884–12885

Federal Election Commission
RULES
Bipartisan Campaign Reform Act; implementation
Non-Federal funds donations to tax-exempt and political organizations; national, State, district, and local political party committees prohibition, 12787–12790

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings, 12863–12865
Hydroelectric applications, 12865
Meetings:
Bonneville Power Administration and the Western Electricity Coordinating Council; technical workshop, 12865–12866
New York Independent System Operator, Inc.; technical conference, 12866–12867
Practice and procedure:
Critical energy infrastructure information, 12867–12868
Preliminary permits surrender:
Gentry Resources Corp., 12868–12869
Applications, hearings, determinations, etc.:
American Electric Power Service Co., et al., 12860–12861
El Paso Natural Gas Co., 12861
Kinder Morgan North Texas Pipeline, L.P., 12861–12862
Port Arthur LNG, L.P., 12862
Southern California Edison Co., 12862–12863

Federal Maritime Commission
NOTICES
Agreements filed, etc., 12885
Ocean transportation intermediary licenses:
Freightcan Global Inc., et al., 12885–12886
Trans Atlantic Shipping, Inc., et al.; correction, 12886

Federal Trade Commission
PROPOSED RULES
Federal Deposit Insurance Corporation Improvement Act; implementation:
Depository institutions lacking Federal deposit insurance; disclosure requirements, 12823–12828
NOTICES
Prohibited trade practices:
CartManager International, 12886–12888

Fish and Wildlife Service
NOTICES
Comprehensive conservation plans; availability, etc.:
Cabeza Prieta National Wildlife Refuge, AZ, 12895–12896

Food and Nutrition Service
NOTICES
Child nutrition programs:
Women, infants, and children; special supplemental nutrition program—
Income eligibility guidelines, 12837–12840

Forest Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 12840–12841
Appealable decisions; legal notice:
Pacific Southwest Region, 12841–12843
Environmental statements; notice of intent:
Nez Perce National Forest, ID, 12843–12844
Meetings:
Resource Advisory Committees—
Beaverhead-Deerlodge National Forest Tri-County, 12844
Wrangell-Petersburg, 12844

Health and Human Services Department
See Centers for Disease Control and Prevention
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Homeland Security Department
See Coast Guard

Interior Department
See Fish and Wildlife Service
See Land Management Bureau

See National Park Service

Internal Revenue Service
RULES
Income taxes:
Charitable remainder trusts; ordering rule application, 12793–12798
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 12952–12958
Committees; establishment, renewal, termination, etc.:
Taxpayer Advocacy Panels; correction, 12958
Meetings:
Art Advisory Panel, 12958
Taxpayer Advocacy Panels, 12958–12959

International Trade Administration
NOTICES
Antidumping:
Stainless steel sheet and strip coils from—
France, 12850–12853

Justice Department
See Alcohol, Tobacco, Firearms, and Explosives Bureau
See Antitrust Division
NOTICES
Pollution control; consent judgments:
Domenick Lombardi Realty Inc., 12898
Illinois Power Co. et al., 12898–12899
Shell Oil Co. et al., 12899
Velsicol Chemical Corp., 12899–12900

Labor Department
See Employment and Training Administration
See Mine Safety and Health Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 12900–12901
Consumer price index, all items for urban consumers; U.S. city average, 12901

Land Management Bureau
NOTICES
Meetings:
Resource Advisory Councils—
John Day/Snake, 12896
Realty actions; sales, leases, etc.:
Oregon; correction, 12896–12897

Maritime Administration
NOTICES
Voluntary Intermodal Sealift Agreement:
Extension, 12938–12948

Mine Safety and Health Administration
NOTICES
Safety standard petitions:
Snyder Coal Co. et al., 12905–12906

National Institutes of Health
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 12889
Meetings:
National Cancer Institute, 12889–12890
National Heart, Lung, and Blood Institute, 12890
National Institute of Child Health and Human Development, 12890–12891
National Institute of Mental Health, 12891
National Institute of Neurological Disorders and Stroke, 12890
National Library of Medicine, 12891–12892
Scientific Review Center, 12892–12894

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pacific cod, 12808–12811
Pollock, 12810
Northeastern United States fisheries—
Tilefish, 12808
NOTICES
Meetings:
Science Advisory Board, 12853
Reports and guidance documents; availability, etc.:
Beluga whales; Cook Inlet, AK; conservation plan, 12853–12854

National Park Service
NOTICES
Meetings:
National Park System Advisory Board, 12897–12898

Navy Department
NOTICES
Inventions, Government-owned; availability for licensing, 12855
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Autoliv, Inc., 12855–12856
Baltimore Shipping Technologies, L.L.C., 12856

Nuclear Regulatory Commission
NOTICES
Enforcement actions:
Enforcement policy and procedure statement; Web site and Agencywide Documents Access Management System availability, 12908–12909
Applications, hearings, determinations, etc.:
Calvert Cliffs Nuclear Power Plant, Inc., 12906–12907
Duke Energy Corp., 12907–12908

Personnel Management Office
PROPOSED RULES
Excepted service:
Student Career Experience Program, 12812–12813

Pipeline and Hazardous Materials Safety Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 12948–12952

Rural Business-Cooperative Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Rural Business Enterprise Program, 12844–12847
Rural Business Opportunity Program, 12847–12849
Rural Economic Development Loan and Grant Program; maximum dollar amount on awards, 12849–12850

Securities and Exchange Commission
NOTICES
Investment Company Act of 1940:
Brazilian Equity Fund, Inc., et al., 12909–12912
Meetings; Sunshine Act, 12912

Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 12912–12915
Chicago Board Options Exchange, Inc., 12916–12919
Fixed Income Clearing Corp., 12919–12921
National Association of Securities Dealers, Inc., 12921–12924
New York Stock Exchange, Inc., 12924–12934
Options Clearing Corp., 12934–12935
Philadelphia Stock Exchange, Inc., 12935–12938

Substance Abuse and Mental Health Services Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 12894

Transportation Department
See Federal Aviation Administration
See Maritime Administration
See Pipeline and Hazardous Materials Safety Administration

Treasury Department
See Internal Revenue Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 12952

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

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CFR PARTS AFFECTED IN THIS ISSUE

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

5 CFR
Proposed Rules:
213.....12812

9 CFR
Proposed Rules:
113 (2 documents) 12813, 12814

11 CFR
300.....12787

14 CFR
39 (2 documents) 12790, 12791
Proposed Rules:
39 (3 documents) 12815, 12816, 12819

16 CFR
Proposed Rules:
230.....12823

26 CFR
1.....12793

32 CFR
199.....12798

33 CFR
117.....12805

47 CFR
73.....12807
Proposed Rules:
Ch. I.....12828
73 (5 documents) 12832, 12833, 12834

50 CFR
648.....12808
679 (5 documents) 12808, 12809, 12810, 12811

Rules and Regulations

Federal Register
Vol. 70, No. 50
Wednesday, March 16, 2005

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

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

FEDERAL ELECTION COMMISSION

11 CFR Part 300

[Notice 2005–8]

Political Party Committees Donating Funds to Certain Tax-Exempt Organizations and Political Organizations

AGENCY: Federal Election Commission.

ACTION: Final rules and transmittal of regulations to Congress.

SUMMARY: The Federal Election Commission is revising its regulations governing donations made or directed by national, State, district, and local political party committees to certain tax-exempt organizations and political organizations. The final rules allow these political party committees to make or direct donations of Federal funds to certain 501(c) tax-exempt organizations and certain 527 political organizations. These revisions conform the Commission's rules to the decision of the U.S. Supreme Court in *McConnell* v. *Federal Election Commission*, which included a narrowing construction of section 101 of the Bipartisan Campaign Reform Act of 2002. Further information is provided in the supplementary information that follows.

DATES: *Effective Date:* The effective date for the revisions to 11 CFR 300.11, 300.37, 300.50 and 300.51 is April 15, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Mai T. Dinh, Assistant General Counsel, or Mr. Albert J. Kiss, Attorney, 999 E Street NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: Section 441i(d) of the Federal Election Campaign Act of 1971 (the ''Act''), 2 U.S.C. 431 *et seq.*, prohibits national, State, district and local political party committees from soliciting any funds for, or making or directing donations to, two types of tax-exempt organizations (''tax-exempt organizations that actively participate in Federal elections''). These consist of (1) organizations described in 26 U.S.C. 501(c) that are exempt from tax under 26 U.S.C. 501(a) (or that have submitted an application for determination of tax exempt status under section 501(a)) and that make expenditures or disbursements in connection with an election for Federal office (including expenditures or disbursements for Federal election activity); and (2) political organizations described in 26 U.S.C. 527 (other than a political committee, a State, district or local committee of a political party, or the authorized campaign committee of a candidate for State or local office). 2 U.S.C. 441i(d)(1) and (2). This statutory provision was added to the Act by section 101 of the Bipartisan Campaign Reform Act of 2002 (''BCRA''), Public Law 107–155, 116 Stat. 81, 82–85 (2002).

In 2002, the Commission promulgated rules at 11 CFR 300.11, 300.37, 300.50, and 300.51 implementing 2 U.S.C. 441i(d). *Explanation and Justification for Rules on Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money*, 67 FR 49064, 49089–49091, and 49105–49106 (July 29, 2002) (''Soft Money Final Rules''). Except for the title of each, the final rule at 11 CFR 300.11 is identical to the final rule at 11 CFR 300.50, and the final rule at 11 CFR 300.37 is identical to the final rule at 11 CFR 300.51. *Id.* at 49106.

Subsequently, in *McConnell* v. *Federal Election Commission*, 540 U.S. 93, 174–178 (2003), the Supreme Court upheld 2 U.S.C. 441i(d)'s prohibitions on the solicitation of funds for tax-exempt organizations that actively participate in Federal elections. The Supreme Court also upheld restrictions on making and directing donations of non-Federal funds to such tax-exempt organizations. Here, the Supreme Court stated that, ''[a]bsent such a restriction, state and local party committees could accomplish directly what the antisolicitation restrictions prevent them from doing indirectly—namely, raising large sums of soft money to launder through tax-exempt organizations engaging in federal election activities.'' *Id.* at 178–179. However, the Supreme Court stated that section 441i(d) raises overbreadth concerns ''if read to restrict donations from a party's federal account—*i.e.*, funds that have already been raised in compliance with FECA's source, amount and disclosure limitations.'' *Id.* at 179. The Court found ''no evidence that Congress was concerned about, much less that it intended to prohibit, donations of money already fully regulated by FECA'' and concluded that ''political parties remain free to make or direct donations of money to any tax-exempt organization that has otherwise been raised in compliance with FECA.'' *Id.* at 180–181.

To conform its regulations to the Supreme Court's decision in *McConnell*, the Commission proposed modifying 11 CFR 300.11, 300.37, 300.50 and 300.51 to provide that political party committees, while prohibited from soliciting funds for tax-exempt organizations that actively participate in Federal elections, are now free to make or direct donations of Federal funds to any tax-exempt organization.[1] The Notice of Proposed Rulemaking (''NPRM'') containing this proposal was published in the **Federal Register** on December 9, 2004. 69 FR 71388 (Dec. 9, 2004). The public comment period closed on January 10, 2005. The Commission received two written comments (both jointly submitted) in response to the NPRM.[2] Both groups of commenters supported the proposed rules.

These final rules are the same as the rules proposed in the NPRM, except that revised 11 CFR 300.37 and 300.51 explicitly encompass Levin funds, which are a type of non-Federal funds, and typographical errors in sections 300.37(b)(2) and 300.51(b)(2) are corrected.

Under the Administrative Procedure Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate and publish them in the **Federal Register** at least 30 calendar days before they take

[1] ''Federal funds'' are funds that comply with the limitations, prohibitions, and reporting requirements of the Act. 11 CFR 300.2(g). ''Non-Federal funds'' are funds that are not subject to the limitations and prohibitions of the Act. 11 CFR 300.2(k).

[2] The comments are available at *http://www.fec.gov/register.html* under ''Political Party Committees Donating Funds to Certain Tax-Exempt Organizations and Political Organizations.''

effect. The final rules that follow were transmitted to Congress on March 10, 2005.

Explanation and Justification

11 CFR 300.11—Prohibitions on Fundraising for and Donating to Certain Tax-Exempt Organizations

Section 300.11 implements 2 U.S.C. 441i(d) by prohibiting national committees of a political party from soliciting any funds for, or making or directing any donations to, tax-exempt organizations that actively participate in Federal elections. To implement the Supreme Court's decision in *McConnell*, the Commission is amending paragraph (a) of 11 CFR 300.11 to allow national party committees to make or direct donations of Federal funds to tax-exempt organizations that actively participate in Federal elections. Under the revised rule, national party committees must not make or direct donations of *non-Federal* funds to such tax-exempt organizations. This statutory and regulatory prohibition is consistent with 2 U.S.C. 441i(a) and 11 CFR 300.10(a), which more generally prohibit national party committees from spending funds or directing to another person donations of funds not subject to the limitations, prohibitions and reporting requirements of the Act. The prohibition on the solicitation of funds by national party committees for tax-exempt organizations that actively participate in Federal elections remains unchanged in section 300.11(a). The Commission is also making a technical amendment to section 300.11(b)(3) by removing the reference to a State, district, or local party committee, because only national party committees are the subject of section 300.11. Both groups of commenters agreed with the Commission's proposed modifications to section 300.11. The final rules for section 300.11 are identical to the proposed rules.

11 CFR 300.37—Prohibitions on Fundraising for and Donating to Certain Tax-Exempt Organizations

Section 300.37 implements 2 U.S.C. 441i(d) by prohibiting State, district and local committees of a political party from soliciting any funds for, or making or directing any donations to, tax-exempt organizations that actively participate in Federal elections, similar to the restrictions placed on national committees of a political party in 11 CFR 300.11. As discussed above, restrictions on making or directing donations of Federal funds by these party committees are unconstitutional under *McConnell*. Consequently, the Commission is revising paragraph (a) of 11 CFR 300.37 to permit the use of Federal funds in this manner. Thus, revised section 300.37(a) limits the prohibition on making or directing donations to donations of non-Federal funds. The prohibition on soliciting funds for tax-exempt organizations that actively participate in Federal elections remains in revised section 300.37(a).

Additionally, the NPRM sought comment on whether State, district and local party committees should be allowed to make or direct donations of Levin funds to tax-exempt organizations that actively participate in Federal elections if permitted by State law. State, district and local party committees may use an allocable mix of Federal funds and Levin funds to pay for certain types of Federal election activity, including voter registration activity during the 120 days preceding a regularly scheduled Federal election, and voter identification, get-out-the-vote, and generic campaign activity that is conducted in connection with an election in which a candidate for Federal office appears on the ballot. 2 U.S.C. 431(20), 441i(b)(1) and (2); 11 CFR 100.24; *see also* 300.32 and 300.33. State, district and local party committees may not use Levin funds, or other non-Federal funds, for any public communication that promotes or supports or attacks or opposes a clearly identified candidate for Federal office. 2 U.S.C. 441i(b)(1); 11 CFR 300.32(c).

In the Soft Money Final Rules, the Commission concluded that Levin funds are a ''new type of non-Federal funds.'' 67 FR at 49065. The Commission found that Levin funds are ''unlike Federal funds, which are fully subject to the Act's requirements, and unlike ordinary non-Federal funds, because they are subject to certain additional requirements under BCRA.'' *Id.* at 49085. Levin funds are generally described as non-Federal funds; *e.g.*, when presenting the Levin amendment to Congress, the sponsor of the Levin amendment stated ''this amendment will allow the use of some *non-Federal* dollars by State parties for voter registration and get out the vote * * *'' 147 Cong. Rec. S3124 (daily ed. Mar. 29, 2001) (Statement of Sen. Levin) [emphasis added].[3] Consequently, State, district and local party committees may deposit Levin funds in their non-Federal account if they do not maintain a separate Levin account. 11 CFR 300.30(c)(3). Thus, Schedules H5 and H6 to FEC Form 3X and the related instructions treat Levin funds as one type of non-Federal funds.

Both groups of commenters agreed with the Commission's proposed modifications to section 300.37. One group of commenters supported the restriction on the donation of Levin funds for several reasons. These commenters observed that the Supreme Court's statements about BCRA provide ''no basis to think that the [Supreme] Court was including Levin funds in its reference to funds from a 'party's federal account.' '' Second, the commenters relied on the legislative history of section 441i(b)(2), which allows State parties to use only limited amounts of non-Federal funds for voter registration and get-out-the-vote activities. Third, the commenters noted the Commission's prior interpretation of section 441i(b)(2) in the Soft Money Final Rules, where the Commission explicitly treated Levin funds as a new type of non-Federal funds. Lastly, the commenters pointed to the danger that BCRA's Levin fund spending restrictions could easily be circumvented if State, district and local party committees are allowed to make or direct donations of Levin funds to tax-exempt organizations that actively participate in Federal elections because such organizations are not subject to section 441i(b)'s spending restrictions. Thus, these commenters find that ''[t]he statutory language and legislative history of the Levin amendment establish that Levin funds are most accurately characterized as non-Federal funds.'' These commenters conclude that ''Levin funds are not the kind of funds that the [Supreme] Court [in *McConnell*] intended to permit state parties to donate or direct to tax exempt groups.''

The Commission concludes that, consistent with its previous treatment of Levin funds as non-Federal funds, Levin funds may not be donated or directed to tax-exempt organizations that actively participate in Federal elections. Levin funds are funds donated to State, district or local party committees, in accordance with State law, from corporations, labor organizations, or other ''persons'' in amounts up to $10,000 per calendar year.[4] 2 U.S.C. 441i(b)(2); 11 CFR 300.2(i). There would be a danger of circumvention of BCRA's soft money restrictions if State, district and local party committees could

[3] Similarly, in the Explanation and Justification for the regulations implementing the Levin Amendment, the Commission noted that ''BCRA's Levin Amendment provides that State, district, and local political party committees may spend certain non-Federal funds for Federal election activities if those funds comply with certain requirements. 2 U.S.C. 441i(b)(2)(A)(ii). Thus, these funds are unlike Federal funds, which are fully subject to the Act's requirements * * *'' 67 FR at 49085.

[4] Foreign nationals may not donate Levin funds. 2 U.S.C. 441e; 11 CFR 300.31(c).

donate corporate and labor union funds of up to $10,000 per donor to tax-exempt organizations that may use these funds for voter identification, voter registration, get-out-the-vote and other activities, and for communications that promote, support, attack or oppose Federal candidates, because State, district and local party committees may not use Levin funds for Federal election activity that refers to a clearly identified Federal candidate, and may not use Levin funds, or other non-Federal funds, for public communications that promote or support or attack or oppose a clearly identified Federal candidate. 2 U.S.C. 441i(b)(1) and (b)(2)(B)(i); 11 CFR 300.32(c).

For these reasons, the final rules for section 300.37(a) are identical to the proposed rules, except that the final rules explicitly include Levin funds as a type of non-Federal funds subject to section 441i(d). The Commission is also correcting a typographical error in section 300.37(b)(2). The phrase ''State, district or local committee *or* a political party'' [emphasis added] is revised to read ''State, district or local committee *of* a political party'' [emphasis added].

11 CFR 300.50—Prohibited Fundraising by National Party Committees

For the reason discussed above regarding the revision to section 300.11, the Commission is revising paragraph (a) of 11 CFR 300.50 to specify that a national committee of a political party may not make or direct donations of non-Federal funds to tax-exempt organizations that actively participate in Federal elections. The prohibition on soliciting funds for these groups remains in revised section 300.50(a). Similarly, the Commission is revising section 300.50(b)(3) by removing the reference to a State, district, or local party committee, because only national party committees are the subject of section 300.50. Both groups of commenters agreed with the Commission's proposed modifications to section 300.50. The final rules for section 300.50 are identical to the proposed rules.

11 CFR 300.51—Prohibited Fundraising by State, District, or Local Party Committees

For the reasons discussed above regarding the revision to section 300.37, the Commission is revising paragraph (a) of 11 CFR 300.51 to specify that a State, district or local committee of a political party may not make or direct donations of non-Federal funds, including Levin funds, to tax-exempt organizations that actively participate in Federal elections. The prohibition on soliciting funds for these groups remains in revised section 300.51(a).

Both groups of commenters agreed with the Commission's proposed modifications to section 300.51. The final rules for section 300.51(a) are identical to the proposed rules, except that the final rules state explicitly that Levin funds are non-Federal funds. The Commission is also amending section 300.51(b)(2) to correct a typographical error. The phrase ''State, district or local committee *or* a political party'' [emphasis added] is revised to read ''State, district or local committee *of* a political party'' [emphasis added].

Other Issues

One group of commenters urged the Commission to amend 11 CFR 102.17, 300.31(e) and 300.31(f) regarding the use of jointly raised or transferred Federal funds for Federal election activity by State, district and local party committees. These changes are beyond the scope of this rulemaking.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The Commission certifies that the attached rules do not have a significant economic impact on a substantial number of small entities for two reasons. First, the national, State, district and local party committees of the two major political parties are not small entities under 5 U.S.C. 601 because they are not small businesses, small organizations or small governmental jurisdictions. To the extent that other national, State, district and local party committees may fall within the definition of ''small entities,'' their numbers are not substantial. Second, the final rules narrow the scope of restrictions applicable to national, State, district and local political party committees, and thus do not have a significant economic impact on the affected entities.

List of Subjects in 11 CFR Part 300

Campaign funds, Nonprofit organizations, Political committees and parties.

■ For the reasons set out in the preamble, the Federal Election Commission amends subchapter C of chapter 1 of title 11 of the *Code of Federal Regulations* as follows:

PART 300—NON-FEDERAL FUNDS

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

Authority: 2 U.S.C. 434(e), 438(a)(8), 441a(a), 441i, 453.

■ 2. In § 300.11, the introductory text of paragraph (a) and paragraph (b)(3) are revised to read as follows:

§ 300.11 Prohibitions on fundraising for and donating to certain tax-exempt organizations (2 U.S.C. 441i(d)).

(a) *Prohibitions.* A national committee of a political party, including a national congressional campaign committee, must not solicit any funds for, or make or direct any donations of non-Federal funds to, the following organizations:

* * * * *

(b) * * *

(3) An entity that is directly or indirectly established, financed, maintained or controlled by an agent of a national committee of a political party, including a national congressional campaign committee.

* * * * *

■ 3. In § 300.37, the introductory text of paragraph (a) and paragraph (b)(2) are revised to read as follows:

§ 300.37 Prohibitions on fundraising for and donating to certain tax-exempt organizations (2 U.S.C. 441i(d)).

(a) *Prohibitions.* A State, district or local committee of a political party must not solicit any funds for, or make or direct any donations of non-Federal funds, including Levin funds, to:

* * * * *

(b) * * *

(2) An entity that is directly or indirectly established, financed, maintained or controlled by a State, district or local committee of a political party or an officer or agent acting on behalf of such an entity; or

* * * * *

■ 4. In § 300.50, the introductory text of paragraph (a) and paragraph (b)(3) are revised to read as follows:

§ 300.50 Prohibited fundraising by national party committees (2 U.S.C. 441i(d)).

(a) *Prohibitions on fundraising and donations.* A national committee of a political party, including a national congressional campaign committee, must not solicit any funds for, or make or direct any donations of non-Federal funds to the following organizations:

* * * * *

(b) * * *

(3) An entity that is directly or indirectly established, financed, maintained or controlled by an agent of a national committee of a political party, including a national congressional campaign committee.

* * * * *

■ 5. In § 300.51, the introductory text of paragraph (a) and paragraph (b)(2) are revised to read as follows:

§ 300.51 Prohibited fundraising by State, district, or local party committees (2 U.S.C. 441i(d)).

(a) *Prohibitions.* A State, district or local committee of a political party must not solicit any funds for, or make or direct any donations of non-Federal funds, including Levin funds, to:

* * * * *

(b) * * *

(2) An entity that is directly or indirectly established, financed, maintained or controlled by a State, district or local committee of a political party or an officer or agent acting on behalf of such an entity; or

* * * * *

Dated: March 11, 2005.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 05–5159 Filed 3–15–05; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19943; Directorate Identifier 2004–NM–76–AD; Amendment 39–14010; AD 2005–06–02]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 757–200 series airplanes. This AD requires modifying the wiring of the test ground signal for the master dim and test system circuit in the flight compartment. This AD is prompted by a report that the master dim and test system circuit does not have wiring separation of the test ground signal for redundant equipment in the flight compartment. We are issuing this AD to prevent a single fault failure during flight, which could result in test patterns instead of the selected radio frequencies showing on the communications panel. These conditions could adversely affect voice and transponder communication capability between the flightcrew and air traffic control, which could result in increased pilot workload.

DATES: This AD becomes effective April 20, 2005.

The incorporation by reference of a certain publication listed in the AD is approved by the Director of the Federal Register as of April 20, 2005.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Washington, DC. This docket number is FAA–2004–19943; the directorate identifier for this docket is 2004–NM–76–AD.

FOR FURTHER INFORMATION CONTACT: Binh Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6485; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with an AD for certain Boeing Model 757–200 series airplanes. That action, published in the **Federal Register** on December 28, 2004 (69 FR 77675), proposed to require modifying the wiring of the test ground signal for the master dim and test system circuit in the flight compartment.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comment that has been submitted on the proposed AD. The commenter supports the proposed AD.

Clarification of Applicability

In paragraph (c) of the proposed AD we inadvertently specified ''certain Boeing Model 757–200 series airplanes'' without identifying the affected group. These airplanes are identified in Boeing Service Bulletin 757–33–0050, Revision 2, dated December 4, 2003. We have revised the final rule to clarify that applicability.

Editorial Change

The FAA noted that in paragraph (g) of the proposed AD, reference was made to Boeing Service Bulletin 757–33–0050. We have revised that reference to read Boeing Special Attention Service Bulletin 757–33–0050.

Conclusion

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

Costs of Compliance

There are about 55 airplanes of the affected design worldwide, and 30 airplanes of U.S. registry. The required modification (including the operational test) will take between 2 and 3 work hours, depending on the airplane configuration, at an average labor rate of $65 per work hour. Required parts cost will be minimal. Based on these figures, the estimated cost of the required modification for U.S. operators is between $130 and $195 per airplane.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–06–02 Boeing: Amendment 39–14010. Docket No. FAA–2004–19943; Directorate Identifier 2004–NM–76–AD.

Effective Date

(a) This AD becomes effective April 20, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 757–200 series airplanes, certificated in any category; as identified in Boeing Service Bulletin 757–33–0050, Revision 2, dated December 4, 2003.

Unsafe Condition

(d) This AD was prompted by a report that the master dim and test system circuit does not have wiring separation of the test ground signal for redundant equipment in the flight compartment. We are issuing this AD to prevent a single fault failure during flight which could result in test patterns instead of the selected radio frequencies showing on the communications panel. These conditions could adversely affect voice and transponder communication capability between the flightcrew and air traffic control, which could result in increased pilot workload.

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.

Modification

(f) Within 60 months after the effective date of this AD: Modify the wiring of the test ground signal for the master dim and test system circuit in the flight compartment by doing all the applicable actions specified in Boeing Service Bulletin 757–33–0050, Revision 2, dated December 4, 2003.

Modifications Done Using Previous Issues of the Service Bulletin

(g) Modifications done before the effective date of this AD in accordance with Boeing Special Attention Service Bulletin 757–33–0050, dated August 15, 2002; or Revision 1, dated January 30, 2003; are considered acceptable for compliance with paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

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

Material Incorporated by Reference

(i) You must use Boeing Service Bulletin 757–33–0050, Revision 2, dated December 4, 2003, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For copies of the service information, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. For information on the availability of this material at the National Archives and Records Administration (NARA), call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

You may view the AD docket at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC.

Issued in Renton, Washington, on March 7, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–5015 Filed 3–15–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19448; Directorate Identifier 2004–NM–134–AD; Amendment 39–14011; AD 2005–06–03]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all McDonnell Douglas Model MD–90–30 airplanes. This AD requires replacing, with improved parts, certain existing fluorescent light lamp holders located in the ceiling panels and life raft ceiling support housings, and behind the overhead stowage compartments in the main cabin. This AD is prompted by reports of failure of fluorescent light lamp holders in the main cabin. We are issuing this AD to prevent chafing of the lamp holder power wire against the mounting bracket, and moisture intrusion into the lamp holders, which could result in failure of the lamp holders and consequent smoke and fire in the airplane cabin.

DATES: This AD becomes effective April 20, 2005.

The incorporation by reference of certain publications listed in the AD is approved by the Director of the Federal Register as of April 20, 2005.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024).

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Washington, DC. This docket number is FAA–2004–19448; the directorate identifier for this docket is 2004–NM–134–AD.

FOR FURTHER INFORMATION CONTACT: George Mabuni, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5341; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR Part 39 with an AD for all McDonnell Douglas Model MD–90–30 airplanes. That action, published in the **Federal Register** on October 26, 2004 (69 FR 62424), proposed to require replacing, with improved parts, certain existing fluorescent light lamp holders located in the ceiling panels and life raft ceiling support housings, and behind the overhead stowage compartments in the main cabin.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the single comment submitted on the proposed AD.

Request To Specify Part Numbers of Existing and Replacement Lamp Holders

The commenter requests that we revise the proposed AD to specify the part numbers of fluorescent light lamp holders determined to be defective and the part numbers of acceptable replacement fluorescent light lamp holders. The commenter states that there may be other acceptable replacement parts, but this is difficult to determine without knowing the part numbers.

We concur. The part numbers of the defective and replacement fluorescent light lamp holders are identified in C & D Aerospace Alert Service Bulletins 59406XX–25A01, currently at Revision 4, dated July 31, 2003; and 51310XX–25A01, currently at Revision 5, dated March 30, 2004. The proposed AD refers to those service bulletins as additional sources of instructions for accomplishing the replacement. For the convenience of affected operators, we have revised paragraphs (f) and (g) of this AD to include the relevant part numbers.

Conclusion

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

Costs of Compliance

This AD will affect about 84 airplanes worldwide and 21 airplanes of U.S. registry. The required actions will take about 98 work hours per airplane, at an average labor rate of $65 per work hour. Required parts will cost about $27,158 per airplane. Based on these figures, the estimated cost of this AD for U.S. operators is $704,088, or $33,528 per airplane.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–06–03 McDonnell Douglas: Amendment 39–14011. Docket No. FAA–2004–19448; Directorate Identifier 2004–NM–134–AD.

Effective Date

(a) This AD becomes effective April 20, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Model MD–90–30 airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by reports of failure of fluorescent light lamp holders in the main cabin. We are issuing this AD to prevent chafing of the lamp holder power wire against the mounting bracket, and moisture intrusion into the lamp holders, which could result in failure of the lamp holders and consequent smoke and fire in the airplane cabin.

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.

Replacement

(f) Within 18 months after the effective date of this AD, replace existing fluorescent light lamp holders manufactured by Page Aerospace Limited, part numbers (P/Ns) C779–02–001 and C779–09–001, with improved parts manufactured by Bruce Industries Incorporated, P/Ns BV04055–01–12 and BV04055N–01–12, as specified in Table 1 of this AD.

TABLE 1.—REPLACEMENT OF LAMP HOLDERS

Replace lamp holders in these locations—	In accordance with this service information—	Which refers to this service information as an additional source of replacement instructions—
(1) Ceiling panels and life raft ceiling support housings.	Boeing Alert Service Bulletin MD90–33A012, Revision 3, dated January 14, 2004.	C & D Aerospace Alert Service Bulletin 59406XX–25A01; currently at Revision 4, dated July 31, 2003.
(2) Sidewall behind the overhead stowage compartments in the main cabin.	Boeing Alert Service Bulletin MD90–33A013, dated November 29, 2001.	C & D Aerospace Alert Service Bulletin 51310XX–25A01; currently at Revision 5, dated March 30, 2004.

Parts Installation

(g) As of the effective date of this AD, no person may install a fluorescent light lamp holder manufactured by Page Aerospace Limited and having P/N C779–02–001 or C779–09–001, in the locations specified in this AD, on any airplane.

Replacements Accomplished Per Previous Issues of Service Bulletin

(h) Replacements accomplished before the effective date of this AD per the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–33A012, dated March 28, 2001; Revision 01, dated September 17, 2001; or Revision 02, dated January 17, 2002; are considered acceptable for compliance with paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

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

Material Incorporated by Reference

(j) You must use the service information that is specified in Table 2 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of those documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For copies of the service information, contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). For information on the availability of this material at the National Archives and Records Administration (NARA), call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* You may view the AD docket at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC.

TABLE 2.—MATERIAL INCORPORATED BY REFERENCE

Service bulletin	Revision level	Date
Boeing Alert Service Bulletin MD90–33A012	3	January 14, 2004.
Boeing Alert Service Bulletin MD90–33A013	Original	November 29, 2001.

Issued in Renton, Washington, on March 7, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–5016 Filed 3–15–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9190]

RIN 1545–AW35

Charitable Remainder Trusts; Application of Ordering Rule

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations on the ordering rules of section 664(b) of the Internal Revenue Code for characterizing distributions from charitable remainder trusts (CRTs). The final regulations reflect changes made to income tax rates, including the rates applicable to capital gains and certain dividends, by the Taxpayer Relief Act of 1997, the Internal Revenue Service Restructuring and Reform Act of 1998, and the Jobs and Growth Tax Relief Reconciliation Act of 2003. The final regulations provide guidance needed to comply with these changes and affect CRTs and their beneficiaries.

DATES: *Effective Date:* These regulations are effective March 16, 2005.

Applicability Dates: For dates of applicability, see § 1.664–1(d)(1)(ix).

FOR FURTHER INFORMATION CONTACT: Theresa M. Melchiorre, (202) 622–7830 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part (1) under section 664(b) of the Internal Revenue Code. On November 20, 2003, the Treasury Department and the IRS published a notice of proposed rulemaking (REG–110896–98, 2003–2 C.B. 1226) in the **Federal Register** (68 FR 65419). The public hearing scheduled for March 9, 2004, was cancelled because no requests to speak were received. Several written comments responding to the notice of proposed rulemaking were received. After consideration of the written comments, the proposed regulations are adopted as revised by this Treasury decision. The revisions and a summary of the comments are discussed below.

The proposed regulations reflected changes made to income tax rates,

including the rates applicable to capital gains and certain dividends, by the Taxpayer Relief Act of 1997 (TRA), Public Law 105–34 (111 Stat. 788), and the Jobs and Growth Tax Relief Reconciliation Act of 2003 (JGTRRA), Public Law 108–27 (117 Stat. 752). These changes affect the ordering rules of section 664(b) for characterizing distributions from CRTs.

Prior to the TRA, long-term capital gains were generally subject to the same Federal income tax rate. The TRA provided, however, that gain from certain types of long-term capital assets would be subject to different Federal income tax rates. Accordingly, after May 6, 1997, a CRT could have at least three classes of long-term capital gains and losses: a class for 28-percent gain (gains and losses from collectibles and section 1202 gains); a class for unrecaptured section 1250 gain (long-term gains not treated as ordinary income that would be treated as ordinary income if section 1250(b)(1) included all depreciation); and a class for all other long-term capital gain. In addition, the TRA provided that qualified 5-year gain (as defined in section 1(h)(9) prior to amendment by the JGTRRA) would be subject to reduced capital gains tax rates under certain circumstances for certain taxpayers. For taxpayers subject to a 10-percent capital gains tax rate, qualified 5-year gain would be taxed at an 8-percent capital gains tax rate effective for taxable years beginning after December 31, 2000. For taxpayers subject to a 20-percent capital gains tax rate, qualified 5-year gain would be taxed at an 18-percent capital gains tax rate provided the holding period for the property from which the gain was derived began after December 31, 2000. As a result, a CRT could also have a class for qualified 5-year gain.

Prior to the JGTRRA, a CRT's ordinary income was generally subject to the same Federal income tax rate. The JGTRRA provided, however, that qualified dividend income as defined in section 1(h)(11) would be subject to the Federal income tax rate applicable to the class for all other long-term capital gain. As a result, after December 31, 2002, a CRT could have a qualified dividend income class that would be subject to a different Federal income tax rate than that applicable to the CRT's other types of ordinary income. In addition, the JGTRRA provided that qualified 5-year gain would cease to exist after May 5, 2003, but that it would return after December 31, 2008.

In response to the changes made by the TRA and the technical corrections to the TRA made by the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105–206 (112 Stat. 685), the IRS issued guidance on the treatment of capital gains under section 664(b)(2) in Notice 98–20 (1998–1 C.B. 776), as modified by Notice 99–17 (1999–1 C.B. 871). The proposed regulations incorporated the guidance provided in Notice 98–20 and Notice 99–17. In addition, the proposed regulations provided additional guidance on the treatment of qualified dividend income under section 664(b)(1) and the treatment of a class of income that temporarily ceases to exist, like the qualified 5-year gain class.

Explanation of Provisions

The proposed regulations provided that trusts must maintain separate classes within a category of income when two classes are only temporarily subject to the same tax rate (for example, if the current tax rate applicable to one class sunsets in a future year). In the preamble to the proposed regulations, comments were requested on the degree of administrative burden and potential tax benefit or detriment of this requirement. Only one comment was received in response to this request. The commentator pointed out that maintaining a class during a temporary period of suspension could be favorable to taxpayers in one situation and unfavorable in another. For example, maintaining the qualified 5-year gain class during a temporary period of suspension would be advantageous because when the class is again in existence, gain distributed from the class probably would be taxed at a rate lower than the rates applicable to other classes of long-term capital gain. On the other hand, if the 28-percent long-term capital gain class is taxed at 15 percent during a temporary period, gain distributed from that class after the expiration of that temporary period is likely to be taxed at a rate higher than the rates applicable to other classes of long-term capital gain.

The IRS and Treasury Department continue to believe that it is appropriate for CRTs to maintain separate classes for income only temporarily taxed at the same rate, and no comment received indicated that this requirement would be unduly burdensome. Therefore, this requirement remains unchanged in the final regulations.

The proposed regulations provided that, to be eligible for inclusion in the class of qualified dividend income, dividends must meet the definition of section 1(h)(11) and must be received by the trust after December 31, 2002. Several commentators suggested that the final regulations should provide that undistributed dividends received by a CRT prior to January 1, 2003, that would otherwise meet the definition of qualified dividends under section 1(h)(11), be treated as qualified dividends.

Subsequent to the issuance of the proposed regulations, a technical correction was made to the JGTRRA by the Working Families Tax Relief Act of 2004, Public Law 108–311 (118 Stat. 1166), to provide that dividends received by a trust on or before December 31, 2002, shall not be treated as qualified dividend income as defined in section 1(h)(11). Accordingly, this suggestion has not been adopted in the final regulations.

The proposed regulations provided that, in netting capital gains and losses, a net short-term capital loss is first netted against the net long-term capital gain in each class before the long-term capital gains and losses in each class are netted against each other. One commentator suggested that this netting rule be revised to provide that the gains and losses of the long-term capital gain classes be netted prior to netting short-term capital loss against any class of long-term capital gain.

The IRS and Treasury Department believe that the netting rules for CRTs should be consistent with the netting rules applicable generally to other noncorporate taxpayers. Accordingly, the final regulations adopt this suggested change.

The proposed regulations provided that items of income within the ordinary income and capital gains categories are assigned to different classes based on the Federal income tax rate applicable to each type of income in that category in the year the items are required to be taken into account by the CRT. One commentator suggested that the assignment of items of income to different classes in the year the items are required to be taken into account by the CRT should be based on the Federal income tax rate that is likely to apply to that item in the hands of the recipient (for example, depending on the recipient's marginal income tax rate bracket) in the year in which the item is distributed.

The final regulations do not adopt this change. It is not feasible in many instances for trustees to determine the tax bracket of beneficiaries. The IRS and Treasury Department believe that the assignment of an item to a particular class should be based upon the tax rate applicable to each class when the item is received by the CRT, and not the various tax rates applicable to the classes at the time of a distribution to the beneficiary.

The proposed regulations provided that the determination of the tax character of amounts distributed by a CRT shall be made as of the end of the taxable year of the CRT. One commentator recommended that the language in the proposed regulations be reworded to make it clear that this rule applies to all distributions made by the CRT to recipients throughout the calendar year. In response to the comment, the second sentence in § 1.664–1(d)(1)(ii)(*a*) is revised in the final regulations to read, ''[t]he determination of the character of amounts distributed or deemed distributed at any time during the taxable year of the trust shall be made as of the end of that taxable year.''

The proposed regulations provided that the annuity or unitrust recipient is taxed on the distribution from the CRT based on the tax rates applicable in the year of the distribution to the classes of income that are deemed distributed from the trust. One commentator suggested that the language in the proposed regulations be reworded to make it clear that the tax rates applicable to a distribution or deemed distribution from a CRT to a recipient are the tax rates applicable to the classes of income from which the distribution is derived in the year of distribution, and not the tax rates applicable to the income in the year it is received by the CRT. This suggestion has been adopted. In the final regulations, the third sentence in § 1.664–1(d)(1)(ii)(*a*) is revised to read as follows:

> The tax rate or rates to be used in computing the recipient's tax on the distribution shall be the tax rates that are applicable, in the year in which the distribution is required to be made, to the classes of income deemed to make up that distribution, and not the tax rates that are applicable to those classes of income in the year the income is received by the trust.

One commentator suggested that a cross-reference to § 1.664–1(d)(4) should be made following the above sentence. This suggestion has not been adopted because the IRS and Treasury Department do not believe that a cross reference is needed. Section 1.664–1(d)(1)(ii)(*a*) confirms that a class of income will be taxed to the beneficiary at the tax rate applicable to that class in the year the distribution is made. Section 1.664–1(d)(4) identifies the year of the distribution.

One commentator proposed that the final regulations specifically address the treatment of municipal bond income and the effect of the alternative minimum tax (AMT) provisions and section 469 on CRT income. The final regulations do not address these issues, because the IRS and Treasury Department believe they are beyond the scope of these regulations. These regulations are intended to address only the income tax rates applicable to classes of income and the order in which those classes of income are to be applied to determine the character of a distribution in the hands of a recipient. The issues raised by the commentator are more appropriately addressed in separate guidance.

One commentator requested clarification of whether the ordering rules in the proposed regulations apply to a CRT that has lost its tax-exempt status under section 664(c) in the year income is distributed. Section 1.664–1(d)(1)(ii) of the proposed regulations provides that the categories and classes of income determined under § 1.664–1(d)(1)(i) are used to determine the character of an annuity or unitrust distribution from the trust in the hands of the recipient, irrespective of whether the trust is exempt from taxation under section 664(c) for the year of the distribution. The final regulations retain this provision.

One commentator recommended that the IRS provide a detailed worksheet that would include all of the possible classes of income a CRT could have so that the trustees can track a CRT's income from year to year. Because the types of income that each CRT may have can vary widely, the IRS and Treasury Department have determined that such a worksheet is not administratively feasible at this time.

One commentator recommended that a provision similar to § 1.664–1(d)(4)(ii) be added to the final regulations to permit the trustee to make corrections when the trustee has made incorrect distributions as a result of mistakes in fiduciary accounting practices, suggesting that such a provision would allow the CRT to receive the benefit of any correction in the year during which the correction is made. The IRS and Treasury Department believe that the proper method to remedy such errors is the filing of amended returns, rather than a current year adjustment and, therefore, such a provision is not included in the final regulations.

One commentator requested that examples addressing the following situations be provided in the final regulations:

Situation 1. The end result of a short-term capital loss and a combination of long-term capital gains and losses that net to a long-term capital loss;

Situation 2. The end result when a class of income has a net-loss amount that is carried forward without affecting the tax character of distributions;

Situation 3. The applicability of the passive loss rules under section 469 to the ordering rules of section 664(b);

Situation 4. The applicability of the alternative minimum tax (AMT) provisions under section 55 to the ordering rules under section 664(b); and

Situation 5. The treatment of the distribution of qualified 5-year gain between January 1, 2004, and December 31, 2008.

In response to this request, Examples 4 and 5 have been added to the final regulations. Example 4 addresses situations 1 and 2. Example 5 addresses situation 5. Examples will not be added to address situations 3 and 4 because they involve issues beyond the scope of these final regulations.

Special Analyses

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

Drafting Information

The principal author of these regulations is Theresa M. Melchiorre, Office of Chief Counsel, IRS. Other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.664–1 is amended as follows:

■ 1. Paragraph (d)(1) is revised.

■ 2. Paragraph (d)(2) is amended by:

■ a. Removing the language ''or to corpus (determined under subparagraph (1)(i) of

this paragraph)'' in the first sentence and adding ''(determined under paragraph (d)(1)(i)(*a*) of this section) or to corpus'' in its place.

■ b. Removing the language ''subparagraph (1)(i)(c) of this paragraph'' from the fifth sentence and adding ''paragraph (d)(1)(i)(*a*)(*3*) of this section'' in its place.

■ c. Removing the language ''or to corpus in the categories described in subparagraph (1) of this paragraph'' from the last sentence and adding ''described in paragraph (d)(1)(i)(*a*) of this section or to corpus'' in its place.

■ 3. Paragraph (e)(1) is amended by removing the language ''paragraph (d)(1)'' from the first sentence and adding ''paragraph (d)(1)(i)(*a*)'' in its place.

The revision reads as follows:

§ 1.664–1 Charitable remainder trusts.

* * * * *

(d) *Treatment of annual distributions to recipients*—(1) *Character of distributions*—(i) *Assignment of income to categories and classes at the trust level.* (*a*) A trust's income, including income includible in gross income and other income, is assigned to one of three categories in the year in which it is required to be taken into account by the trust. These categories are—

(*1*) Gross income, other than gains and amounts treated as gains from the sale or other disposition of capital assets (referred to as the ordinary income category);

(*2*) Gains and amounts treated as gains from the sale or other disposition of capital assets (referred to as the capital gains category); and

(*3*) Other income (including income excluded under part III, subchapter B, chapter 1, subtitle A of the Internal Revenue Code).

(*b*) Items within the ordinary income and capital gains categories are assigned to different classes based on the Federal income tax rate applicable to each type of income in that category in the year the items are required to be taken into account by the trust. For example, for a trust with a taxable year ending December 31, 2004, the ordinary income category may include a class of qualified dividend income as defined in section 1(h)(11) and a class of all other ordinary income, and the capital gains category may include separate classes for short-term and long-term capital gains and losses, such as a short-term capital gain class, a 28-percent long-term capital gain class (gains and losses from collectibles and section 1202 gains), an unrecaptured section 1250 long-term capital gain class (long-term gains not treated as ordinary income that would be treated as ordinary income if section 1250(b)(1) included all depreciation), a qualified 5-year long-term capital gain class as defined in section 1(h)(9) prior to amendment by the Jobs and Growth Tax Relief Reconciliation Act of 2003 (JGTRRA), Public Law 108–27 (117 Stat. 752), and an all other long-term capital gain class. After items are assigned to a class, the tax rates may change so that items in two or more classes would be taxed at the same rate if distributed to the recipient during a particular year. If the changes to the tax rates are permanent, the undistributed items in those classes are combined into one class. If, however, the changes to the tax rates are only temporary (for example, the new rate for one class will sunset in a future year), the classes are kept separate.

(ii) *Order of distributions.* (*a*) The categories and classes of income (determined under paragraph (d)(1)(i) of this section) are used to determine the character of an annuity or unitrust distribution from the trust in the hands of the recipient irrespective of whether the trust is exempt from taxation under section 664(c) for the year of the distribution. The determination of the character of amounts distributed or deemed distributed at any time during the taxable year of the trust shall be made as of the end of that taxable year. The tax rate or rates to be used in computing the recipient's tax on the distribution shall be the tax rates that are applicable, in the year in which the distribution is required to be made, to the classes of income deemed to make up that distribution, and not the tax rates that are applicable to those classes of income in the year the income is received by the trust. The character of the distribution in the hands of the annuity or unitrust recipient is determined by treating the distribution as being made from each category in the following order:

(*1*) First, from ordinary income to the extent of the sum of the trust's ordinary income for the taxable year and its undistributed ordinary income for prior years.

(*2*) Second, from capital gain to the extent of the trust's capital gains determined under paragraph (d)(1)(iv) of this section.

(*3*) Third, from other income to the extent of the sum of the trust's other income for the taxable year and its undistributed other income for prior years.

(*4*) Finally, from trust corpus (with corpus defined for this purpose as the net fair market value of the trust assets less the total undistributed income (but not loss) in paragraphs (d)(1)(i)(*a*) (*1*) through (*3*) of this section).

(*b*) If the trust has different classes of income in the ordinary income category, the distribution from that category is treated as being made from each class, in turn, until exhaustion of the class, beginning with the class subject to the highest Federal income tax rate and ending with the class subject to the lowest Federal income tax rate. If the trust has different classes of net gain in the capital gains category, the distribution from that category is treated as being made first from the short-term capital gain class and then from each class of long-term capital gain, in turn, until exhaustion of the class, beginning with the class subject to the highest Federal income tax rate and ending with the class subject to the lowest rate. If two or more classes within the same category are subject to the same current tax rate, but at least one of those classes will be subject to a different tax rate in a future year (for example, if the current rate sunsets), the order of that class in relation to other classes in the category with the same current tax rate is determined based on the future rate or rates applicable to those classes. Within each category, if there is more than one type of income in a class, amounts treated as distributed from that class are to be treated as consisting of the same proportion of each type of income as the total of the current and undistributed income of that type bears to the total of the current and undistributed income of all types of income included in that class. For example, if rental income and interest income are subject to the same current and future Federal income tax rate and, therefore, are in the same class, a distribution from that class will be treated as consisting of a proportional amount of rental income and interest income.

(iii) *Treatment of losses at the trust level*—(*a*) *Ordinary income category.* A net ordinary loss for the current year is first used to reduce undistributed ordinary income for prior years that is assigned to the same class as the loss. Any excess loss is then used to reduce the current and undistributed ordinary income from other classes, in turn, beginning with the class subject to the highest Federal income tax rate and ending with the class subject to the lowest Federal income tax rate. If any of the loss exists after all the current and undistributed ordinary income from all classes has been offset, the excess is carried forward indefinitely to reduce ordinary income for future years and retains its class assignment. For purposes of this section, the amount of current income and prior years' undistributed income shall be computed

without regard to the deduction for net operating losses provided by section 172 or 642(d).

(*b*) *Other income category.* A net loss in the other income category for the current year is used to reduce undistributed income in this category for prior years and any excess is carried forward indefinitely to reduce other income for future years.

(iv) *Netting of capital gains and losses at the trust level.* Capital gains of the trust are determined on a cumulative net basis under the rules of this paragraph (d)(1) without regard to the provisions of section 1212. For each taxable year, current and undistributed gains and losses within each class are netted to determine the net gain or loss for that class, and the classes of capital gains and losses are then netted against each other in the following order. First, a net loss from a class of long-term capital gain and loss (beginning with the class subject to the highest Federal income tax rate and ending with the class subject to the lowest rate) is used to offset net gain from each other class of long-term capital gain and loss, in turn, until exhaustion of the class, beginning with the class subject to the highest Federal income tax rate and ending with the class subject to the lowest rate. Second, either—

(*a*) A net loss from all the classes of long-term capital gain and loss (beginning with the class subject to the highest Federal income tax rate and ending with the class subject to the lowest rate) is used to offset any net gain from the class of short-term capital gain and loss; or

(b) A net loss from the class of short-term capital gain and loss is used to offset any net gain from each class of long-term capital gain and loss, in turn, until exhaustion of the class, beginning with the class subject to the highest Federal income tax rate and ending with the class subject to the lowest Federal income tax rate.

(v) *Carry forward of net capital gain or loss by the trust.* If, at the end of a taxable year, a trust has, after the application of paragraph (d)(1)(iv) of this section, any net loss or any net gain that is not treated as distributed under paragraph (d)(1)(ii)(*a*)(*2*) of this section, the net gain or loss is carried over to succeeding taxable years and retains its character in succeeding taxable years as gain or loss from its particular class.

(vi) *Special transitional rules.* To be eligible to be included in the class of qualified dividend income, dividends must meet the definition of section 1(h)(11) and must be received by the trust after December 31, 2002. Long-term capital gain or loss properly taken into account by the trust before January 1, 1997, is included in the class of all other long-term capital gains and losses. Long-term capital gain or loss properly taken into account by the trust on or after January 1, 1997, and before May 7, 1997, if not treated as distributed in 1997, is included in the class of all other long-term capital gains and losses. Long-term capital gain or loss (other than 28-percent gain (gains and losses from collectibles and section 1202 gains), unrecaptured section 1250 gain (long-term gains not treated as ordinary income that would be treated as ordinary income if section 1250(b)(1) included all depreciation), and qualified 5-year gain as defined in section 1(h)(9) prior to amendment by JGTRRA), properly taken into account by the trust before January 1, 2003, and distributed during 2003 is treated as if it were properly taken into account by the trust after May 5, 2003. Long-term capital gain or loss (other than 28-percent gain, unrecaptured section 1250 gain, and qualified 5-year gain), properly taken into account by the trust on or after January 1, 2003, and before May 6, 2003, if not treated as distributed during 2003, is included in the class of all other long-term capital gain. Qualified 5-year gain properly taken into account by the trust after December 31, 2000, and before May 6, 2003, if not treated as distributed by the trust in 2003 or a prior year, must be maintained in a separate class within the capital gains category until distributed. Qualified 5-year gain properly taken into account by the trust before January 1, 2003, and deemed distributed during 2003 is subject to the same current tax rate as deemed distributions from the class of all other long-term capital gain realized by the trust after May 5, 2003. Qualified 5-year gain properly taken into account by the trust on or after January 1, 2003, and before May 6, 2003, if treated as distributed by the trust in 2003, is subject to the tax rate in effect prior to the amendment of section 1(h)(9) by JGTRRA.

(vii) *Application of section 643(a)(7).* For application of the anti-abuse rule of section 643(a)(7) to distributions from charitable remainder trusts, see § 1.643(a)–8.

(viii) *Examples.* The following examples illustrate the rules in this paragraph (d)(1):

Example 1. (i) X, a charitable remainder annuity trust described in section 664(d)(1), is created on January 1, 2003. The annual annuity amount is $100. X's income for the 2003 tax year is as follows:

Interest income	$80
Qualified dividend income	50
Capital gains and losses	0
Tax-exempt income	0

(ii) In 2003, the year this income is received by the trust, qualified dividend income is subject to a different rate of Federal income tax than interest income and is, therefore, a separate class of income in the ordinary income category. The annuity amount is deemed to be distributed from the classes within the ordinary income category, beginning with the class subject to the highest Federal income tax rate and ending with the class subject to the lowest rate. Because during 2003 qualified dividend income is taxed at a lower rate than interest income, the interest income is deemed distributed prior to the qualified dividend income. Therefore, in the hands of the recipient, the 2003 annuity amount has the following characteristics:

Interest income	$80
Qualified dividend income	20

(iii) The remaining $30 of qualified dividend income that is not treated as distributed to the recipient in 2003 is carried forward to 2004 as undistributed qualified dividend income.

Example 2. (i) The facts are the same as in Example 1, and at the end of 2004, X has the following classes of income:

Interest income class	$5
Qualified dividend income class ($10 from 2004 and $30 carried forward from 2003)	40
Net short-term capital gain class	15
Net long-term capital loss in 28-percent class	(325)
Net long-term capital gain in unrecaptured section 1250 gain class	175
Net long-term capital gain in all other long-term capital gain class	350

(ii) In 2004, gain in the unrecaptured section 1250 gain class is subject to a 25-percent Federal income tax rate, and gain in the all other long-term capital gain class is subject to a lower rate. The net long-term capital loss in the 28-percent gain class is used to offset the net capital gains in the other classes of long-term capital gain and loss, beginning with the class subject to the highest Federal income tax rate and ending with the class subject to the lowest rate. The $325 net loss in the 28-percent gain class reduces the $175 net gain in the unrecaptured section 1250 gain class to $0. The remaining $150 loss from the 28-percent gain class reduces the $350 gain in the all other long-term capital gain class to $200. As in Example 1, qualified dividend income is taxed at a lower rate than interest income during 2004. The annuity amount is deemed to be distributed from all the classes in the ordinary income category and then from the classes in the capital gains category, beginning with the class subject to the highest Federal income tax rate and ending with the class subject to the lowest rate. In the hands of the recipient, the 2004 annuity amount has the following characteristics:

Interest income	$ 5
Qualified dividend income	40
Net short-term capital gain	15
Net long-term capital gain in all other long-term capital gain class	40

(iii) The remaining $160 gain in the all other long-term capital gain class that is not treated as distributed to the recipient in 2004

is carried forward to 2005 as gain in that same class.

Example 3. (i) The facts are the same as in Examples 1 and 2, and at the end of 2005, X has the following classes of income:

Interest income class	$ 5
Qualified dividend income	20
Net loss in short-term capital gain class	(50)
Net long-term capital gain in 28-percent gain class	10
Net long-term capital gain in unrecaptured section 1250 gain class	135
Net long-term capital gain in all other long-term capital gain class (carried forward from 2004)	160

(ii) There are no long-term capital losses to net against the long-term capital gains. Thus, the net short-term capital loss is used to offset the net capital gains in the classes of long-term capital gain and loss, in turn, until exhaustion of the class, beginning with the class subject to the highest Federal income tax rate and ending with the class subject to the lowest rate. The $50 net short-term loss reduces the $10 net gain in the 28-percent gain class to $0. The remaining $40 net loss reduces the $135 net gain in the unrecaptured section 1250 gain class to $95. As in Examples 1 and 2, during 2005, qualified dividend income is taxed at a lower rate than interest income; gain in the unrecaptured section 1250 gain class is taxed at 25 percent; and gain in the all other long-term capital gain class is taxed at a rate lower than 25 percent. The annuity amount is deemed to be distributed from all the classes in the ordinary income category and then from the classes in the capital gains category, beginning with the class subject to the highest Federal income tax rate and ending with the class subject to the lowest rate. Therefore, in the hands of the recipient, the 2005 annuity amount has the following characteristics:

Interest income	$ 5
Qualified dividend income	20
Unrecaptured section 1250 gain	75

(iii) The remaining $20 gain in the unrecaptured section 1250 gain class and the $160 gain in the all other long-term capital gain class that are not treated as distributed to the recipient in 2005 are carried forward to 2006 as gains in their respective classes.

Example 4. (i) The facts are the same as in Examples 1, 2 and 3, and at the end of 2006, X has the following classes of income:

Interest income class	$ 95
Qualified dividend income class	10
Net loss in short-term capital gain class	(20)
Net long-term capital loss in 28-percent gain class	(350)
Net long-term capital gain in unrecaptured section 1250 gain class (carried forward from 2005)	20
Net long-term capital gain in all other long-term capital gain class (carried forward from 2005)	160

(ii) A net long-term capital loss in one class is used to offset the net capital gains in the other classes of long-term capital gain and loss, in turn, until exhaustion of the class, beginning with the class subject to the highest Federal income tax rate and ending with the class subject to the lowest rate. The $350 net loss in the 28-percent gain class reduces the $20 net gain in the unrecaptured section 1250 gain class to $0. The remaining $330 net loss reduces the $160 net gain in the all other long-term capital gain class to $0. As in Examples 1, 2 and 3, during 2006, qualified dividend income is taxed at a lower rate than interest income. The annuity amount is deemed to be distributed from all the classes in the ordinary income category and then from the classes in the capital gains category, beginning with the class subject to the highest Federal income tax rate and ending with the class subject to the lowest rate. In the hands of the recipient, the 2006 annuity amount has the following characteristics:

Interest income	$ 95
Qualified dividend income	5

(iii) The remaining $5 of qualified dividend income that is not treated as distributed to the recipient in 2006 is carried forward to 2007 as qualified dividend income. The $20 net loss in the short-term capital gain class and the $170 net loss in the 28-percent gain class are carried forward to 2007 as net losses in their respective classes.

Example 5. (i) X, a charitable remainder annuity trust described in section 664(d)(1), is created on January 1, 2002. The annual annuity amount is $100. Except for qualified 5-year gain of $200 realized before May 6, 2003, but not distributed, X has no other gains or losses carried over from former years. X's income for the 2007 tax year is as follows:

Interest income class	$ 10
Net gain in short-term capital gain class	5
Net long-term capital gain in 28-percent gain class	5
Net long-term capital gain in unrecaptured section 1250 gain class	10
Net long-term capital gain in all other long-term capital gain class	10

(ii) The annuity amount is deemed to be distributed from all the classes in the ordinary income category and then from the classes in the capital gains category, beginning with the class subject to the highest Federal income tax rate and ending with the class subject to the lowest rate. In 2007, gains distributed to a recipient from both the qualified 5-year gain class and the all other long-term capital gains class are taxed at a 15/5 percent tax rate. Since after December 31, 2008, gains distributed from the qualified 5-year gain class will be taxed at a lower rate than gains distributed from the other classes of long-term capital gain and loss, distributions from the qualified 5-year gain class are made after distributions from the other classes of long-term capital gain and loss. In the hands of the recipient, the 2007 annuity amount has the following characteristics:

Interest income	$10
Short-term capital gain	5
28-percent gain	5
Unrecaptured section 1250 gain	10
All other long-term capital gain	10
Qualified 5-year gain (taxed as all other long-term capital gain)	60

(iii) The remaining $140 of qualified 5-year gain that is not treated as distributed to the recipient in 2007 is carried forward to 2008 as qualified 5-year gain.

(ix) *Effective dates.* The rules in this paragraph (d)(1) that require long-term capital gains to be distributed in the following order: first, 28-percent gain (gains and losses from collectibles and section 1202 gains); second, unrecaptured section 1250 gain (long-term gains not treated as ordinary income that would be treated as ordinary income if section 1250(b)(1) included all depreciation); and then, all other long-term capital gains are applicable for taxable years ending on or after December 31, 1998. The rules in this paragraph (d)(1) that provide for the netting of capital gains and losses are applicable for taxable years ending on or after December 31, 1998. The rule in the second sentence of paragraph (d)(1)(vi) of this section is applicable for taxable years ending on or after December 31, 1998. The rule in the third sentence of paragraph (d)(1)(vi) of this section is applicable for distributions made in taxable years ending on or after December 31, 1998. All other provisions of this paragraph (d)(1) are applicable for taxable years ending after November 20, 2003.

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Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: March 10, 2005.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 05–5110 Filed 3–15–05; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8–R]

RIN–0720–AA90

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); TRICARE Reserve Select for Certain Members of the Selected Reserve; Transitional Assistance Management Program; Early Eligibility for TRICARE for Certain Reserve Component Members

AGENCY: Office of the Secretary, DoD.

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule establishes requirements and procedures for implementation of TRICARE Reserve Select. It also revises requirements and procedures for the Transitional Assistance Management Program. In addition, it establishes

requirements and procedures for implementation of the earlier TRICARE eligibility for certain reserve component members. The rule is being published as an interim final rule with comment period in order to comply with statutory effective dates.

DATES: This rule is effective April 15, 2005. Submit comments on or before May 16, 2005.

ADDRESSES: Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission or e-mail. Mail written comments to the following address ONLY: TRICARE Management Activity, TRICARE Operations/Strategic Initiatives Division, Sky 5 Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041–3206; Attention: Jody Donehoo, Program Analyst.

FOR FURTHER INFORMATION CONTACT: Jody Donehoo, Office of the Assistant Secretary of Defense (Health Affairs), telephone (703) 681–0039.

Questions regarding payment of specific claims under the TRICARE allowable charge method should be addressed to the appropriate TRICARE contractor.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

The Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (NDAA–05) (Pub. L. 108–375) contains several provisions to enhance health care benefits for reservists and their family members. Three of the provisions are addressed in this interim final rule. First, section 701 provides for premium-based medical coverage for certain members of the Selected Reserve and their eligible family members. Section 706 makes permanent the temporary revisions to the Transitional Assistance Management Program, enacted in section 704 of the National Defense Authorization Act for Fiscal Year 2004 (NDAA–04) (Pub. L. 108–136) and section 1117 of the Emergency Supplemental Appropriations Act for the Reconstruction of Iraq and Afghanistan, 2004 (Emergency Supplemental) (Pub. L. 108–106). Section 703 makes permanent the earlier TRICARE eligibility for certain reserve component members authorized by section 703 of NDAA–04 and section 1116 of the Emergency Supplemental.

These provisions represent significant enhancements to the health care benefits available to reservists and their eligible family members. They focus particularly on reservists and guardsmen activated in support of a contingency operation after September 11, 2001. Prior to the statutory changes enacted since November 2003, reservists and their families received TRICARE health care benefits when activated for more than 30 consecutive days. Now, TRICARE benefits begin up to 90 days prior to activation for those who receive delayed-effective-date orders, and coverage is extended to a full 180 days after a period of active service in support of a contingency operation. These changes provide for an easier transition to and from civilian life. And, for those who served in support of a contingency operation and who commit to continued service in the Selected Reserve, a new health benefits program will allow them to obtain through TRICARE health coverage comparable to that available to full-time civilian employees of the Department of Defense. This new program is called ''TRICARE Reserve Select.'' It is subject to a number of specific statutory requirements, which are outlined in this regulation.

II. Provisions of the Rule Regarding the Tricare Reserve Select Program

A. *Establishment of the TRICARE Reserve Select Program* (paragraph 199.24(a)). This paragraph describes the nature, purpose, statutory basis, scope, and major features of TRICARE Reserve Select, a premium-based medical coverage program that will be available to certain members of the Selected Reserve and their dependents. TRICARE Reserve Select is authorized by 10 U.S.C. 1076d, and is applicable worldwide. The major features of the program include the following: TRICARE rules apply unless otherwise specified; certain special TRICARE programs are not part of TRICARE Reserve Select, including the Supplemental Health Care Program, the Extended Health Care Option (ECHO) program, and the Special Supplemental Food Program (also known as the Women, Infants, and Children—Overseas Program). The TRICARE Dental Program is already available under 10 U.S.C. 1076a to all members of the Selected Reserve and their family members whether or not they enroll in TRICARE Reserve Select. Under TRICARE Reserve Select, eligible Selected Reserve members may enroll for self-only or self and family coverage. When their enrollment becomes effective, TRICARE Reserve Select beneficiaries receive the TRICARE Standard benefit. TRICARE Reserve Select features the deductible and cost share provisions of the TRICARE Standard plan for active duty family members (ADFM) for both the member and eligible family members.

B. *Eligibility for enrollment in TRICARE Reserve Select* (paragraph 199.24(b)). This paragraph defines who is eligible to enroll in TRICARE Reserve Select, based on statutory provisions. To be eligible, a person must be a member of a reserve component of the armed forces, who serves on active duty for 90 consecutive days or more related to a contingency operation on or after September 11, 2001, and, on or before the date of release from active duty, agrees to serve continuously in the Selected Reserve for a period of one or more whole years following release from active duty, and, if not already a member of the Selected Reserve, actually begins serving in the Selected Reserve prior to the date upon which TRICARE Reserve Select coverage is effective. The member must meet the qualifications for continued service in the Selected Reserve as determined by the member's reserve component. If the member was released from active duty on or before April 26, 2005, the member has until October 28, 2005, to sign an agreement to serve continuously in the Selected Reserve for a period of one or more whole years in order to be eligible to enroll in TRICARE Reserve Select. This temporary opportunity (until October 28, 2005) applies to current members of the Selected Reserve, and also to former members who served in support of a contingency after 9/11, rejoin the Selected Reserve, and enter into an agreement for continued service. In conformance with section 701(b)(2)(B) of the NDAA–05, the Department will take reasonable steps to the maximum extent practicable to notify reservists released from active duty on or before April 26, 2005, who may be eligible for TRICARE Reserve Select and provide them information on the opportunity and procedures for entering into an agreement together with a clear explanation of the benefits that the member is eligible to receive under TRICARE Reserve Select as a result of entering into such agreement. Eligible family members of eligible reserve members enrolled in TRICARE Reserve Select are also eligible for enrollment in TRICARE Reserve Select. Eligibility determinations are the responsibility of the Reserve Components of the Armed Services.

C. *TRICARE Reserve Select enrollment procedures* (paragraph 199.24(c)). In order to be covered under TRICARE Reserve Select, eligible reserve component members released from active duty after April 26, 2005, must enter into an agreement prior to being released to serve continuously in the reserves for a period of one or more

whole years following such date, and the member must meet the qualifications for continuous service in the Selected Reserve as determined by the member's reserve component. The member must then enroll by signing the appropriate TRICARE enrollment form and submitting the initial monthly premium to the appropriate TRICARE contractor, not later than 30 days prior to the end of their Transitional Assistance Management Program benefit period. A member may elect self-only or self and family coverage, and may enroll for one year of TRICARE Reserve Select coverage for every 90 days of continuous active-duty service, to the extent that the member agrees to continue service in the Selected Reserves for the same number of years after coverage begins. Members released from active duty on or before April 26, 2005 may enroll in TRICARE Reserve Select upon execution of the agreement to serve continuously in the Selected Reserve. Coverage becomes effective the later of the end of TAMP coverage or the effective date of the agreement to serve in the Selected Reserve.

Except for members released from active duty on or before April 26, 2005, enrollment in TRICARE Reserve Select must be accomplished prior to the expiration of Transition Assistance Management Program (TAMP) benefits, and coverage begins at the expiration of TAMP benefits and runs continuously until eligibility expires or is otherwise terminated. When enrollment is terminated or the member is otherwise disenrolled, a member may not re-enroll unless recalled to active duty and the member re-qualifies for this benefit.

For eligible members, the decision to enroll in TRICARE Reserve Select or to decline enrollment is a one-time choice. If it is declined, or if coverage is taken for a period less than the maximum period of eligibility, coverage may not be initiated or extended later, nor may any period of eligibility be saved until later. Thus, for example, if a member served for one year in support of a contingency operation, the member earns potential eligibility for the next four years if the member agrees to continue service in the Selected Reserves for four years. However, if that member elects to continue service in the Selected Reserve for only two years, the member will qualify for only two years of TRICARE Reserve Select coverage. This two-year coverage period cannot be extended later, even if the member later extends Selected Reserve service for two more years. The only way to extend TRICARE Reserve Select coverage beyond the period determined when the one-time choice is made is by re-qualifying through another period of active duty service in support of a contingency operation.

If, while enrolled in TRICARE Reserve Select a member is recalled to active duty for a period of more than 30 consecutive days, TRICARE Reserve Select coverage is superseded by active duty military health benefits for the member and the member's immediate family, but the coverage period continues to run. When the member is released from active duty, TRICARE Reserve Select coverage will resume for the member and the member's immediate family provided the member had been enrolled in family coverage on the date TRICARE Reserve Select coverage was superseded by active duty health benefits. TRICARE Reserve Select coverage will continue until the member's eligibility expires, is otherwise terminated, or the member is disenrolled. Following the member's release from active duty, TRICARE Reserve Select coverage will be further superseded by TAMP benefits, if applicable. In addition, TRICARE Reserve Select coverage is also superseded, if applicable, by any period of early TRICARE coverage based on delayed-effective-date orders or by a new enrollment, as a result of re-qualifying through another period of active duty service in support of a contingency operation. During any period in which TRICARE Reserve Select coverage is superseded, no premium payments for TRICARE Reserve Select are due for the period being superseded.

Under certain circumstances, reserve members may change their TRICARE Reserve Select type of coverage. After initial enrollment, the reserve member may not change from self-only to self and family enrollment, or change from self and family enrollment to self-only enrollment, except on the occasion of certain events affecting the family, such as the birth of a child, the marriage or divorce of the sponsor, the legal adoption of a child, or placement by a court of a child as a legal ward in the sponsor's home, or certain events affecting family health coverage, such as an employment change of the member or spouse. It is the responsibility of the TRS member to provide the necessary evidence required regarding the circumstances permitting the change in enrollment to the appropriate TRICARE contractor. The Director, TRICARE Management Activity shall issue guidelines as necessary to implement these provisions. All such changes are effective prospectively.

Failure to make a premium payment in a timely manner will result in permanent disenrollment of the member and the member's immediate family and denial of claims for services received on or after the effective date of disenrollment, which is the end of the last month for which the premium was paid. Members and their immediate family will not be allowed to re-enroll, unless the member qualifies for a new period of eligibility.

A reserve member whose service in the Selected Reserve ends is automatically disenrolled, along with the member's eligible family members, based on the date the member terminated service in the Selected Reserve.

D. *TRICARE Reserve Select premiums* (paragraph 199.24(d)). Annual premiums are charged for coverage under TRICARE Reserve Select. Premiums are to be paid monthly, except as otherwise established as part of the administrative implementation of TRICARE Reserve Select. The monthly premium rates are established and updated annually on a calendar year basis and are effective on the first of January each year, for the two types of coverage—self-only and self and family. The rates are based on 28 percent of the total estimated amount reasonable for coverage under the TRICARE Standard benefit for the TRICARE Reserve Select eligible population, as determined by the Assistant Secretary of Defense (Health Affairs) (ASD(HA)) on an appropriate actuarial basis. The monthly rate for each month of a calendar year is one-twelfth of the annual rate for that calendar year, rounded to the nearest dollar.

Annual rates are based on the annual premiums for the Blue Cross and Blue Shield Standard Service Benefit Plan under the Federal Employees Health Benefits Program, a nationwide plan closely resembling TRICARE Standard coverage, with adjustments based on demographic differences in covered populations, as determined by the ASD(HA). Based on an analysis of demographic differences between Blue Cross and Blue Shield participants and beneficiaries eligible for TRICARE Reserve Select, the adjustment amount is for purposes of calendar year 2005 a 32 percent reduction from the Blue Cross and Blue Shield annual premium for self-only coverage and an 8 percent reduction from the Blue Cross and Blue Shield annual premium for self and family coverage. (The difference in the percentage reductions between self-only and self and family premiums is due to the disproportionately high number of high cost, single, elderly retiree federal employees covered by Blue Cross and Blue Shield self-only coverage.)

Premiums will be adjusted annually to maintain an appropriate relationship with the annual changes in Blue Cross and Blue Shield premiums.

In addition to these annual premium changes, premium adjustments may also be made prospectively for any calendar year to reflect any significant program changes or any actual experience in the costs of administering the TRICARE Reserve Select Program.

For calendar year 2005, the annual premium for self-only coverage is $900 (monthly premium $75), and the annual premium for self and family coverage is $2,796 (monthly premium $233). These premiums will change effective January 2006.

E. *Relationship to Continued Health Care Benefits Program (CHCBP)* (paragraph 199.24(e)). This paragraph addresses the relationship between TRICARE Reserve Select and the CHCBP. CHCBP is a program that (among other things) allows members released from active duty to purchase continued health care coverage through TRICARE. This coverage is available for a period of 18 months. Some members at the time of release from active duty will be eligible for either TRICARE Reserve Select or CHCBP. This paragraph of the regulation provides that if a member enrolls in TRICARE Reserve Select, but later is disenrolled, the member or the covered family members may then activate CHCBP coverage for whatever period is remaining of the original 18 month eligibility. For example, in the case that TRICARE Reserve Select enrollment is ended because of discharge from the Selected Reserve (such as through a reduction in force or base closure) of a member within 18 months of release from active duty, the member could choose to continue health care coverage under CHCBP for the remainder of the period at the applicable CHCBP premiums.

F. *Preemption of State laws* (paragraph 199.24(f)). This paragraph explains that the preemptions of State and local laws established for the TRICARE program also apply to TRICARE Reserve Select. Any State or local law or regulation pertaining to health insurance, prepaid health plans, or other health care delivery, administration, and financing methods is preempted and does not apply in connection with TRICARE Reserve Select. This includes State and local laws imposing premium taxes on health insurance carriers or underwriters or other plan managers, or similar taxes on such entities. Preemption does not apply to taxes, fees, or other payments on net income or profit realized by such entities in the conduct of business relating to DoD health services contracts, if those taxes, fees or other payments are applicable to a broad range of business activity. For the purposes of assessing the effect of Federal preemption of State and local taxes and fees in connection with DoD health services contracts, interpretations shall be consistent with those applicable to the Federal Employees Health Benefits Program under 5 U.S.C. 8909(f).

G. *Administration* (paragraph 199.24(g)). This paragraph provides that the ASD(HA) may establish other rules and procedures necessary for the effective administration of TRICARE Reserve Select.

III. Provisions of the Rule Regarding the Transitional Assistance Management Program

A. *Eligibility under the Transitional Assistance Management Program (TAMP)* (paragraph 199.3(e)). Section 706 of NDAA–05 makes permanent revisions to the Transitional Assistance Management Program, which was temporarily revised by section 704 of NDAA–04 and section 1117 of the Emergency Supplemental. Based on these enactments, several categories of armed forces members are eligible for transitional health care after serving on active duty. These include:

1. A member who is involuntarily separated from active duty;

2. A member of a reserve component who is separated from active duty to which called or ordered in support of a contingency operation if the active duty is active duty for a period of more than 30 consecutive days;

3. A member who is separated from active duty for which the member is involuntarily retained under 10 U.S.C. 12305 in support of a contingency operation; or

4. A member who is separated from active duty served pursuant to a voluntary agreement of the member to remain on active duty for a period of less than one year in support of a contingency operation.

(2) A spouse (as described in paragraph (b)(2)(i) of this section except for former spouses) and child (as described in paragraph (b)(2)(ii) of this section) of a member described in paragraph (e)(1) of this section is also eligible for TAMP benefits under TRICARE.

The spouse and children of the member are also eligible for TAMP benefits. TAMP benefits begin the day after the member is separated from active duty, and end 180 days later. Eligibility is determined by the armed forces.

B. *Beneficiary liability under TAMP.* (paragraph 199.4(f)(2)(vi)). This paragraph establishes that TAMP beneficiaries (including the member) are subject to the TRICARE Standard deductible and cost sharing rules applicable to active duty family members.

IV. Provisions of the Rule Regarding Early Eligibility for Tricare for Certain Reserve Component Members

A. *Eligibility* (paragraph 199.3(b)(5)). This paragraph incorporates requirements and procedures for implementation of the earlier temporary TRICARE eligibility for certain reserve component members authorized by section 703 of NDAA–04 and section 1116 of the Emergency Supplemental, which provisions were made permanent by section 703 of NDAA–05. Under this paragraph reserve component members issued delayed-effective-date orders for service in support of a contingency operation, and their family members, are eligible for TRICARE on the date the orders are issued, up to 90 days prior to the date on which the period of active duty of more than 30 consecutive days is to begin.

V. Regulatory Procedures

Executive Order 12866 requires certain regulatory assessments for any significant regulatory action that would result in an annual effect on the economy of $100 million or more, or have other substantial impacts. The Congressional Review Act establishes certain procedures for major rules, defined as those with similar major impacts. The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation that would have significant impact on a substantial number of small entities. This interim final rule is not subject to any of those requirements because it would not have any of these substantial impacts. Any substantial impacts associated with implementation of TRICARE Reserve Select are already determined by statute and are outside any discretionary action of DoD or effect of this regulation.

This rule, however, does address novel policy issues relating to implementation of a new medical benefits program for members of the armed forces. Thus, this rule has been reviewed by the Office of Management and Budget under E.O. 12866.

This rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–

3511). Information needed for TRICARE Reserve Select is obtained from active duty military service records.

This rule is being issued as an interim final rule, with comment period, as an exception to our standard practice of soliciting public comments prior to issuance. This is because Congress has established an April 26, 2005 effective date for eligible members' entitlement to TRICARE Reserve Select. The 180-day TAMP coverage period and the delayed effect date orders pre-mobilization eligibility period entitlements became effective on the date of enactment. This rule changes the regulation to conform to the statutory entitlement. Based on these statutory requirements, the ASD(HA) has determined that following the standard practice in this case would be unnecessary, impractical, and contrary to the public interest.

Public comments are invited. All comments will be carefully considered. A discussion of the major issues received by public comments will be included with the issuance of the final rule.

List of Subjects in 32 CFR Part 199

Claims, handicapped, health insurance, and military personnel.

■ Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

■ 1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

■ 2. Section 199.2(b) is amended by adding the following two definitions and placing them in alphabetical order to read as follows:

§ 199.2 Definitions.

* * * * *

(b) * * *

Transitional Assistance Management Program (TAMP). The program established under 10 U.S.C. § 1145(a) and §199.3(e) of this part.

* * * * *

TRICARE Reserve Select. The program established under 10 U.S.C. § 1076d and § 199.24 of this part.

* * * * *

■ 3. Section 199.3 is amended by adding new paragraph (b)(5) and revising paragraph (e) to read as follows:

§ 199.3 Eligibility.

* * * * *

(b) * * *

(5) *Reserve Component Members Issued Delayed-Effective-Date Orders.*

(i) *Member.* A member of a reserve component of the armed forces who is ordered to active duty for a period of more than 30 consecutive days in support of a contingency operation under a provision of law referred to in section 101(a)(13)(B) of Title 10, United States Code, that provides for active-duty service to begin on a date after the date of the issuance of the order.

(ii) *Dependents.* CHAMPUS eligible dependents under this paragraph (b)(5) are those identified in paragraphs (b)(2)(i) (except former spouses) and (b)(2)(ii) of this section.

(iii) *Effective date.* The eligibility established by paragraphs (b)(5)(i) and (ii) of this section shall begin on or after November 6, 2003, and shall be effective on the later of the date that is:

(A) The date of issuance of the order referred to in paragraph (b)(5)(i) of this section; or

(B) 90 days before the date on which the period of active duty is to begin.

(iv) *Termination date.* The eligibility established by paragraphs (b)(5)(i) and (ii) of this section ends upon entry of the member onto active duty (at which time CHAMPUS eligibility for the dependents of the member is established under paragraph (b)(2) of this section) or upon cancellation or amendment of the orders referred to in paragraph (b)(5)(i) of this section such that they no longer meet the requirements of that paragraph (b)(5)(i).

* * * * *

(e) *Eligibility under the Transitional Assistance Management Program (TAMP).*

(1) A member of the armed forces is eligible for transitional health care if the member is:

(i) A member who is involuntarily separated from active duty.

(ii) A member of a Reserve component who is separated from active duty to which called or ordered in support of a contingency operation if the active duty is active duty for a period of more than 30 consecutive days.

(iii) A member who is separated from active duty for which the member is involuntarily retained under 10 U.S.C. 12305 in support of a contingency operation; or

(iv) A member who is separated from active duty served pursuant to a voluntary agreement of the member to remain on active duty for a period of less than 1 year in support of a contingency operation.

(2) A spouse (as described in paragraph (b)(2)(i) of this section except former spouses) and child (as described in paragraph (b)(2)(ii) of this section) of a member described in paragraph (e)(1) of this section is also eligible for TAMP benefits under TRICARE.

(3) TAMP benefits under TRICARE begin on the day after the member is separated from active duty, and, if such separation occurred on or after November 6, 2003, and end 180 days after such date. TRICARE benefits available to both the member and eligible family members are generally those available to family members of members of the uniformed services under this Part. Each branch of service will determine eligibility for its members and eligible family members and provide data to DEERS.

* * * * *

■ 4. Section 199.4 is amended by adding new paragraph (f)(2)(vi) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(f) * * *

(2) * * *

(vi) *Transitional Assistance Management Program (TAMP).* Members of the Armed Forces (and their family members) who are eligible for TAMP under paragraph 199.3(e) of this Part are subject to the same beneficiary or sponsor liability as family members of members of the uniformed services described in this paragraph (f)(2).

* * * * *

■ 5. Section 199.24 is added to read as follows:

§ 199.24 TRICARE standard coverage for certain selected reserve members.

(a) *Establishment.* TRICARE Reserve Select is established for the purpose of offering TRICARE health benefits to eligible members of the Selected Reserve and their immediate family.

(1) *Purpose.* TRICARE Reserve Select is a premium-based medical coverage program that will be available to certain members of the Selected Reserve and their immediate family as specified in paragraph (b) of this section.

(2) *Statutory Authority.* TRICARE Reserve Select is authorized by 10 U.S.C. 1076d.

(3) *Scope of the Program.* TRICARE Reserve Select is applicable in the 50 United States, the District of Columbia, Puerto Rico, and, to the extent practicable, other areas where members of the Selected Reserve serve. In locations other than the 50 states of the United States and the District of Columbia, the Assistant Secretary of Defense may authorize modifications to the program rules and procedures as may be appropriate to the area involved.

(4) *Major Features of TRICARE Reserve Select.* The major features of the program include the following:

(i) *TRICARE rules applicable.* (A) Unless specified in this section or

otherwise prescribed by the Assistant Secretary of Defense (Health Affairs) (ASD(HA)), provisions of 32 CFR Part 199 apply to TRICARE Reserve Select.

(B) Certain special programs established in 32 CFR Part 199 are not available to enrollees in TRICARE Reserve Select. These include the Supplemental Health Care Program (see § 199.16), the Extended Health Care Option Program (see § 199.5), and the Special Supplemental Food Program (see § 199.23). The TRICARE Dental Program (see § 199.13) is independent of this program and is otherwise available to all members of the Selected Reserve and their dependents whether or not they are enrolled in TRICARE Reserve Select.

(ii) *Enrollment system.* Under TRICARE Reserve Select, eligible Reserve component members may enroll for self-only or self and family coverage. Rules and procedures for enrollment and payment of applicable premiums are prescribed in this section. When their enrollment becomes effective TRICARE Reserve Select beneficiaries receive the TRICARE Standard benefit, as described in § 199.17.

(iii) *Benefits.* Eligible persons may be enrolled in TRICARE Reserve Select, which features the deductible and cost share provisions of the TRICARE Standard plan for active duty family members for both the member and the member's dependents. The TRICARE Standard plan is described in § 199.17.

(b) *Eligibility for enrollment in TRICARE Reserve Select.* (1) *Eligibility.* Individuals are eligible for enrollment in TRICARE Reserve Select who meet the eligibility criteria defined in paragraphs (b)(1)(i), (b)(1)(ii), or (b)(1)(iii) of this section.

(i) *Members released from active duty after April 26, 2005.* A member released from active duty after April 26, 2005 that is a member of a Reserve component of the Armed Forces is eligible for TRICARE Reserve Select if the member:

(A) Is called or ordered to active duty for a period of more than 30 days on or after September 11, 2001 under a provision of law referred to in 10 U.S.C. 101(a)(13)(B).

(B) Serves continuously on active duty for 90 days or more pursuant to such call or order to active duty (unless such continuous service on active duty is less than 90 days solely due to an injury, illness, or disease incurred or aggravated while deployed, as provided in 10 U.S.C. 1076d(b(2)(A));.

(C) Is released from active duty after April 26, 2005.

(D) On or before the date of release from active duty, agrees to serve continuously in the Selected Reserve for a period of 1 or more years upon release from active duty; and

(E) Meets the qualifications for continued membership in the Selected Reserve as determined by the member's Reserve component.

(ii) *Members released from active duty on or before April 26, 2005.* A member or former member of a Reserve component of the Armed Forces who was released from active duty on or before April 26, 2005 is eligible for TRICARE Reserve Select if the member:

(A) Was called or ordered to active duty for a period of more than 30 days on or after September 11, 2001 under a provision of law referred to in 10 U.S.C. 101(a)(13)(B).

(B) Served continuously on active duty for 90 days or more pursuant to such call or order to active duty (unless such continuous service on active duty is less than 90 days solely due to an injury, illness, or disease incurred or aggravated while deployed, as provided in 10 U.S.C. 1076d(b(2)(A)).

(C) Was released from active duty on or before April 26, 2005.

(D) Prior to enrollment in TRICARE Reserve Select, signs an agreement no later than October 28, 2005 to serve continuously in the Selected Reserved for a period of 1 or more years; and

(E) Meets the qualifications for continued membership in the Selected Reserve as determined by the member's Reserve component.

(iii) *Immediate family of reserve members.* While an eligible member of a Reserve component is enrolled in TRICARE Reserve Select, dependents of such member, as defined in paragraphs (b)(2)(i) (except former spouses) and (b)(2)(ii) of this section are eligible to be enrolled for the same period as the member.

(2) *Additional procedures applicable to eligibility.* The Reserve components are responsible for determining members' duty status, periods of obligation, and other military personnel matters that are pertinent to establishing eligibility for TRICARE Reserve Select.

(c) *TRICARE Reserve Select enrollment procedures.* (1) *Enrollment required.* In order to be covered under TRICARE Reserve Select, eligible Reserve component members must complete and submit the applicable TRICARE enrollment form, and an initial premium required by paragraph (d) of this section. Enrollment is accomplished by submission of an application to the appropriate TRICARE Contractor in accordance with procedures established by the ASD(HA).

(2) *Election of type of coverage.* A member of a Reserve component who is eligible for enrollment under paragraph (b) of this section may elect self-only or self and family coverage. Family members who may be included in such family coverage are dependents referred to in paragraph (b)(1)(iii) of this section.

(3) *Period of coverage.* Except eligible members released from active duty on or before April 26, 2005, a member must before being released from active duty enter into an agreement to serve continuously in the Selected Reserve, and the member must meet the qualifications for continued service in the Selected Reserve as determined by the member's Reserve component. The member must then enroll in TRICARE Reserve Select prior to 30 days before the expiration of Transition Assistance Management Program (TAMP) benefits under § 199.3(e) of this part.

(i) Except members released from active duty on or before April 26, 2005, coverage begins at the expiration of TAMP benefits under § 199.3(e) of this part and runs continuously until eligibility expires or is otherwise terminated, or the member is disenrolled. (See paragraphs (c)(4)(i), (5), or (6) of this section.) When enrollment is terminated, a member may not re-enroll unless recalled to active duty and the member re-qualifies for a new period of benefits under paragraph (b) of this section.

(ii) For members released from active duty on or before April 26, 2005, coverage begins on the date that is the later of the expiration of TAMP benefits under § 199.3(e) or the effective date of the member's agreement referred to in paragraph (b)(1)(ii)(D) of this section.

(iii) When a member enrolled in TRICARE Reserve Select is recalled to active duty for a period of more than 30 days TRICARE Reserve Select coverage is superseded by active duty military medical benefits for the member and for any family member enrolled in TRICARE Reserve Select, but the coverage period continues to run. When the member is released from active duty, TRICARE Reserve Select coverage will resume for the member (and the member's family members provided the member had been enrolled in self and family coverage on the date TRICARE Reserve Select coverage was superseded by active duty health benefits). TRICARE Reserve Select coverage will continue until the member's eligibility expires or is otherwise terminated, or the member is disenrolled. (See paragraphs (c)(4)(i), (5), or (6) of this section.) Following the member's release from active duty, TRICARE Reserve Select coverage will also be superseded by TAMP benefits under § 199.3(e) of this Part, if applicable. In

addition, TRICARE Reserve Select coverage is also superseded, if applicable, by any period of early TRICARE coverage based on delayed effective date orders under § 199.3(b)(5) of this Part or by a new enrollment, as a result of re-qualifying through another period of active duty service in support of a contingency operation under § 199.24(c) of this Part. During any period in which TRICARE Reserve Select coverage is superseded, no premium payments for TRICARE Reserve Select are due.

(iv) Members who are eligible for TRICARE Reserve Select under paragraph (b) of this section may enroll for one year of TRICARE Reserve Select coverage for every 90 days of continuous active-duty service, subject to the limitation in paragraph (c)(3)(v) of this section. If such continuous service on active duty is less than 90 days solely due to an injury, illness, or disease incurred or aggravated while deployed, then the otherwise eligible member may enroll for one year of TRICARE Reserve Select coverage, as provided in 10 U.S.C. 1076d(b(2)(A).

(v) The number of years for which the member and family are eligible under paragraph (c)(3)(iv) of this section may not exceed the number of whole years for which the member agrees to continue service in the Selected Reserves before coverage begins, per the service agreement entered into under paragraph (b)(1) of this section. The number of years established by the member's agreement that was entered into prior to beginning coverage under TRICARE Reserve Select may not later be changed, even if that number of years was fewer than the maximum number of years that the member could have established in the agreement. The number of years of coverage may only be changed if the member is recalled to active duty and the member re-qualifies for a new period of benefits under paragraph (b) of this section.

(vi) When a member's eligibility is terminated or the member is disenrolled from TRICARE Reserve Select under paragraphs (c)(4)(i), (5), or (6) of this section, the member may not re-enroll unless recalled to active duty and the member re-qualifies for a new period of benefits under paragraph (b) of this section.

(4) *Changes to type of coverage.* Under certain circumstances, reserve members may change their TRICARE Reserve Select type of coverage.

(i) *Disenrollment.* Reserve members may disenroll from the program at any time by notifying the appropriate TRICARE office. Disenrollment of the member will result in automatic disenrollment of the member's family members in TRICARE Reserve Select.

(ii) *Change from self and family type of coverage to self-only type of coverage.* After initial enrollment, sponsors may change *type of coverage* from self and family to self-only only when an event occurs that changes the composition of the family, such as divorce, legal separation, or death of a family member, or changes in family employment or health coverage status. The change will become effective in accordance with procedures established by the ASD(HA).

(iii) *Change from self-only type of coverage to self and family type of coverage.* After initial enrollment, the reserve member may change *type of coverage* from self-only to self and family only when an event occurs that changes the composition of the family, such as the birth of a child, marriage of the sponsor, legal adoption of a child, or placement by a court of a child as a legal ward in the sponsor's home, or certain events affecting family health coverage, such as an employment change. The change will become effective in accordance with procedures established by the ASD(HA).

(5) *Effect of failure to pay applicable premiums.* Failure by enrollees to make a premium payment as required in a timely manner will result in automatic disenrollment from TRICARE Reserve Select and denial of payment of claims for services provided on or after the first day of the month for which the premium payment was not paid. Beneficiaries disenrolled due to lack of premium payments will not be allowed to re-enroll, absent the member acquiring a new period of eligibility based upon qualifying active duty service after the date of disenrollment. Disenrollment of the member for failure to pay applicable premiums will also result in automatic disenrollment of the member and the member's family members from TRICARE Reserve Select.

(6) *Ineligibility.* A reserve member who ceases to be eligible for TRICARE Reserve Select as specified in paragraph (b) of this section or whose eligibility is terminated based on termination of the member's service in the Selected Reserve shall be disenrolled and shall no longer be eligible. Disenrollment of the member due to ineligibility will result in automatic disenrollment of the member's family members in TRICARE Reserve Select.

(7) *Effective date of disenrollment.* Disenrollments become effective:

(i) In the case of disenrollment due to ineligibility (other than relating to the death of a member), on the date of ineligibility.

(ii) In the case of disenrollment due to nonpayment of premiums, at the end of the last month for which premiums were paid.

(iii) In all other cases, at the end of the month in which the event causing disenrollment occurred.

(8) *Periodic revision.* Periodically, certain features, rules or procedures of TRICARE Reserve Select may be revised. If such revisions will have a significant effect on participants' costs or access to care, beneficiaries may be given the opportunity to change their enrollment status coincident with the revisions.

(d) *TRICARE Reserve Select premiums.* Premiums shall be charged for coverage under TRICARE Reserve Select. Premiums are to be paid monthly, except as otherwise provided through administrative implementation, pursuant to procedures established by the ASD(HA).

(1) *Establishment of rates.* (i) TRICARE Reserve Select monthly premium rates are established annually on a calendar year basis by the ASD(HA) for the two *types of coverage*—self-only and self and family. The annual rates are based on 28 percent of the total estimated amount (rounded to the nearest dollar) reasonable for health care coverage for the TRICARE Reserve Select eligible population under the TRICARE Standard benefit, as determined by the ASD(HA) on an appropriate actuarial basis. The monthly rate for each month of a calendar year is one-twelfth of the annual rate for that calendar year, rounded to the nearest dollar.

(ii) Initial annual rates are based on the annual premiums for the Blue Cross and Blue Shield Standard Service Benefit Plan under the Federal Employees Health Benefits Program, a nationwide plan closely resembling TRICARE Standard coverage, with an adjustment based on estimated differences in covered populations, as determined by the ASD(HA).

(2) *Premium adjustments.* In addition to the determinations described in paragraph (d)(1) of this section, premium adjustments may be made prospectively for any calendar year to reflect any significant program changes or any actual experience in the costs of administering the TRICARE Reserve Select Program.

(3) *Premium rates for calendar year 2005.* (i) For calendar year 2005, the annual premium for self-only coverage under TRICARE Reserve Select is $900.

(ii) For calendar year 2005, the annual premium for self and family coverage under TRICARE Reserve Select is $2,796.

(e) *Relationship to Continued Health Care Benefits Program.* If at the time a member enrolls in TRICARE Reserve Select, or resumes TRICARE Reserve Select coverage after a period in which coverage was superseded under paragraph (c)(3)(iii) of this section, the member was also eligible to enroll in the Continued Health Care Benefits Program (CHCBP) under § 199.20(d)(1)(i) of this part (except to the extent eligibility in CHCBP was affected by enrollment in TRICARE Reserve Select), enrollment in TRICARE Reserve Select will be deemed to also constitute preliminary enrollment in CHCBP. If for any reason the member becomes disenrolled from TRICARE Reserve Select before the date that is 18 months after discharge or release from the most recent period of active duty upon which CHCBP eligibility was based, the member or the member's family members eligible to be included in CHCBP coverage may, within 30 days of the effective date of the disenrollment, begin CHCBP coverage by paying the applicable premium. The period of coverage will be as provided in § 199.20(d)(6) of this part.

(f) *Preemption of State laws.* (1) Pursuant to 10 U.S.C. 1103, the Department of Defense has determined that in the administration of chapter 55 of title 10, U.S. Code, preemption of State and local laws relating to health insurance, prepaid health plans, or other health care delivery or financing methods is necessary to achieve important Federal interests, including but not limited to the assurance of uniform national health programs for military families and the operation of such programs at the lowest possible cost to the Department of Defense, that have a direct and substantial effect on the conduct of military affairs and national security policy of the United States. This determination is applicable to contracts that implement this section.

(2) Based on the determination set forth in paragraph (e)(1) of this section, any State or local law or regulation pertaining to health insurance, prepaid health plans, or other health care delivery, administration, and financing methods is preempted and does not apply in connection with TRICARE Reserve Select. Any such law, or regulation pursuant to such law, is without any force or effect, and State or local governments have no legal authority to enforce them in relation to TRICARE Reserve Select. (However, the Department of Defense may, by contract, establish legal obligations on the part of DoD contractors to conform with requirements similar to or identical to requirements of State or local laws or regulations with respect to TRICARE Reserve Select.)

(3) The preemption of State and local laws set forth in paragraph (e)(2) of this section includes State and local laws imposing premium taxes on health insurance carriers or underwriters or other plan managers, or similar taxes on such entities. Such laws are laws relating to health insurance, prepaid health plans, or other health care delivery or financing methods, within the meaning of 10 U.S.C. 1103. Preemption, however, does not apply to taxes, fees, or other payments on net income or profit realized by such entities in the conduct of business relating to DoD health services contracts, if those taxes, fees or other payments are applicable to a broad range of business activity. For the purposes of assessing the effect of Federal preemption of State and local taxes and fees in connection with DoD health services contracts, interpretations shall be consistent with those applicable to the Federal Employees Health Benefits Program under 5 U.S.C. 8909(f).

(g) *Administration.* The ASD(HA) may establish other rules and procedures for the effective administration of TRICARE Reserve Select, and may authorize exceptions to requirements of this section, if permitted by law, based on extraordinary circumstances.

Dated: March 11, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–5219 Filed 3–15–05; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–04–129]

RIN 1625–AA09

Drawbridge Operation Regulations: Townsend Gut, ME

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard has temporarily changed the drawbridge operation regulations that govern the operation of the SR 27 Bridge, at mile 0.7, across Townsend Gut, between Boothbay Harbor and Southport, Maine. This temporary rule requires the bridge to open at specific times between 6 a.m. and 6 p.m., each day, from March 14, 2005 through November 30, 2005. Additionally, this temporary rule would also allow four 4-day closures during the effective period of this rule when the bridge may remain in the closed position. This action is necessary to help facilitate rehabilitation construction at the bridge.

DATES: This rule is effective on March 14, 2005, through November 30, 2005.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–04–129) and are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John W. McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On January 5, 2005, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations, Townsend Gut, Maine, in the **Federal Register** (70 FR 773).

We received no comments in response to the notice of proposed rulemaking. No public hearing was requested and none was held.

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

The Coast Guard believes making this final rule effective less than 30 days after publication is reasonable because the bridge rehabilitation construction is necessary vital work that needs to be performed as soon as possible.

Any delay in making this final rule effective would not be in the best interest of public or safety because performing this work during the non-winter months March 14, 2005 through November 30, 2005, is the best time period during which construction personnel may work in a more safe and productive manner to help restore the SR 27 Bridge to a more safe and reliable operational status.

Background and Purpose

The SR 27 Bridge has a vertical clearance of 10 feet at mean high water, and 19 feet at mean low water in the closed position. The existing drawbridge operating regulations under 33 CFR 117.5 require the bridge to open on signal at all times.

The bridge owner, Maine Department of Transportation, has requested a

temporary rule to allow the bridge to open at specific times of either two or three hour intervals between 6 a.m. and 6 p.m., from March through November 2005.

The purpose of this temporary regulation is to help facilitate rehabilitation construction at the bridge. Frequent unscheduled bridge openings would greatly limit the progress of the rehabilitation project.

On January 5, 2005, we published a notice of proposed rulemaking (70 FR 773) with an effective period from March 1, 2005 through November 30, 2005. Subsequent to publication of the notice of proposed rulemaking the bridge owner advised us that they would not begin the rehabilitation construction work until March 14, 2005. As a result we have changed the effective period for this temporary final rule to be effective from March 14, 2005 through November 30, 2005.

Under this temporary final rule the SR 27 Bridge shall operate as follows:

From March 14, 2005 through May 26, 2005, and from September 6, 2005 through November 30, 2005, the draw shall open on signal every three hours at 6 a.m., 9 a.m., 12 p.m., 3 p.m. and 6 p.m., daily. From 6 p.m. to 6 a.m. and on holidays, the draw shall open on signal.

From May 27, 2005 through September 5, 2005, the draw shall open on signal every two hours at 6 a.m., 8 a.m., 10 a.m., 12 p.m., 2 p.m., 4 p.m., and 6 p.m., daily. From 6 p.m. through 6 a.m. and holidays, the draw shall open on signal.

In addition, this temporary rule would also allow bridge to remain in the closed position for four 4-day closures as follows: April 11, 2005 through April 14, 2005; April 25, 2005 through April 28; May 9 through May 12; May 23 through May 26; May 9 through May 12, and May 23 through May 26, 2005.

Discussion of Comments and Changes

The Coast Guard received no comments in response to the notice of proposed rulemaking. We changed the effective date of this final rule from March 1, 2005 to March 14, 2005, upon learning that work would not commence as originally scheduled.

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).

This conclusion is based on the fact that vessel traffic will still be able to transit through the SR27 Bridge under a fixed opening schedule. Vessel operators may adjust their schedules to correspond with the opening schedule at the bridge. Vessel operators may also use the alternate route should they need to transit at other times.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we 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 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 conclusion is based on the fact that vessel traffic will still be able to transit through the SR27 Bridge under a fixed opening schedule. Vessel operators may adjust their schedules to correspond with the opening schedule at the bridge. Vessels operators may also use the alternate route should they need to transit at other times.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

No small entities requested Coast Guard assistance and none was given.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

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 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 concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have 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 proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this final rule under Commandant Instruction M16475.1D, 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 (32)(e), of the Instruction, from further environmental documentation. It has been determined that this final rule does not significantly impact the environment.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. From March 14, 2005 through November 30, 2005, § 117.T536 is temporarily added to read as follows:

§ 117.T536 Townsend Gut.

The draw of the SR 27 Bridge, mile 0.7, across Townsend Gut shall operate as follows:

(a) From March 14, 2005 through May 26, 2005, and from September 6, 2005 through November 30, 2005, the draw shall open on signal at 6 a.m., 9 a.m., 12 p.m., 3 p.m., and 6 p.m., daily. From 6 p.m. through 6 a.m., and on holidays, the draw shall open on signal.

(b) From May 27, 2005 through September 5, 2005, the draw shall open on signal at 6 a.m., 8 a.m., 10 a.m., 12 p.m., 2 p.m., 4 p.m., and 6 p.m., daily. From 6 p.m. through 6 a.m., and on holidays, the draw shall open on signal.

(c) The bridge may remain in the closed position for four 4-day closures as follows: April 11 through April 14; April 25 through April 28; May 9 through May 12; and May 23 through May 26, 2005.

Dated: March 9, 2005.

John L. Grenier,

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

[FR Doc. 05–5188 Filed 3–15–05; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–553]

Radio Broadcasting Services; Various Locations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, on its own motion, editorially amends the Table of FM Allotments to specify the actual classes of channels allotted to various communities. The changes in channel classifications have been authorized in response to applications filed by licensees and permittees operating on these channels. This action is taken pursuant to *Revision of Section 73.3573(a)(1) of the Commission's Rules Concerning the Lower Classification of an FM Allotment,* 4 FCC Rcd 2413 (1989), and *Amendment of the Commission's Rules to permit FM Channel and Class Modifications by Applications,* 8 FCC Rcd 4735 (1993).

DATES: Effective March 16, 2005.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* adopted March 2, 2005, and released March 4, 2005. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* The Commission will not send a copy of the *Report & Order* in this proceeding pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the adopted rules are rules of particular applicability.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCASTING SERVICES

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

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by removing Channel 237A and adding Channel 237C2 at Coaling.

■ 3. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Channel 291A and adding Channel 291C1 at Munds Park.

■ 4. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by removing Channel 246A and adding Channel 246C3 at Calico Rock.

■ 5. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 300A and adding Channel 300C1 at Mount Shasta and by removing Channel 286B1 and adding Channel 286A at Pacific Grove.

■ 6. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 236A and adding Channel 236C3 at Ebro.

■ 7. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 282C and adding Channel 282C0 at Augusta.

■ 8. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by removing Channel 280A and adding Channel 280C3 at Fort Scott and by removing Channel 246C3 and adding Channel 246C2 at Hutchinson.

■ 9. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 237A and adding Channel 239A at Amory.

■ 10. Section 73.202(b), the Table of FM Allotments under Utah, is amended by removing Channel 264C2 and adding Channel 263C at Monroe.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–5170 Filed 3–15–05; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 010319075–1217–02; I.D. 030905G]

Fisheries of the Northeastern United States; Tilefish Fishery; Quota Harvested for Part-time Category

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

ACTION: Closure.

SUMMARY: NMFS announces that the percentage of the tilefish annual total allowable landings (TAL) available to the Part-time permit category for the 2005 fishing year has been harvested. Commercial vessels fishing under the Part-time tilefish category may not harvest tilefish from within the Golden Tilefish Management Unit for the remainder of the 2005 fishing year (through October 31, 2005). Regulations governing the tilefish fishery require publication of this notification to advise the public of this closure.

DATES: Effective 0001 hrs local time, March 19, 2005, through 2400 hrs local time, October 31, 2005.

FOR FURTHER INFORMATION CONTACT: Brian R. Hooker, Fishery Policy Analyst, at (978) 281–9220.

SUPPLEMENTARY INFORMATION: Regulations governing the tilefish fishery are found at 50 CFR part 648. The regulations require annual specification of a TAL for federally permitted tilefish vessels harvesting tilefish from within the Golden Tilefish Management Unit. The Golden Tilefish Management Unit is defined as an area of the Atlantic Ocean from the latitude of the VA and NC border (36°33.36′ N. lat.), extending eastward from the shore to the outer boundary of the exclusive economic zone, and northward to the U.S.-Canada border. After 5 percent of the TAL is deducted to reflect landings by vessels issued an open-access Incidental permit category, and after up to 3 percent of the TAL is set aside for research purposes, should research TAL be set aside, the remaining TAL is distributed among three tilefish limited access permit categories: Full-time tier 1 category (66 percent), Full-time tier 2 category (15 percent), and the Part-time category (19 percent).

The TAL for tilefish for the 2005 fishing year was set at 1.995 million lb (905,172 kg) and then adjusted downward by 5 percent to 1,895,250 lb (859,671 kg) to account for incidental catch. There was no research set-aside for the 2005 fishing year. Thus, the Part-time permit category quota for the 2005 fishing year, which is equal to 19 percent of the TAL, is 360,098 lb (163,338 kg). However, as a result of the Part-time permit category exceeding the quota during the 2004 fishing year by 16,264 lb (7,377 kg) the adjusted Part-time category quota for the 2005 fishing year is 343,843 lb (155,961 kg). Notification of the 2004 Part-time permit category overage and the adjusted quota for the 2005 fishing year was published in the **Federal Register** on October 22, 2004 (69 FR 62001).

The Administrator, Northeast Region, NMFS (Regional Administrator) monitors the commercial tilefish quota for each fishing year using dealer reports, vessel catch reports, and other available information to determine when the quota for each limited access permit category is projected to have been harvested. NMFS is required to publish notification in the **Federal Register** notifying commercial vessels and dealer permit holders that, effective upon a specific date, the tilefish TAL for the specific limited access category has been harvested and no commercial quota is available for harvesting tilefish by that category for the remainder of the fishing year, from within the Golden Tilefish Management Unit.

The Regional Administrator has determined, based upon dealer reports and other available information, that the 2005 tilefish TAL for the Part-time category has been harvested. Therefore, effective 0001 hrs local time, March 19, 2005, further landings of tilefish harvested from within the Golden Tilefish Management Unit by tilefish vessels holding Part-time category Federal fisheries permits are prohibited through October 31, 2005. The 2006 fishing year for commercial tilefish harvest will open on November 1, 2005. Federally permitted dealers are also advised that, effective March 19, 2005, they may not purchase tilefish from Part-time category federally permitted tilefish vessels who land tilefish harvested from within the Golden Tilefish Management Unit for the remainder of the 2005 fishing year (through October 31, 2005).

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: March 10, 2005.

Alan D. Risenhoover,

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

[FR Doc. 05–5223 Filed 3–11–05; 2:39 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 020718172–2303–02; I.D. 030905B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Less Than 60 ft (18.3 m) LOA Using Jig or Hook-and-Line Gear in the Bogoslof Pacific Cod Exemption Area in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels less than 60 ft (18.3 meters (m)) length overall (LOA) using jig or hook-and-line gear in the Bogoslof Pacific cod exemption area of the Bering Sea and

Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the limit of Pacific cod for catcher vessels less than 60 ft (18.3 m) LOA using jig or hook-and-line gear in the Bogoslof Pacific cod exemption area in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 10, 2005, through 2400 hrs, A.l.t., December 31, 2005.

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

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

In accordance with § 679.22(a)(7)(i)(C)(1) and (2), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that 113 metric tons of Pacific cod have been caught by catcher vessels less than 60 ft (18.3 m) LOA using jig or hook-and-line gear in the Bogoslof exemption area described at § 679.22(a)(7)(i)(C)(1). Consequently, the Regional Administrator is prohibiting directed fishing for Pacific cod by catcher vessels less than 60 ft (18.3 m) LOA using jig or hook-and-line gear in the Bogoslof Pacific cod exemption area.

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 Pacific cod by catcher vessels less than 60 ft (18.3 m) LOA using jig or hook-and-line gear in the Bogoslof Pacific cod exemption area.

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 § 679.22 and is exempt from review under Executive Order 12866.

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

Dated: March 9, 2005.

Alan D. Risenhoover,

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

[FR Doc. 05–5105 Filed 3–10–05; 3:54 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031124287–4060–02; I.D. 030905F]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels 60 Feet Length Overall and Longer Using Hook-and-line Gear in the Bering Sea and Aleutian Islands

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels 60 feet (18.3 meters (m)) length overall (LOA) and longer using hook-and-line gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2005 first seasonal allowance of the Pacific cod total allowable catch (TAC) specified for catcher vessels using hook-and-line gear in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 10, 2005, until 1200 hrs, A.l.t., June 10, 2005.

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

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

The 2005 first seasonal allowance of the Pacific cod total allowable catch specified to catcher vessels using hook-and-line gear in the BSAI as a directed fishing allowance is 174 metric tons as established by the 2005 and 2006 final harvest specification for groundfish of the BSAI (70 FR 8979, February 24, 2005) for the period 1200 hrs, A.l.t., January 1, 2004, through 1200 hrs, A.l.t., June 10, 2004. See §§ 679.20(c)(3)(iii), (c)(5), (a)(7)(i)(A), and (a)(7)(i)(C)(*1*)(*ii*).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2005 first seasonal allowance of the Pacific cod total allowable catch specified for catcher vessels using hook-and-line gear in the BSAI will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels 60 feet (18.3 m) LOA and longer using hook-and-line gear in the BSAI. Vessels less than 60 feet (18.3 m) LOA using hook-and-line gear in the BSAI may continue to participate in the directed fishery for Pacific cod under a separate Pacific cod allocation to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear.

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 Pacific cod by catcher vessels 60 feet (18.3 m) LOA and longer using hook-and-line gear in the BSAI.

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: March 9, 2005.

Alan D. Risenhoover

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

[FR Doc. 05–5106 Filed 3–10–05; 3:54 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126333–5040–02; I.D. 030905C]

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 B season allowance of the 2005 total allowable catch (TAC) of pollock for Statistical Area 610 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 12, 2005, through 1200 hrs, A.l.t., August 25, 2005.

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 B season allowance of the 2005 TAC of pollock in Statistical Area 610 of the GOA is 5,035 metric tons (mt) as established by the 2005 and 2006 harvest specifications for groundfish of the GOA (70 FR 8958, February 24, 2005). In accordance with § 679.20(a)(5)(iii)(B) the Administrator, Alaska Region, NMFS (Regional Administrator), hereby decreases the B season pollock allowance by 2,068 mt, the amount the A season allowance of the pollock TAC in Statistical Area 610 was exceeded. The revised B season allowance of the pollock TAC in Statistical Area 610 is therefore 2,967 mt (5,035 mt minus 2,068 mt).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the B season allowance of the 2005 TAC of pollock in Statistical Area 610 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,767 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 has been 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: March 9, 2005.

Alan D. Risenhoover

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

[FR Doc. 05–5107 Filed 3–10–05; 3:54 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126332–5039–02; I.D. 031105B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher/Processor Vessels Using Trawl Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher/processor vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2005 first seasonal allowance of the Pacific cod total allowable catch (TAC) specified for catcher/processor vessels using trawl gear in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 13, 2005, through 1200 hrs, A.l.t., April 1, 2005.

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

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

The 2005 first seasonal allowance of the Pacific cod TAC specified for catcher/processor vessels using trawl gear in the BSAI is 22,390 metric tons (mt) as established by the 2005 and 2006 final harvest specifications for groundfish in the BSAI (70 FR 8979, February 24, 2005), for the period 1200 hrs, A.l.t., January 1, 2005, through 1200 hrs, A.l.t., April 1, 2005. See §§ 679.20(c)(3)(iii), (c)(5), and (a)(7)(i)(B).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS, has determined that the 2005 first seasonal allowance of the Pacific cod total allowable catch specified for catcher/processor vessels using trawl

gear in the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 21,390 mt, and is setting aside the remaining 1,000 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 has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher/processor vessels using trawl gear in the BSAI.

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 Pacific cod by catcher/processor vessels using trawl gear in the BSAI.

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: March 11, 2005.

Alan D. Risenhoover

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

[FR Doc. 05–5222 Filed 3–11–05; 2:39 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126332–5039–02; I.D. 031105A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Using Trawl Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2005 first seasonal allowance of the Pacific cod total allowable catch (TAC) specified for catcher vessels using trawl gear in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 13, 2005, through 1200 hrs, A.l.t., April 1, 2005.

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

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

The 2005 first seasonal allowance of the Pacific cod TAC specified for catcher vessels using trawl gear in the BSAI is 31,345 metric tons (mt) as established by the 2005 and 2006 final harvest specifications for groundfish in the BSAI (70 FR 8979, February 24, 2005), for the period 1200 hrs, A.l.t., January 1, 2005, through 1200 hrs, A.l.t., April 1, 2005. See § 679.20(c)(3)(iii), (c)(5), and (a)(7)(i)(B).

In accordance with § 679.20(d)(1)(ii), the Administrator, Alaska Region, NMFS, has determined that the 2005 first seasonal allowance of the Pacific cod TAC specified for catcher vessels using trawl gear in the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 31,000 mt, and is setting aside the remaining 345 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 has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using trawl gear in the BSAI.

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 Pacific cod by catcher vessels using trawl gear in the BSAI.

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: March 11, 2005.

Alan D. Risenhoover

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

[FR Doc. 05–5221 Filed 3–11–05; 2:39 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 50
Wednesday, March 16, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 213

RIN 3206–AK59

Excepted Service—Student Program

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed regulations to allow certain job-related experience acquired in a structured work-study program to be credited under the Student Career Experience Program. The proposed change would permit agencies to credit a student's job-related work-study experience toward the minimum requirement for conversion to a permanent appointment under the Program.

ADDRESSES: Send, fax, or deliver written comments to Mark Doboga, Deputy Associate Director, Center for Talent and Capacity Policy, U.S. Office of Personnel Management, 1900 E Street, NW., Room 6500, Washington, DC 20415, e-mail: *employ@opm.gov*, FAX: 202–606–2329.

Comments may also be sent through the Federal eRulemaking Portal at: *http://www.regulations.gov*. All submissions received through the Portal must include the agency name and docket number or Regulation Identifier Number (RIN) for this rulemaking.

DATES: Comments will be considered if received by May 16, 2005.

FOR FURTHER INFORMATION CONTACT: Pam Galemore, 202–606–0960, FAX: 202–606–2329, TDD: (202) 606–0023, or e-mail: *pamela.galemore@opm.gov*.

SUPPLEMENTARY INFORMATION: The Student Career Experience Program (SCEP or Program), a component of the Student Educational Employment Program, was established by Executive Order 12015 to permit students completing approved career-related work-study programs to be appointed non-competitively to career or career-conditional positions in the competitive service. OPM has implemented the Executive order by regulation in section 213.3202(b) of title 5, Code of Federal Regulations. The Program permits Federal agencies to appoint students attending a high school, an accredited technical or vocational school, 2 or 4-year college or university, or graduate or professional school to positions in the excepted service so that they may gain work experience that is related to and complements their academic course of study. The regulation also authorizes a Federal agency to appoint students who meet the requirements set forth in section 213.3202(b)(11) without further competition to positions in the competitive civil service. The Program gives students valuable work experience in a field related to their academic course of study and allows them to experience firsthand the rewards of public service; at the same time, it gives an agency the opportunity to observe students' job performance in the work environment and evaluate them as potential employees.

OPM has refined the Program over time, reducing the required number of work-related hours for noncompetitive appointment (from 1040 to 640 hours) and expanding the types of academic degrees that qualify a student for the Program. The original intent has remained constant: to provide students with an integrated program of academic study and related work experience while building a candidate pool of promising, high-potential graduates for entry-level positions in the Federal civil service.

OPM proposes to modernize the Program to reflect current trends in student employment. Proposed revisions include a provision that would allow an agency to credit up to 320 hours of job-related experience gained in other formal (and comparable) work-study programs towards SCEP requirements. The proposed regulations would also allow an agency to credit job-related experience acquired by a degree-seeking student as an active duty member of the armed forces of the United States (including the National Guard and the Reserves). Finally, the proposed regulations would permit an agency to waive up to one-half of the required SCEP work experience hours for those students who have exceptional job performance and academic excellence while enrolled in the Program (or equivalent).

These proposed changes reflect contemporary student employment trends and allow Federal agencies to take advantage of relevant, job-related experience acquired in public service work-study programs that are as rigorous as programs they may themselves offer. For example, many promising students today serve in Federal agencies under stipend programs, non-Federal internships, scholarships, or grants; such experience is comparable to that gained under SCEP, but because the student may not have been employed directly by the agency, it does not count towards SCEP requirements. OPM believes that with sufficient rigor, some portion of such service would clearly meet the Program's intent and should be so credited. This proposed regulatory change will permit agencies to evaluate and accept a promising student's job-related work-study experience, even if some of that experience was acquired in non-Federal positions.

Credit for non-Federal work experience and the waiver of up to one-half of minimum work experience would apply only to SCEP students enrolled in accredited colleges and universities.

The proposed regulations also revise the definition of ''student'' in sections 213.3202(a)(2) and (b)(2) to specify that schools must be accredited by an accrediting body recognized by the Secretary of the U.S. Department of Education or, for high schools, have a curriculum approved by a State or local governing body. The regulations also expand current policy to allow credit for related work experience, as determined by the agency, gained during any Student Educational Employment Program appointment.

We seek comments from reviewers as to whether they believe this rule would give certain students an unfair advantage over others, such as fellows appointed under 5 CFR 213.3102(r) or student volunteers under 5 CFR 308. This proposal does not allow agencies to credit up to 320 hours of a fellow's or student volunteer's job-related experience towards SCEP requirements.

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 213

Government employees, Reporting and recordkeeping requirements.

Office of Personnel Management.

Dan G. Blair,

Acting Director.

Accordingly, OPM proposes to amend 5 CFR Part 213 as follows:

PART 213—EXCEPTED SERVICE

1. The authority citation for part 213 is revised to read as follows:

Authority: 5 U.S.C. 3161; 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; Sec. 213.101 also issued under 5 U.S.C. 2103; Sec. 213.3102 also issued under 5 U.S.C. 3301, 3302, 3307, 8337(h) and 8456; E.O. 13318, 68 FR 66317, Nov. 25, 2003; 38 U.S.C. 4301 *et seq.*; Pub. L. 105–339, 112 Stat 3182–83; and E.O. 13162, 65 FR 43211, July 12, 2000.

2. Revise § 213.3202, paragraphs (a)(2), (b)(2), and (b)(11) to read as follows:

§ 213.3202 Entire executive civil service.

(a) * * *

(2) *Definition of student:* A student is an individual who has been accepted for enrollment or who is enrolled and seeking a degree (diploma, certificate, etc.) in a high school whose curriculum has been approved by a State or local governing body, or in a technical or vocational school, 2-year or 4-year college or university, or graduate or professional school, that has been accredited by an accrediting body recognized by the Secretary of the U.S. Department of Education. The definition of *half-time* is the definition provided by the school in which the student is enrolled. Students need not be in actual physical attendance, so long as all other requirements are met. An individual who needs to complete less than the equivalent of half an academic/vocational or technical course-load in the class enrollment period immediately prior to graduating is still considered a student for purposes of this program.

* * * * *

(b) * * *

(2) *Definition of student:* A student is an individual who has been accepted for enrollment or who is enrolled and seeking a degree (diploma, certificate, etc.) in a high school whose curriculum has been approved by a State or local governing body, or in a technical or vocational school, 2-year or 4-year college or university, or graduate or professional school, that has been accredited by an accrediting body recognized by the Secretary of the U.S. Department of Education. The definition of *half-time* is the definition provided by the school in which the student is enrolled. Students need not be in actual physical attendance, so long as all other requirements are met. An individual who needs to complete less than the equivalent of half an academic/vocational or technical course-load in the class enrollment period immediately prior to graduating is still considered a student for purposes of this program.

* * * * *

(11) *Program requirements for noncompetitive conversion.* (i) A student who is a U.S. citizen may be noncompetitively converted from the Student Career Experience Program to a term, career or career-conditional appointment under Executive Order 12015 (as amended by Executive Order 13024) when the student has:

(A) Completed at least 640 hours of career-related work experience acquired through a Federal work-study program while otherwise enrolled as a full-time or part-time, degree-seeking student. Up to 320 hours acquired through a comparable non-Federal work-study program meeting the criteria set forth in paragraph (b)(11)(ii) of this section may be credited toward the 640-hour minimum for students pursuing degrees under paragraphs (b)(1)(i)(D) through (F) of this section;

(B) Completed a course of academic study from an accredited school conferring a diploma, certificate, or degree, within the 120-day period preceding the appointment;

(C) Received a favorable recommendation regarding such an appointment by an official of the agency or agencies in which the job-related work experience was acquired; and

(D) Met the qualification standards for the position to which the student will be appointed.

(ii) To be creditable under paragraph (b)(11)(i)(A) of this section, work experience must be in a field or functional area that is generally related to the student's target position/career field and must be acquired either under a Student Educational Employment Program appointment or while the student:

(A) Worked in, but not for, a Federal agency, pursuant to a formal work-study agreement between the agency and the accredited academic institution;

(B) Worked in, but not for, a Federal agency, pursuant to a written contract between the agency and an organization officially established to provide internship experiences to students; or

(C) Served as a member in good standing of the armed forces of the United States (including the National Guard and Reserves), as defined in 5 U.S.C. 2101.

(iii) Agencies may waive up to one-half (*i.e.,* 320 hours) of the 640-hour minimum service requirement in paragraph (b)(11)(i)(A) of this section if a student enrolled in an accredited college or university completes 320 hours of career-related work experience under a Student Educational Employment Program appointment and has demonstrated high potential, as evidenced by outstanding academic achievement and exceptional job performance.

(A) Outstanding academic achievement must be demonstrated by an overall grade point average of 3.5 or better, on a 4.0 scale; standing in the top 10 percent of the student's graduating class; and/or induction into a nationally-recognized scholastic honor society (see the definition of superior academic achievement in OPM's *Qualifications Standards for General Schedule Positions* available on the OPM Web site at *http://www.opm.gov*).

(B) Exceptional job performance must be demonstrated by a formal evaluation conducted by the student's work-study supervisor(s), in a manner consistent with the applicable performance appraisal program established under an approved performance appraisal system.

(iv) Service credited under paragraphs (b)(ii)(A) and (B) of this section is not creditable for any other purpose of this chapter. Student volunteer service under part 308 of this chapter may not be credited under this section.

(v) Noncompetitive conversion may be to a position within the same agency or any other agency within the Federal Government but must be to an occupation related to the student's academic training and work-study experience.

(vi) Agencies that noncompetitively convert a Student Career Experience Program graduate to a term appointment may also noncompetitively convert that individual to a career or career-conditional appointment before the term appointment expires.

* * * * *

[FR Doc. 05–5179 Filed 3–15–05; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 113

[Docket No. 93–039–4]

Viruses, Serums, Toxins, and Analogous Products; Standard Requirement for Escherichia Coli Bacterins

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; withdrawal.

SUMMARY: We are withdrawing a proposed rule to amend the Virus-Serum-Toxin Act regulations by adding a Standard Requirement for *Escherichia coli* bacterins. The proposed rule would have provided uniform test methods, procedures, and criteria to be used by manufacturers of *E. coli* bacterins to ensure that such bacterins were immunogenic and potent. We are withdrawing the proposed rule after considering the comments we received following its publication.

FOR FURTHER INFORMATION CONTACT: Dr. Albert P. Morgan, Section Leader, Operational Support Section, Center for

Veterinary Biologics, Policy, Evaluation, and Licensing, VS, APHIS, 4700 River Road, Unit 148, Riverdale, MD 20737–1231; (301) 734–8245.

SUPPLEMENTARY INFORMATION: On October 11, 1994, we published in the **Federal Register** (59 FR 51390–51392, Docket No. 93–039–1) a proposed rule to amend the regulations in 9 CFR part 113 to include a Standard Requirement for *Escherichia coli* bacterins. We solicited comments on the proposed rule for 60 days ending on December 12, 1994. We subsequently reopened the comment period, then extended the comment period again: The first notice, published in the **Federal Register** on May 17, 1995 (60 FR 26384, Docket No. 93–039–2), reopened the comment period until August 15, 1995, and the second notice, published in the **Federal Register** on August 22, 1995 (60 FR 43573–43574, Docket No. 93–039–3), extended the comment period until September 14, 1995.

We received a total of nine comments by the close of the extended comment period. The comments were from veterinary biologics manufacturers and a trade association representing veterinary biologics manufacturers. One commenter supported the concept of a standard test procedure for *E. coli* bacterin, but remarked that the proposed standard lacked sufficient detail concerning the test method. Another commenter identified provisions in the proposed rule that he believed conflicted with the provisions in an interrelated proposed rule concerning *in vitro* testing, and requested an indefinite extension of the comment period pending resolution of the conflicting provisions. The remaining commenters requested clarification of the various technical provisions of the rule and suggested alternative wording for our consideration.

After considering all of the comments that we received, we have concluded that we will withdraw the proposed rule. Therefore, we are withdrawing the October 11, 1994, proposed rule referenced above. The concerns and recommendations of all of the commenters will be considered if any new proposed regulations concerning a Standard Requirement for *E. coli* bacterins are developed.

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 10th day of March 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–5155 Filed 3–15–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 113

[Docket No. 03–054–2]

Viruses, Serums, Toxins, and Analogous Products; Standard Requirements for Bovine Virus Diarrhea and Bovine Rhinotracheitis Vaccines

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; withdrawal.

SUMMARY: We are withdrawing a proposed rule to amend the Virus-Serum-Toxin Act regulations concerning Standard Requirements for Bovine Virus Diarrhea Vaccine, Killed Virus, and Bovine Rhinotracheitis Vaccine, Killed Virus. The proposed rule would have required vaccines to elicit specific antibody titer that is at least 80 percent of the geometric mean antibody titer obtained in the vaccinates in the host animal protection study to pass the potency test. We are taking this action after considering the comments we received following the publication of the proposed rule.

FOR FURTHER INFORMATION CONTACT: Dr. Albert P. Morgan, Section Leader, Operational Support Section, Center for Veterinary Biologics, Policy, Evaluation, and Licensing, APHIS, 4700 River Road, Unit 148, Riverdale, MD 20737–1231; (301) 734–8245.

SUPPLEMENTARY INFORMATION:

Background

The Virus-Serum-Toxin Act regulations in 9 CFR part 113 (referred to below as the regulations) prescribe standard requirements for the preparation and testing of veterinary biological products. On October 6, 2003, we published in the **Federal Register** (68 FR 57638–57639, Docket No. 03–054–1) a proposed rule to amend the regulations concerning Standard Requirements for Bovine Virus Diarrhea Vaccine, Killed Virus, and Bovine Rhinotracheitis Vaccine, Killed Virus, to require that those vaccines elicit specific antibody titer that is at least 80 percent of the geometric mean antibody titer obtained in the vaccinates in the host animal protection study to pass the potency test. The proposed action would have established potency test requirements for these vaccines that were based on the host animal protection study performed by the licensee.

We solicited comments concerning our proposal for 60 days ending on December 5, 2003. We received nine comments by that date. The comments were from veterinary biologics manufacturers, trade associations representing veterinary biologics manufacturers, a microbiologist, and a veterinary association. One commenter supported the proposed rule. Another commenter expressed support for the proposal in principle, but urged delay in its implementation pending the completion of additional studies. The remaining commenters were opposed to the proposed rule. Some of those commenters stated that the proposed rule was scientifically flawed, and suggested that it be withdrawn lest it have a negative impact on the industry and future availability of vaccine. Other commenters stated that the proposed rule was inconsistent with the requirements for vaccine evaluated by other test methods and suggested that the Agency address the disparity in requirements.

After considering all of the comments that we received, we have concluded that we will withdraw the proposed rule. Therefore, we are withdrawing the October 6, 2003, proposed rule referenced above. The concerns and recommendations of all of the commenters will be considered if any new proposed regulations concerning Standard Requirements for Bovine Virus Diarrhea Vaccine, Killed Virus, and Bovine Rhinotracheitis Vaccine, Killed Virus, are developed.

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 10th day of March 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–5156 Filed 3–15–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20626; Directorate Identifier 2004–NM–243–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, –700C, –800, and –900 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes. This proposed AD would require replacing the fuel shutoff valve wires and conduit assemblies in the left and right engine strut aft fairing areas. This proposed AD is prompted by a report that an operator discovered many small chafe marks and exposed shield braid on fuel shutoff wires routed through a conduit in the wing. We are proposing this AD to prevent exposed wires that could provide an ignition source in a flammable leakage zone and possibly lead to an uncontrolled fire or explosion.

DATES: We must receive comments on this proposed AD by May 2, 2005.

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

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–20626; the directorate identifier for this docket is 2004–NM–243–AD.

FOR FURTHER INFORMATION CONTACT: Doug Pegors, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6504; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2005–20626; Directorate Identifier 2004–NM–243–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

We have received a report that an operator discovered many small chafe marks and exposed shield braid on fuel shutoff valve wires routed through a conduit in the wing of a Boeing Model 737–700 series airplane. Most of the chafing occurred at each bend of the conduit, although chafing was also found at the conduit end fitting. Investigation revealed that high vibration causes wire movement in the conduit which can lead to chafing. If sharp edges are present inside the conduit, chafing can result in damage to the wire jacket and can expose the shield braid. This condition, if not corrected, could result in exposed wires that could provide an ignition source in a flammable leakage zone and possibly lead to an uncontrolled fire or explosion.

Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 737–28–1199, dated September 9, 2004. The service bulletin describes procedures for replacing the fuel shutoff valve wires and conduit assemblies in the left and right engine strut aft fairing areas with new fuel shutoff valve wires and conduit assemblies. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

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

Costs of Compliance

There are about 1,338 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 529 airplanes of U.S. registry. The proposed actions would take about 42 work hours per airplane, at an average labor rate of $65 per work hour. Required parts would cost about $2,418 per airplane. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $2,723,292, or $5,148 per airplane.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2005–20626; Directorate Identifier 2004–NM–243–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by May 2, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes; as listed in Boeing Special Attention Service Bulletin 737–28–1199, dated September 9, 2004; certificated in any category.

Unsafe Condition

(d) This AD was prompted by a report that an operator discovered many small chafe marks and exposed shield braid on fuel shutoff valve wires routed through a conduit in the wing. We are issuing this AD to prevent exposed wires that could provide an ignition source in a flammable leakage zone and possibly lead to an uncontrolled fire or explosion.

Compliance

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

Action Heading

(f) Within 24 months after the effective date of this AD, replace the fuel shutoff valve wires and conduit assemblies in the left and right engine strut aft fairing areas with new fuel shutoff valve wires and conduit assemblies; by accomplishing all the actions in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–28–1199, dated September 9, 2004.

Alternative Methods of Compliance (AMOCs)

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

Issued in Renton, Washington, on March 8, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–5137 Filed 3–15–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20625; Directorate Identifier 2003–NM–148–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–600, B4–600R, and F4–600R Series Airplanes, and Model C4–605R Variant F Airplanes (Collectively Called A300–600); and Model A310 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus model airplanes, as specified above. This proposed AD would require modifying the electrical bonding points of additional center tanks. This proposed AD is prompted by the results of fuel system reviews conducted by the manufacturer. We are proposing this AD to prevent electrical arcing inside the fuel tank, due to insufficient bonding, which could result in the ignition of fuel vapors with a potential risk of explosion of the fuel tank.

DATES: We must receive comments on this proposed AD by April 15, 2005.

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

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

For service information identified in this proposed AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility, U.S. Department

of Transportation, 400 Seventh Street, SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–20625; the directorate identifier for this docket is 2003–NM–148–AD.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2005–20625; Directorate Identifier 2003–NM–148-AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

The FAA has examined the underlying safety issues involved in recent fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements' (67 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (*i.e.*, type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews. In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with another latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

The Joint Aviation Authorities (JAA) has issued a regulation that is similar to SFAR 88. (The JAA is an associated body of the European Civil Aviation Conference (ECAC) representing the civil aviation regulatory authorities of a number of European States who have agreed to co-operate in developing and implementing common safety regulatory standards and procedures.) Under this regulation, the JAA stated that all members of the ECAC that hold type certificates for transport category airplanes are required to conduct a design review against explosion risks.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist on certain Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model C4–605R Variant F airplanes (collectively called A300–600); and Model A310 series airplanes. The DGAC advises that review of the bonding methods for various components of additional center tanks (ACT) installed in the cargo compartment has shown that the effectiveness of the grounds must be improved. In certain specific flight conditions (such as an airplane lightning strike or the accumulation of static charges), insufficient bonding could lead to electrical arcing inside the fuel tank. This condition, if not prevented, could result in the ignition of fuel vapors with a potential risk of explosion of the fuel tank.

Relevant Service Information

Airbus has issued Service Bulletin A300–28–6060 (for Model A300–600 airplanes), dated December 7, 1999; and Service Bulletin A310–28–2137 (for Model A310 series airplanes), Revision 02, dated April 7, 2003. The service bulletins describe procedures for modifying the electrical bonding points of the ACT(s). The modification includes the following actions:

- In the manhole cover areas of the ACT, cleaning the contact zones of the bonding points on the studs and bracket, and on bonding contact zones of the inner and outer manhole covers with a certain cleaning agent.
- Modifying/cleaning and reidentifying certain parts, and preparing and bonding certain areas before pipework installation.
- Modifying certain equipment; doing an in-situ modification of the water drain valves; and preparing and bonding certain areas before equipment installation.
- For Model A310 series airplanes, installing the additional bonding lead between the flanges of the fuel and vent pipes.
- Reidentifying the ACT.

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

service information and issued French airworthiness directive 2003–161(B), dated April 30, 2003, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. We have examined the DGAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under ''Difference Between the Proposed AD and French Airworthiness Directive.''

Difference Between the Proposed AD and French Airworthiness Directive

The applicability of French airworthiness directive 2003–161(B) excludes airplanes on which Airbus Service Bulletin A300–28–6060 and A310–28–2137 were accomplished in service. However, we have not excluded those airplanes in the applicability of this proposed AD; rather, this proposed AD includes a requirement to accomplish the actions specified in those service bulletins, as applicable. This requirement would ensure that the actions specified in the applicable service bulletin and required by this proposed AD are accomplished on all affected airplanes. Operators must continue to operate the airplane in the configuration required by this proposed AD unless an alternative method of compliance is approved.

Costs of Compliance

This proposed AD would affect about 2 airplanes of U.S. registry. The proposed actions would take about 48 work hours per airplane, at an average labor rate of $65 per work hour. Required parts would cost about $470 per airplane. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $7,180, or $3,590 per airplane.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2005–20625; Directorate Identifier 2003–NM–148–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by April 15, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes listed in Table 1 of this AD, certificated in any category, equipped with one or more additional center tanks (ACTs).

TABLE 1.—APPLICABILITY

Airbus model—	As identified in—
A300 B4–600, B4–600R, and F4–600R series airplanes, and Model C4–605R Variant F airplanes (collectively called A300–600 airplanes).	Airbus Service Bulletin A300–28–6060, dated December 7, 1999.
A310 series airplanes	Airbus Service Bulletin A310–28–2137, Revision 02, dated April 7, 2003.

Unsafe Condition

(d) This AD was prompted by the results of fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent electrical arcing inside the fuel tank, due to insufficient bonding, which could result in the ignition of fuel vapors with a potential risk of explosion of the fuel tank.

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.

Modify the Electrical Bonding Points

(f) Within 30 months after the effective date of this AD, modify the electrical bonding

points of the ACT(s), by doing all of the actions specified in the Accomplishment Instructions of Airbus Service Bulletin A300–28–6060, dated December 7, 1999 (for Model A300–600 airplanes); or Airbus Service Bulletin A310–28–2137, Revision 02, dated April 7, 2003 (for Model A310 series airplanes); as applicable.

Credit for Previous Service Bulletins

(g) Actions done before the effective date of this AD in accordance with Airbus Service Bulletin A310–28–2137, dated December 7, 1999; or Revision 01, dated January 12, 2002; are acceptable for compliance with the requirements of paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

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

Related Information

(i) French airworthiness directive 2003–161(B), dated April 30, 2003, also addresses the subject of this AD.

Issued in Renton, Washington, on March 8, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–5138 Filed 3–15–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20439; Directorate Identifier 2005–CE–04–AD]

RIN 2120–AA64

Airworthiness Directives; AeroSpace Technologies of Australia Pty Ltd. Models N22B, N22S, and N24A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2003–14–20, which applies to all AeroSpace Technologies of Australia Pty Ltd. (ASTA) Models N22B and N24A airplanes. AD 2003–14–20 requires you to repetitively inspect, using either dye penetrant or magnetic particle methods, the rudder control lever shafts for cracks; inspect (one-time) all lever shaft side plates by measuring the thickness; and if cracks or discrepancies in thickness are found, replace unserviceable parts with new or serviceable parts. Since AD 2003–14–20 was issued, we determined that the AD should also affect Model N22S airplanes. The manufacturer has also revised the service information to include a rudder control lever shaft part number (P/N) that was not part of AD 2003–14–20. Consequently, this proposed AD would require the actions of AD 2003–14–20, add Model N22S airplanes to the applicability, and add rudder control lever shaft P/N 1/N–45–1102 to the inspection requirements. We are issuing this proposed AD to detect and correct cracks in the rudder control lever torque shafts and discrepancies in the thickness of the lever shaft side plates, which could result in failure of the rudder control lever torque shaft. Such failure could lead to reduced controllability of the airplane.

DATES: We must receive any comments on this proposed AD by April 15, 2005.

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

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Fax:* 1–202–493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

To get the service information identified in this proposed AD, contact Nomad Operations, Aerospace Support Division, Boeing Australia, PO Box 767, Brisbane, QLD 4001 Australia; telephone 61 7 3306 3366; facsimile 61 7 3306 3111.

To view the comments to this proposed AD, go to *http://dms.dot.gov.* The docket number is FAA–2005–20439; Directorate Identifier 2005–CE–04–AD.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, Small Airplane Directorate, ACE–112, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include the docket number, ''FAA–2005–20439; Directorate Identifier 2005–CE–04–AD'' at the beginning of your comments. We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). This is docket number FAA–2005–20439; Directorate Identifier 2005–CE–04–AD. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

Are there any specific portions of this proposed AD I should pay attention to? We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed 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 this proposed AD in light of those comments and contacts.

Docket Information

Where can I go to view the docket information? You may view the AD docket that contains the proposal, any comments received, and any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m. (eastern standard time), Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800-647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES.** You may also view the AD docket on the Internet at *http://dms.dot.gov.* The comments will be available in the AD docket shortly after the DMS receives them.

Discussion

Has FAA taken any action to this point? Reports of cracking and other discrepancies on rudder control lever shaft assemblies on certain ASTA Models N22B and N24A airplanes caused us to issue AD 82–12–06,

Amendment 39–4399. AD 82–12–06 required the following:

—Repetitively inspecting visually all rudder control lever shafts for cracking;
—If cracks are found, replacing with new or serviceable rudder control shafts;
—Checking for clearance of the fit of all rod end bearings in lever shafts; and
—Discontinuing the repetitive visual inspections when lever shafts are inspected either by magnetic particle inspection or dye penetrant methods.

The Civil Aviation Safety Authority (CASA), which is the airworthiness authority for Australia notified FAA of the need to change AD 82–12–06. The CASA reported failures of the rudder control lever shaft. All the failures occurred during ground operations. Nosewheel steering/rudder loads are considered the primary cause of the failures.

Some of the failures occurred on airplanes where the terminating action of AD 82–12–06 had been incorporated. This caused us to issue AD 2003–14–20, Amendment 39–13239 (68 FR 42954, July 21, 2003).

AD 2003–14–20 currently requires the following on all ASTA Model N22B and N24A airplanes:

—Repetitively inspecting, using either dye penetrant or magnetic particle methods and measurements, certain rudder control lever shafts, part numbers (P/N) 2/N–45–1102, 1/N–45–1103, and 1/N–45–1104 (or FAA-approved equivalent part numbers), for cracks;
—Inspecting (one-time) all lever shaft side plates by measuring the thickness; and
—If cracks or discrepancies in thickness are found, replacing unserviceable parts with new or serviceable parts.

What has happened since AD 2003–14–20 to initiate this proposed action? Since AD 2003–14–20 was issued, we determined that AD 2003–14–20 should also affect Model N22S airplanes.

The manufacturer has also revised the service information to include a rudder control lever shaft part number (P/N) that was not part of AD 2003–14–20.

What is the potential impact if FAA took no action? This condition, if not detected and corrected, could result in failure of the rudder control lever torque shaft. Such failure could lead to reduced controllability of the airplane.

Is there service information that applies to this subject? Aerospace Technologies of Australia Limited has issued Nomad Alert Service Bulletin ANMD–27–51, Rev. 2, dated April 29, 2004; and Nomad—Series N22 & N24 Inspection Requirements Manual, Temporary Revision 26, Fatigue Critical Areas, dated May 27, 2004.

What are the provisions of this service information? Nomad Alert Service Bulletin ANMD–27–51, Rev. 2, dated April 29, 2004, includes procedures for:

—Inspecting, using dye penetrant or magnetic particle methods, rudder control lever shafts, P/Ns 1/N–45–1102, 2/N–45–1102, 1/N–45–1103, and 1/N–45–1104, for cracks;
—Inspecting all lever shaft side plates by measuring the thickness; and
—If cracks or discrepancies in thickness are found, replacing unserviceable parts with new or serviceable parts.

Nomad—Series N22 & N24 Inspection Requirements Manual, Temporary Revision 26, Fatigue Critical Areas, dated May 27, 2004, includes procedures for:

—Inspecting, using dye penetrant method, rudder control lever shafts, P/Ns 1/N–45–1103 and 1/N–45–1104 for cracks;
—Inspecting, using magnified (10x) visual methods, rudder control lever shafts, P/Ns 1/N–45–1102 and 2/N–45–1102 for cracks; and
—If any cracks are found, replacing unserviceable parts with new or serviceable parts.

What action did the CASA take? The CASA classified this service information as mandatory and issued Australian AD GAF–N22/44, Amendment 2, dated November 2004, to ensure the continued airworthiness of these airplanes in Australia.

Did the CASA inform the United States under the bilateral airworthiness agreement? These Model N22B, N22S, and N24A airplanes are manufactured in Australia 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 CASA has kept us informed of the situation described above.

FAA's Determination and Requirements of This Proposed AD

What has FAA decided? We have examined the CASA's findings, 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.

Since the unsafe condition described previously is likely to exist or develop on other Model N22B, N22S, and N24A airplanes of the same type design that are registered in the United States, we are proposing AD action to detect and correct cracks in the rudder control lever torque shafts and discrepancies in the thickness of the lever shaft side plates, which could result in failure of the rudder control lever torque shaft. Such failure could lead to reduced controllability of the airplane.

What would this proposed AD require? This proposed AD would supersede AD 2003–14–20 with a new AD that would require the actions of AD 2003–14–20, add Model N22S airplanes to the applicability, and add rudder control lever shaft P/N 1/N–45–1102 to the inspection requirements.

How does the revision to 14 CFR part 39 affect this proposed AD? On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 15 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We estimate the following costs to do the proposed initial inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
12 workhours × $65 per hour = $780	Not Applicable ..	$780	15 × $780 = $11,700

We estimate the following costs to accomplish the necessary repetitive inspections:

Labor cost	Parts cost	Total cost per airplane
2 workhours × $65 per hour = $130	Not Applicable ..	$130

We estimate the following costs to accomplish any rudder control lever shaft replacement that would be required based on the results of the proposed inspections. We have no way of determining the number of airplanes that may need such replacement:

Labor cost	Parts cost	Total cost per airplane
12 workhours × $65 per hour = $780	$930	$780 + $930 = $1710

We estimate the following costs to accomplish any lever shaft side plate replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need such replacement:

Labor cost	Parts cost	Total cost per airplane
12 workhours × $65 per hour = $780	$930	$780 + $930 = $1710

What is the difference between the cost impact of this proposed AD and the cost impact of AD 2003–14–20? The only difference between AD 2003–14–20 and this proposed AD is the addition of Model N22S airplanes to the applicability section. There are no additional actions required in this proposed AD.

Authority for This Rulemaking

What authority does FAA have for issuing this rulemaking action? 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 AD.

Regulatory Findings

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

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed AD:

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 proposed 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 FAA–2005–20439; Directorate Identifier 2005–CE–04–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2003–14–20, Amendment 39–13239 (68 FR 42954, July 21, 2003), and by adding a new AD to read as follows:

Aerospace Technologies of Australia PTY Ltd.: Docket No. FAA–2005–20439; Directorate Identifier 2005–CE–04–AD; Supersedes AD 2003–14–20, Amendment 39–13239.

When Is the Last Date I Can Submit Comments on This Proposed AD?

(a) We must receive comments on this proposed airworthiness directive (AD) by April 15, 2005.

What Other ADs Are Affected by This Action?

(b) This AD supersedes AD 2003–14–20, Amendment 39–13239.

What Airplanes Are Affected by This AD?

(c) This AD affects Models N22B, N22S, and N24A airplanes, all serial numbers, that are certificated in any category.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of continuing airworthiness information (MCAI) issued by the airworthiness authority for Australia. The actions specified in this AD are intended to detect and correct cracks in the rudder control lever torque shafts and discrepancies

in the thickness of the lever shaft side plates, which could result in failure of the rudder control lever torque shaft. Such failure could lead to reduced controllability of the airplane.

What Must I Do To Address This Problem?

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) Inspect the following: (i) The rudder control lever shafts, part numbers (P/N) 1/N–45–1102, 2/N–45–1102, 1/N–45–1103, and 1/N–45–1104 (or FAA-approved equivalent part numbers) for cracks. Use dye penetrant inspection while the shaft is installed. Use either dye penetrant or magnetic particle inspection if the shaft is removed; and (ii) All lever shaft side plates on P/Ns 1/N–45–1102, 2/N–45–1102, 1/N–45–1103, and 1/N–45–1104 (or FAA-approved equivalent part numbers) by measuring the thickness for discrepancies.	Initially inspect within the next 50 hours time-in-service (TIS) or 30 days after the effective date of this AD, whichever occurs first, unless already done.	Following Nomad Alert Service Bulletin ANMD–27–51, Rev. 2, dated April 29, 2004, and the applicable maintenance manual.
(2) If no cracks are found in the rudder control lever shafts during the inspection required in paragraph (e)(1)(i) of this AD, repetitively inspect rudder control lever shafts P/Ns 1/N–45–1102, 2/N–45–1102, 1/N–45–1103, and 1/N–45–1104 (or FAA-approved equivalent part numbers) for cracks.	Repetitively inspect thereafter at intervals not to exceed 300 hours TIS after the initial inspection required in paragraph (e)(1) of this AD.	Following Nomad—Series N22 & N24 Inspection Requirements Manual, Temporary Revision 26, Fatigue Critical Areas, dated May 27, 2004.
(3) If cracks or discrepancies are found during any inspection required by this AD, do the following: (i) For rudder control lever shafts found with crack damage, replace with new or serviceable parts. Continue with the repetitive inspections required paragraph (e)(2) of this AD. (ii) If the thickness of the lever shaft side plates is less than 0.050 inches, replace the lever shaft side plate with a new plate that measures at least 0.050 inches in thickness.	Before further flight after any inspection required by this AD in which cracks or discrepancies in are found.	Following Nomad Alert Service Bulletin ANMD–27–51, Rev. 2, dated April 29, 2004, and the applicable maintenance manual.
(4) If at any time certain operating conditions occur that caused abnormal rudder pedal loads, inspect the rudder control lever shafts as specified in paragraph (e)(2) of this AD. Examples of such conditions are: heavy use of nosewheel steering over rough ground; excessive steering angle under tow; towing with rudder gust lock fitted; engine failure on take-off; and aircraft left parked outside with rudder gust lock not fitted.	Before further flight	Following Nomad—Series N22 & N24 Inspection Requirements Manual, Temporary Revision 26, Fatigue Critical Areas, dated May 27, 2004.
(5) Do not install a new lever shaft side plate that is less than 0.050 inches in thickness.	As of the effective date of this AD	As specified in Nomad Alert Service Bulletin ANMD–27–51, Rev. 2, dated April 29, 2004; and Nomad—Series N22 & N24 Inspection Requirements Manual, Temporary Revision 26, Fatigue Critical Areas, dated May 27, 2004.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19.

(1) Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Doug Rudolph, Aerospace Engineer, Small Airplane Directorate, ACE–112, 901 Locust, Rm 301, Kansas City, Missouri, 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(2) Alternative methods of compliance approved for AD 2003–14–20 are not considered approved as alternative methods of compliance for this AD.

Is There Other Information That Relates to This Subject?

(g) Australian AD GAF–N22/44, Amendment 2, dated November 2004, also addresses the subject of this AD.

May I Get Copies of the Documents Referenced in This AD?

(h) To get copies of the documents referenced in this AD, contact Nomad Operations, Aerospace Support Division, Boeing Australia, PO Box 767, Brisbane, QLD 4001 Australia; telephone 61 7 3306 3366; facsimile 61 7 3306 3111. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov.* This is docket number FAA–2005–20439; Directorate ID 2005–CE–04–AD.

Issued in Kansas City, Missouri, on March 10, 2005.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–5153 Filed 3–15–05; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 320

RIN 3084–AA99

Disclosures for Non-Federally Insured Depository Institutions Under the Federal Deposit Insurance Corporation Improvement Act (FDICIA)

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Notice of proposed rulemaking; request for public comment.

SUMMARY: The Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) directs the Commission to prescribe the manner and content of certain disclosures that must be used by depository institutions that do not have federal deposit insurance. The Commission seeks comment on these proposed disclosure rules for non-federally insured depository institutions.

DATES: Written comments must be received on or before June 15, 2005.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Proposed Rule for FDICIA Disclosures, Matter No. R411014'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159 (Annex A), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form and the first page of the document must be clearly labeled ''Confidential.'' The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form should be submitted by clicking on the following: *https://secure.commentworks.com/ftc-fdicia* and following the instructions on the web-based form.

To ensure that the Commission considers an electronic comment, you must file it on the web-based form at *https://secure.commentworks.com/ftc-fdicia*. You also may visit *http://www.regulations.gov* to read this proposed Rule, and may file an electronic comment through that website. The Commission will consider all comments that *regulations.gov* forwards to it.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at *http://www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, (202) 326–2889, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

In 1991, Congress enacted the FDICIA which, among other things, added a new section 43 (12 U.S.C. 1831t) to the Federal Deposit Insurance Act (FDIA). This section, passed in response to incidents affecting the safety of deposits in certain financial institutions, imposes several requirements on non-federally insured institutions and private deposit insurers.[1] Among other things, section 43(b) mandates that depository institutions lacking federal deposit insurance provide certain disclosures to consumers, in periodic statements and advertising, that the institution does not have federal deposit insurance and that, if the institution fails, the federal government does not guarantee that depositors will get their money back.

Under existing law, all federally chartered and most state chartered depository institutions have federal deposit insurance. Federal deposit insurance funds provide a government guarantee of up to $100,000 per depositor in most cases. Pursuant to Federal Deposit Insurance Corporation (FDIC) and National Credit Union Administration (NCUA) requirements, federally insured banks and credit unions must display signs that depositors are federally ''insured to $100,000.'' [2]

Although most depository institutions have federal deposit insurance, there are some exceptions. For instance, several hundred state-chartered credit unions in eight States and Puerto Rico do not have federal deposit insurance.[3] These credit unions generally use a private deposit insurer to protect members' accounts in lieu of federal insurance. The Puerto Rican government provides deposit insurance for credit unions located there. In addition, the Commission understands that there are a small number of state banks and savings associations that do not have federal deposit insurance.

A. Requirements of FDIA Section 43

Section 43 requires that depository institutions lacking federal deposit insurance affirmatively disclose that fact to their depositors or members. 12 U.S.C. 1831t(b). Specifically, section 43(b) of the FDIA requires non-federally insured depository institutions to: (1) Include conspicuously in all periodic statements of account, on each signature card, and on each passbook, certificate of deposit, or similar instrument evidencing a deposit a notice that the institution is not federally insured, and that if the institution fails, the federal government does not guarantee that depositors will get their money back (section 43(b)(1)), and (2) include conspicuously in all advertising and at each place where deposits are normally received a notice that the institution is not federally insured (section 43(b)(2)).

Section 43(b) further provides that non-federally insured institutions may receive deposits only from persons who have signed acknowledgments that the institution is not federally insured and that if the institution fails, the federal government does not guarantee that they will get their money back (see section 43(b)(3)). Section 43 specifically directs the FTC to prescribe ''the manner and content'' of the required disclosures by

[1] See Pub. L. 102–242, 105 Stat. 2236. Section 151 of FDICIA, subtitle F of title 1, S. 543. Section 43 was initially designated as section 40 of the FDIA. See also S. Rep. No. 167, 102 Cong., 1st Sess., at 61.

[2] See 12 CFR part 328 and 12 CFR part 740.

[3] According to the U.S. Government Accountability Office (GAO)(formerly, and then, the General Accounting Office), eight States have credit unions that purchase private deposit insurance in lieu of federal insurance. Other States either require federal insurance or allow private insurance but do not have any privately insured credit unions. ''Federal Deposit Insurance Act: FTC Best Among Candidates to Enforce Consumer Protection Provisions,'' GAO–03–971 (Aug. 2003), p. 7.

regulation or order. It also gives the Commission discretion to exempt from the disclosure requirements depository institutions within the U.S. that do not receive initial deposits of less than $100,000 from individuals who are U.S. citizens or residents.

Section 43 applies to ''depository institutions'' lacking federal insurance. Based on definitions incorporated into section 43, this includes credit unions, banks, and savings associations. Specifically, section 43(f)(2) incorporates the FDIA definition of ''depository institution'' in 12 U.S.C. 1813(c), which includes ''banks'' and ''savings associations.'' Section 43(f)(2) also expands the FDIA definition of ''depository institution'' to include any entity described in 12 U.S.C. 461(b)(1)(A)(iv). This includes any ''insured credit union'' as defined in the Federal Credit Union Act (FCUA) (12 U.S.C. 1752) or ''any credit union which is eligible to make application to become an insured credit union'' under 12 U.S.C. 1781.[4] The definition of ''depository institution'' in section 43(f)(2) also includes any entity that, as determined by the FTC, is engaged in the business of receiving deposits and could reasonably be mistaken for a depository institution by the entity's current or prospective customers (*i.e.*, ''look-alike'' institutions). Finally, section 43(f)(3) indicates that the term ''lacking federal deposit insurance'' means an institution is not either: (1) an insured depository institution [5]; or (2) an insured credit union, as defined in section 101 of the FCUA (12 U.S.C. 1752).

In addition to the disclosure requirements, section 43 prohibits depository institutions lacking federal deposit insurance from using the mails or other instrumentalities of interstate commerce to facilitate depository activities unless the appropriate state supervisor has determined that the institution meets eligibility requirements for such insurance (12 U.S.C. 1831t(e)(1) (commonly referred to as the ''shut-down'' provision)). Section 43 also requires private insurers of depository institutions lacking federal insurance to obtain annual independent audits, which the depository institution must make available to its depositors upon request and file with appropriate state agencies (12 U.S.C. 1831t(a) and 1831t(a)(2)(A)(ii)).[6] Section 43(g) directs the FTC to enforce the requirements of section 43, including the shut-down and audit provisions.

B. FTC Authority

Until recently, the Commission's appropriations authority prohibited the use of FTC resources to enforce section 43. In connection with that prohibition, the Commission in 1992 notified every then-existing known credit union subject to the statute that, despite the enforcement ban, the requirements of the statute remained in effect.

In 2003, Congress lifted the longstanding FTC appropriations ban for certain provisions of the FDICIA, including the disclosure provisions of section 43.[7] This action occurred shortly after the GAO had released a study (GAO–03–971) that discussed, among other things, the potential impact on consumers from non-enforcement of section 43 as to credit unions. The GAO had concluded that credit union compliance ''varied considerably'' and that the ''most apparent impact on consumers, from the lack of enforcement of these provisions, may result from credit unions not providing adequate disclosures that they are not federally insured.'' (GAO–03–971, p. 3.) The conference committee report accompanying the 2003 legislation noted the GAO report conclusions about the effect of non-enforcement of section 43. The committee report also directed the FTC to consult with the FDIC and the NCUA when determining the manner and content of disclosure requirements, and to coordinate with state supervisors of non-federally insured depository institutions to assist the FTC in enforcing these requirements.[8]

Although Congress also lifted the funding prohibition for enforcement of the audit provision of the FDICIA (section 43(a)), the statute does not direct the Commission to issue rules related to that provision. Accordingly, the Commission does not plan to address the audit provision in this proceeding.[9]

II. Proposed Disclosure Requirements and Request for Comment

A. Scope of the Proposed Rule

The proposed rule would apply to depository institutions (*e.g.*, banks, savings association, and credit unions) that do not have federal deposit insurance. Consistent with section 43(f)(3)(B) of the FDIA, a depository institution lacks federal deposit insurance if it is not an insured depository institution as defined in the FDIA (12 U.S.C. 1813(c)(2)), or is not an insured credit union, as defined in section 101 of the FCUA, 12 U.S.C. 1752. Most banks and savings associations are required to have federal deposit insurance under state or federal laws.[10] Accordingly, we expect that the proposed rule would apply to only a small number of state-chartered banks and savings associations. The Commission seeks comment on the number of banks and savings associations that lack federal deposit insurance and thus would be covered by the proposed rule's requirements.

Consistent with the statute, the proposed rule would apply to non-federally insured credit unions in any State, the District of Columbia, the several territories and possessions of the United States, the Panama Canal Zone, or the Commonwealth of Puerto Rico (see 12 U.S.C. 1781). The Commission understands that many credit unions in Puerto Rico do not have federal deposit insurance but, instead, operate under a Puerto Rican government-backed deposit insurance system. Section 43 imposes its disclosure requirements specifically on institutions that do not have federal insurance and does not exempt institutions operating under

[4] The FCUA defines ''insured credit union'' to mean ''any credit union the member accounts of which are insured by the National Credit Union Administration.'' (12 U.S.C. 1752). Entities that are eligible to make an application to become an ''insured credit union'' consist of: (1) Credit unions organized and operated according to the laws of any state, the District of Columbia, the several territories, including the trust territories, and possessions of the United States, the Panama Canal Zone, or the Commonwealth of Puerto Rico and (2) credit unions organized and operating under the jurisdiction of the Department of Defense if such credit unions are operating in compliance with the requirements of the FCUA (12 U.S.C. 1781).

[5] The FDIA defines ''insured depository institution'' as any bank or savings association the deposits of which are insured by the Corporation pursuant to this chapter (12 U.S.C. 1813(c)).

[6] The law also contains a provision requiring private insurers to file business plans with appropriate state agencies (section 151(b)(2) of the FDICIA).

[7] Making Appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies, for the Fiscal Year Ending September 30, 2004, and for Other Purposes, H.R. Conf. Rep. No. 108–401, Cong., 1st Sess., at 88 (2003).

[8] *Id.* at 637–38. In preparing this notice, Commission staff has consulted with the FDIC, the NCUA, the National Association of State Credit Union Supervisors (NASCUS), and the Puerto Rican Corporacion de Seguro de Acciones y Depósitos de Cooperativas de Ahorro y Crédito (PROSAD).

[9] In addition, the Commission is not addressing the issue of ''look-alike'' institutions in this rulemaking proceeding. As the GAO report states, the GAO examined credit unions ''as agreed with [Congressional] committee staff.'' The GAO report did not examine look-alike institutions. The Commission has not identified any ''look-alike'' institutions at this time. If it does identify ''look-alike'' institutions, it may conduct a rulemaking proceeding concerning look-alike institutions at a future time.

[10] See, *e.g.*, 12 U.S.C. 222 (national banks); Cal. Fin. Code 5606(a) (California savings associations); and 12 U.S.C. 3104(c)(1) (state and federal branches of foreign banks receiving deposits of less than $100,000).

state-run insurance systems. Accordingly, Puerto Rico credit unions would be subject to the rule's requirements.

B. Disclosures in Periodic Statements

Consistent with section 43(b)(1) of the statute, section 320.3 of the proposed rule would require covered institutions to include conspicuously in all periodic statements and account records an indication that the institution is not federally insured, and that, if the institution fails, the federal government does not guarantee that depositors will get their money back. Section 320.3 offers model language that depository institutions may use to satisfy the requirement. The Rule also specifies that disclosures must be conspicuous. The Commission will evaluate whether disclosures are conspicuous according to well-established FTC law.[11]

C. Disclosures in Advertising

Under proposed rule section 320.4, covered depository institutions must place a notice that the institution is not federally insured at each location where the depository institution's account funds or deposits are normally received and in all advertising. For the purposes of the proposed rule, advertising includes, but is not limited to, advertising in print, electronic, webpage, or broadcast media. This requirement implements section 43(b)(2) of the statute, which states that any covered institution shall ''include conspicuously in all advertising and at each place where deposits are normally received a notice that the institution is not federally insured.''

The proposed rule language does not enumerate any exceptions to section 43's broad mandate. Although NCUA and FDIC rules exempt many types of advertising from the mandatory deposit insurance disclosures (*see* 12 CFR Part 740 and 12 CFR Part 328), those rules and exemptions are based on other statutory authority. In addition, those rules apply to federally-insured institutions and are intended to inform depositors that a limited amount of insurance exists for their deposits. Here, by contrast, the proposed rule's purpose is to alert depositors that their deposits are not federally insured and will not be guaranteed by the federal government should the institution fail. The Commission seeks comment on the proposed advertising disclosure requirements.

D. Disclosures at Deposit Locations

In implementing section 43(b)(2) of the statute, section 320.4 of the proposed rule requires disclosures at each location ''where the depository institution's account funds or deposits are normally received including, but not limited to, its principal place of business, its branches, its automated teller machines, and credit union centers, service centers, or branches servicing more than one credit union or institution.'' The Commission seeks comment on whether this list accurately describes the types of locations where deposits are normally received. For instance, commenters should consider whether automatic teller machines are locations where deposits are ''normally received.''

E. Disclosure Acknowledgment

Sections 320.5 and 320.6 of the proposed rule indicate that non-federally insured depository institutions must obtain from new and existing depositors signed acknowledgments of the fact that the institution is not federally insured. The proposed rule language tracks the requirements set forth in section 43(b)(3) of the FDIA. For certain customers (those holding accounts before 1994), depository institutions may have already discharged their acknowledgment obligations by means of a series of notifications as specified in section 43(b)(3)(C).[12]

F. Exception for Certain Depository Institutions

Section 43(d) of the FDIA (''Exceptions for institutions not receiving retail deposits'') provides the Commission with the discretion to exempt certain institutions from the disclosure requirements. Consistent with that provision, section 320.6 of the proposed rule exempts from the disclosure requirements depository institutions that do not receive initial deposits of less than $100,000 from individuals who are citizens or residents of the U.S., other than money received in connection with any draft or similar instrument issued to transmit money. Because it appears unlikely that such institutions are engaged in the business of retail deposits, insurance disclosures do not appear to be necessary for their customers. The Commission expects that customers of such institutions (*i.e.*, those dealing with initial deposits of $100,000 or more) are sufficiently knowledgeable about these institutions and do not need the same disclosures required for other customers. Such an exception would be similar to exemptions from deposit insurance requirements for non-retail deposits accepted by federal and state branches of foreign banks (12 U.S.C. 3104(c)). Without the FTC exemption, such institutions would have to follow FTC disclosure requirements even though the FDIC specifically exempts them from the federal deposit insurance requirements designed to protect retail customers. The Commission seeks comment on whether such an exemption is appropriate.

G. Proposed Rule's Impact on State Requirements

The Commission understands that some states have their own disclosure requirements for depository institutions and that new federal disclosures may affect those rules. The proposed disclosure requirements provide covered entities with the information that must be disclosed to the public, and offer model language that depository institutions may use to satisfy the requirement. The proposed rule, however, does not mandate precise wording for the disclosures. In the Commission's view, a state's required disclosure language would not have to be identical to that suggested by the FTC if state disclosures are consistent with the purpose and requirements of section 43 (that is, to alert depositors and potential depositors to the absence of federal deposit insurance and to the fact that the federal government does not guarantee they will get their money back should the institution fail).[13] Accordingly, in some cases, depository institutions may be able to comply with the FTC rule and a state disclosure requirement simultaneously. On the other hand, if it is impossible for a depository institution to comply with applicable state and FTC requirements simultaneously, or if a required state disclosure would frustrate the purpose of the federal requirement by contradicting the meaning or undermining the effectiveness of the

[11] *See, e.g., Thompson Medical Co.,* 104 F.T.C. 648, 797–98 (1984); *The Kroger Co.,* 98 F.T.C. 639, 760 (1981).

[12] Section 43(b)(3)(C) allowed affected institutions to transmit to each depositor who was a depositor before June 19, 1994 and had not signed a written acknowledgment, a signature card containing the necessary acknowledgment information and accompanying materials requesting the depositor to sign and return the card. By mailing such card three times, the institution discharged its duty under the statute even if the depositor did not return a signed card. If the institution followed such procedures, the statute does not require the institution to provide another separate written acknowledgment to the depositor.

[13] Federal law will preempt state law if it frustrates the purpose of the federal statutory scheme or if compliance with both the State and federal laws is physically impossible. *See Crosby* v. *National Foreign Trade Council,* 530 U.S. 363, 372–73 (2000).

FDICIA mandated disclosure, it is likely the State requirement would be preempted by the FTC's rule.[14] The Commission seeks comment on the impact of the proposed rule on depository institutions' compliance with state disclosure requirements, including information about existing state disclosure requirements and how they relate to the FTC's proposed rule.

H. Enforcement

Section 43(g) authorizes the Commission to enforce compliance with the rule in accordance with the Federal Trade Commission Act.[15] Section 320.7 tracks this statutory directive.

III. Communications by Outside Parties to Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor will be placed on the public record. See 16 CFR 1.26(b)(4).

IV. Paperwork Reduction Act

The proposed disclosure and written acknowledgment statements do not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) because they are a ''public disclosure of information originally supplied by the government to the recipient for the purpose of disclosure to the public'' as indicated in OMB regulations.[16]

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires that the Commission provide an Initial Regulatory Flexibility Analysis (IRFA) with a proposed rule and a Final Regulatory Flexibility Analysis (FRFA), if any, with the final rule, unless the Commission certifies that the rule will not have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 603–605.

The Commission does not anticipate that the proposed rule will have a significant economic impact on a substantial number of small entities. The Commission recognizes that many of the affected depository institutions may qualify as small businesses under the relevant thresholds (*i.e.*, assets that do not exceed $150 million) and that the economic impact of the proposed rule on a particular small entity could be significant. Overall, however, the proposed rule likely will not have a significant economic impact on a substantial number of small entities. The Commission staff estimates that these requirements will apply to fewer than 400 credit unions, banks, and savings associations. These depository institutions have been required to make the applicable disclosures for more than ten years under section 43 of the FDIA. In addition, the Commission expects that most covered entities make disclosures about their deposit insurance as a matter of course. The Commission does not expect that the disclosures specified in the proposed rule will have a significant impact on these entities.

Accordingly, this document serves as notice to the Small Business Administration of the agency's certification of no effect. To ensure the accuracy of this certification, however, the Commission requests comment on whether the proposed rule will have a significant impact on a substantial number of small entities, including specific information on the number of entities that would be covered by the proposed rule, the number of these companies that are ''small entities,'' and the average annual burden for each entity. Although the Commission certifies under the RFA that the rule proposed in this notice would not, if promulgated, have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, that it is appropriate to publish an IRFA in order to inquire into the impact of the proposed rule on small entities. Therefore, the Commission has prepared the following analysis:

A. Description of the Reasons That Action by the Agency Is Being Taken

The Federal Trade Commission is charged with enforcing the requirements of 12 U.S.C. 1831t(b).

B. Statement of the Objectives of, and Legal Basis for, the Proposed Rule

The objective of the proposed rule is to require depository institutions lacking federal deposit insurance to: (1) Include conspicuously in all periodic statements and account records a statement that the institution is not federally insured, and that if the institution fails, the government does not guarantee that depositors will get back their money; (2) include in all advertising and at each location where the depository institution's account funds or deposits are normally received a statement that the institution is not federally insured; and (3) obtain from their new and existing depositors signed acknowledgments of the fact that the institution is not federally insured. The proposed rule is authorized by and based upon section 151 of FDICIA, Public Law 102–242, 105 Stat. 2236.

C. Small Entities to Which the Proposed Rule Will Apply

As described above, the proposed rule applies to depository institutions lacking federal deposit insurance, including State-chartered credit unions, banks, and savings associations that are small entities. According to the GAO, in 2003 there were 212 credit unions in the 50 states that choose to use private deposit insurance instead of federal insurance. The Commission estimates that, in addition to this number, there are approximately 150 credit unions in Puerto Rico that do not have federal deposit insurance. In addition, the Commission estimates that there are fewer than 20 banks and savings associations that would be covered by the proposed rule. The Commission assumes that few of these depository institutions have assets exceeding $150 million. The Commission, therefore, invites comment and information on this issue.

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

The Commission recognizes that the proposed disclosure rule will involve some increased costs for affected depository institutions. Most of these costs will be in the form of printing costs for account statements, signature cards, and other printed material requiring the disclosures. The Commission does not expect that there will be any significant costs associated with legal, other professional, or training costs to determine the nature of the disclosure because the Commission is providing in the proposed rule the information required to be disclosed to the public. The Commission does not expect that the disclosure requirements will impose significant incremental costs for websites or other advertising. Adding the required disclosure to account statements, signature cards, passbooks, signed acknowledgment cards, and certificates of deposit imposes on the depository institutions some printing costs and perhaps minimal initial design or layout costs. A precise estimate of such costs is difficult

[14] It is also possible that a state's required language would not be sufficient to effectuate section 43's purpose but would not present a conflict with the FTC's required disclosure. In such a case, the depository institution would have to make both disclosures.

[15] See 12 U.S.C. 1831t(g) (''Compliance with the requirements of this section, and any regulation prescribed or order issued under this section, shall be enforced under the Federal Trade Commission Act [15 U.S.C. 41 *et seq.*] by the Federal Trade Commission.'')

[16] 5 CFR 1320.3(c)(2).

to determine without data regarding the required volume of such materials. The Commission invites comment and information on this issue.

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission has not identified any other federal statutes, rules, or policies that would duplicate, overlap, or conflict with the proposed rule. The Commission invites comment and information on this issue.

F. Significant Alternatives to the Proposed Rule

The provisions of the rule directly reflect the requirements of the statute, and thus leave little room for significant alternatives to decrease burden. One possible measure to decrease the rule's burden would be to set an effective date for the rule's requirements beyond the typical 30 days to allow entities additional time to come into compliance. Because the requirements of section 43 have been in effect for more than ten years, however, the Commission does not expect that a different effective date would have a significant effect on the rule's impact on small entities. Nevertheless, the Commission seeks comment and information with regard to: (1) The existence of small business entities for which the proposed rule would have a significant economic impact; and (2) suggested alternative methods of compliance that, consistent with the statutory requirements, would reduce the economic impact of the rule on such small entities. If the comments filed in response to this notice identify small entities that are affected by the rule, as well as alternative methods of compliance that would reduce the economic impact of the rule on such entities, the Commission will consider the feasibility of such alternatives and determine whether they should be incorporated into the final rule.

VI. Invitation to Comment and Questions for Comment

All persons are hereby given notice of the opportunity to submit written data, views, facts, and arguments addressing the issues raised by this Notice. Written comments must be received on or before June 15, 2005. Comments should refer to: ''Proposed Rule for FDICIA Disclosures, Matter No. R411014'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159 (Annex A), 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled ''Confidential.''[17] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

To ensure that the Commission considers an electronic comment, you must file it on the web-based form at *https://secure.commentworks.com/ftc-fdicia*. You may also visit *http://www.regulations.gov* to read this proposed Rule, and may file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

The questions below are designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted.

A. What types of banks and savings associations do not have federal deposit insurance? How many of these institutions exist?

B. What costs or burdens would the proposed requirements impose, and on whom?

C. What regulatory alternatives to the proposed requirements are available that would reduce the burdens of the proposed requirements, while providing the same benefits?

D. Are the proposed advertising disclosure requirements appropriate and consistent with the purposes of section 43?

E. What impact would the proposed rule have on existing state requirements?

F. What effect would the proposed rule have on credit unions insured by the Commonwealth of Puerto Rico?

G. Is it appropriate for the Commission to exempt institutions that do not receive initial deposits of less than $100,000, as proposed in section 320.6? Why or why not?

H. Does the list of locations in section 320.4(a) accurately describe the types of locations where deposits are normally received?

I. What should be the effective date period for the final requirements (*i.e.*, the number of days between publication and the effective date of the rule)?

VII. Proposed Rule Language

List of Subjects in 16 CFR Part 320

Credit unions, Depository institutions, Federal Deposit Insurance Act, Federal Trade Commission Act, and Federal deposit insurance.

For the reasons stated in the preamble, the Federal Trade Commission proposes to add Part 320 to 16 CFR chapter I, subchapter C as set forth below:

PART 320—DISCLOSURE REQUIREMENTS FOR DEPOSITORY INSTITUTIONS LACKING FEDERAL DEPOSIT INSURANCE

Sec.

320.1 Scope.
320.2 Definitions.
320.3 Disclosures in periodic statements and account records.
320.4 Disclosures in advertising and on the premises.
320.5 Disclosure acknowledgment.
320.6 Exception for certain depository institutions.
320.7 Enforcement.

Authority: 12 U.S.C. 1831t(b); 15 U.S.C. 41 *et seq.*

§ 320.1 Scope.

This part applies to all depository institutions lacking federal deposit insurance. It requires the disclosure of certain insurance-related information in periodic statements, account records, locations where deposits are normally received, and advertising. This part also requires such depository institutions to obtain a written acknowledgment from depositors regarding the institution's lack of federal deposit insurance.

[17] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record.

§ 320.2 Definitions.

(a) *Lacking federal deposit insurance* means the depository institution is not an insured depository institution as defined in 12 U.S.C. 1813(c)(2), or is not an insured credit union, as defined in section 101 of the Federal Credit Union Act, 12 U.S.C. 1752.

(b) *Depository institution* means any bank or savings association as defined under 12 U.S.C. 1813, or any credit union organized and operated according to the laws of any State, the District of Columbia, the several territories and possessions of the United States, the Panama Canal Zone, or the Commonwealth of Puerto Rico, which laws provide for the organization of credit unions similar in principle and objectives to federal credit unions.

§ 320.3 Disclosures in periodic statements and account records.

Depository institutions lacking federal deposit insurance must include in all periodic statements of account, on each signature card, and on each passbook, certificate of deposit, or similar instrument evidencing a deposit a notice disclosing conspicuously that the institution is not federally insured, and that if the institution fails, the federal government does not guarantee that depositors will get back their money. For example, a notice would comply with the requirement if it conspicuously stated the following: ''[Institution's name] is not federally insured. If it fails, the federal government does not guarantee that you will get your money back.''

§ 320.4 Disclosures in advertising and on the premises.

Depository institutions lacking federal deposit insurance must include conspicuously a notice disclosing that the institution is not federally insured:

(a) At each location where the depository institution's account funds or deposits are normally received, including, but not limited to, its principal place of business, its branches, its automated teller machines, and credit union centers, service centers, or branches servicing more than one credit union or institution; and

(b) In all advertisements, including, but not limited to, advertising in print, electronic, webpage, or broadcast media.

§ 320.5 Disclosure acknowledgment.

Except as provided in § 320.6, depository institutions lacking federal deposit insurance are prohibited from receiving any deposit for the account of a new or existing depositor unless the depositor has signed a written acknowledgment indicating that the institution is not federally insured and, if the institution fails, the federal government does not guarantee that the depositor will get back the depositor's money.[1]

§ 320.6 Exception for certain depository institutions.

The requirements of this part do not apply to any depository institution lacking federal deposit insurance and located within the United States that does not receive initial deposits of less than $100,000 from individuals who are citizens or residents of the United States, other than money received in connection with any draft or similar instrument issued to transmit money.

§ 320.7 Enforcement.

Compliance with the requirements of this part shall be enforced under the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 05–5218 Filed 3–15–05; 8:45 am]

BILLING CODE 6750–01–P

[1] Depository institutions lacking federal deposit insurance may receive deposits from members who were depositors before June 19, 1994 without obtaining a signed written acknowledgment, if the depository institution followed the procedures set forth in 12 U.S.C. 1831t(b)(3)(C). If the institution followed such procedures, the statute does not require the institution to provide another separate written acknowledgment to the depositor.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[WC Docket No. 05–68; FCC 05–41]

Regulation of Prepaid Calling Card Services

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this Notice of Proposed Rulemaking (NPRM), the Federal Communications Commission (Commission) commences a proceeding to consider comprehensively the appropriate classification of and its jurisdiction over prepaid calling card services that provide users with the ability to do more than merely place a phone call. The Commission also seeks comment on ways in which it can ensure that prepaid calling cards continue to be available at reasonable rates to soldiers and their families.

DATES: Comments are due on or before April 15, 2005 and reply comments are due on or before May 16, 2005.

ADDRESSES: You may submit comments, identified by WC Docket No. 05–68, by any of the following methods:

- Federal Communications Commission's Web Site: *http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-Mail: To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message: ''get form.''
- U.S. Postal Service Mail: 445 12th Street, SW., Washington, DC 20554.
- Commercial Overnight Mail: 9300 East Hampton Drive, Capitol Heights, MD 20743.
- Hand-Delivery or Messenger-Delivery: 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.

For detailed instructions for submitting comments, other filing methods, and additional information on the rulemaking process, see the ''Comment Filing Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Fred Campbell, Pricing Policy Division, Wireline Competition Bureau, via telephone: (202) 418–1553 or e-mail: *Fred.Campbell@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Commission released an Order and NPRM addressing prepaid calling card services on February 23, 2005. *See AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services; Regulation of Prepaid Calling Card Services,* WC Docket Nos. 03–133 & 05–68, Order & Notice of Proposed Rulemaking, FCC 05–41 (rel. Feb. 23, 2005) (*Order & NPRM*). This is a summary of the NPRM portion of the *Order & NPRM.* Copies of the *Order & NPRM* and any subsequently filed documents in this matter are or will be available on the Commission's Internet site at *http://www.fcc.gov* and for public inspection Monday through Thursday from 8 a.m. to 4:30 p.m. and Friday from 8 a.m. to 11:30 a.m. at the FCC Reference Information Center, Portals II, 445 12th St. SW., Room CY–A257, Washington, DC 20554. Copies of any such documents may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 488–5300, facsimile (202) 488–5563, TTY (202) 488–5562, e-mail *fcc@bcpiweb.com.* Accessible formats (computer diskettes, large print, audio

recording and Braille) are available to persons with disabilities by contacting the Consumer & Governmental Affairs Bureau, at (202) 418–0531, TTY (202) 418–7365, or at *fcc504@fcc.gov.*

Background

Prepaid calling cards provide consumers with the ability to place long-distance calls without presubscribing to an interexchange carrier (IXC) or using a credit card. A calling card customer typically dials a number to reach the service provider's centralized switching platform and the platform requests the unique personal identification number associated with the card for purposes of verification and billing. When prompted by the platform, the customer dials the destination number and the platform routes the call to the intended recipient.

To date, calling card services have been regulated by the Commission as telecommunications services because they provide transmission of information, without a change in form or content, for a fee directly to the public. Consistent with this classification, the Commission requires carriers to report revenues from prepaid calling cards on the forms submitted to the Universal Service Administrative Company for purposes of universal service contributions.

Calling cards have been considered ''jurisdictionally mixed'' telecommunications services because they enable the caller to make interstate and intrastate calls. For purposes of determining the jurisdiction of calling card calls, the Commission has applied an ''end-to-end'' analysis, classifying long-distance calls as jurisdictionally interstate or intrastate based on the endpoints, not the actual path, of each complete communication. Under the Commission's end-to-end analysis, intrastate access charges apply when customers use prepaid calling cards to make interexchange calls that originate and terminate within the same State, even if the centralized switching platform is located in a different State.

In the *Order & NPRM,* the Commission held that these same rules apply to AT&T's ''enhanced'' prepaid calling card service that transmits an advertisement to the customer during call setup. AT&T had requested that the Commission declare that its ''enhanced'' prepaid calling card service is an ''information service'' within the meaning of the Communications Act and the Commission's rules, and that calls between persons in the same State are jurisdictionally interstate so long as the prepaid calling card platform delivering the advertising message is in another State. The Commission denied AT&T's petition based on its finding that AT&T's ''enhanced'' calling card service is a telecommunications service and the location of the calling card platform used in that service is irrelevant to the jurisdictional analysis.

On November 22, 2004, prior to adoption of the *Order & NPRM,* AT&T filed an *ex parte* letter amending its petition to request an additional ruling on two new variants of its ''enhanced'' prepaid calling card service. In the first variant, rather than immediately sending the advertising message, the platform provides the caller with a series of options other than making a call (e.g., ''press 1 to learn more about specials at ABC stores; press 2 to add minutes to your card''). AT&T recently added this type of capability to cards it offers through a partnership with Wal-Mart Stores, Inc., including an option for customers to donate minutes to troops serving overseas. When the chosen option is completed, or if no option is chosen, the caller is directed to dial the destination number and at that point the platform transmits the advertising message in the same manner as the original version of the service.

In the second variant, the service provided to the customer may be the same as the service ruled upon in the *Order & NPRM* or the variant described above, but some of the transport is provided over AT&T's Internet backbone using Internet Protocol technology. AT&T states that these calls are not dialed on a 1+ basis and therefore are not covered by the Commission's prior determination that ''IP-in-the-middle'' calls are telecommunications services, and not information services. *See Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges,* WC Docket No. 02–361, Order, 19 FCC Rcd 7457 (2004) (*AT&T IP Telephony Order*). According to AT&T, the *AT&T IP Telephony Order* is inapplicable because it was expressly limited to calls that utilize 1+ dialing.

Discussion

In the *Order & NPRM,* the Commission found that AT&T's original, ''enhanced'' prepaid calling card service does not meet the statutory definition of an information service because: (1) AT&T does not offer any capability to the customer with respect to the advertising message; and (2) the advertising message is incidental to the underlying telecommunications service. We seek comment on how to apply this analysis to the first variant on AT&T's ''enhanced'' calling card service described above. Does offering the caller a menu of options to access information satisfy the definition of an information service, or must the information made available be more integral to the underlying telecommunications service? How should we distinguish between incidental information and information that is essential to the service? Is there any evidence that any of these cards are being marketed as providing a service other than making telephone calls? Is there any evidence that customers purchase these cards for any reason other than making telephone calls? Is the customer's purpose in buying the card relevant to this inquiry? How relevant is the frequency with which customers use any such additional features? We seek comment on the manner in which these cards are marketed, the types of features they offer, and the frequency with which customers use those features.

We also seek comment on the extent to which the use of IP technology to deliver calls placed using prepaid calling cards is a relevant factor in determining its classification under the Act. In the *AT&T IP Telephony Order,* we concluded that an AT&T voice service utilizing 1+ dialing from a regular telephone that is converted into IP format for transport over AT&T's network and converted back into analog format for delivery through local exchange carrier lines is a telecommunications service. We stated that this conclusion applies to all services that (1) use ordinary customer premises equipment with no enhanced functionality, (2) originate and terminate on the public switched telephone network, and (3) undergo no net protocol conversion and provide no enhanced functionality to end users due to the provider's use of IP technology. Are prepaid calling card services that use ''IP-in-the-middle'' and meet these same criteria also telecommunications services? Does it matter, as AT&T argues, whether 1+ dialing or 8YY dialing is used to originate the call? AT&T has asserted that other prepaid calling card providers are using IP to transport prepaid calling card services and are treating such calls as information services. If other providers are offering such services, are they treating them as information services? If so, how are those services similar or dissimilar to the ''IP-in-the-middle'' service we classified as a telecommunications service in the *AT&T IP Telephony Order?*

In addition to services similar to the variants described above, we seek comment on how we might distinguish between telecommunications and

information services for other existing or potential prepaid calling card services that incorporate features not specifically addressed in this item. Are there other existing prepaid calling cards that offer capabilities in addition to the ability to place a phone call? What capabilities do these other cards offer, and how are they different from the prepaid calling cards offered or proposed by AT&T? In what other ways is IP technology being used to provide prepaid calling services? What other features are relevant to the classification of any existing or potential prepaid calling cards?

To the extent the variant services described by AT&T or other existing or potential prepaid calling card services are classified as information services, they presumably would be subject solely to Federal jurisdiction. If any such services are classified as telecommunications services, we seek comment on the circumstances, if any, under which we should assert exclusive Federal jurisdiction, even if the calls originate and terminate in the same State. What factors would be relevant in deciding whether the Commission should assert exclusive jurisdiction? Does the Commission's recent *Vonage Order* have any relevance in this circumstance? *See Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission,* WC Docket No. 03–211, Memorandum Opinion and Order, FCC 04–267 (rel. Nov. 12, 2004).

The record developed in the *Order & NPRM* proceeding made clear that prepaid calling cards are a vital communications tool for members of the armed services and their families. We seek comment on whether there are steps this Commission can take to ensure that prepaid calling cards continue to be available to soldiers and their families at reasonable rates. Specifically, are there any circumstances in which soldiers and their families would be negatively impacted if prepaid calling cards were subject to universal service and access charges? If there would be any such negative impact, are there steps the Commission can take, consistent with the requirements of the Telecommunications Act of 1934, as amended, to ameliorate it? In this respect, would it be within our authority to exempt calling cards sold at military exchanges or other military retails outlets from universal service or access charges, or within our authority to forbear from applying such charges? Even if it is within our authority, is it technically feasible for vendors to differentiate such cards?

Comment Filing Procedures

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated in the **DATES** section of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov*. Filers should follow the instructions provided on the Web site for submitting comments.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message: ''get form.'' A sample form and directions will be sent in response.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be sent to 445 12th Street, SW., Washington DC 20554.

People with Disabilities may contact the FCC to request materials in accessible formats (braille, large print, electronic files, audio format, etc.) by e-mail at *FCC504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0531 (voice), 202–418–7365 (TTY).

***Ex Parte* Requirements**

This matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. See 47 CFR 1.1200, 1.1206. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required. See 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules. 47 CFR 1.1206(b).

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), 5 U.S.C. 603, the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines indicated in the **DATES** section of this document. The Commission will send a copy of the NPRM and IRFA to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

Need for, and Objectives of, the NPRM

In the past, the Commission has treated prepaid calling cards as jurisdictionally mixed telecommunications services subject to State and Federal regulation. As companies introduce ''enhanced'' prepaid calling cards, questions arise as

to whether these new services should be subject to the same regulatory treatment. In the NPRM, the Commission seeks comment on two types of ''enhanced'' prepaid calling card services offered or planned by AT&T as well as other existing or potential prepaid calling card services incorporating features that are not currently addressed by our rules. Specifically, the Commission seeks comment on the classification of such services as telecommunications services or information services and whether, or under what circumstances, the Commission should exercise exclusive Federal jurisdiction over such services. The Commission also seeks comment on whether there are steps it can take to ensure that prepaid calling cards continue to be available to soldiers and their families at reasonable rates.

Legal Basis

This rulemaking action is supported by sections 4(i), 4(j), 201, 202, 203, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), (j), 201, 202, 203, 254.

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

The RFA, 5 U.S.C. 603, directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be the data that the Commission publishes in its *Trends in Telephone Service* report. The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers, Paging, and Cellular and Other Wireless Telecommunications. Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, we discuss the total estimated numbers of small businesses that might be affected by our actions.

We have included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

Wired Telecommunications Carriers: The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year. Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

Local Exchange Carriers: Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,310 carriers reported that they were incumbent local exchange service providers. Of these 1,310 carriers, an estimated 1,025 have 1,500 or fewer employees and 285 have more than 1,500 employees. In addition, according to Commission data, 563 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 563 companies, an estimated 472 have 1,500 or fewer employees and 91 have more than 1,500 employees. In addition, 37 carriers reported that they were ''Other Local Exchange Carriers.'' Of the 37 ''Other Local Exchange Carriers,'' an estimated 36 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of local exchange service, competitive local exchange service, competitive access providers, and ''Other Local Exchange Carriers'' are small entities that may be affected by the rules and policies proposed herein.

Telecommunications Resellers: The SBA has developed a size standard for a small business within the category of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 32 companies reported that they were engaged in the provision of prepaid calling cards. Of these 32 companies, an estimated 31 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the great majority of prepaid calling card providers are small entities that may be affected by the rules and policies proposed herein.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

In the NPRM, we are seeking comment on, among other things, the appropriate classification of certain prepaid calling card services and the scope of Federal jurisdiction over such services. If we determine that particular prepaid calling card services are telecommunications services, providers of any such services that have not complied with applicable regulatory requirements in the past would be subject to additional reporting or recordkeeping burdens related to those requirements. If the Commission determines that it should exercise exclusive Federal jurisdiction over prepaid calling card services, any current reporting and recordkeeping burdens related to state regulation likely would be reduced.

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

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

In this NPRM, the Commission seeks comment on the classification of prepaid calling card services, the scope of Federal jurisdiction over such services, and whether the Commission should take steps to ensure that prepaid calling cards remain affordable to members of the military and their families. The Commission's resolution of these issues will affect not only small providers of prepaid cards, but also small LECs that exchange traffic with these providers and small IXCs that compete with these providers. Options that reduce burdens for one type of small entity may increase the burden on another type of small entity. We therefore seek comment on the types of burdens small entities could face if the Commission alters its treatment of prepaid calling card providers as proposed in the NPRM. Entities, especially small businesses, are encouraged to quantify, if possible, the costs and benefits of potential reporting, recordkeeping, and other compliance requirements. We will consider any proposals made to minimize significant economic impact on small entities.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

Paperwork Reduction Act

This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–5167 Filed 3–15–05; 8:45 am]

BILLING CODE 6712–01–P?≤

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–566; MB Docket No. 04–248, RM–10990]

Radio Broadcasting Services; Big Pine Key, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: The Audio Division dismisses a Petition for Rule Making filed by Call Communications Group, requesting the reservation of vacant Channel 239A at Big Pine Key, Florida for noncommercial educational use. *See* 69 FR 43552, July 21, 2004. Call Communications Group, or no other party, filed comments supporting the reservation of vacant Channel 239A at Big Pine Key for noncommercial educational use. It is the Commission's policy to refrain from making a new allotment or reservation to a community absent an expression of interest.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 04–248, adopted March 2, 2005, and released March 4, 2005. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20054, telephone 1–800–378–3160 or *www.BCPIWEB.com.* This document is not subject to the Congressional Review Act. (The Commission, is, therefore, not required to submit a copy of this Report and Order to GAO, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A) because the proposed rule was dismissed.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–5169 Filed 3–15–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–577; MB Docket No. 05–88; RM–11173, RM–11177]

Radio Broadcasting Services; Lost Hills, Maricopa, and San Luis Obispo, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The first proposal, filed by GTM San Luis Obispo, licensee of Station KLRM(FM), San Luis Obispo, California, proposes the substitution of Channel 245B1 for Channel 246B1 at San Luis Obispo, California, reallotment of Channel 245B1 from San Luis Obispo to Lost Hills, California, as its second local service, and modification of the Station KLRM(FM) license. The second proposal, filed by 105 Mountain Air, Inc. requests the allotment of Channel 245A at Maricopa, California, as its second local service. Channel 245B1 can be reallotted to Lost Hills, California in conformity with the Commission's rules, provided there is a site restriction of 16.6 kilometers (10.3 miles) south at coordinates 35–28–00 NL and 119–41–00 WL. Alternatively, Channel 245A can be allotted to Maricopa, consistent with the minimum distance separation requirements of Section 73.207(b) of the Commission's rules, provided there is a site restriction of 2.9 kilometers (1.8 miles) southwest at coordinates 35–02–41 NL and 119–25–25 WL. In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest pertaining to the use of Channel 245B1 at Lost Hills.

DATES: Comments must be filed on or before April 25, 2005, and reply comments on or before May 10, 2005.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Lewis J. Paper, Esq., Andrew S. Kersting, Esq., Counsel, GTM San Luis Obispo, Dickstein, Shapiro, Morin & Oshinsky, LLP, 2101 L Street, NW., Washington, DC 20037–1526 and Robert Eurich, President, 105 Mountain Air, Inc., 7179 N. Van Ness, Fresno, California 93711.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MB Docket No. 05–88, adopted March 2, 2005, and released March 4, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402,

Washington, DC 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Channel 245B1 at Lost Hills, by adding Channel 245A at Maricopa, and by removing Channel 246B1 at San Luis Obispo.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–5173 Filed 3–15–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–574; MB Docket No. 05–66, RM–11146]

Radio Broadcasting Services; Anson and Roby, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document seeks comment on a petition for rule making filed by Jeraldine Anderson proposing the allotment of Channel 249A at Roby, Texas as the community's first local service. Channel 249A can be allotted at coordinates located 32–43–00 NL and 100–27–00 WL with a site restriction of 7.5 kilometers (4.7 miles) southwest of the community. To accommodate this proposal, the FM Table of Amendments will be amended to reflect the current licensed authorization of Station KTLT(FM) on Channel 251C2 at Anson, Texas. Station KTLT(FM)'s one-step permit (File No. BPH–1990122IG) to upgrade to Channel 251C1 at Anson, Texas expired on December 13, 2002.

DATES: Comments or counterproposals must be filed on or before April 25, 2005, and reply comments must be filed on or before May 10, 2005.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve Petitioner, as follows: Jeraldine Anderson, 1702 Cypress Dr., Irving, TX 75061.

FOR FURTHER INFORMATION CONTACT: Helen McLean, Media Bureau, (202) 418–2738.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking,* MB Docket No. 05–66, adopted March 2, 2005, and released March 4, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20054, telephone 800–378–3160 or *http://www.BCPIWEB.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

The provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a *Notice of Proposed Rule Making* is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 251C1 and by adding Channel 251C2 at Anson, and by adding Roby, Channel 249A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–5174 Filed 3–15–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–576; MB Docket No. 05–76, RM–11167; MB Docket No. 05–77, RM–11168; and MB Docket No. 05–78, RM–11169]

Radio Broadcasting Services; Silver Springs, NV; Covington, OK; and Poultney, VT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document sets forth three proposals to amend the FM Table of Allotments, § 73.202(b) of the Commission's rules, 47 CFR 73.202(b). The Commission requests comment on a petition filed by Dana J. Puopolo. Petitioner proposes the allotment of Channel 273C at Silver Springs, Nevada, as a first local service. Channel 273C can be allotted at Silver Springs in compliance with the Commission's minimum distance separation requirements with a site restriction of 47.7 km (29.7 miles) east of Silver Springs. The proposed coordinates for Channel 273C at Silver Springs are 39–30–00 North Latitude and 118–40–48 West Longitude. *See* Supplementary Information *infra.*

DATES: Comments must be filed on or before April 25, 2005, and reply comments on or before May 10, 2005.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the designated petitioner as follows: Dana J. Puopolo, 2134 Oak Street, Unit C, Santa Monica, California 90495; Charles Crawford, 4553 Bordeaux Avenue, Dallas, Texas 75205.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket Nos. 05–76, 05–77, and 05–78, adopted March 2, 2005, and released March 4, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

The Commission further requests comment on a petition filed by Charles Crawford. Petitioner proposes the allotment of Channel 290A at Covington, Oklahoma, as a first local service. Channel 290A can be allotted at Covington in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.7km (3.5 miles) east of Covington. The proposed coordinates for Channel 290A at Covington are 36–18–26 North Latitude and 97–31–31 West Longitude.

The Commission further requests comment on a petition filed by Dana J. Puopolo. Petitioner proposes the allotment of Channel 223A at Poultney, Vermont, as a first local service. Channel 223A can be allotted at Poultney in compliance with the Commission's minimum distance separation requirements without site restriction at center city coordinates. The proposed coordinates for Channel 223A at Poultney are 43–31–06 North Latitude and 73–14–06 West Longitude. Concurrence in a specially negotiated allotment by the Government of Canada is required because the proposed allotment is located within 320 kilometers (199 miles) of the U.S.-Canadian border and would be short-spaced to Station CFQR–FM, Channel 223C1, Montreal, Quebec, Canada.

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Nevada, is amended by adding Silver Springs, Channel 273C.

3. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Covington, Channel 290A.

4. Section 73.202(b), the Table of FM Allotments under Vermont, is amended by adding Poultney, Channel 223A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau

[FR Doc. 05–5175 Filed 3–15–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–578; MB Docket No. 05–81; RM–11102]

Radio Broadcasting Services; Altheimer, AR and Little Rock, AR.

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by Charles Crawford, requesting the allotment of Channel 251C3 at Altheimer, Arkansas, as the community's first local aural transmission service. Petitioner's proposal also requires the reclassification of Station KURB(FM), Channel 253C, Little Rock, Arkansas 253C0 pursuant to the reclassification procedures adopted by the Commission. *See* Second Report and Order in MM Docket 98–93 (1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules) 65 FR 79773 (2000). An Order to Show Cause was issued to Citadel Broadcasting Company, licensee of Station KURB(FM) (RM–11102). Channel 251C3 can be allotted at Altheimer, Arkansas, at Petitioner's requested site 20.4 kilometers (12.7 miles) southwest of the community at coordinates 34–09–00 NL and 91–56–00 WL

DATES: Comments must be filed on or before April 25, 2005, and reply comments on or before May 10, 2005. Any counterproposal filed in this proceeding need only protect Station KURB(FM), Little Rock, Arkansas as a Class C0 allotment.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, and Station KURB as follows: Charles Crawford, 553 Bordeaux Avenue, Dallas, Texas 75205

(Petitioner), Citadel Broadcasting Company, City Center West, 7201 W. Lake Mead Blvd., Suite 400, Las Vegas, Nevada 89128 (Licensee of Station KURB).

FOR FURTHER INFORMATION CONTACT: Victoria McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 05–81, adopted March 2, 2005, and released March 4, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, or via e-mail *qualexint@aol.com*. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas is amended by adding Altheimer, Channel 251C3, and by removing Channel 253C and adding Channel 253C0 at Little Rock.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–5171 Filed 3–15–05; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 70, No. 50
Wednesday, March 16, 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

March 11, 2005.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under 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 be 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), *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 Marketing Service

Title: Recordkeeping Requirements for Certified Applicators of Federally Restricted Use Pesticides (7 CFR Part 110).

OMB Control Number: 0581–0164.

Summary of Collection: The Food, Agriculture, Conservation, and Trade (FACT) Act of 1990 (Subtitle H, Sec. 1491) mandates the Department of Agriculture (USDA) in consultation with the Administrator of the Environmental Protection Agency (EPA), ''shall require certified applicators of federally restricted use pesticides to maintain records comparable to records maintained by commercial applicators in each state.'' In addition, USDA and the Administrator of EPA are required under Section 1491(f) of the FACT Act to survey the records and develop and maintain a data base so USDA and the Administrator of EPA can prepare and publish annual pesticide use reports, copies of which must be transmitted to Congress. Agricultural Marketing Service (AMS) is charged with administering the Federal Pesticide Recordkeeping Program. AMS requires certified private applicators of federally restricted use pesticides to maintain records of all restricted use pesticide applications for a period of two years.

Need and Use of the Information: AMS will collect information using form STD–8, Pesticide for Recordkeeping Inspection. In order to properly administer the Pesticide Recordkeeping Program, AMS needs to monitor and determine to what extent private applicators are complying with the program's requirements and identify the reasons for non/or partial compliance. AMS has the responsibility to assure records are kept to provide information to be utilized by licensed health care professionals for possible medical treatment. In addition, the stature requires USDA to submit annual reports to Congress pertaining to the use of restricted use pesticides in agricultural production.

Description of Respondents: Farm; Federal Government; State, local or tribal government.

Number of Respondents: 660,148.

Frequency of Responses: Recordkeeping; reporting: On occasion.

Total Burden Hours: 1,561,209.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 05–5177 Filed 3–15–05; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 11, 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 be 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), *OIRA_Submission@OMB.EPO.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.

Farm Service Agency

Title: Long Term Contracting.

OMB Control Number: 0560–NEW.

Summary of Collection: The Long Term Contracting System (LTCS) is a web-based application that streamlines the bid entry and evaluation functions for Long-term, Indefinite-Delivery, Indefinite-Quality contracts. The Kansas City Commodity Office (KCCO) will generally issue invitations for bids to purchase commodities for domestic feeding program on an annual, semi-annual, monthly, or quarterly basis; however, invitations may be issued more frequently depending on various program requirements. Bid offers will be received, evaluated, and awarded within the LTCS.

Need and Use of the Information: The information collected will be processed through the LTCS bid evaluation program to determine optimal awards. KCCO will analyze the results of the bid evaluation and award contracts to the eligible, responsible and responsive bidders whose offers are most advantageous to USDA in terms of the lowest overall cost. The information is required to procure agricultural commodities for domestic feeding programs. Without the information, KCCO could not meet program requirements.

Description of Respondents: Business or other for-profit; not-for-profit institutions; Federal Government.

Number of Respondents: 20.

Frequency of Responses: Recordkeeping; reporting: quarterly; semi-annually; annually; monthly; on occasion.

Total Burden Hours: 80.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 05–5180 Filed 3–15–05; 8:45 am]

BILLING CODE 3410–05–M

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Request for an Extension of a Currently Approved Information Collection ''County Committee Elections

AGENCY: Farm Service Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency (FSA) is seeking comments from all interested individuals and entities on the extension of a currently approved information collection used in support of the FSA County Committee Elections. The collection of information from FSA Farmers and Ranchers is used to receive nominations from eligible voters for the County Committee.

DATES: Comments on this notice must be received on or before May 16, 2005 to be assured consideration.

Additional Information: Comments concerning this notice should be addressed to: Kenneth Nagel, Agricultural Program Specialist, Office of the Deputy Administrator for Field Operations, Farm Service Agency, USDA, STOP 0542, 1400 Independence Avenue, SW., STOP 0542, Washington, DC 20250; telephone (202) 720–7890. Copies of the information collection may be obtained by contacting Kenneth Nagel.

SUPPLEMENTARY INFORMATION:

Title: County Committee Election.

OMB Control Number: 0560–0229.

Expiration Date of Approval: September 30, 2005.

Type of Request: Extension of a Currently Approved Information Collection.

Abstract: The information collected under OMB Control Number is 0560–0229 is necessary to effectively allow farmer and ranchers to nominate potential candidates for the county committee election in accordance with the requirements at 7 CFR part 7. Specifically, the Agency uses the information annually or if needed through-out the year for special elections to create ballots for county committee elections.

Estimate of Respondent Burden: Public reporting burden for this collection of information is estimated to average 10 minutes per response.

Respondents: Any individual with farming interest in the Local Administrative Area (LAA). (eligible voters)

Estimated Number of Respondents: 2,100,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 350.

Topics for comment include but are not limited to the following: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether 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 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. Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, and to Kenneth Nagel, Agricultural Program Specialist, Office of Deputy Administrator for Field Operations, Farm Service Agency, USDA, STOP 0542, 1400 Independence Ave., SW., Washington, DC 20250; telephone (202) 720–7890. Copies of the information collection may be obtained from Kenneth Nagel at the above address.

All responses to this notice will be summarized and included in the request for Office of management and Budget approval. All comments will be a matter of public record.

Signed in Washington, DC on March 8, 2005.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 05–5154 Filed 3–15–05; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Income Eligibility Guidelines

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: The Department announces adjusted income eligibility guidelines to be used by State agencies in determining the income eligibility of persons applying to participate in the Special Supplemental Nutrition Program for Women, Infants and Children Program (WIC). These income eligibility guidelines are to be used in conjunction with the WIC Regulations.

DATES: *Effective Date:* July 1, 2005.

FOR FURTHER INFORMATION CONTACT: Debra Whitford, Branch Chief, Policy and Program Development Branch, Supplemental Food Programs Division, FNS, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 305–2746.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This notice is exempt from review by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of this Act.

Paperwork Reduction Act of 1995

This notice does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.557 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, 48 FR 29112 June 24, 1983, and 49 FR 22676, May 31, 1984).

Description

Section 17(d)(2)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786 (d)(2)(A)) requires the Secretary of Agriculture to establish income criteria to be used with nutritional risk criteria in determining a person's eligibility for participation in the WIC Program. The law provides that persons will be income eligible for the WIC Program only if they are members of families that satisfy the income standard prescribed for reduced-price school meals under section 9(b) of the National School Lunch Act (42 U.S.C. 1758(b)). Under section 9(b), the income limit for reduced-price school meals is 185 percent of the Federal poverty guidelines, as adjusted.

Section 9(b) also requires that these guidelines be revised annually to reflect changes in the Consumer Price Index. The annual revision for 2005 was published by the Department of Health and Human Services (HHS) at 70 FR 8373, February 18, 2005. The guidelines published by HHS are referred to as the poverty guidelines.

Section 246.7(d)(1) of the WIC regulations (Title 7, Code of Federal Regulations) specifies that State agencies may prescribe income guidelines either equaling the income guidelines established under section 9 of the National School Lunch Act for reduced-price school meals or identical to State or local guidelines for free or reduced-price health care. However, in conforming WIC income guidelines to State or local health care guidelines, the State cannot establish WIC guidelines which exceed the guidelines for reduced-price school meals, or which are less than 100 percent of the Federal poverty guidelines. Consistent with the method used to compute income eligibility guidelines for reduced-price meals under the National School Lunch Program, the poverty guidelines were multiplied by 1.85 and the results rounded upward to the next whole dollar.

At this time the Department is publishing the maximum and minimum WIC income eligibility guidelines by household size for the period July 1, 2005, through June 30, 2006. Consistent with section 17(f)(17) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(17)), a State agency may implement the revised WIC income eligibility guidelines concurrently with the implementation of income eligibility guidelines under the Medicaid program established under Title XIX of the Social Security Act (42 U.S.C. 1396, *et seq.*). State agencies may coordinate implementation with the revised Medicaid guidelines, but in no case may implementation take place later than July 1, 2005. State agencies that do not coordinate implementation with the revised Medicaid guidelines must implement the WIC income eligibility guidelines on July 1, 2005. The first table of this notice contains the income limits by household size for the 48 contiguous States, the District of Columbia and all Territories, including Guam. Because the poverty guidelines for Alaska and Hawaii are higher than for the 48 contiguous States, separate tables for Alaska and Hawaii have been included for the convenience of the State agencies.

INCOME ELIGIBILITY GUIDELINES
(Effective from July 1, 2005 to June 30, 2006)

Household Size	Federal Poverty Guidelines- 100%					Reduced Price Meals - 185%				
	Annual	Monthly	Twice-Monthly	Bi-Weekly	Weekly	Annual	Monthly	Twice-Monthly	Bi-Weekly	Weekly
48 Contiguous States, D.C., Guam and Territories										
1	$9,570	$798	$399	$369	$185	$17,705	$1,476	$738	$681	$341
2	12,830	1,070	535	494	247	23,736	1,978	989	913	457
3	16,090	1,341	671	619	310	29,767	2,481	1,241	1,145	573
4	19,350	1,613	807	745	373	35,798	2,984	1,492	1,377	689
5	22,610	1,885	943	870	435	41,829	3,486	1,743	1,609	805
6	25,870	2,156	1,078	995	498	47,860	3,989	1,995	1,841	921
7	29,130	2,428	1,214	1,121	561	53,891	4,491	2,246	2,073	1,037
8	32,390	2,700	1,350	1,246	623	59,922	4,994	2,497	2,305	1,153
Each Add'l Member Add	+ $3,260	+ $272	+ $136	+ $126	+ $63	+ $6,031	+ $503	+ $252	+ $232	+ $116
Alaska										
1	$11,950	$996	$498	$460	$230	$22,108	$1,843	$922	$851	$426
2	16,030	1,336	668	617	309	29,656	2,472	1,236	1,141	571
3	20,110	1,676	838	774	387	37,204	3,101	1,551	1,431	716
4	24,190	2,016	1,008	931	466	44,752	3,730	1,865	1,722	861
5	28,270	2,356	1,178	1,088	544	52,300	4,359	2,180	2,012	1,006
6	32,350	2,696	1,348	1,245	623	59,848	4,988	2,494	2,302	1,151
7	36,430	3,036	1,518	1,402	701	67,396	5,617	2,809	2,593	1,297
8	40,510	3,376	1,688	1,559	780	74,944	6,246	3,123	2,883	1,442
Each Add'l Member Add	+ $4,080	+ $340	+ $170	+ $157	+ $79	+ $7,548	+ $629	+ $315	+ $291	+ $146
Hawaii										
1	$11,010	$918	$459	$424	$212	$20,369	$1,698	$849	$784	$392
2	14,760	1,230	615	568	284	27,306	2,276	1,138	1,051	526
3	18,510	1,543	772	712	356	34,244	2,854	1,427	1,318	659
4	22,260	1,855	928	857	429	41,181	3,432	1,716	1,584	792
5	26,010	2,168	1,084	1,001	501	48,119	4,010	2,005	1,851	926
6	29,760	2,480	1,240	1,145	573	55,056	4,588	2,294	2,118	1,059
7	33,510	2,793	1,397	1,289	645	61,994	5,167	2,584	2,385	1,193
8	37,260	3,105	1,553	1,434	717	68,931	5,745	2,873	2,652	1,326
Each Add'l Member Add	+ $3,750	+ $313	+ $157	+ $145	+ $73	+ $6,938	+ $579	+ $290	+ $267	+ $134

Authority: 42 U.S.C. 1786.

Dated: March 8, 2005.

Roberto Salazar,

Administrator.

BILLING CODE 3410–30–P

[FR Doc. 05–5114 Filed 3–15–05; 8:45 am]

BILLING CODE 3410–30–C

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Request for Comments; Forest Products Removal Permits and Contracts

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension of an information collection associated with forest product removal permits and contracts. The collected information will help the Forest Service administer the use of forest products. Information will be collected from permittees for free use of forest products and from permittees and purchasers for purchase of forest products.

The collected information is necessary to ensure that: applicants meet the requirements of the forest products program; permittees obtaining free use of forest products qualify for the free-use program; applicants purchasing permits non-competitively to harvest forest products do not exceed the authorized limit in a fiscal year; and, permittees can be identified in the field by Forest Service compliance personnel.

DATES: Comments must be received in writing on or before May 16, 2005 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Director, Forest Management, 1400 Independence Avenue, SW., Mail Stop 1103, Washington, DC 20250–0003.

Comments also may be submitted via facsimile to (202) 205–1045 or by e-mail to: *forest_products_forms@fs.fed.us.* In addition, comments may be submitted via the World Wide Web/Internet Web site at: *http://www.regulations.gov*. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The Forest Products Permits and Contract are available for public review on the Forest Service World Wide Web/Internet site at: *http://www.fs.fed.us/forestmanagement/infocenter/index.shtml.* Alternatively, these can be viewed in the Office of the Director, Forest Management, Third Floor, Southwest Wing, Yates Building, 201 14th Street, SW., Washington, DC. Visitors are encouraged to call ahead on (202) 205–1496 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Don Benner, Forest Management Staff, at (202) 205–0855, or Richard Fitzgerald, Forest Management Staff, at (202) 205–1753. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Forest Product Removal Permits and Contracts.

OMB Number: 0596–0085.

Expiration Date of Approval: March 31, 2005.

Type of Request: Extension with minor revision.

Abstract: Under 16 U.S.C. 551, individuals and other Federal agencies planning to remove forest products from the National Forests must obtain a permit. To obtain a permit, applicants must meet the criteria at 36 CFR 223.1, 223.2, and 223.5 through 223.13 under which free use or sale of timber or forest products is authorized. Upon receiving a permit, the permittee must comply with the terms of the permit at 36 CFR 261.6 that designate the forest products that can be harvested and under what conditions, such as limiting harvest to a designated area or permitting harvest of only specifically designated material.

When applying for forest products removal permits, applicants, depending on what timber or forest products they intend to remove, must answer questions on one of the following permits:

- Contract FS–2400–4, Forest Products Contract and Cash Receipt, is used to sell timber products, such as sawtimber, or forest products, such as fuelwood.
- Permit FS–2400–8, Forest Products Free Use Permit, is used to allow free use of timber or forest products (36 CFR 223.5 through 223.13).
- Permit FS–2400–1, Forest Products Removal Permit and Cash Receipt, is used to sell timber or forest products such as fuelwood, Christmas trees or pine cones (36 CFR 223.1 and 223.2).

Each permit and contract implements different regulations and has different provisions for compliance, but each permit and contract collect similar information from the applicant for related purposes.

The Forest Service will use the information collected: To ensure that permittees obtaining free use of timber or forest products qualify for the free-use program and do not receive product value in excess of the $20 amount that District Rangers or $100 amount that Forest Supervisors are authorized to approve in a fiscal year (36 CFR 223.8); to ensure that applicants purchasing permits non-competitively to harvest timber or forest products do not exceed the authorized $10,000 limit in a fiscal year (16 U.S.C. 472(a)); and, to ensure that permittees can be identified in the field by Forest Service compliance personnel.

An applicant is not restricted to one permit or contract. An applicant may apply for as many forest products permits or contracts as necessary to meet their needs. For example, an applicant may obtain free use of a timber product, such as pine cones, using Permit 2400–8, Forest Products Free Use Permit, and still purchase fuelwood using Contract 2400–4, Forest Products Contract and Cash Receipt.

Individuals and persons representing small businesses usually request each permit and contract in person at the Forest Service office issuing the permit. Forest Service personnel ask applicants to respond to questions that include their name, address, and identification number. The identification number can be a tax identification number, social security number, drivers license number, or other unique number identifying the applicant. Forest Service personnel enter the information into a computerized database for easier retrieval upon subsequent requests for a forest products permit or contract by the same individual. The information is also printed onto a paper copy of a permit or contract. The applicant signs and dates the paper permit or contract. Forest Service personnel discuss the terms and conditions of the permit or contract with the applicant. Permittees may be required to maintain a forest product removal record on the permit.

Data gathered in this information collection are not available from other sources. The agency uses the collected data to ensure that applicants for free use meet the criteria for free use of timber or forest products authorized by regulations at 36 CFR 223.5 through 223.13, that applicants seeking to purchase and remove timber or forest products from National Forest System lands meet the criteria under which sale of timber or forest products is authorized by the regulations at 36 CFR 223.80, and to ensure that permittees comply with regulations and terms of the permit at 36 CFR 261.6.

Estimate of Annual Burden:
Permit 2400–1: 4.5 minutes.
Permit 2400–8: 4.5 minutes.
Contract 2400–4: 5.5 minutes.

Type of Respondents:
Permit 2400–1: Individuals and small businesses.
Permit 2400–8: Individuals.
Contract 2400–4: Individuals and small businesses.

Estimated Annual Number of Respondents:
Permit 2400–1: 150,000.
Permit 2400–8: 25,000.
Permit 2400–4: 1,000.

Estimated Annual Number of Responses per Respondent:
Permit 2400–1: 4.
Permit 2400–8: 4.
Contract 2400–4: 5.

Estimated Total Annual Burden on Respondents:
Permit 2400–1: 12,000 hours.
Permit 2400–8: 2,000 hours.
Permit 2400–4: 100 hours.

Comment is invited on: (a) Whether the proposed collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will become a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: March 10, 2005.

Fredrick L. Norbury,

Associate Deputy for National Forest System.

[FR Doc. 05–5213 Filed 3–15–05; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers of Record for the Pacific Southwest Region; California

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all Ranger Districts, Forests, and the Regional Office of the Pacific Southwest Region to publish legal notices of all decisions subject to appeal under 36 CFR 215 and 217 and to publish notices for public comment and notice of decision subject to the provisions of 36 CFR 215. Further, these newspapers will become the newspapers of record for planning as defined in 36 CFR 219.16 and by notification required under 36 CFR 218. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices for public comment or decisions, thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals and objection processes.

DATES: Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made after publication of this notice in the **Federal Register**. The list of newspapers will remain in effect until another notice is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Sue Danner, Regional Appeals and Litigation Manager, Pacific Southwest Region, 1323 Club Drive, Vallejo, California 94592, 707–562–8945.

SUPPLEMENTARY INFORMATION: On June 4, 2003, updated CFR part 215 was published requiring publication of legal notice of decisions subject to appeal. On January 5, 2005, a final rule concerning 36 CFR part 219 was published requiring publication of legal notices as required by 36 CFR 215.5 The newspaper(s) of record for projects in a plan area is (are) the newspaper(s) of record for notices related to planning. Sections 215.5, 217.5, 218.2, and 219.16 require notice published in the **Federal Register** advising the public of the principal newspapers to be utilized for publishing legal notices. This newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested and affected by a specific decision.

In addition to the primary newspaper listed for each unit, some Forest Supervisors and District Rangers have listed newspapers providing additional notice of their decisions. The timeframe for appeal shall be based on the date of publication of the notice in the first (primary) newspaper listed for each unit.

The newspapers to be used are as follows:

Pacific Southwest Regional Office

Regional Forester Decisions:
Sacramento Bee, published daily in Sacramento, Sacramento County, California, for decisions affecting National Forest System lands and for any decision of Region-wide impact.

Angeles National Forest, California

Forest Supervisor Decisions:
Los Angeles times, published daily in Los Angeles, Los Angeles County, California.

District Rangers Decisions:
Los Angeles Ranger District: *Daily News,* published daily in Los Angeles, Los Angeles County, California.
Newspapers providing additional notice of Los Angeles District Ranger decisions: *Pasadena Star News,* published in Pasadena, California; and *Foothill Leader,* published in Glendale, California.
San Gabriel river Ranger District: *Inland valley bulletin,* published daily in Los Angeles, Los Angeles County, California.
Newspaper providing additional notice of San Gabriel River District Ranger decisions: *San Gabriel Valley Tribune,* published in the eastern San Gabriel Valley, California.
Santa Clara/Mojave Rivers Ranger District: *Daily News,* published daily in Los Angeles, Los Angeles County, California.
Newspapers providing additional notice of Santa Clara/Mojave Rivers District Ranger decisions: *Antelope Valley Press,* published in Palmdale, California; and *Mountaineer Progress,* published in Wrightwood, California.

Cleveland National Forest, California

Forest Supervisor Decisions:
San Diego Union-Tribune, published daily in San Diego, San Diego County California.

District Rangers Decisions:
Descanso Ranger District: *San Diego Union-Tribune,* published daily in San Diego, San Diego County, California.
Palomar Ranger District: *San Diego Union-Tribune,* published daily in San Diego, San Diego County, California.
Newspaper providing additional notice of Palomar District Ranger decisions: *Riverside Press*

Enterprise, published daily in Riverside, Riverside County, California.
Trabuco Ranger District: *Riverside Press Enterprise,* published daily in Riverside, Riverside County, California.
Newspaper providing additional notice of Trabuco District Ranger decisions: *Orange County Register*, published daily in Santa Ana, Orange County, California.

Eldorado National Forest, California

Forest Supervisor Decisions:
Mountain Democrat published four times weekly in Placerville, El Dorado County, California.
District Rangers Decisions:
Mountain Democrat published four times weekly in Placerville, El Dorado County, California.

Inyo National Forest, California

Forest Supervisor Decisions:
Inyo Register published three times weekly in Bishop, Inyo County, California.
District Rangers Decisions:
Inyo Register published three times weekly in Bishop, Inyo County, California.

Klamath National Forest, California

Forest Supervisor Decisions:
Siskiyou Daily News, published daily in Yreka, Siskiyou County, California.
District Rangers Decisions:
Siskiyou Daily News, published daily in Yreka, Siskiyou County, California.
Newspaper sometimes providing additional notice of Goosenest District Ranger decisions: *Klamath Falls Herald and News,* published daily in Klamath Falls, Klamath County, Oregon.

Lake Tahoe Basin Management Unit, California and Nevada

Forest Supervisor Decisions:
Tahoe Daily Tribune, published daily (five times weekly) in South Lake Tahoe, El Dorado County, California.

Lassen National Forest, California

Forest Supervisor Decisions:
Lassen County Times, published weekly in Susanville, Lassen County, California.
District Rangers Decisions:
Eagle Lake Ranger District: *Lassen County Times,* published weekly in Susanville, Lassen County, California.
Almanor Ranger District: *Chester Progressive,* published weekly in Chester, Plumas County, California.
Hat Creek Ranger District: *Intermountain News,* published weekly in Burney, Shasta County, California.

Los Padres National Forest, California

Forest Supervisor Decisions:
Santa Barbara News Press, published daily in Santa Barbara, Santa Barbara County, California.
District Rangers Decisions:
Monterey Ranger District: *Monterey County Herald,* published daily in Monterey, Monterey County, California.
Santa Lucia Ranger District: *Telegram Tribune,* published daily in San Luis Obispo, San Luis Obispo County, California.
Santa Barbara Ranger District: *Santa Barbara News Press,* published daily in Santa Barbara, Santa Barbara County, California.
Ojai Ranger District: *Ventura Star,* published daily in Ventura, Ventura County, California.
Mt. Pinos Ranger District: *The Bakersfield Californian,* published daily in Bakersfield, Kern County, California.

Mendocino National Forest, California

Forest Supervisor Decisions:
Chico Enterprise-Record, published daily in Chico, Butte County, California.
District Rangers Decisions:
Grindstone Ranger District: *Chico Enterprise-Record,* published daily in Chico, Butte County, California.
Upper Lake and Covelo Districts: *Ukiah Daily Journal,* published daily in Ukiah, Mendocino County, California.

Modoc National Forest, California

Forest Supervisor Decisions:
The Modoc County Record, published weekly in Alturas, Modoc County, California.
District Rangers Decisions:
The Modoc County Record, published weekly in Alturas, Modoc County, California.

Plumas National Forest, California

Forest Supervisor Decisions:
Feather River Bulletin, published weekly in Quincy, Plumas County, California.
Newspaper providing additional notice for Environmental Impact Statements: *Sacramento Bee,* published daily in Sacramento, Sacramento County, California.
District Rangers Decisions:
Beckwourth Ranger District: *Portola Reporter,* published weekly in Portola, Plumas County, California.
Newspaper occasionally providing additional notice of Beckwourth District Ranger decisions: *Feather River Bulletin,* published weekly in Quincy, Plumas County, California.
Feather River Ranger District: *Oroville Mercury Register,* published daily in Oroville, Butte County, California.
Newspaper occasionally providing additional notice of Feather River District Ranger decisions: *Feather River Bulletin,* published weekly in Quincy, Plumas County, California.
Mr. Hough Ranger District: *Feather River Bulletin,* published weekly in Quincy, Plumas County, California.
Newspaper occasionally providing additional notice of Mt. Hough District Ranger decisions: *Portola Reporter,* published weekly in Portola, Plumas County, California.

San Bernardino National Forest, California

Forest Supervisor Decisions:
San Bernardino Sun, published daily in San Bernardino, San Bernardino County, California.
District Rangers Decisions:
Mountaintop Ranger District—Arrowhead Area: *Mountain News,* published weekly in Blue Jay, San Bernardino County, California.
Mountaintop Ranger District—Big Bear Area: *Big Bear Life and Grizzly,* published weekly in Big Bear, San Bernardino County, California.
Front Country Ranger District: *San Bernardino Sun,* published daily in San Bernardino, San Bernardino County, California.
San Jacinto Ranger District: *Idyllwild Town Crier,* published weekly in Idyllwild, Riverside County, California.

Sequoia National Forest, California

Forest Supervisor Decisions:
Porterville Recorder, published daily (except Sunday) in Porterville, Tulare County, California.
District Rangers Decisions:
Porterville Recorder, published daily (except Sunday) in Porterville, Tulare County, California.

Shasta-Trinity National Forest, California

Forest Supervisor Decisions:
Record Searchlight, published daily in Redding, Shasta County, California.
District Rangers Decisions:
Record Searchlight, published daily in Redding, Shasta County, California.

Sierra National Forest, California

Forest Supervisor Decisions:
Fresno Bee, published daily in Fresno, Fresno County, California.
District Rangers Decisions:
Fresno Bee, published daily in Fresno, Fresno County, California.

Six Rivers National Forest, California

Forest Supervisor Decisions:
Times Standard, published daily in Eureka, Humboldt County, California.
District Rangers Decisions:
Smith River National Recreation Area: *Del Norte Triplicate,* published daily (five times weekly) in Crescent City, Del Norte County, California.
Orleans and Lower Trinity Districts: *The Kourie*, published weekly in Willow Creek, Humboldt County, California.
Mad River District: *Times Standard,* published daily in Eureka, Humboldt County, California.

Stanislaus National Forest, California

Forest Supervisor Decisions:
The Union Democrat, published daily (five times weekly) in Sonora, Tuolumne County, California.
District Rangers Decisions:
The Union Democrat, published daily (five times weekly) in Sonora, Tuolumne County, California.
Newspaper sometimes providing additional notice of Groveland District Ranger decisions: *Mariposa Gazette*, published weekly in Mariposa, California.
Newspaper sometimes providing additional notice of Calaveras District Ranger decisions: *Calaveras Enterprise*, published twice weekly in San Andreas, California.

Tahoe National Forest, California

Forest Supervisor Decisions:
The Union, published daily (except Sunday) in Grass Valley, Nevada County, California.
District Rangers Decisions:
American River Ranger District: *Auburn Journal*, published daily in Auburn, Placer County, California.
Sierraville Ranger District: *Mountain Messenger*, published weekly in Downieville, Sierra County, California.
Newspapers providing additional notice of Sierraville District Ranger decisions: *Sierra Booster*, published weekly in Loyalton, Sierra County, California; and *Portola Recorder*, published weekly in Portola, Plumas County, California.
Truckee Ranger District: *Sierra Sun*, published weekly in Truckee, Nevada County, California.
Newspaper providing additional notice of Truckee District Ranger decisions: *Tahoe World*, published weekly in Tahoe City, Placer County, California.
Yuba River Ranger District: *The Union*, published daily (except Sunday) in Grass Valley, Nevada County, California.
Newspaper providing additional notice of Yuba River District Ranger decisions: *Mountain Messenger*, published weekly in Downieville, Sierra County, California.

Dated: March 9, 2005.

Barbara J. Rate,

Deputy Regional Forester for Operations.

[FR Doc. 05–5134 Filed 3–15–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Newsome Creek Watershed Rehabilitation Project, Nez Perce National Forest, Idaho County, ID

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

Authority: 40 CFR 1501.7

SUMMARY: The Forest Service will prepare an environmental impact statement to disclose the environmental impacts of implementing watershed improvement activities within the Newsome Creek Watershed Rehabilitation project area. Individuals interested in actions of this nature are encouraged to submit comments and become involved in the planning process.

DATES: Comments concerning the scope of the analysis should be received at the address below on or before May 6, 2005.

ADDRESSES: Send written comments to Terry Nevius, Red River District Ranger, P.O. Box 416, Elk City, ID 83525.

FOR FURTHER INFORMATION CONTACT: Stephanie Bransford, Project Coordinator, (208) 842–2113.

SUPPLEMENTARY INFORMATION: The Newsome Creek Watershed Rehabilitation Project area is located on the Nez Perce National Forest in northern Idaho within Idaho County. Newsome Creek joins the South Fork Clearwater River 53 miles upstream of Kooshia, Idaho. This watershed has a very high habitat potential for both anadromous and resident fish with spawning occurring in the upper reaches and providing important subadult/adult rearing habitat for fish in the lower section (USDA Forest Service, 1998).

The Newsome Creek Watershed Rehabilitation Project entails three main components; road decommissioning and improvements, culvert replacements, and the rehabilitation of approximately four miles of the mainstream Newsome Creek channel and floodplain.

Approximately 52 miles of roads have been identified for either decomissioning or improvement. Treating these roads will reduce chronic sediment delivery to the watershed's stream system.

Two culverts have been identified for replacement. They are located on a road that is identified above for improvement. These culverts are currently undersized and fish passage barriers. New culverts will be designed using natural stream simulation and will be able to handle bankfull stream flows.

In 2004, a feasibility study was done on rehabilitating approximately 4 miles of stream channel and floodplain that have been heavily altered by past dredge mining activities. From the feasibility study an alternative has been chosen that includes regrading sections of tailings piles to regain a functioning floodplain as well as reconstructing sections of stream channel that currently has little or no habitat diversity. This component of the project will create more fish habitat for spawning and rearing as well as providing a functioning riparian area and floodplain.

The comment period on the draft environmental impact statement will be 45-days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

It is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016,1022 (9th Cir. 1980) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court

rulings, it is very important that those interested in the Newsome Creek Watershed Rehabilitation Project, as now defined, submit comments by [enter correct time period] so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

Dated: March 9, 2005.

Jane L. Cottrell,

Forest Supervisor, Nez Perce National Forest.

[FR Doc. 05–5146 Filed 3–15–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Wrangell-Petersburg Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Wrangell-Petersburg Resource Advisory Committee (RAC) will meet from 8 a.m. until 5:15 p.m. (or until the conclusion of public testimony) on Friday, April 22, and from 8 a.m. until 9 a.m., Saturday, April 23, 2005, in Wrangell, Alaska. The purpose of this meeting is to review, discuss and potentially recommend for funding proposals received pursuant to Title II, Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act. Public testimony regarding the proposals will also be taken.

DATES: The meeting will be held commencing at 8 a.m. on Friday, April 22, through 9 a.m., Saturday, April 23, 2005.

ADDRESSES: The meeting will be held at the James and Elsie Nolan Center, 1096 Outer Drive, Wrangell, Alaska.

FOR FURTHER INFORMATION CONTACT: Bill Messmer, Acting Wrangell District Ranger, P.O. Box 51, Wrangell, AK 99929, phone (907) 874–2323, e-mail *bmessmer@fes.fed.us,* or Patty Grantham, Petersburg District Ranger, P.O. Box 1328, Petersburg, AK 99833, phone (907) 772–3871, e-mail *pagrantham@fs.fed.us.*

Toll-free conference calling is available for this meeting; please call or e-mail for specific information. For further information on RAC history, operations, and the application process, a Web site is available at *www.fs.fed.us/payments.* Once in the Web site, follow the links to the Wrangell-Petersburg Resource Advisory Committee.

SUPPLEMENTARY INFORMATION: This meeting will focus on the review and discussion of proposals received by the RAC for funding under Title II of the Payments to States legislation (Pub. L. 106–393), particularly proposals that were of high interest to the committee, but lacked enough information for the committee to act. New information may be introduced concerning these proposals. New proposals (initial reading) may be discussed at this meeting. The committee may make recommendations for project funding at this meeting. A field trip to review proposals proximate to the Wrangell, Alaska, area may take place. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: March 9, 2005.

Dennis Neill,

Acting Forest Supervisor.

[FR Doc. 05–5135 Filed 3–15–05; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Tri-County Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Beaverhead-Deerlodge National Forest's Tri-County Resource Advisory Committee will meet on Thursday, April 14, 2005, from 4 p.m. to 8 p.m. in Deer Lodge, Montana, for a business meeting. The meeting is open to the public.

DATES: Thursday, April 14, 2005.

ADDRESSES: The meeting will be held at the USDA Service Center, 1002 Hollenback Road, Deer Lodge, Montana.

FOR FURTHER INFORMATION CONTACT: Thomas K. Reilly, Designated Forest Official (DFO), Forest Supervisor, Beaverhead-Deerlodge National Forest, at (406) 683–3973.

SUPPLEMENTARY INFORMATION: Agenda topics for this meeting include a review of projects approved and proposed for funding as authorized under Title II of Public Law 106–393, new proposals for funding, review of a community fire plan, and public comment. If the meeting location is changed, notice will be posted in local newspapers, including The Montana Standard.

Dated: March 10, 2005.

Thomas K. Reilly,

Forest Supervisor.

[FR Doc. 05–5144 Filed 3–15–15: 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Business—Cooperative Service

Inviting Rural Business Enterprise Grant Program Preapplications for Technical Assistance for Rural Transportation Systems

AGENCY: Rural Business—Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service (RBS), an Agency within the Rural Development mission area, announces the availability of two individual grants: one single $496,000 grant from the passenger transportation funds appropriated for the RBS Rural Business Enterprise Grant (RBEG) program and another single $248,000 grant from the Federally Recognized Native American Tribes' funds appropriated for RBS under the RBEG program for fiscal year (FY) 2005. Each grant is to be competitively awarded to a qualified national organization. These grants are to provide technical assistance for rural transportation.

DATES: The deadline for receipt of preapplications in the Rural Development State Office is May 16, 2005. Preapplications received at a Rural Development State Office after that date would not be considered for FY 2005 funding.

ADDRESSES: For further information, entities wishing to apply for assistance should contact a Rural Development State Office to obtain copies of the pre-application package. A list of Rural Development State Offices follows:

District of Columbia

Rural Business-Cooperative Service, USDA,
Specialty Lenders Division, 1400 Independence Avenue, SW., STOP 3225, Room 6867, Washington, DC 20250–3225, (202) 720–1400.

Alabama

USDA Rural Development State Office,
Sterling Center, Suite 601, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3400/TTD (334) 279–3495.

Alaska

USDA Rural Development State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645–6539, (907) 761–7705/TDD (907) 761–8905.

Arizona

USDA Rural Development State Office, Phoenix Corporate Center, 230 N. First Ave., Suite 206, Phoenix, AZ 85003–1706, (602) 280–8700/TTD (602) 280–8705.

Arkansas

USDA Rural Development State Office, USDA Service Center, 700 West Capitol Avenue, Room 3416, Little Rock, AR 72201–3225, (501) 301–3200/TTD (501) 301–3279.

California

USDA Rural Development State Office, 430 G Street, Agency 4169, Davis, CA 95616–4169, (530) 792–5800/TTD (530) 792–5848.

Colorado

USDA Rural Development State Office, 655 Parfet Street, Room E–100, Lakewood, CO 80215, (720) 544–2903/TDD (720) 544–2976.

Delaware-Maryland

USDA Rural Development State Office, 4607 South DuPont Highway, P.O. Box 400, Camden, DE 19934–9998, (302) 697–4300/TDD (302) 697–4303.

Florida/Virgin Islands

USDA Rural Development State Office, P.O. Box 147010, 4440 NW. 25th Place, Gainesville, FL 32606, (352) 338–3402/TDD (352) 338–3499.

Georgia

USDA Rural Development State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2162/TDD (706) 546–2034.

Hawaii

USDA Rural Development State Office, Federal Building, Room 311, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8380/TDD (808) 933–8321.

Idaho

USDA Rural Development State Office, 9173 West Barnes Dr., Suite A1, Boise, ID 83709, (208) 378–5600/TDD (208) 378–5644.

Illinois

USDA Rural Development State Office, 2118 West Park Court, Suite A, Champaign, IL 61821, (217) 403–6202/TDD (217) 403–6240.

Indiana

USDA Rural Development State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278–1996, (317) 290–3100/TDD (317) 290–3340.

Iowa

USDA Rural Development State Office, Federal Building, Room 873, 210 Walnut Street, Des Moines, IA 50309–2196, (515) 284–4663/TDD (515) 284–4558.

Kansas

USDA Rural Development State Office, Suite 100, 1303 SW First American Place, Topeka, KS 66604, (785) 271–2700/TDD (785) 271–2767.

Kentucky

USDA Rural Development State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503–5477, (859) 224–7300/TDD (859) 224–7422.

Louisiana

USDA Rural Development State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7921/TDD (318) 473–7655.

Maine

USDA Rural Development State Office, P. O. Box 405, 967 Illinois Avenue, Suite 4, Bangor, ME 04402–0405, (207) 990–9160/TTD (207) 942–7331.

Massachusetts/Rhode Island/ Connecticut

USDA Rural Development State Office, 451 West Street, Suite 2, Amherst, MA 01002–2999, (413) 253–4300/TDD (413) 253–4318.

Michigan

USDA Rural Development State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5190/TDD (517) 337–6795.

Minnesota

USDA Rural Development State Office, 410 Farm Credit Service Building, 375 Jackson Street, St. Paul, MN 55101–1853, (651) 602–7800/TDD (651) 602–3799.

Mississippi

USDA Rural Development State Office, Federal Building, Suite 831, 100 West Capitol Street, Jackson, MS 39269, (601) 965–4318/TDD (601) 965–5850.

Missouri

USDA Rural Development State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0976/TDD (573) 876–9480.

Montana

USDA Rural Development State Office, P. O. Box 850, 900 Technology Blvd., Unit 1, Suite B, Bozeman, MT 59771, (406) 585–2580/TDD (406) 585–2562.

Nebraska

USDA Rural Development State Office, Federal Building, Room 152, 100 Centennial Mall North, Lincoln, NE 68508, (402) 437–5551/TDD (402) 437–5093.

Nevada

USDA Rural Development State Office, 1390 South Curry Street, Carson City, NV 89703–9910, (775) 887–1222/TDD (775) 885–0633.

New Jersey

USDA Rural Development State Office, 5th Floor North, Suite 500, 8000 Midlantic Drive, Mt. Laurel, NJ 08054, (856) 787–7700.

New Mexico

USDA Rural Development State Office, 6200 Jefferson Street, NE., Room 255, Albuquerque, NM 87109, (505) 761–4950/TDD (505) 761–4938.

New York

USDA Rural Development State Office, The Galleries of Syracuse, 441 South Salina Street, Suite 357, Syracuse, NY 13202–2541, (315) 477–6435/TDD (315) 477–6447.

North Carolina

USDA Rural Development State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2000/TDD (919) 873–2003.

North Dakota

USDA Rural Development State Office, P. O. Box 1737, Federal Building, Room 208, 220 East Rosser Avenue, Bismarck, ND 58502–1737, (701) 530–2037/TDD (701) 530–2113.

Ohio

USDA Rural Development State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2418, (614) 255–2500/TDD (614) 255–2554.

Oklahoma

USDA Rural Development State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1000/TDD (405) 742–1007.

Oregon

USDA Rural Development State Office,

101 SW Main Street, Suite 1410, Portland, OR 97204–3222, (503) 414–3300/TDD (503) 414–3387.

Pennsylvania

USDA Rural Development State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2299/TDD (717) 237–2261.

Puerto Rico

USDA Rural Development State Office, 654 Munoz Rivera Avenue, IBM Building, Suite 601, San Juan, Puerto Rico 00918–6106, (787) 766–5095/TDD (787) 766–5332.

South Carolina

USDA Rural Development State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 765–5163/TDD (803) 765–5697.

South Dakota

USDA Rural Development State Office, Federal Building, Room 210, 200 4th Street, SW., Huron, SD 57350, (605) 352–1100/TDD (605) 352–1147.

Tennessee

USDA Rural Development State Office, 3322 West End Avenue, Suite 300, Nashville, TN 37203–1084, (615) 783–1300.

Texas

USDA Rural Development State Office, Federal Building, Suite 102, 101 South Main Street, Temple, TX 76501, (254) 742–9700/TDD (254) 742–9712.

Utah

USDA Rural Development State Office, Wallace F. Bennett Federal Building, 125 South State Street, Room 4311, Salt Lake City, UT 84138, (801) 524–4320/TDD (801) 524–3309.

Vermont/New Hampshire

USDA Rural Development State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6010/TDD (802) 223–6365.

Virginia

USDA Rural Development State Office, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229–5014, (804) 287–1552/TDD (804) 287–1753.

Washington

USDA Rural Development State Office, 1835 Black Lake Boulevard, SW., Suite B, Olympia, WA 98512–5715, (360) 704–7715.

West Virginia

USDA Rural Development State Office, Federal Building, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 284–4860/TDD (304) 284–4836.

Wisconsin

USDA Rural Development State Office, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7615/TDD (715) 345–7614.

Wyoming

USDA Rural Development State Office, Federal Building, Room 1005, 100 East B Street, Casper, WY 82601, (307) 233–6700/TDD (307) 233–6733.

SUPPLEMENTARY INFORMATION: The passenger transportation portion of the RBEG program is authorized by section 310B(c)(2) of the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1932(c)(2)). The RBEG program is administered on behalf of RBS at the State level by the Rural Development State Offices. The primary objective of the program is to improve the economic conditions of rural areas. Assistance provided to rural areas under this program may include on-site technical assistance to local and regional governments, public transit agencies, and related nonprofit and for-profit organizations in rural areas; the development of training materials; and the provision of necessary training assistance to local officials and agencies in rural areas.

Awards under the RBEG passenger transportation program are made on a competitive basis using specific selection criteria contained in 7 CFR part 1942, subpart G, and in accordance with section 310B(c)(2) of the CONACT. That subpart also contains the information required to be in the application package. For the $248,000 grant, at least 75 percent of the benefits of the project must be received by members of federally recognized tribes. The project that scores the greatest number of points based on the selection criteria and Administrator's points will be selected for each grant. Preapplications will be tentatively scored by the State Offices and submitted to the National Office for review, final scoring, and selection.

To be considered ''national,'' a qualified organization is required to provide evidence that it operates in multi-State areas. There is not a requirement to use the grant funds in a multi-State area. Under this notice, grants will be made to qualified, private, non-profit organizations for the provision of technical assistance and training to rural communities for the purpose of improving passenger transportation services or facilities. Public bodies are not eligible for passenger transportation RBEG grants.

The information collection requirements contained within this Notice have received approval by the Office of Management and Budget (OMB) under OMB Control Number 0570–0022 (7 CFR part 1942, subpart G).

Fiscal Year 2005 Preapplications Submission: Each application received in a Rural Development State Office will be reviewed to determine if this application is consistent with the eligible purposes contained in section 310B(c)(2) of the CONACT. Each selection priority criterion outlined in 7 CFR part 1942, subpart G, section 1942.305(b)(3), must be addressed in the application. Failure to address any of the criteria will result in a zero-point score for that criterion and impact the overall evaluation of the application. Copies of 7 CFR part 1942, subpart G, will be provided to any interested applicant making a request to a Rural Development State Office listed in this notice. All projects to receive technical assistance through these passenger transportation grant funds are to be identified when the preapplications are submitted to the Rural Development State Office. Multiple project preapplications must identify each individual project, indicate the amount of funding requested for each individual project, and address the criteria as stated above for each individual project. For multiple-project preapplications, the average of the individual project scores will be the score for that application.

All eligible preapplications, along with tentative scoring sheets and the Rural Development State Director's recommendation, will be referred to the National Office no later than June 17, 2005, for final scoring and selection for an award.

The National Office will score preapplications based on the grant selection criteria and weights contained in 7 CFR part 1942, subpart G and will select a grantee subject to the grantee's satisfactory submission of a formal application and related materials in the manner and timeframe established by RBS in accordance with 7 CFR part 1942, subpart G. It is anticipated that the grantees will be selected by July 29, 2005. All applicants will be notified by RBS of the Agency's decision on the awards.

Nondiscrimination Statement: ''The U.S. Department of Agriculture (USDA) (Departmental Regulation 4300–3), prohibits discrimination in all its programs and activities on the basis of

race, color, national origin, sex, religion, age, disability, political beliefs, sexual orientation, or marital or family status in employment or in any program or activity conducted or funded by the Department. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, STOP 9410, Room 326–W, Whitten Building, 1400 Independence Avenue, SW., Washington, DC 20250–9410 or call (202) 720–5964 (voice and TDD). USDA is an equal opportunity provider and employer.''

Dated: February 23, 2005.

Peter J. Thomas,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 05–5126 Filed 3–15–05; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Inviting Applications for Rural Business Opportunity Grants

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service (RBS), an Agency within the Rural Development mission area, announces the availability of grants of up to $50,000 per application from the Rural Business Opportunity Grant (RBOG) Program for fiscal year (FY) 2005, to be competitively awarded. For multi-State projects, grant funds of up to $150,000 will be available on a competitive basis.

DATES: The deadline for the receipt of applications in the Rural Development State Office is May 27, 2005. Any applications received at a Rural Development State Office after that date would not be considered for FY 2005 funding.

ADDRESSES: For further information, entities wishing to apply for assistance should contact a Rural Development State Office to receive copies of the application package. Potential applicants located in the District of Columbia must send their applications to the National Office at:

District of Columbia

Rural Business-Cooperative Service, USDA, Specialty Lenders Division, 1400 Independence Avenue, SW., Room 6867, STOP 3225, Washington, DC 20250–3225, (202) 720–1400.

A list of Rural Development State Offices follows:

Alabama

USDA Rural Development State Office, Sterling Center, Suite 601, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3400/TTD (334) 279–3495.

Alaska

USDA Rural Development State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645–6539, (907) 761–7705/TDD (907) 761–8905.

Arizona

USDA Rural Development State Office, Phoenix Corporate Center, 230 N. First Ave., Suite 206, Phoenix, AZ 85003–1706, (602) 280–8700/TTD (602) 280–8705.

Arkansas

USDA Rural Development State Office, USDA Service Center, 700 West Capitol Avenue, Room 3416, Little Rock, AR 72201–3225, (501) 301–3200/TTD (501) 301–3279.

California

USDA Rural Development State Office, 430 G Street, Agency 4169, Davis, CA 95616–4169, (530) 792–5800/TTD (530) 792–5848.

Colorado

USDA Rural Development State Office, 655 Parfet Street, Room E–100, Lakewood, CO 80215, (720) 544–2903/TDD (720) 544–2976.

Delaware-Maryland

USDA Rural Development State Office, 4607 South DuPont Highway, P.O. Box 400, Camden, DE 19934–9998, (302) 697–4300/TDD (302) 697–4303.

Florida/Virgin Islands

USDA Rural Development State Office, P.O. Box 147010, 4440 NW. 25th Place, Gainesville, FL 32606, (352) 338–3402/TDD (352) 338–3499.

Georgia

USDA Rural Development State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2162/TDD (706) 546–2034.

Hawaii

USDA Rural Development State Office, Federal Building, Room 311, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8380/TDD (808) 933–8321.

Idaho

USDA Rural Development State Office, 9173 West Barnes Dr., Suite A1, Boise, ID 83709, (208) 378–5600/TDD (208) 378–5644.

Illinois

USDA Rural Development State Office, 2118 West Park Court, Suite A, Champaign, IL 61821, (217) 403–6202/TDD (217) 403–6240.

Indiana

USDA Rural Development State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278–1996, (317) 290–3100/TDD (317) 290–3340.

Iowa

USDA Rural Development State Office, Federal Building, Room 873, 210 Walnut Street, Des Moines, IA 50309–2196, (515) 284–4663/TDD (515) 284–4558.

Kansas

USDA Rural Development State Office, Suite 100, 1303 SW First American Place, Topeka, KS 66604, (785) 271–2700/TDD (785) 271–2767.

Kentucky

USDA Rural Development State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503–5477, (859) 224–7300/TDD (859) 224–7422.

Louisiana

USDA Rural Development State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7921/TDD (318) 473–7655.

Maine

USDA Rural Development State Office, P.O. Box 405, 967 Illinois Avenue, Suite 4, Bangor, ME 04402–0405, (207) 990–9160/TTD (207) 942–7331.

Massachusetts/Rhode Island/Connecticut

USDA Rural Development State Office, 451 West Street, Suite 2, Amherst, MA 01002–2999, (413) 253–4300/TDD (413) 253–4318.

Michigan

USDA Rural Development State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5190/TDD (517) 337–6795.

Minnesota

USDA Rural Development State Office, 410 Farm Credit Service Building, 375 Jackson Street, St. Paul, MN 55101–1853, (651) 602–7800/TDD (651) 602–3799.

Mississippi

USDA Rural Development State Office, Federal Building, Suite 831, 100 West Capitol Street, Jackson, MS 39269, (601) 965–4318/TDD (601) 965–5850.

Missouri

USDA Rural Development State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0976/TDD (573) 876–9480.

Montana

USDA Rural Development State Office, P.O. Box 850, 900 Technology Blvd., Unit 1, Suite B, Bozeman, MT 59771, (406) 585–2580/TDD (406) 585–2562.

Nebraska

USDA Rural Development State Office, Federal Building, Room 152, 100 Centennial Mall North, Lincoln, NE 68508, (402) 437–5551/TDD (402) 437–5093.

Nevada

USDA Rural Development State Office, 1390 South Curry Street, Carson City, NV 89703–9910, (775) 887–1222/TDD (775) 885–0633.

New Jersey

USDA Rural Development State Office, 5th Floor North, Suite 500, 8000 Midlantic Drive, Mt. Laurel, NJ 08054, (856) 787–7700.

New Mexico

USDA Rural Development State Office, 6200 Jefferson Street, NE., Room 255, Albuquerque, NM 87109, (505) 761–4950/ TDD (505) 761–4938.

New York

USDA Rural Development State Office, The Galleries of Syracuse, 441 South Salina Street, Suite 357, Syracuse, NY 13202–2541, (315) 477–6435/TDD (315) 477–6447.

North Carolina

USDA Rural Development State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2000/TDD (919) 873–2003.

North Dakota

USDA Rural Development State Office, P.O. Box 1737, Federal Building, Room 208, 220 East Rosser Avenue, Bismarck, ND 58502–1737, (701) 530–2037/TDD (701) 530–2113.

Ohio

USDA Rural Development State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2418, (614) 255–2500/TDD (614) 255–2554.

Oklahoma

USDA Rural Development State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1000/TDD (405) 742–1007.

Oregon

USDA Rural Development State Office, 101 SW Main Street, Suite 1410, Portland, OR 97204–3222, (503) 414–3300/TDD (503) 414-3387.

Pennsylvania

USDA Rural Development State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2299/TDD (717) 237–2261.

Puerto Rico

USDA Rural Development State Office, 654 Munoz Rivera Avenue, IBM Building, Suite 601, San Juan, Puerto Rico 00918–6106, (787) 766–5095/TDD (787) 766–5332.

South Carolina

USDA Rural Development State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 765–5163/TDD (803) 765–5697.

South Dakota

USDA Rural Development State Office, Federal Building, Room 210, 200 4th Street, SW., Huron, SD 57350, (605) 352–1100/TDD (605) 352–1147.

Tennessee

USDA Rural Development State Office, 3322 West End Avenue, Suite 300, Nashville, TN 37203–1084, (615) 783–1300.

Texas

USDA Rural Development State Office, Federal Building, Suite 102, 101 South Main Street, Temple, TX 76501, (254) 742–9700/TDD (254) 742–9712.

Utah

USDA Rural Development State Office, Wallace F. Bennett Federal Building, 125 South State Street, Room 4311, Salt Lake City, UT 84138, (801) 524–4320/TDD (801) 524–3309.

Vermont/New Hampshire

USDA Rural Development State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6010/ TDD (802) 223–6365.

Virginia

USDA Rural Development State Office, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229–5014, (804) 287–1552/ TDD (804) 287–1753.

Washington

USDA Rural Development State Office, 1835 Black Lake Boulevard, SW., Suite B, Olympia, WA 98512–5715, (360) 704–7715.

West Virginia

USDA Rural Development State Office, Federal Building, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 284–4860/TDD (304) 284–4836.

Wisconsin

USDA Rural Development State Office, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7615/TDD (715) 345–7614.

Wyoming

USDA Rural Development State Office, Federal Building, Room 1005, 100 East B Street, Casper, WY 82601, (307) 233–6700/ TDD (307) 233–6733.

SUPPLEMENTARY INFORMATON: The RBOG program is authorized under section 306 of the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1926(a)(11)). The Rural Development State Offices administer the RBOG program on behalf of RBS at the State level. The primary objective of the program is to improve the economic conditions of rural areas. Assistance provided to rural areas under this program may include technical assistance for business development and economic development planning. A total of $992,000 of non-earmarked funds is available for the RBOG program for FY 2005. To ensure that a broad range of communities have the opportunity to benefit from the available funds, no grant will exceed $50,000, unless it is a multi-State project where funds may not exceed $150,000. Pursuant to the Consolidated Appropriations Act for 2005 (Public Law 108–447), a total of $992,000 has been earmarked for Native Americans and a total of $992,000 for Empowerment Zones, Enterprise Communities, and Rural Economic Area Partnerships. There is no project dollar amount limitation on applications for earmarked funds. Awards are made on a competitive basis using specific selection criteria contained in 7 CFR part 4284, subpart G. Information required to be in the application package are contained in 7 CFR part 4284, subpart G. The State Director may assign up to 15 discretionary points to an application, and the Agency Administrator may assign up to 20 additional discretionary points based on geographic distribution of funds, special importance for implementation of a strategic plan in partnership with other organizations, or extraordinary potential for success due to superior project plans or qualifications of the grantee. To ensure the equitable distribution of funds, two projects from each State that score the greatest number of points based on the selection criteria and discretionary points will be considered for funding. Applications will be tentatively scored by the State Offices and submitted to the National Office for final review and selection.

The National Office will review the scores based on the grant selection criteria and weights contained in 7 CFR part 4284, subpart G. All applicants will be notified by RBS of the Agency's decision on the awards.

In accordance with the Paperwork Reduction Act of 1995, the information collection requirement contained in this Notice is approved by the Office of Management and Budget (MB) under OMB Control Number 0570–0024.

Nondiscrimination Statement

''The U.S. Department of Agriculture (USDA) (Departmental Regulation 4300–3), prohibits discrimination in all its programs and activities on the basis of race, color, national origin, sex, religion, age, disability, political beliefs, sexual orientation, or marital or family status in employment or in any program or activity conducted or funded by the Department. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, STOP 9410, Room 326–W,

Whitten Building, 1400 Independence Avenue, SW., Washington, DC 20250–9410 or call (202) 720–5964 (voice and TDD). USDA is an equal opportunity provider and employer.''

Dated: February 23, 2005.

Peter J. Thomas,

Administrator, Rural Business—Cooperative Service.

[FR Doc. 05–5125 Filed 3–15–05; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Maximum Dollar Amount on Awards Under the Rural Economic Development Loan and Grant Program for Fiscal Year 2005

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service hereby announces the maximum dollar amount on loan and grant awards under the Rural Economic Development Loan and Grant (REDLG) program for fiscal year (FY) 2005. The maximum dollar award on zero-interest loans for FY 2005 is $740,000. The maximum dollar award on grants for FY 2005 is $300,000. The maximum loan and grant awards stated in this notice are effective for loans and grants made during the fiscal year beginning October 1, 2004, and ending September 30, 2005. REDLG loans and grants are available to Rural Utilities Service electric and telephone utilities to assist in developing rural areas from an economic standpoint.

FOR FURTHER INFORMATION CONTACT: Kenya Nicholas, Loan Specialist, Rural Business-Cooperative Service, USDA, STOP 3225, Room 6866, 1400 Independence Avenue, SW., Washington, DC 20250–3225. Telephone: (202) 720–1970 FAX: (202) 720–2213.

ADDRESSES: For further information, entities wishing to apply for assistance should contact a Rural Development State Office to receive further information and copies of the application package. A list of Rural Development State Offices follows:

District of Columbia

Rural Business-Cooperative Service, USDA, Specialty Lenders Division, 1400 Independence Avenue, SW., STOP 3225, Room 6867, Washington, DC 20250–3225, (202) 720–1400.

Alabama

USDA Rural Development State Office, Sterling Center, Suite 601, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3400/TTD (334) 279–3495.

Alaska

USDA Rural Development State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645–6539, (907) 761–7705/TDD (907) 761–8905.

Arizona

USDA Rural Development State Office, Phoenix Corporate Center, 230 N. First Ave., Suite 206, Phoenix, AZ 85003–1706, (602) 280–8700/TTD (602) 280–8705.

Arkansas

USDA Rural Development State Office, USDA Service Center, 700 West Capitol Avenue, Room 3416, Little Rock, AR 72201–3225, (501) 301–3200/TTD (501) 301–3279.

California

USDA Rural Development State Office, 430 G Street, Agency 4169, Davis, CA 95616–4169, (530) 792–5800/TTD (530) 792–5848.

Colorado

USDA Rural Development State Office, 655 Parfet Street, Room E–100, Lakewood, CO 80215, (720) 544–2903/TDD (720) 544–2976.

Delaware-Maryland

USDA Rural Development State Office, 4607 South DuPont Highway, P.O. Box 400, Camden, DE 19934–9998, (302) 697–4300/TDD (302) 697–4303.

Florida/Virgin Islands

USDA Rural Development State Office, P.O. Box 147010, 4440 NW. 25th Place, Gainesville, FL 32606, (352) 338–3402/TDD (352) 338–3499.

Georgia

USDA Rural Development State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2162/TDD (706) 546–2034.

Hawaii

USDA Rural Development State Office, Federal Building, Room 311, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8380/TDD (808) 933–8321.

Idaho

USDA Rural Development State Office, 9173 West Barnes Dr., Suite A1, Boise, ID 83709, (208) 378–5600/TDD (208) 378–5644.

Illinois

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USDA Rural Development State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278–1996, (317) 290–3100/TDD (317) 290–3340.

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USDA Rural Development State Office, Federal Building, Room 873, 210 Walnut Street, Des Moines, IA 50309–2196, (515) 284–4663/TDD (515) 284–4558.

Kansas

USDA Rural Development State Office, Suite 100, 1303 SW., First American Place, Topeka, KS 66604, (785) 271–2700/TDD (785) 271–2767.

Kentucky

USDA Rural Development State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503–5477, (859) 224–7300/TDD (859) 224–7422.

Louisiana

USDA Rural Development State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7921/TDD (318) 473–7655.

Maine

USDA Rural Development State Office, P.O. Box 405, 967 Illinois Avenue, Suite 4, Bangor, ME 04402–0405, (207) 990–9160/TTD (207) 942–7331.

Massachusetts/Rhode Island/Connecticut

USDA Rural Development State Office, 451 West Street, Suite 2, Amherst, MA 01002–2999, (413) 253–4300/TDD (413) 253–4318.

Michigan

USDA Rural Development State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823. (517) 324–5190/TDD (517) 337–6795.

Minnesota

USDA Rural Development State Office, 410 Farm Credit Service Building, 375 Jackson Street, St. Paul, MN 55101–1853, (651) 602–7800/TDD (651) 602–3799.

Mississippi

USDA Rural Development State Office, Federal Building, Suite 831, 100 West Capitol Street, Jackson, MS 39269, (601) 965–4318/TDD (601) 965–5850.

Missouri

USDA Rural Development State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0976/TDD (573) 876–9480.

Montana

USDA Rural Development State Office, P. O. Box 850, 900 Technology Blvd., Unit 1, Suite B, Bozeman, MT 59771, (406) 585–2580/TDD (406) 585–2562.

Nebraska

USDA Rural Development State Office, Federal Building, Room 152, 100 Centennial Mall North, Lincoln, NE., 68508, (402) 437–5551/TDD (402) 437–5093.

Nevada

USDA Rural Development State Office, 1390 South Curry Street, Carson City, NV 89703–9910, (775) 887–1222/TDD (775) 885–0633.

New Jersey

USDA Rural Development State Office, 5th Floor North, Suite 500, 8000 Midlantic Drive, Mt. Laurel, NJ 08054, (856) 787–7700.

New Mexico

USDA Rural Development State Office, 6200 Jefferson Street, NE., Room 255, Albuquerque, NM 87109, (505) 761–4950/TDD (505) 761–4938.

New York

USDA Rural Development State Office, The Galleries of Syracuse, 441 South Salina Street, Suite 357, Syracuse, NY 13202–2541, (315) 477–6435/TDD (315) 477–6447.

North Carolina

USDA Rural Development State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2000/TDD (919) 873–2003.

North Dakota

USDA Rural Development State Office, P.O. Box 1737, Federal Building, Room 208, 220 East Rosser Avenue, Bismarck, ND 58502–1737, (701) 530–2037/TDD (701) 530–2113.

Ohio

USDA Rural Development State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2418, (614) 255–2500/TDD (614) 255–2554.

Oklahoma

USDA Rural Development State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1000/TDD (405) 742–1007.

Oregon

USDA Rural Development State Office, 101 SW., Main Street, Suite 1410, Portland, OR 97204–3222, (503) 414–3300/TDD (503) 414–3387.

Pennsylvania

USDA Rural Development State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2299/TDD (717) 237–2261.

Puerto Rico

USDA Rural Development State Office, 654 Munoz Rivera Avenue, IBM Building, Suite 601, San Juan, Puerto Rico 00918–6106, (787) 766–5095/TDD (787) 766–5332.

South Carolina

USDA Rural Development State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 765–5163/TDD (803) 765–5697.

South Dakota

USDA Rural Development State Office, Federal Building, Room 210, 200 4th Street, SW., Huron, SD 57350, (605) 352–1100/TDD (605) 352–1147.

Tennessee

USDA Rural Development State Office, 3322 West End Avenue, Suite 300, Nashville, TN 37203–1084, (615) 783–1300.

Texas

USDA Rural Development State Office, Federal Building, Suite 102, 101 South Main Street, Temple, TX 76501, (254) 742–9700/TDD (254) 742–9712.

Utah

USDA Rural Development State Office, Wallace F. Bennett Federal Building, 125 South State Street, Room 4311, Salt Lake City, UT 84138, (801) 524–4320/TDD (801) 524–3309.

Vermont/New Hampshire

USDA Rural Development State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6010/TDD (802) 223–6365.

Virginia

USDA Rural Development State Office, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229–5014, (804) 287–1552/ TDD (804) 287–1753.

Washington

USDA Rural Development State Office, 1835 Black Lake Boulevard, SW., Suite B, Olympia, WA 98512–5715, (360) 704–7715.

West Virginia

USDA Rural Development State Office, Federal Building, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 284–4860/TDD (304) 284–4836.

Wisconsin

USDA Rural Development State Office, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7615/TDD (715) 345–7614.

Wyoming

USDA Rural Development State Office, Federal Building, Room 1005, 100 East B Street, Casper, WY 82601, (307) 233–6700/TDD (307) 233–6733.

SUPPLEMENTARY INFORMATION: The maximum loan and grant awards are determined in accordance with 7 CFR 1703.28. The maximum loan and grant awards are calculated as 3.0 percent of the projected program levels, rounded to the nearest $10,000; however, as specified in 7 CFR 1703.28(b), regardless of the projected total amount that will be available, the maximum size may not be lower than $200,000. The projected program level during FY 2005 for zero-interest loans is $24,802,640, and the projected program level for grants is $10,000,000. Applying the specified 3.0 percent to the program level for loans, rounded to the nearest $10,000, results in the maximum loan award of $740,000. Applying the specified 3.0 percent to the program level for grants results in an amount higher than $200,000. Therefore, the maximum grant award for FY 2005 will be $300,000. This notice will be amended should funding in excess of projected levels be received.

Nondiscrimination Statement

''The U.S. Department of Agriculture (USDA) (Departmental Regulation 4300–3), prohibits discrimination in all its programs and activities on the basis of race, color, national origin, sex, religion, age, disability, political beliefs, sexual orientation, or marital or family status in employment or in any program or activity conducted or funded by the Department. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, STOP 9410, Room 326–W, Whitten Building, 1400 Independence Avenue, SW., Washington, DC 20250–9410 or call (202) 720–5964 (voice and TDD). USDA is an equal opportunity provider and employer.''

Dated: February 23, 2005.

Peter J. Thomas,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 05–5124 Filed 3–15–05; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–427–814

Stainless Steel Sheet and Strip in Coils from France: Amended Final Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: On February 11, 2005, the Department of Commerce (Department) published the final results of its administrative review of the antidumping duty order on stainless steel sheet and strip in coils (SSSS) from France for the period from July 1, 2002, to June 30, 2003 in the **Federal Register**. *See Stainless Steel Sheet and Strip in Coils from France: Final Results of Antidumping Administrative Review*, 70 FR 7240 (February 11, 2005) (*Final Results*). We are amending our Final Results to correct ministerial errors alleged by Petitioners[1] pursuant to

[1] Allegheny Ludlum Corporation, AK Steel, Inc., North American Stainless, United Steelworkers of America, AFL-CIO/CLC, Butler Armco Independent Union, and Zanesville Armco Independent Organization are the Petitioners in this case.

section 751(h) of the Tariff Act of 1930, as amended (the Act).

EFFECTIVE DATE: March 16, 2005.

FOR FURTHER INFORMATION CONTACT: Sebastian Wright or Sean Carey at (202) 482–5254 and (202) 482–3964, respectively; AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Scope of the Antidumping Duty Order

For purposes of this administrative review, the products covered by the order are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat–rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold–rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is currently classifiable in the *Harmonized Tariff Schedule of the United States* (''HTS'') at subheadings: 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.1300.81[2], 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.20.8000, 7220.20.9030, 7220.20.9060, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080. Although the HTS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the review of this order are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat–rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold–rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat–rolled product of stainless steel, not further worked than cold–rolled (cold–reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTS, ''Additional U.S. Note'' 1(d).

Flapper valve steel is also excluded from the scope of the order. This product is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus–or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron–chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.''[3]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non–magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.''[4]

Certain martensitic precipitation–hardenable stainless steel is also excluded from the scope of this order.

[2] Due to changes to the HTS numbers in 2001, 7219.13.0030, 7219.13.0050, 7219.13.0070, and 7219.13.0080 are now 7219.13.0031, 7219.13.0051, 7219.13.0071, and 7219.13.0081, respectively.

[3] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[4] ''Gilphy 36'' is a trademark of Imphy, S.A.

This high–strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500–grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.''[5]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[6] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6''.[7]

[5] ''Durphynox 17'' is a trademark of Imphy, S.A.

[6] This list of uses is illustrative and provided for descriptive purposes only.

Amendment of Final Results

On February 11, 2005, the Department published the final results for its review of the antidumping duty order on SSSS from France. *See Final Results*. On February 11, 2005, in accordance with section 751(h) of the Act and 19 C.F.R. 351.224(c)(2), Petitioners timely filed an allegation that the Department erred in its calculation of the antidumping margin by failing to convert the variable for U.S. further manufacturing costs (FURMANU) from U.S. dollars per pound to U.S. dollars per kilogram in its margin calculation program. Ugine & ALZ France, S.A. (UA France) did not allege any ministerial errors, nor did it rebut Petitioners' allegations.

Petitioners allege that the Department failed to convert the variable FURMANU from U.S. dollars per pound to U.S. dollars per kilogram. Petitioners note that the Department used UA France's U.S. sales file, which included FURMANU. Petitioners state that after merging the U.S. exchange rates with the U.S. sales file, the Department converted the U.S. sales expenses from a value per pound to a value per kilogram for all the expenses except FURMANU. This conversion from per–pound amounts to per–kilogram amounts was necessary because UA France submitted its home–market sales and costs files on a per–kilogram basis.

According to Petitioners, the failure to convert FURMANU from U.S. dollars per pound to U.S. dollars per kilogram resulted in an overstatement of the net U.S. price and an understatement of the antidumping duty margin. In order to correct this ministerial error, Petitioners suggested that the Department revise the margin calculation program at Line 2670 to account for the conversion to per–kilogram values.

The Act, as well as the Department's regulations, define a ministerial error as one involving ''addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the Secretary considers ministerial.'' *See* section 751(h) of the Act and 19 C.F.R. 351.224(f).

After reviewing Petitioners' allegation, we have determined that the alleged error is a ministerial error pursuant to section 751(h) of the Act and 19 C.F.R. 351.224(f). Therefore, we are amending the *Final Results* to correct the above–described ministerial error. We agree with Petitioners that FURMANU should be converted from U.S. dollars per pound to U.S. dollars per kilogram. The Department agrees that to correct the Department's ministerial error line 2670 should be amended to: FURMANU = FURMANU/0.4536.

[7] ''GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

Amended Final Results of Review

In the *Final Results*, the Department determined the antidumping margin for UA France to be 9.65 percent. As a result of correcting the ministerial error, the Department is amending the antidumping margin for UA France as follows:

Manufacturer/Exporter	Margin (percent)
Ugine & ALZ France, S.A.	11.12

Cash Deposit Requirements

The following antidumping duty deposit rates will be required on all shipments of SSSS from France entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided for by section 751(a)(1) of the Act: (1) for UA France, the cash deposit rate will be the amended rate indicated above; (2) for previously reviewed or investigated companies other than UA France, the cash deposit rate will be the company–specific rate established for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less–than-fair–value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered by this review, a prior review, or the LTFV investigation, the cash deposit rate shall be the ''all others'' rate established in the LTFV investigation, which is 9.38 percent *ad valorem*. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from France*, 64 FR 30820 (June 8, 1999). These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Accordingly, the Department will determine, and U.S. Customs and Border Production (CBP) shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these amended final results of review.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1), 751(h), and 777(i)(1) of the Act and 19 C.F.R. 351.224(f).

Dated: March 9, 2005.

Barbara E. Tillman,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–1160 Filed 3–15–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Science Advisory Board

AGENCY: Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The NOAA Science Advisory Board (SAB) was established by a Decision Memorandum dated September 25, 1997, and is the only Federal Advisory Committee with responsibility to advise the Under Secretary of Commerce for Oceans and Atmosphere on long- and short-range strategies for research, education, and application of science to resource management and environmental assessment and prediction. SAB activities and advice provide necessary input to ensure that science programs are of the highest quality and provide optimal support the NOAA mission.

Time and Date: The meeting will be held Tuesday, March 22, 2005, from 10:15 a.m. to 5:45 p.m. and Wednesday, March 23, 2005, from 10 a.m. to 3 p.m. These times and the agenda topics described below may be subject to change. Refer to the Web page listed below for the most up-to-date meeting agenda.

Place: The meeting will be held both days in the Staff Auditorium at the National Geographic Society Headquarters, 1145 17th Street, NW., Washington, DC.

Status: The meeting will be open to public participation with a 30-minute time period set aside on Wednesday, March 23, 2005, for direct oral statements or questions from the public. The SAB expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of five (5) minutes. Approximately thirty (30) seats will be available for the public including five (5) seats reserved for the media. Seats will be available on a first-come, first-served basis.

Matters to be Considered: The meeting will include the following topics: (1) Status of NOAA Responses to SAB Actions and Recommendations Overview of NOAA Response to SAB/ Research Review Team Report; (2) Review NOAA's Draft Policy to Formalize the Transition of Research to Operations and Information Services; (3) Progress Reports: External Ecosystem Task Team and the Physical and Social Science Task Team; (4) Draft NOAA Cooperative Institute Policy; (5) Report on the Review of the National Sea Grant College Extension Program and a Call for Greater National Commitment to Engagement; (6) Administration Response to Ocean Commission Report; (7) NOAA's plans for the International Polar Year (IPY); (8) Briefing on the Integrated Surface Observing System (ISOS) Working Group; (9) Transitioning from the Integrated Ocean Observing System, NPOESS, GOES-R, NEXRAD, etc. to Integrated Earth Observing System (IEOS); (10) NOAA Role in Implementing the President's Executive Order on the Great Lakes; (11) Overview of Predictions/Monitoring of 2004 Hurricanes (12) Tsunamis—Research and Observations; (13) Global Earth Observing Systems of Systems (GEOSS) Update; (14) 2006–2011 Strategic planning; (15) public statements.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Uhart, Executive Director, Science Advisory Board, NOAA, Rm. 11142, 1315 East-West Highway, Silver Spring, Maryland 20910. (Phone: 301–713–9121, Fax: 301–713–3515, e-mail: *Michael.Uhart@noaa.gov*); or visit the NOAA SAB Web site at *http://www.sab.noaa.gov.*

Dated: March 10, 2005.

Louisa Koch,

Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 05–5118 Filed 3–15–05; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031105D]

Endangered Fish and Wildlife; Marine Mammal Protection Act, Draft Conservation Plan for the Cook Inlet Stock of Beluga Whales

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

ACTION: Notice of availability; request for written comments.

SUMMARY: The Marine Mammal Protection Act (MMPA) of 1972, as amended, requires the Secretary of Commerce to prepare a conservation plan for any species or stock designated as depleted under that Act. The Cook Inlet stock of beluga whales was designated as depleted on May 31, 2000, and this Conservation Plan is being written to promote the conservation and recovery of these whales. The goal of this Conservation Plan (Plan) will be met when the Cook Inlet stock of beluga whales are no longer considered depleted under the MMPA.

DATES: Comments and information must be received by May 16, 2005.

ADDRESSES: Copies of the Draft Conservation Plan may be reviewed and/or copied at the NMFS, Protected Resources Division, 222 W. 7th Ave., t43, Anchorage, AK, 99513; or at the Alaska Regional Office, Protected Resources Division, 709 W. 9th St., P.O. Box 21668, Juneau, AK 99802. The draft Conservation Plan is available on the Internet at the following address: *http://www.fakr.noaa.gov/protectedresources/whales/beluga.htm*. Comments on the Draft Conservation Plan should be sent to the above addresses, or can be electronically forwarded to the following e-mail address: *Records.Fakr@noaa.gov*. Please identify electronic comments with the header: Beluga Whale Conservation Plan.

FOR FURTHER INFORMATION CONTACT: Kaja Brix, NOAA/NMFS, Alaska Region, (907) 586 7235, or Brad Smith, NOAA/ NMFS, Alaska Region, Anchorage Field Office, (907) 271 5006.

SUPPLEMENTARY INFORMATION: The Cook Inlet beluga whale stock declined by greater than 50 percent during the last decade. In response to this significant decline, NMFS designated the Cook Inlet stock of beluga whales as depleted under the MMPA on May 31, 2000 (65 FR 34590). Subsequent surveys conducted between 1999 and 2004 have

resulted in abundance estimates ranging from 313 to 435, with no clear trend. Since 1999 the subsistence harvest of this stock has been significantly restricted as compared to previous years (down to 0–2 whales annually). However, the population has not shown any significant response as was expected following the restriction on the number of animals taken in the subsistence harvest.

This draft Plan delineates reasonable actions necessary to protect the depleted Cook Inlet beluga whales under the MMPA. The conservation strategy outlined in the Plan is meant to guide Federal and other actions toward the goal of recovering the Cook Inlet beluga whales.

The Plan provides a description of the biology and life history of the Cook Inlet stock of beluga whales, a description of the population trends in recent decades and their current depleted status under the MMPA, and management goals and objectives for recovery of the stock. The Plan also outlines known and possible factors that may be influencing the stock including natural factors such as stranding events, predation, disease and environmental change, and human-induced factors that may be, or have been in recent years, influencing trends in the abundance of this stock. These human-induced factors include the subsistence harvest, commercial fishing and its potential to influence prey availability, pollution in the inlet, vessel traffic, noise, oil and gas development and possible effects from research activities.

The Plan outlines a conservation strategy that addresses each of the natural and human-induced factors that may be influencing the recovery of the stock. It also outlines a monitoring strategy for future subsistence harvests and the development and use of beluga whale habitat in Cook Inlet, and a research plan as part of the monitoring and recovery strategy. The recommended conservation actions are developed for each known factor that may be influencing the stock, and linked to the applicable research recommendations.

Public and Agency Involvement: The goals and objectives of the draft Plan can be achieved only if a long-term commitment is made to support the respective actions recommended herein. The shared resources and cooperative involvement of federal, state, and local governments, industry, academia, non-governmental organizations, Alaska Natives, and other invested individuals will be required throughout the recovery period.

NMFS is soliciting comments on the draft Plan with this notice. Comments can be forwarded to [see **ADDRESSES**].

Dated: March 11, 2005.

Donna S. Wieting

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–5224 Filed 3–15–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Office of the Actuary; Notice of a Meeting

AGENCY: Department of Defense.

ACTION: Notice of meeting; DoD Medicare-Eligible Retiree Health Care Board of Actuaries.

SUMMARY: A meeting of the Board has been scheduled to execute the provisions of Chapter 56, Title 10, United States Code (10 U.S.C. 1114 *et. seq.*). The Board shall review DoD actuarial methods and assumptions to be used in the valuation of benefits under DoD retiree health care programs for Medicare-eligible beneficiaries. Persons desiring to: (1) Attend the DoD Medicare-Eligible Retiree Health Care Board of Actuaries meeting, or (2) make an oral presentation or submit a written statement for consideration at the meeting, must notify Bill Klunk at 703–696–7404 by May 10, 2005. Notice of this meeting is required under the Federal Advisory Committee Act.

DATES: June 3, 2005, 1:30 p.m.–5 p.m.

ADDRESSES: 4040 N. Fairfax Drive, Suite 270, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Bill Klunk, DoD Office of the Actuary, 4040 N. Fairfax Drive, Suite 308, Arlington, VA 22203, (703) 696–7404.

Dated: March 10, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–5220 Filed 3–15–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Intent To Prepare a Draft Environmental Impact Statement (EIS) for a Permit Application for the Proposed Timber Branch Subdivision Phase II, Near Covington, St. Tammany Parish, LA

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

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers, New Orleans District, is initiating the preparation of an Environmental Impact Statement under the National Environmental Policy Act in compliance with a judicial order. The Environmental Impact Statement is for a Department of the Army permit issued under Section 404 of the Clean Water Act to install the infrastructure necessary to implement an approximately 82-acre residential development to provide single and multi-family residential lots in the vicinity of LA Hwy 1085 and Bricker Road, near Covington, Louisiana, some of the property containing regulated wetlands. The permit was subsequently enjoined by the United States District Court, Eastern District of Louisiana. Information obtained from preparation of this EIS will be utilized in the re-evaluation of the enjoined permit decision.

FOR FURTHER INFORMATION CONTACT: Questions concerning the Environmental Impact Statement (EIS) should be addressed to Mr. Brian Breaux at U.S. Army Corps of Engineers, OD–S, P.O. Box 60267, New Orleans, LA 70160–0267, phone (504) 862–1938, fax number (504) 862–2117 or by E-mail at *brian.w.breaux@mvn02.usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. Proposed Action. The proposed action would include land-clearing, excavation, and deposition of fill material for site preparation and construction of drainage, utility and roadway infrastructure. Single-family and multi-family residential lots would then be offered for public sale. The approximately 82-acre project site grades through ridge and swale hardwood, mixed pine-hardwood/hardwood flats, pine flatwood, and pine savannah community types. Of the 82-acre development, 38.9 acres of pine flatwood/pine savannah wetlands would be directly affected by development.

2. Alternatives. Reasonable alternatives to consider include the avoidance and minimization of impacts and the ''no action'' alternative.

3. Scoping. Scoping is the process for determining the range of alternatives and issues to be addressed in the EIS. For this analysis, a public notice will be posted on the New Orleans District Web site, *http://www.mvn.usace.army.mil/ops/regulatory/publicnotices.asp*, requesting input on alternatives and issues to be evaluated. The public notice will also notify interested parties of any public scoping meetings that will be held in the local area. Notices will also be sent to local news media. All interested parties are invited to comment at this time.

4. Significant Issues. An Environmental Assessment and Finding of No Significant Impact were completed on the subject proposal and a Section 404 permit issued. The permit decision was subsequently challenged through litigation, *O'Reilly, et al.* v. *U.S. Army Corps of Engineers*, U.S.D.C., E.D. of La., CA 04 0940. The decision of the court enjoined the permit and required preparation of an EIS. Specific issues identified in the decision include wildlife resources, substrate, wetlands, aquatic resources, mitigation, segmenting of project phases, and cumulative effects.

5. Environmental Consultation and Review. Federal, State and local agencies will be consulted. The U.S. Fish and Wildlife Service (USFWS) will be consulted to assist in the documentation of existing conditions and assessment of effects of project alternatives through Fish and Wildlife Coordination Act consultation procedures. Consultation will be accomplished with the USFWS and the National Marine Fisheries Service (NMFS) concerning threatened and endangered species and their critical habitat. The NMFS will be consulted on the effects of this proposed action on Essential Fish Habitat. The draft EIS (DEIS) or a notice of its availability will be distributed to all interested agencies, organizations, and individuals.

6. Estimated Date of Availability. The DEIS is expected to be available not earlier than the spring of 2006.

Dated: March 4, 2005.

Stephen E. Jeselink,

Lieutenant Colonel, U.S. Army, Deputy District Engineer.

[FR Doc. 05–5123 Filed 3–15–05; 8:45 am]

BILLING CODE 3710–02–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The following inventions are assigned to the U.S. Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy.

U.S. Patent Application Serial Number 11/009847 entitled ''Multiple Shock Event Sensing Device.'' U.S. Patent Application Serial Number 11/040,291 entitled ''MEMS Inertial Delay Device.'' U.S. Patent Application Serial Number 10/826,791 entitled ''Container, and Related Methods.'' U.S. Patent Application serial Number 11/040,300 entitled ''MEMS Multi-Directional Shock Sensor.'' U.S. Patent Application Serial Number 10/040,292 entitled ''Method and Device for Clearing Firebreaks and Controlling Fire.'' U.S. Patent Application Serial Number 11/010,701 entitled ''Inhibition of Aluminum Oxidation Through the Vapor Deposition of a Passivation Layer and method Thereof.''

ADDRESSES: Requests for copies of the Patent Applications cited should be directed to the Naval Surface Warfare Center, Code CAB, 101 Strauss Avenue, Indian Head, MD 20640–5035.

FOR FURTHER INFORMATION CONTACT: Dr. J. Scott Deiter, Head, Technology Transfer Office, Naval Surface Warfare Center Indian Head Division, Code CAB, 101 Strauss Avenue, Indian Head, MD 20640–5035, telephone 301–744–6111.

Dated: March 9, 2005.

I.C. Le Moyne Jr.,

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

[FR Doc. 05–5151 Filed 3–15–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Invention; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government, as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy. U.S. Patent No. 6,857,371: Two Payload Decoy Device.

ADDRESSES: Requests for copies of the inventions cited should be directed to the Naval Surface Warfare Center, Crane Division, Code 054, Building 1, 300 Highway 361, Crane, IN 47522–5001, and must include the patent number.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Bailey, Naval Surface Warfare Center, Crane Division, Code 054, Building 1, 300 Highway 361, Crane, IN 47522–5001, telephone (812) 854–1865. An application for license may be downloaded from *http://www.crane.navy.mil/newscommunity/techtrans_CranePatents.asp*.

(**Authority:** 35 U.S.C. 207, 37 CFR part 404.)

Dated: March 9, 2005.

I.C. Le Moyne Jr.,

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

[FR Doc. 05–5152 Filed 3–15–05; 8:45 am]

BILLING CODE 3810–FF–P]

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Partially Exclusive License; Autoliv, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy gives notice of its intent to grant Autoliv, Inc., a revocable, nonassignable, partially exclusive license, with exclusive field of use in airbag inflators, in the United States to practice the Government-Owned invention, U.S. Patent Number 6,562,160 B2 entitled ''Airbag Propellant.''

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than April 9, 2005.

ADDRESSES: Written objections are to be filed with Indian Head Division, Naval Surface Warfare Center, Code CAB, 101 Strauss Avenue, Indian Head, MD 20640–5035.

FOR FURTHER INFORMATION CONTACT: Dr. J. Scott Deiter, Head, Technology Transfer Office, Naval Surface Warfare Center Indian Head Division, Code CAB, 101 Strauss Avenue, Indian Head, MD 20640–5035, telephone (301) 744–6111.

Dated: March 10, 2005.

I.C. Le Moyne Jr.,

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

[FR Doc. 05–5150 Filed 3–15–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Partially Exclusive License; Baltimore Shipping Technologies, L.L.C.

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy gives notice of its intent to grant Baltimore Shipping Technologies, L.L.C., a revocable, nonassignable, partially exclusive license, with exclusive fields of use in intermodal containerized transportation, in the United States to practice the Government-owned invention, U.S. Patent Application Serial Number 10/826,791 entitled ''Container, and Related Methods.''

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than March 31, 2005.

ADDRESSES: Written objections are to be filed with Indian Head Division, Naval Surface Warfare Center, Code CAB, 101 Strauss Avenue, Indian Head, MD 20640–5035.

FOR FURTHER INFORMATION CONTACT: Dr. J. Scott Deiter, Head, Technology Transfer Office, Naval Surface Warfare Center, Indian Head Division, Code CAB, 101 Strauss Avenue, Indian Head, MD 20640–5035, telephone 301–744–6111.

Dated: March 9, 2005.

I.C. Le Moyne, Jr.,

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

[FR Doc. 05–5149 Filed 3–15–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Privacy Act of 1974; Computer Matching Program

AGENCY: Department of Education.

ACTION: Notice— computer matching between the Department of Education and the Department of Homeland Security, Citizenship and Immigration Services, formerly the Immigration and Naturalization Service.

SUMMARY: Pursuant to the Computer Matching and Privacy Protection Act of 1988, Public Law 100–503, and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs, a notice is hereby given of the computer matching program between the Department of Education (ED) (the recipient agency), and the Department of Homeland Security, Citizenship and Immigration Service (CIS), (the source agency).

In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, and OMB Circular A–130, the following information is provided:

1. *Names of Participating Agencies.* The U.S. Department of Education and the U.S. Department of Homeland Security, CIS.

2. *Purpose of the Match.* The matching program entitled ''Systematic Alien Verification for Entitlement (SAVE) CIS/ED'' will permit ED to confirm the immigration status of alien applicants for, or recipients of, assistance as authorized by section 484(g) of the Higher Education Act of 1965, as amended (HEA); 20 U.S.C. 1091(g). The Title IV programs include: the Federal Pell Grant Program, the Federal Perkins Loan Program; the Federal Work-Study Program; the Federal Supplemental Educational Opportunity Grant Program; the Federal Family Education Loan Program; the William D. Ford Federal Direct Loan Program; the Leveraging Educational Assistance Partnership Program; and the Gaining Early Awareness and Readiness for Undergraduate Programs.

3. *Authority for Conducting the Matching Program.* The information contained in the CIS data base is referred to as the Verification Information System (VIS), and is authorized under the Immigration Reform and Control Act of 1986 (IRCA), Public Law 99–603. ED seeks access to the VIS database for the purpose of confirming the immigration status of applicants for assistance, as authorized by section 484(g) of the Higher Education Act of 1965, as amended, (HEA) 20 U.S.C. 1091(g). CIS is authorized to participate in this immigration status verification under section 103 of the Immigration and Nationality Act, 8 U.S.C. 1103.

4. *Categories of Records and Individuals Covered.* The records to be used in the match and the roles of the matching participants are described as follows: Through the use of user identification codes and passwords, authorized persons from ED will transmit electronically data from its Privacy Act system of records entitled, ''Federal Student Aid Application File (18–11–01)'' to CIS. The data will include the alien registration number and date of birth of the alien applicant for, or recipient of, Title IV assistance. This action will initiate a search for corresponding data elements in a CIS Privacy Act system of records entitled ''Verification Information System (JUSTICE/INS–035).'' Where there is a match of records, the system will provide to ED the immigration status code of the alien applicant or recipient. In accordance with 5 U.S.C. 552a(p), ED will not suspend, terminate, reduce, or make a final denial of any Title IV assistance to such individual, or take other adverse action against such individual, as a result of information produced by such a match, until (1)(a) ED has independently verified the information; or (b) the Data Integrity Board of ED determines in accordance with guidance issued by the Director of the OMB that (i) the information is limited to identification and amount of benefits paid by ED under a Federal benefit program; and (ii) there is a high degree of confidence that the information provided to ED is accurate; (2) the individual receives a notice from ED containing a statement of its findings and informing the individual of the opportunity to contest such findings by submitting documentation demonstrating a satisfactory immigration status within 30 days of receipt of the notice; and (3) 30 days from the date of the individual's receipt of such notice has expired.

5. *Effective Dates of the Matching Program.* The matching program will become effective 40 days after a copy of the computer matching agreement, as approved by the Data Integrity Board of each agency, is sent to Congress and OMB, unless the requested ten-day waiver is approved by OMB or unless OMB objects to some or all of the agreement, or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months after the effective date and may be extended for an additional 12 months thereafter, if the conditions specified in 5 U.S.C. 552a(o)(2)(D) have been met.

6. *Address for Receipt of Public Comments or Inquires.* Ms. Marya Dennis, Management and Program Analyst, U.S. Department of Education, Federal Student Aid, Union Center Plaza, 830 First Street NE, Washington DC 20002–5345. Telephone: (202) 377–3385. If you use a telecommunications

device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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

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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*.

Authority: 5 U.S.C. 552a; Pub. L. 100–503.

Dated: March 11, 2005.

Theresa S. Shaw,

Chief Operating Officer, Federal Student Aid.

[FR Doc. 05–5233 Filed 3–15–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; List of Correspondence

AGENCY: Department of Education.

ACTION: List of Correspondence from October 1, 2004 through December 31, 2004.

SUMMARY: The Secretary is publishing the following list pursuant to section 607(d) of the Individuals with Disabilities Education Act, as amended (IDEA). Under section 607(d) of the IDEA, the Secretary is required, on a quarterly basis, to publish in the **Federal Register** a list of correspondence from the Department of Education received by individuals during the previous quarter that describes the interpretations of the Department of Education (Department) of the IDEA or the regulations that implement the IDEA.

FOR FURTHER INFORMATION CONTACT: Melisande Lee or JoLeta Reynolds. Telephone: (202) 245–7459 (press 3).

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 a copy of this notice in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact persons listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: The following list identifies correspondence from the Department issued from October 1, 2004 through December 31, 2004.

Included on the list are those letters that contain interpretations of the requirements of the IDEA and its implementing regulations, as well as letters and other documents that the Department believes will assist the public in understanding the requirements of the law and its regulations. The date of and topic addressed by a letter are identified, and summary information is also provided, as appropriate. To protect the privacy interests of the individual or individuals involved, personally identifiable information has been deleted, as appropriate. Pursuant to the effective dates set forth in section 302 of the Individuals with Disabilities Education Improvement Act of 2004 (the Act), which amended and reauthorized the IDEA, the changes in IDEA that were made by the Act, with certain enumerated exceptions, will take effect on July 1, 2005. Accordingly, statutory citations in this list, as well as those contained in the letters referenced in this list, refer to the provisions of the IDEA that were in effect at the time the letters were issued.

Part A, General Provision

Section 605—Acquisition of Equipment; Construction or Alteration of Facilities

Topic Addressed: Construction or alteration of facilities.

○ Letter dated October 25, 2004 to Commonwealth of the Northern Mariana Islands Commissioner of Education Rita Hocog Inos, regarding the general principles for determining whether expenditures for construction of new facilities or alteration of existing facilities are allowable under the IDEA.

Part B—Assistance for Education of All Children With Disabilities

Section 611—Authorization; Allotment; Use of Funds; Authorization of Appropriations

Topic Addressed: Use of funds.

○ Letter dated November 10, 2004 to New Hampshire Disabilities Rights Center Executive Director Richard A. Cohen, regarding the use of grants to local educational agencies (LEAs) for capacity building and improvement and funds retained by the State for State level activities to pay for expenses related to statewide assessments for grades three, six, and ten.

Topic Addressed: Part B Grant Awards.

○ OSEP memorandum 05–01 dated October 1, 2004 to Chief State School Officers and State Directors of Special Education, transmitting additional Part B Grant Awards under Section 611 of IDEA that became available on October 1, 2004 and clarifying that any special conditions that applied to Part B funds that became available on July 1, 2004 also apply to these additional funds.

Section 612—State Eligibility

Topic Addressed: Free appropriate public education.

○ Letter dated November 3, 2004 to Advocate Louis H. Geigerman, regarding the provision of physical therapy and occupational therapy as a related service for students with disabilities under Part B of IDEA.

Topic Addressed: Local educational agency compliance.

○ Letter dated October 28, 2004 to Interim Illinois State Superintendent of Education Randy J. Dunn, regarding (1) procedures that a State educational agency (SEA) must follow in withholding funds under Part B of IDEA from an LEA or State agency that is not in compliance with a requirement of Part B of IDEA, including the right of the affected LEA or State agency to a hearing before the SEA terminates funds, and (2) how an SEA can satisfy its obligation to provide direct services to students with disabilities under Part B of IDEA.

Topic Addressed: State educational agency general supervisory authority.

○ Letter dated December 20, 2004 to New Jersey Commissioner of Education William L. Librera, reiterating the Department's position that the New Jersey Department of Education must afford parents of children with disabilities living in New Jersey and attending school in New York under a contract between New Jersey and New York school districts access to New Jersey's due process procedures and clarifying applicable procedures if parents request changes to educational programs for children with disabilities who live in New Jersey and attend school in New York.

Section 614—Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements

Topic Addressed: Individualized education programs.

○ Letter dated December 15, 2004 to Utah State Director of Special Education Karl A. Wilson, responding to the State's interpretation of Utah State Office of Education Special Education Rule III.I.10, regarding documentation of accommodations necessary for students to have access to regular education, and clarifying that those accommodations must be included in the individualized education programs of students with disabilities who are eligible for services under Part B of IDEA.

Topic Addressed: Educational placements.

○ Letter dated November 3, 2004 to Ohio Attorney Helen S. Carroll, regarding grade level assignments for students with disabilities and clarifying that Part B of IDEA does not address whether a child has a right to experience each grade level in sequence.

Other Letters That Do Not Interpret the IDEA But May Be of Interest to Readers

Topic Addressed: Confidentiality.

○ Letter dated November 18, 2004 to Tennessee Department of Education Policy Analyst Matthew J. Pepper from Family Policy Compliance Office Director LeRoy S. Rooker, regarding the applicability of the Family Educational Rights and Privacy Act to the release of student level records to researchers and clarifying that education records, with the removal of all personally identifiable information, may be released without prior consent.

Electronic Access to This Document

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

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(Catalog of Federal Domestic Assistance Number 84.027, Assistance to States for Education of Children with Disabilities)

Dated: March 11, 2005.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 05–5157 Filed 3–15–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: proposed collection; comment request.

SUMMARY: The DOE is soliciting comments on the proposed revisions and three-year extension to EIA–417, ''Emergency Incident and Disturbance Report.'' (The revised Form, sponsored by DOE's Office of Electricity and Energy Assurance, (EEA) will be renumbered as the EEA–417, ''Emergency Incident and Disturbance Report.'')

DATES: Comments must be filed by May 16, 2005. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Alice Lippert, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–0690. Alternatively, Ms. Lippert may be contacted by telephone at (202) 586–9600, FAX at (202) 586–2623, or e-mail at *alice.lippert@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of forms and instructions should be directed to Ms. Lippert at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Power Act (16 U.S.C. 791a *et seq.*) authorizes the DOE to collect information on the generation, distribution, and transmission of electric energy. The DOE collects information on emergency situations in electric energy supply systems so that appropriate Federal emergency response measures can be implemented in a timely and effective manner.

The DOE, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information. Any comments received help the DOE to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the DOE will later seek approval by the Office of Management and Budget (OMB) under section 3507(a) of the Paperwork Reduction Act of 1995.

The purpose of this notice is to seek public comment on the revised Form EEA–417 used to report electric emergency incidents and disturbances to the DOE. The Form EEA–417 reports will enable the Department to monitor electric emergency incidents and disturbances in the United States (including all 50 States, the District of Columbia, Puerto Rico, U.S. Virgin Islands, and the U.S. Trust Territories) so Government may help prevent the physical or virtual disruption of the operation of any critical infrastructure.

Currently, DOE's Office of Electricity and Energy Assurance (EEA) uses Form EIA–417, ''Emergency Incident and Disturbance Report,'' to monitor major system incidents on electric power systems and to conduct after-action investigations on significant interruptions of electric power. The information is used to meet DOE national security responsibilities and requirements contained in the National Response Plan. The information may also be used in developing legislative recommendations and reports to Congress; and coordinating Federal efforts regarding activities such as incidents/disturbances in critical infrastructure protection; continuity of electric industry operations; and the continuity of operations of the government.

The information submitted may also be used by the Department's Office of Policy and International Affairs and the Energy Information Administration to analyze significant interruptions of electric power.

II. Current Actions

The DOE is proposing changing the form number from EIA–417 to EEA–417 to reflect the sponsorship of the form and to revise the reporting requirements. The revisions include the following: (1) Identifying which electric emergency incidents must be reported, on which schedule, and how soon after

an incident must the form be submitted; (2) changing reporting criteria and thresholds for incidents and disturbances; and (3) adding check-off boxes, (4) including optional data reporting; and (5) revising the confidentiality provisions. Each revision is discussed below.

(1) Schedule Requirements and Timelines

The Form EEA–417, ''Electric Emergency Incident and Disturbance Report,'' will have the existing Schedule 1 broken into two parts, Part A and Part B. The proposed Part A of Schedule 1 (Emergency Alert Notice) will be for a subset of incidents and disturbances that need to be filed within one hour. The reporting requirement is that the Form EEA–417 must be submitted within 1 hour if the cause of the disturbance meets criteria 1–8 (The new criteria are discussed in the next section). The proposed Part B of Schedule 1 will contain essentially the same information as the existing form, but will be labeled Part B—Normal/Update Alert Notice and will have an initial reporting requirement of 6 hours. The separation of Schedule 1 into two Parts reflects that the initial notification to the Federal Government about potential impacts of incidents on electrical system operations is not required of all incidents or disturbances within one hour. Schedule 2 has been modified to request that the respondent identify the names of facilities affected and provide input about ''electrical islanding situations.'' (This occurs where part or parts of a power grid remain(s) operational in an otherwise blacked out area or within the partial failure of an integrated electrical system.)

(2) Changes to Reporting Criteria

The Required Respondents criteria will be revised to properly address actual physical or cyber attacks that do damage to the Nation's infrastructure, from that of suspected or attempted actions. The reporting criteria are adjusted by adding two new lines (1 and 2), which are subsets of the current criteria 5 and 6. Lastly, proposed criterion 4 (electrical islanding) is also a subset of the current criterion 9 (full electrical system failure). The recommended changes provide for better reporting of an alert within one hour that describes actual events that have had an impact on electrical operations.

The proposed format for criteria (1, 2, and 4) are included with the existing criteria (which are re-numbered so they are) ranked by severity of incident. The proposed criteria are:

1. Actual physical attack that causes major interruptions or impacts to critical infrastructure facilities or to operations (subset of criterion 5 on current form).

2. Actual cyber or communications attack that causes major interruptions of electrical system operations (subset of criterion 6 on current form).

3. Complete operational failure or shut-down of the transmission and/or distribution electrical system (criterion 9 on current form).

4. Electrical System Separation (Islanding) where part or parts of a power grid remain(s) operational in an otherwise blacked out area or within the partial failure of an integrated electrical system (subset of criterion 9 on current form).

5. Uncontrolled loss of 300 Megawatts (MW) or more of firm system loads for more than 15 minutes from a single incident (criterion 1 on current form).

6. Load shedding of 100 MW or more implemented under emergency operational policy (criterion 2 on current form).

7. System-wide voltage reductions of 3 percent or more (criterion 3 on current form).

8. Public appeal to reduce the use of electricity for purposes of maintaining the continuity of the electric power system (criterion 4 on current form).

9. Suspected physical attacks that could impact electric power system adequacy or reliability; or vandalism which target components of any security systems (subset of criterion 5 on current form).

10. Suspected cyber or communications attacks that could impact electric power system adequacy or vulnerability (subset of criterion 6 on current form).

11. Loss of electric service to more than 25,000 customers for 1 hour or more (modification of reporting requirement for criterion 8 on current form—see below).

12. Fuel supply emergencies that could impact electric power system adequacy or reliability (criterion 7 on current form).

With respect to Criterion 11 in Schedule 1, the threshold ''Loss of electric service to more than 25,000 customers for 1 hour or more'' has been reduced from 50,000 to 25,000 end-user customers. This change was made after DOE reviewed several years of filings and determined that a strong undercount exists for reporting by mid-sized and small utilities.

Any utility, business entity, or energy concern that participates in the electric power industry could be notified by DOE that it needs to provide technical information concerning a particular incident. A new confidential question, covering a teleconferencing contact has been added to support this area. If DOE believes that the incident(s) warrants a conference discussion, the respondent will be requested to supply the teleconference/video number and password for that session on the Form EEA–417. These special investigations are infrequent and reports are released to the public. (The Department of Energy has initiated three special studies about incidents that happened in the 1990s and none in the 1980s. The three studies are: The Cold Weather Snap of 1992; The Electric Power Outages in the Western United States, July 2–3, 1996 (DOE/PO–0050); and the Report of the U.S. Department of Energy's Power Outage Study Team (DOE/PO—March 2000 Final Report.)

(3) Check-Off Boxes

Another proposed revision to the Form EEA–417 is to add more detail to the check-off boxes in Sections 19, 20, and 21, formerly Sections 17, 18, and 19. The check-off boxes are grouped by events that describe: Type of Emergency, Cause of Incident, and Actions Taken. The respondent will continue to mark the form to indicate all known or suspected causes. In addition, check-off boxes have been added to indicate if high voltage transmission substations or switchyards (230 kV+ for AC; 200 kV+ for DC) were impacted. (kV is kilovolt, AC is Alternating Current, and DC is Direct Current.) The classifications of Cause of Incident and Actions Taken were also adjusted to rank categories by severity.

(4) Optional Data Reporting

The data will continue to be filed with the DOE's Emergency Operations Center. This DOE facility operates 24 hours a-day, 7-days a week. Electronic submission is the preferred method of notification. Fax, e-mail, and telephone contract are also accepted. However, changes to the information sharing process are under consideration as well as allowance for optional filing modes. The U. S. Department of Homeland Security and the North American Electric Reliability Council are developing a Homeland Security Information Network (HSIN) program that may change the data submission process. (The HSIN has been designated by DHS as its primary platform for the sharing of information and as the mechanism for collaboration on threats and vulnerabilities pertaining to U.S. critical infrastructure. HSIN will enable

industry sectors designated as owners and operators of ''critical infrastructure'' under HSPD–7 to receive, submit, share and collaborate on information pertaining to incidents, threats, vulnerabilities and infrastructure security. HSIN will be financed by DHS and controlled by the industry sectors. HSIN runs on a highly secure backbone network, and includes the following components: (a) Industry sector portals with the ability to report incidents via secure protocol, post community updates and store sensitive documents; (b) Collaboration Tools enabling members to engage in real-time dialogue around planning and response to incidents; and (c) Broadcasting/Narrowcasting of alerts, threats and warnings. The proposed reporting process is intended to reduce duplicative reporting and establish a common reporting format by providing another option on how the Form EEA–417 can be filed with DOE. As this concept is developed, the status will be addressed in future informational releases or **Federal Register** notices.

(5) Confidentiality

DOE will treat the entire narrative on Form EEA–417, Schedule 2, as confidential. The requested information will provide a brief description of the incident or expected system problem, names of facilities affected, and actions taken to resolve it. If released, this could affect the economic operations of various electricity markets; cause competitive harm; and/or identify concerns that could be or are being reviewed by law enforcement agencies. Contact information for a respondent will continue to be treated as confidential (Lines 4–9 of Schedule 1). This includes the proposed Line 9 covering teleconferencing/video contact information.

The following is the provision for confidentiality of information for data in the possession of DOE that will be applied to the data submitted in the narrative in Schedule 2.

The information reported on Form EEA–417 will be kept confidential and not disclosed to the public to the extent that it satisfies the criteria for exemption under the Freedom of Information Act (FOIA), 5 U.S.C. 552, the DOE regulations, 10 CFR 1004.11, implementing the FOIA, and the Trade Secrets Act, 18 U.S.C. 1905. The DOE will protect your information in accordance with its confidentiality and security policies and procedures.

The Federal Energy Administration Act requires the DOE to provide company-specific data to other Federal agencies when requested for official use. The information reported on this form may also be made available, upon request, to another component of the DOE; to any Committee of Congress, the General Accounting Office, or other Federal agencies authorized by law to receive such information. A court of competent jurisdiction may obtain this information in response to an order. The information may be used for any nonstatistical purposes such as administrative, regulatory, law enforcement, or adjudicatory purposes.

Officials in the Critical Infrastructure Protection Branch of the Department of Homeland Security have requested access to the EEA–417 submissions.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments.

General Issues:

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a potential respondent to the request for information:

A. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

B. Can the information be submitted by the due date?

C. Public reporting burden for this collection is estimated to average 10 minutes for the Emergency Incident Report (Schedule 1, Part A) that is to be filed within 1 hour; the overall public reporting burden for the form is estimated at 2 hours to cover any detailed reporting in the Normal/Update Report (Schedule 1, Part B and Schedule 2) that would be filed later (up to 48 hours), if required. In your opinion, how accurate is this estimate?

D. The agency estimates that the only cost to a respondent is for the time it will take to complete the collection. Will a respondent incur any start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

E. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

F. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

G. Is the proposed treatment for narrative information as confidential appropriate? Is it appropriate for another data element? If so, then specify the data element(s) and provide an explanation for the proposed confidential status. Is the delayed release of information effective in addressing competitive market concerns?

As a potential user of the information to be collected:

A. Is the information useful at the levels of detail to be collected?

B. For what purpose(s) would the information be used? Be specific.

C. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, DC, March 10, 2005.

Jay H. Casselberry,

Agency Clearance Officer, Energy Information Administration.

[FR Doc. 05–5184 Filed 3–15–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER05–31–000, ER05–31–001, and EL05–70–000]

American Electric Power Service Corporation; PJM Interconnection, LLC and Midwest Independent Transmission System Operator, Inc.; Notice Instituting Section 206 Proceeding and Establishing Effective Refund Date

March 10, 2005.

On March 9, 2005, the Commission issued an order in the above-referenced dockets instituting a proceeding in Docket No. EL05–70–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL05–70–000, established pursuant

to section 206 of the Federal Power Act, will be 60 days following publication of this notice in the **Federal Register**.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1148 Filed 3–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–82–000]

El Paso Natural Gas Company; Notice of Application

March 10, 2005.

Take notice that El Paso Natural Gas Company (El Paso), Post Office Box 1087, Colorado Springs, Colorado, 80944, filed in Docket No. CP05–82–000 on February 28, 2005, an application pursuant to section 7(b) of the Natural Gas Act (NGA) and the Commission's Regulations, for authorization to abandon in place El Paso's Gila Compressor Station facilities, with appurtenances, located in Maricopa County, Arizona. El Paso states that this station which yields approximately 17,100 horsepower has become functionally obsolete and is no longer required in its natural gas service, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be also viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8659 or TTY, (202) 208–3676.

Any questions regarding this application should be directed to Robert T. Tomlinson, Director, Regulatory Affairs, El Paso Natural Gas Company, P.O. Box 1087, Colorado Springs, Colorado, 80944, at (719) 520–3788 or fax (719) 520–4318.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: March 31, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1159 Filed 3–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–87–000]

Kinder Morgan North Texas Pipeline, L.P.; Notice of Application for Blanket Certificate and Petition for Rate Review

March 10, 2005.

Take notice that on March 2, 2005, Kinder Morgan North Texas Pipeline, L.P. (KMNTP) pursuant to section 7(c) of the Natural Gas Act, 15 U.S.C. 717(f)(c), and section 284.224 of the Commission's regulations, 18 CFR 284.224, KMNTP, a Texas Hinshaw pipeline company that is not subject to the jurisdiction of FERC, applies for a blanket certificate of public convenience and necessity authorizing interruptible transportation of natural gas in interstate commerce to the same extent and in the same manner that intrastate pipelines are authorized to engage in such activities, transactions and services pursuant to Subparts C and D of Part 284 of the Commission's regulations.

KMNTP's corporate office is located in Houston, Texas and it is subject to the jurisdiction of the Railroad Commission of Texas. KMNTP is a Delaware partnership owned by Kinder Morgan Tejas Pipeline GP, LLC and Tejas Energy Partner, LLC. These two entities are subsidiaries of Tejas Natural Gas, LLC, which is a subsidiary of Tejas Gas, LLC. The ultimate parent of KMNTP is Kinder Morgan Energy Partners, L.P. KMNTP currently provides services to one customer in the State of Texas. The pipeline's construction like its current operations is under the authority of the Railroad Commission of Texas.

Any person desiring to participate in this rate 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, on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not 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: March 24, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1147 Filed 3–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP05–83–000, CP05–84–000, CP05–85–000, and CP05–86–000]

Port Arthur LNG, L.P. and Port Arthur Pipeline, L.P.; Notice of Applications

March 10, 2005.

Take notice that on February 28, 2005, Port Arthur LNG, L.P. (Port Arthur LNG) filed an application in Docket No. CP05–83–000 seeking authorization to site, construct and operate a liquefied natural gas (LNG) terminal and associated facilities to import and deliver up to 1.5 Bcf per day of natural gas during Phase I, increasing to 3.0 Bcf per day during Phase II. The terminal and associated facilities will be located in the City of Port Arthur, Texas and in Jefferson County, Texas. The LNG terminal will provide LNG tanker terminal services to third party shippers who would be importing LNG from foreign sources. Port Arthur LNG made the request to site, construct and operate the LNG terminal pursuant to section 3(a) of the Natural Gas Act and Part 153 of the Commission's regulations.

Also, take notice that on February 28, 2005, Port Arthur Pipeline, L.P. (Port Arthur Pipeline) filed in Docket No. CP05–84–000, an application seeking a certificate of public convenience and necessity, pursuant to section 7(c) of the NGA and Part 157, Subpart A of the Commission's regulations, to construct and operate a 70-mile pipeline leg and a 3-mile pipeline leg and related facilities to transport natural gas on an open access basis. In Docket No. CP05–85–000, Port Arthur Pipeline requests a blanket certificate under section 7(c) of the NGA and Part 157, Subpart F of the Commission's regulations to perform routine activities in connection with the future construction, operation and maintenance of the proposed pipeline. Finally, Port Arthur Pipeline requests authorization in Docket No. CP05–86–000 to provide the natural gas transportation services on a firm and interruptible basis pursuant to section 7(c) of the NGA and Part 284 of the Commission's regulations.

These applications are on file with the Commission and open to public inspection. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

In Docket No. PF04–11–000, Port Arthur LNG and Port Arthur Pipeline participated in a pre-filing National Environmental Policy Act review of the proposed project to identify and resolve potential landowner and environmental problems before the applications were filed.

Any initial questions regarding these applications should be directed to Georgetta J. Baker, Sempara Energy , 101 Ash Street, HQ13D, San Diego, California 92101, Phone: (619) 699–5064, Fax: (619) 699–5027 or gbaker@sempra.com or Stacy Van Goor, Sempra Energy, 101 Ash Street, HQ8, San Diego, California 92101, Phone: (619) 696–2264, Fax: (619) 696–2500 or *svangoor@sempraglobal.com*.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

Persons who wish to comment only on the environmental review of this project, or in support of or in opposition to this project, should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the applicant. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: March 31, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1146 Filed 3–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 382]

Southern California Edison Company; Notice of Authorization for Continued Project Operation

March 10, 2005.

On February 26, 2003, Southern California Edison Company, licensee for the Borel Project No. 382, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's

regulations thereunder. Project No. 382 is located on the Kern River in Kern County, California.

The license for Project No. 382 was issued for a period ending February 28, 2005. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 382 is issued to Southern California Edison Company for a period effective March 1, 2005 through February 28, 2006, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before March 1, 2006, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Southern California Edison Company is authorized to continue operation of the Borel Project No. 382 until such time as the Commission acts on its application for subsequent license.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1152 Filed 3–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG05–35–000, et al.]

SeaWest WindPower, Inc., et al.; Electric Rate and Corporate Filings

March 9, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. SeaWest WindPower, Inc.

[Docket No. EG05–35–000]

On March 4, 2005, SeaWest WindPower, Inc. (SeaWest WindPower), located at 1455 Frazee Road, Ninth Floor, San Diego, California, 92108, filed with the Federal Energy Regulatory Commission an amended application for determination of exempt wholesale generator (EWG) status pursuant to part 365 of the Commission's regulations.

SeaWest WindPower states it will be engaged directly and exclusively in the business of operating certain eligible facilities and selling electric energy exclusively at wholesale within the meaning of section 32(a) of PUHCA. SeaWest WindPower requests that the Commission determine that it is an EWG as it is currently owned and after consummation of the sale of 100 percent of the capital stock of its parent, SeaWest Holdings, Inc., to a wholly-owned subsidiary of the AES Corporation, AES Western Wind, LLC.

SeaWest WindPower states that a copy of the amended application has been served on the U.S. Securities and Exchange Commission, the California Public Utilities Commission, the Indiana Utility Regulatory Commission, the Oregon Public Utility Commission, and the Wyoming Public Service Commission.

Comment Date: 5 p.m. eastern time on March 22, 2005.

2. California Independent System Operator Corporation

[Docket Nos. ER98–997–006, ER98–1309–005, ER02–2297–005, and ER02–2298–005]

Take notice that on March 2, 2005, the California Independent System Operator Corporation (ISO) submitted a filing in compliance with the Commission's Order issued February 11, 2005, 110 FERC ¶ 61,122.

The ISO states that this filing has been served on all parties on the official service lists for the above-captioned dockets. In addition, the ISO states that the filing has been posted on the ISO Home Page.

Comment Date: 5 p.m. eastern time on March 23, 2005.

3. FPL Energy Seabrook, LLC

[Docket No. ER02–1838–004]

Take notice that on February 25, 2005, FPL Energy Seabrook, LLC submitted a request to increase prior authorization to sell energy, capacity and ancillary services at market-based rates.

FPL Energy Seabrook LLC states that copies of the filing were served upon the Florida Public Service Commission.

Comment Date: 5 p.m. eastern time on March 18, 2005.

4. PJM Interconnection, L.L.C.

[Docket No. ER04–608–003]

Take notice that on February 28, 2005, PJM Interconnection, L.L.C. (PJM) submitted for filing an updated status report of PJM's stakeholder process regarding expansion of PJM's behind the meter generation program to include generation associated with municipals' and cooperatives' electric distribution systems, originally filed on January 3, 2005, in Docket No. ER04–608–002.

Comment Date: 5 p.m. eastern time on March 21, 2005.

5. Upper Peninsula Power Company

[Docket No. ER05–89–002]

Take notice that on March 2, 2005, Upper Peninsula Power Company (UPPCO) tendered for filing a Supplement to market-based rate application in preparation for MISO Day-2 Market Operations FILED ON January 4, 2005 in Docket No. ER05–89–001.

UPPCO states that copies of the filing were served upon the official service list, PJM, MISO and the Michigan Public Service Commission.

Comment Date: 5 p.m. eastern time on March 14, 2005.

6. Southwest Power Pool, Inc.

[Docket No. ER05–490–001]

Take notice that on March 7, 2005, Southwest Power Pool, Inc. (SPP) submitted for filing an amendment to an executed service agreement for Firm Point-To-Point Transmission Service with Southwestern Public Service Company (Southwestern) previously filed with the Commission in Docket No. ER05–490–000 on January 26, 2005. SPP seeks an effective date of January 1, 2005, for the service agreement.

SPP states that Southwestern was served with a copy of this filing.

Comment Date: 5 p.m. eastern time on March 16, 2005.

7. New England Power Company

[Docket No. ER05–530–001]

Take notice that on March 2, 2005, New England Power Company (NEP) tendered for filing an amendment to its January 31, 2005, filing in Docket No. ER05–530–000. NEP states that the amendment consists of Substitute Service Agreements for Network Integration Transmission Service under NEP's FERC Electric Tariff, Second Revised Volume No. 9. NEP reiterates its request for an effective data of January 1, 2005.

NEP states that copies of this filing have been served on Dominion Energy and regulators in the States of Massachusetts and Rhode Island.

Comment Date: 5 p.m. eastern time on March 23, 2005.

8. Public Service Company of New Mexico

[Docket No. ER05–664–000]

Take notice that on March 2, 2005, the Public Service Company of New Mexico (PNM) submitted for filing an interim invoicing agreement with respect to invoicing for coal deliveries from San Juan Coal Company among PNM, Tucson Electric Power Company (TEP), and the other owners of interests in the San Juan Generating Station covering the period from January 1, 2005, through December 31, 2005. PNM states that the interim invoicing agreement is an appendix to the San Juan Project participating agreement (PPA), and effectively modifies the PPA for that same period.

On February 8, 2005, Tucson Electric Power Company filed a certificate of concurrence in connection with the 2005 interim invoicing agreement for the San Juan Generating Station. PNM requests an effective date of January 1, 2005.

PNM states that copies of the filing have been sent to the New Mexico Public Regulation Commission, the New Mexico Attorney General, TEP and each of the owners of interest in the San Juan Generating Station.

Comment Date: 5 p.m. eastern time on March 23, 2005.

9. Barrick Goldstrike Mines Inc.

[Docket No. ER05–665–000]

Take notice that on March 2, 2005, Barrick Goldstrike Mines Inc. submitted an application, pursuant to section 205 of the Federal Power Act, for an order accepting its proposed market-based rate tariff and granting certain blanket authorizations and waivers of the Commission's regulations.

Comment Date: 5 p.m. eastern time on March 23, 2005.

10. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER05–667–000]

Take notice that on March 2, 2005, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted an unexecuted Large Generator Interconnection Agreement among Montana-Dakota Utilities Co., Dakota Wind Harvest, LLC and the Midwest ISO.

Midwest ISO states that a copy of this filing was served on the parties to this Interconnection Agreement.

Comment Date: 5 p.m. eastern time on March 23, 2005.

11. New England Power Company

[Docket No. ER05–668–000]

Take notice that on March 2, 2005, New England Power Company (NEP) submitted for filing an Interconnection Agreement between NEP and Bear Swamp Power Co. LLC (Bear Swamp Power) designated as a service agreement under ISO New England Inc.'s transmission, markets and services tariff, ISO New England Inc., FERC Electric Tariff No. 3. NEP states that the Agreement concerns the interconnection of the Bear Swamp Project, a hydro-electric generating unit, to NEP's transmission system.

NEP states that copies of this filing have been served on Bear Swamp Power, ISO New England, Inc. and regulators in the Commonwealth of Massachusetts.

Comment Date: 5 p.m. eastern time on March 23, 2005.

12. New England Power Company

[Docket No. ER05–669–000]

Take notice that on March 2, 2005, New England Power Company (NEP) submitted for filing an interconnection agreement between NEP and Bear Swamp Power Co. LLC (Bear Swamp Power) under ISO New England Inc.'s transmission, markets and services tariff, ISO New England Inc., FERC Electric Tariff No. 3. NEP states that the Agreement concerns the interconnection of the Fife Brook Development, a hydro-electric generating unit, to NEP's transmission system.

NEP states that copies of this filing have been served on Bear Swamp Power, ISO New England, Inc. and regulators in the Commonwealth of Massachusetts.

Comment Date: 5 p.m. eastern time on March 23, 2005.

13. Vermont Electric Cooperative, Inc.

[Docket No. ER05–670–000]

Take notice that on March 2, 2005, the Vermont Electric Cooperative, Inc. (VEC) tendered for filing its second annual formula rate update to its open access transmission tariff (OATT), FERC Electric Tariff, Original Volume No. 1 and First Revised Rate Schedule FERC Nos. 4 and 6. VEC states that the OATT charges produced by the formula rates are applicable to the new VEC-specific Local Service Schedule of the ISO New England Tariff, FERC Electric Tariff No. 3, as well as the subsequent Local Service Schedule that may be filed with the Commission in the future.

VEC states that a copy of this filing is being served on each of the customers under the OATT and Rate Schedule FERC Nos. 4 and 6, the Vermont Public Service Board and the Vermont Department of Public Service.

Comment Date: 5 p.m. eastern time on March 23, 2005.

14. FirstEnergy Service Company

[Docket No. ER05–671–000]

Take notice that on March 2, 2005, FirstEnergy Service Company (FirstEnergy) Tendered for filing a Notice of Cancellation of a Generator Interconnection and Operating Agreement between FirstEnergy Nuclear Operating Company and American Transmission Systems, Incorporated (ATSI), designated as Service Agreement No. 290 under ATSI's FERC Electric Tariff, Second Revised Volume No. 1. ATSI requests an effective date of January 1, 2005.

FirstEnergy states that a copy of the filing was served upon the parties to the Service Agreement No. 290.

Comment Date: 5 p.m. eastern time on March 23, 2005.

15. PacifiCorp

[Docket No. ER05–674–000]

Take notice that on March 2, 2005, PacifiCorp tendered for filing the February 18, 2005, Joint Operating Agreement between PacifiCorp and Utah Associated Municipal Power Systems (UAMPS).

PacifiCorp states that copies of this filing were supplied to the Public Utility Commission of Oregon, the Washington Utilities and Transportation Commission, and UAMPS.

Comment Date: 5 p.m. eastern time on March 23, 2005.

16. Black Hills Power, Inc.

[Docket No. RT01–50–001]

Take notice that on March 1, 2005, Black Hills Power, Inc., pursuant to the Commission's letter order issued February 8, 2005, submitted a report on its recent and current efforts with respect to regional transmission organizations.

Comment Date: 5 p.m. eastern time on March 22, 2005.

17. First Electric Cooperative Corporation

[Docket No. RT01–59–001]

Take notice that on March 1, 2005, First Electric Cooperative Corporation, pursuant to the Commission's letter order issued February 8, 2005, submitted a report on its recent and current efforts with respect to regional transmission organizations.

Comment Date: 5 p.m. eastern time on March 22, 2005.

Standard Paragraph

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

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

This filing is accessible 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. E5–1136 Filed 3–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Settlement Agreement Modification and Solicitation of Comments

March 10, 2005.

Please take notice that the following settlement agreement modification has been filed with the Commission and is available for public inspection. The filing includes a request to amend an associated decommissioning application to reflect the settlement agreement modification.

a. *Type of Application:* Modification of Settlement Agreement.

b. *Project No.:* P–2342–011.

c. *Date filed:* February 28, 2005.

d. *Applicant:* PacifiCorp.

e. *Name of Project:* Condit Hydroelectric Project.

f. *Location:* On the White Salmon River in Klickitat and Skamania Counties, Washington.

g. *Applicant Contact:* Jeff Lovinger, 825 NE. Multnomah, Suite 1500, Portland, Oregon 97232; (503) 230–7120.

h. *FERC Contact:* Nicholas Jayjack, (202) 502–6073; *Nicholas.Jayjack@ferc.gov.*

i. *Deadline for filing comments:* March 21, 2005. Reply comments due March 31, 2005.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

j. On October 29, 1999, PacifiCorp filed a settlement agreement, signed by 23 Federal and State agencies and non-governmental organizations, to decommission the Condit Hydroelectric Project commencing October 1, 2006. The 1999 settlement agreement, among other things, limits PacifiCorp's commitment to fund decommissioning to $17,150,000 (1999 dollars), of which a maximum of $2,000,000 would be for permitting and mitigation costs. Anticipating that permitting and mitigation costs will exceed $2,000,000, PacifiCorp signed a memorandum of agreement with the parties that modifies the 1999 settlement agreement to: (1) Delay the commencement of decommissioning to October 1, 2008; (2) increase PacifiCorp's commitment to fund decommissioning to $20,450,000 (1999 dollars); and (3) increase the maximum amount of permitting and mitigation costs to $5,300,000 (1999 dollars). By this notice, we are providing an opportunity to submit comments concerning the modified provisions of the settlement agreement.

k. A copy of the memorandum of agreement modifying the settlement agreement is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1151 Filed 3–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM05–7–000 and AD04–13–000]

Potential New Wholesale Transmission Services; Assessing the State of Wind Energy in Wholesale Electricity Markets; Notice of Final Agenda for Technical Workshop

March 10, 2005.

As announced in the Notice of Technical Workshop issued on February 1, 2005, and March 2, 2005, the staffs of Bonneville Power Administration (BPA)

and the Western Electricity Coordinating Council (WECC) will participate with the staff of the Federal Energy Regulatory Commission (FERC) at a workshop on March 16—17, 2005. The workshop will be held at the Doubletree Hotel & Executive Meeting Center Portland-Lloyd Center, 1000 NE Multnomah, Portland, Oregon 97232. The workshop is scheduled to begin at 9 a.m. and end at approximately 5 p.m. (PST) each day.

The goal of the workshop is to work with market participants to develop clear definitions for additional wholesale electric transmission services, *e.g.*, conditional firm transmission service, develop applicable pro forma tariff language that could be included in public utilities' open access transmission tariffs and address attendant issues.

Attachment A of this Notice contains the final agenda for the workshop. Attachment B contains a table prepared by Commission staff that identifies and briefly describes the new transmission services proposed by other entities. Attachment C contains a proposal for a BPA ''Conditional-Firm Product.'' Panelists are strongly encouraged to coordinate among themselves prior to the workshop to minimize overlap in the information presented at the workshop by using the information attached to this Notice.

The Commission will solicit comments related to the workshop to be filed in the captioned dockets by April 13, 2005. The comments will be available for review in the Commission's e-Library. The public will have the opportunity to file reply comments in response to these comments by April 29, 2005.

The conference workshop is open for the public to attend, and preregistration is not required; on-site attendees may simply register on the day of the event.

Capitol Connection offers the opportunity for remote listening of the conference via the Internet or a Phone Bridge Connection for a fee. Interested persons should make arrangements as soon as possible by visiting the Capitol Connection Web site at *http://www.capitolconnection.gmu.edu* and clicking on ''FERC.'' If you have any questions contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100).

For more information about the conference, please contact Jignasa Gadani at 202–502–8608, *jignasa.gadani@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E5–1145 Filed 3–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER05–428–000]

New York Independent System Operator, Inc.; Notice of Staff Technical Conference

March 10, 2005.

Take notice that a staff technical conference will be held on Monday, March 21, 2005, at 10 a.m. (e.s.t.) and, if necessary, on Tuesday, March 22, 2005, at the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in a room to be designated.

As explained in the Commission's order directing staff to convene a technical conference,[1] the purpose of the conference will be to address specific issues relating to the appropriateness of the specific parameters to be used by the New York Independent System Operator, Inc. (NYISO) in calculating the Installed Capacity (ICAP) Demand Curves for Capability Years 2005/2006, 2006/2007, and 2007/2008. Thus, staff is particularly interested in understanding how different assumptions for these issues will affect the Annual Reference Value, and potential interdependencies between different assumptions. Staff is looking for specific and factual recommendations on the parameters that should be used and why they are appropriate.

Staff has identified the following specific issues:

1. Load Shapes

- Does the 2002 load shape used in the Levitan analysis represent normal weather? If not, what load shape does represent normal weather?

2. Modeling Assumptions

- Is it necessary to reflect recent new capacity additions in NYCA in the modeling of future net revenues?

3. Accuracy/Appropriateness of Peaking Unit Characteristics

- Are the operating characteristics of the assumed peaking units (the 7FA and LM6000) used by Levitan reasonable? If not, what are reasonable operating characteristics?
- Is the ability of these units to participate in ancillary services and day-ahead markets, particularly given their environmental permits, important in determining the parameters of the demand curve?

4. Peaking Unit Costs

- Are the capital cost assumptions and financing periods used in the Levitan analysis reasonable? If not, what assumptions are reasonable?

5. Scarcity Component

- Should the NYISO have included an adjustment for the scarcity component in their derivation of the Annual Reference Value, and if so, what adjustment is reasonable?
- What were the assumptions used to develop the scarcity component?
- Are the assumptions consistent with the Levitan analysis?

6. Local Siting Costs and Constraints

- Should local costs and constraints be included in development of costs for a representative peaking unit?
- Are Keyspan-Ravenswood's points concerning local siting issues, such as fixed gas transportation costs and local property taxes, correct?

7. Impact on Demand Curve Parameters

- How do you reflect potential interdependencies between different assumptions?

8. Should the Zero Crossing Point be changed? If so, what should be the Zero Crossing Point, and why?

9. Is it reasonable to include an adjustment reflecting winter and summer capacity levels in the Annual Reference Value for NYCA Demand Curve? Is it reasonable to not include a similar adjustment for the New York City Demand Curve?

Those persons interested in speaking at the conference should send a short e-mail to *David.Kathan@FERC.gov* listing their name, title, affiliation, address, and a short (one paragraph preferred) description of the topic(s) they wish to discuss. Staff will prepare an agenda for the conference based on the responses received. Staff will determine the identity and times allotted for speakers. We encourage parties sharing the same position on an issue(s) to coordinate their efforts and designate the fewest number of speakers possible to present their positions.

The conference will be transcribed. Transcripts of the conference will be immediately available from Ace

[1] New York Independent System Operator, Inc., 110 FERC ¶ 61,201 (2005).

Reporting Company (202) 347–3700 or 1–800–336–6646) for a fee. They will be available for the public on the Commission's e-Library seven calendar days after FERC receives the transcript. The e-Library is accessible to the public on the Internet at *http://ferc.fed.us/docs-filing/elibrary.asp.*

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202) 208–1659 (TTY), or send a FAX to (202) 208–2106 with the required accommodations.

All interested parties and staff are permitted to attend the conference. For more information about the conference, please contact David Kathan at (202) 502–6404 or e-mail *David.Kathan@FERC.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E5–1149 Filed 3–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM02–4–003 and PL02–1–003]

Critical Energy Infrastructure Information; Notice Soliciting Public Comment

March 3, 2005.

1. On August 3, 2004, the Federal Energy Regulatory Commission (the Commission) issued a final rule in Order No. 649 amending its regulations for gaining access to critical energy infrastructure information (CEII).[1] The Commission issued Order No. 649 in response to public comments it had solicited on the operation of its newly-implemented CEII rules. In Order No. 649, the Commission committed to continue its monitoring and review of its CEII program and to examine the effectiveness of the rules within one year. In order to facilitate this review, the Commission is issuing this notice soliciting public comment on the effectiveness of its CEII process.

Background

2. Although the Commission's CEII process was established in Order No. 630 in March 2003,[2] its efforts began shortly after the attacks of September 11, 2001 with the issuance of a policy statement in PL02–1–000 (Policy Statement). *See* Statement of Policy on Treatment of Previously Public Documents, 66 FR 52917 (Oct. 18, 2001), 97 FERC ¶ 61,130 (2001). In its Policy Statement, the Commission explained its removal of certain previously-public records from public access through the Public Reference Room, the Commission's document retrieval system, and the Internet. The documents affected by the Policy Statement included oversized maps and other categories of records likely to detail specifications of facilities licensed or certified by the Commission. The Policy Statement advised the public to request such information in accordance with the Freedom of Information Act (FOIA) process detailed in 5 U.S.C. 552 and in the Commission's regulations at 18 CFR 388.108 (2004).

3. In January 2003, the Commission issued a notice of inquiry (the NOI) that raised issues for public comment and provided guidance to those filing information that might warrant non-public treatment under the Policy Statement. *See* Notice of Inquiry and Guidance for Filings in the Interim, 67 FR 3129 (Jan. 23, 2002), FERC Stats. & Regs. ¶ 35,542 (2002). The NOI identified information the Commission was seeking to protect as ''critical energy infrastructure information,'' or ''CEII,'' and asked for public comment on how to define the scope of the term. The NOI also invited public comment on the Commission's legal authority to protect CEII (including applicability of FOIA exemptions), requester verification and access issues, use of non-disclosure agreements, and the process for requesting CEII.

4. After reviewing the comments received in response to the NOI, the Commission issued a notice of proposed rulemaking regarding CEII (the NOPR). 67 FR 57994 (Sept. 13, 2002); FERC Stats. & Regs. ¶ 32,564 (2002). The NOPR expanded the proposed definition of CEII to include detailed information about proposed facilities as well as those already licensed or certificated by the Commission. In addition, it proposed a new process that would restrict general public access to CEII while at the same time permitting those with a need for the information to obtain it in a timely manner. To that end, the NOPR proposed a supplement to the FOIA request process that would enable requesters to get access to CEII that was otherwise exempt from mandatory disclosure under the FOIA. Under the proposed process, requesters would have to provide limited personal information about themselves and their need for the information. This information would be considered in determining whether or not to grant the request. In addition, release would generally be contingent upon the requester agreeing to abide by the terms of an appropriate non-disclosure agreement.

5. On February 21, 2003, the Commission issued its CEII rule in Order No. 630. The Commission defined CEII to include information about proposed facilities and to exclude information that simply identified the location of the infrastructure. In addition, the Commission's related definition of ''critical infrastructure'' was broad enough to cover virtually all facilities within its jurisdiction. The Commission declined to limit protection to ''high risk'' projects or facilities, opting instead to include virtually all facilities and components, including computer systems that control or form part of the energy infrastructure.

6. After receiving a request for rehearing on Order No. 630, the Commission issued Order No. 630–A, denying the request for rehearing, but amending the rule in several respects.[3] Specifically, the order on rehearing made several minor procedural changes and clarifications, added a reference in the regulation regarding the filing of non-Internet public (NIP) information, a term first described in Order No. 630, and added a commitment to review the effectiveness of the new process after six months.

7. The first CEII review was initiated with a notice soliciting public comment that was issued on February 13, 2004.[4] After reviewing the comments received, the Commission made a few additional changes to the CEII process in Order No. 649.[5] The Commission changed the treatment of boundary maps from CEII to NIP. It also agreed that federal agencies would not have to file more than one request for CEII in one docket, and that agents of owners and operators of facilities could get information on their clients' facilities outside the CEII process with written authorization from the owner/operator. As with the earlier order on rehearing, the Commission committed to re-examine the effectiveness of its CEII rules within the

[1] Critical Energy Infrastructure Information, Order No. 649, 69 FR 48386 (Aug. 10, 2004).

[2] Critical Energy Infrastructure Information, Order No. 630, 68 FR 9857 (Mar. 3, 2003), FERC Stats. & Regs. ¶ 31,140 (2003).

[3] Critical Energy Infrastructure Information, Order No. 630–A, 68 FR 46456 (July 23, 2003), FERC Stats. & Regs. ¶ 31,147 (2003).

[4] Notice Soliciting Public Comment, 69 FR 8638 (Feb. 25, 2004).

[5] Critical Energy Infrastructure Information, Order No. 649, 69 FR 48386 (Aug. 10, 2004), FERC Stats. & Regs. ¶ 31,167 (2004).

next year. This order is intended to facilitate that review.

Experience To Date

8. Since Order No. 630 became effective on April 2, 2003, the Commission has received many filings where the submitters have requested non-public treatment of documents because they contained CEII. In addition, Commission staff has designated certain internally-generated documents as CEII as well. Despite the amount of information that has been designated as CEII, the Commission has received relatively few complaints that the rules have impaired requesters' ability to participate meaningfully in Commission proceedings. As discussed below, the Commission has taken steps to minimize the harm to requesters in such cases. The Commission has not received any requests for rehearings of CEII Coordinator decisions to date.[6]

9. Once a CEII request is received, the appropriate staff members locate the document requested and provide the document to legal staff with a recommendation regarding whether or not the information qualifies as CEII. In cases where the requested document was submitted to the Commission with a request for CEII treatment, the Associate General Counsel for General Law notifies the submitter of the request and gives the submitter a period of at least five days in which to comment on both release to the particular requester and the non-public nature of the document itself, including FOIA exemptions applicable to the document. Each time a document is requested, the submitter receives a notice and opportunity to comment on release to that particular requester. Commission staff reviews each requested document to determine whether it qualifies as CEII, verifies the requester's identity and need for the information requested, and seeks to obtain an appropriate non-disclosure agreement from the requester. Where the submitter of the document provides information regarding the request or requester, the staff factors such information into its recommendation to the CEII Coordinator. When the request involves a Commission-generated document, the CEII Coordinator releases the document to the requester with the order granting the request. In cases where the document has been submitted to the Commission, the CEII Coordinator issues a decision on release, but release of the document is delayed by at least five days to give the submitter notice prior to release of the document. Because of the required notice and comment period and the notice prior to release, it usually takes staff more time to process requests for documents submitted to the Commission than those that are internally generated.

10. The Commission has been largely successfully in its goal of processing CEII requests expeditiously. However, as discussed below, there have been some instances where the sensitivity of certain requested documents required additional research, and in one instance warranted a vote of the Commission to establish the appropriate standard for release of those documents.[7] In those instances involving the Weaver's Cove application to construct a liquefied natural gas facility in CP04–36–000, the process took longer than usual. Some of those requests were denied for failure to agree to the terms of a non-disclosure agreement specified by the CEII Coordinator.[8] In other instances, portions of one document were not released because the harm from release outweighed the requesters' need for the information.[9] In order to minimize harm to requesters receiving CEII in the Weaver's Cove proceeding, the Secretary issued a notice giving such requesters additional time in which to file comments on the draft environmental impact statement.[10] The Commission believes the steps it has taken have protected the due process rights of those involved in the proceeding.

11. The Commission received 79 requests for CEII in FY 2003, 304 CEII requests in FY 2004, and as of February 18, 2005, has received 162 CEII requests for FY 2005. As of February 18, 2005, there were 109 CEII requests pending. The vast majority of those pending were either filed after January 1, 2005 or are awaiting information from the requester, such as the non-disclosure agreement. The majority of the requests that have been denied were denied for failure to agree to the terms of a non-disclosure agreement. The other denials were either because of the extreme sensitivity of the information (in the case of one Weaver's Cove document), or because the information was subject to the attorney-client, attorney work product, or deliberative process privileges, or protected by statute (*e.g.*, cultural resource locations). The Commission generally does not intend to release privileged information, regardless of whether or not it falls within the definition of CEII. In addition to formal requests for CEII under 18 CFR 388.113, Commission staff also received numerous direct requests from owners or operators of facilities and their authorized agents for documents containing CEII relating to their own facilities. Staff generally satisfies those owner/operator requests within a few days of receipt.

12. As noted in Order No. 649, the Commission remains committed to examining the effectiveness of its CEII rules, and therefore seeks public comments regarding its CEII process. This notice invites the public to comment on its experience under the CEII procedures and to suggest ways to improve the process. While the public is free to provide comments on any aspect of the Commission's CEII rules, the Commission specifically invites comments on the following issues:

i. Is the CEII designation being misused or claimed for information that does not meet the definition?

ii. Is there a need for the non-Internet public designation? Is it currently too broad? Are there location maps that should be available on the Internet?

iii. Does it make sense for the Commission to protect (either as CEII or NIP) information that is readily publicly available, for instance in USGS maps?

iv. Are there classes of information that are not appropriate for release even when a legitimate requester agrees to the terms of an appropriate non-disclosure agreement?

The Commission orders:

Comments regarding the Commission's CEII process should be filed with the Office of the Secretary within 30 days of the issuance of this order.

By direction of the Commission.

Linda Mitry,

Deputy Secretary.

[FR Doc. 05–4947 Filed 3–15–05; 8:45 am]

BILLING CODE 6717–01–P

[6] Commission action on CEII requests is delegated to the CEII Coordinator, whose decisions are subject to rehearing. No requester has pursued a request for rehearing of any of the CEII decisions rendered to date.

[7] Alfred Lima, 110 FERC ¶ 61,002 (Jan. 5, 2005).

[8] Edward M. Lambert, Jr., *et al.*, 110 FERC ¶ 62,050 (Jan. 21, 2005).

[9] *See, e.g.*, Lima, 110 FERC ¶ 61,002 (Jan. 5, 2005).

[10] *Weaver's Cove Energy, L.L.C.,* 70 FR 4838 (Jan. 31, 2005).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11872–001]

Gentry Resources Corporation; Notice of Surrender of Preliminary Permit

March 10, 2005.

Take notice that Gentry Resources Corporation, permittee for the proposed Lake Pleasant Pumped Storage Project,

has requested that its preliminary permit be terminated. The permit was issued on January 21, 2004, and would have expired on December 31, 2006.[1] The project would have been located on the Aqua Fria River in Maricopa and Yavapai Counties, Arizona.

The permittee filed the request on February 17, 2005, and the preliminary permit for Project No. 11872 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, part-day holiday that affects the Commission, or legal holiday as described in section 18 CFR 385.2007, in which case the effective date is the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1150 Filed 3–15–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7884–6]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree, to address a lawsuit filed by the American Lung Association of Metropolitan Chicago, Citizens Against Ruining the Environment, the Environmental Law & Policy Center, the Illinois Public Interest Research Group, the Lake County Conservation Alliance, the Little Village Environmental Justice Organization and the Sierra Club (collectively ''Plaintiffs''): *American Lung Association of Metropolitan Chicago, et al.* v. *Johnson*, No. 04–C–5966 (N.D. Ill.), consolidated with Lake County Conservation Alliance v. Leavitt, No. 04–5967 and Citizens Against Ruining the Environment v. Leavitt, No. 04–5968. On or about September 13, 2004, Plaintiffs filed deadline suits to compel the Administrator to respond to petitions seeking EPA's objection to Title V operating permits issued by the Illinois Environmental Protection Agency for five electrical generating stations of the Midwest Generation Company known as the Fisk Generating Station, the Crawford Generating Station, the Joliet Generating Station, the Will County Generating Station, and the Waukegan Generating Station in the State of Illinois. Under the terms of the proposed consent decree, three deadlines are established for responding to Title V veto petitions ranging from March 25, 2005 to September 23, 2005.

DATES: Written comments on the proposed consent decree must be received by April 15, 2005.

ADDRESSES: Submit your comments, identified by docket ID number OGC–2005–0003, online at *http://www.epa.gov/edocket* (EPA's preferred method); by e-mail to *oei.docket@epa.gov*; mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD-ROM should be formatted in Wordperfect or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Padmini Singh, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. telephone: (202) 564–5641.

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

Plaintiffs submitted administrative petitions to the Administrator of the Environmental Protection Agency requesting that he object to Title V operating permits issued by the Illinois Environmental Protection Agency for five electrical generating stations in the State of Illinois. The Consent Decree establishes three deadlines for responding to the petitions. The Decree, which is subject to CAA section 113(g), provides the following schedule for EPA's responses to the five title V petitions. EPA must sign an order responding to each petition no later than the dates listed: March 25, 2005 for Fisk Generating Station and Crawford Generating Station; by June 24, 2005 for Will County Generating Station and Joliet Generating Station; and by September 23, 2005 for Waukegan Generating Station. If EPA fulfills its obligations as described in the decree, the Consent Decree shall terminate and the case shall be dismissed with prejudice.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed consent decree from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, based on any comment which may be submitted, that consent to the consent decree should be withdrawn, the terms of the decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How Can I Get a Copy of the Consent Decree?

EPA has established an official public docket for this action under Docket ID No. OGC–2005–0003 which contains a copy of the consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, 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 Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or

[1] 106 FERC ¶ 62,042.

other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in EPA's electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and To Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: March 10, 2005.

Richard B. Ossias,

Acting Associate General Counsel, Air and Radiation Law Office, Office of General Counsel.

[FR Doc. 05–5132 Filed 3–15–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket Number ORD–2005–0005; FRL–7884–8]

Board of Scientific Counselors, Ecological Research Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the Environmental Protection Agency, Office of Research and Development (ORD), announces a meeting of the Board of Scientific Counselors (BOSC) Ecological Research Subcommittee.

DATES: A teleconference call meeting will be held on Friday, April 1, 2005, from 5 p.m. to 7 p.m. All times noted are Eastern Standard Time. The meeting may adjourn early if all business is completed.

ADDRESSES: *Conference calls:* Participation in the conference call will be by teleconference only—meeting rooms will not be used. Members of the public may obtain the call-in number and access code for the teleconference meeting from Greg Susanke, whose contact information is listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Document Availability

The draft agenda for the meeting is available from Greg Susanke, whose contact information is listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice. Requests for the draft agenda will be accepted up to 2 business days prior to the conference call/meeting date. The draft agenda also can be viewed through EDOCKET, as provided in Unit I.A. of the **SUPPLEMENTARY INFORMATION** section.

Any member of the public interested in making an oral presentation during the conference call may contact Greg Susanke, whose contact information is listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice. Requests for making oral presentations will be accepted up to 2 business days prior to each conference call/meeting date. In general, each individual making an oral presentation will be limited to a total of three minutes.

Submitting Comments

Written comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I.B. of this section. Written comments will be accepted up to 2 business days prior to the conference call/meeting date.

FOR FURTHER INFORMATION CONTACT: Greg Susanke, Designated Federal Officer, Environmental Protection Agency, Office of Research and Development, Mail Code 8104R, 1200 Pennsylvania Avenue NW., Washington, DC; telephone (202) 564–9945; fax (202) 565–2925; e-mail *susanke.greg@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

This notice announces a meeting of the BOSC Ecological Research Subcommittee. The purpose of the meeting is to evaluate EPA's Ecological Research Program. The proposed agenda item for the conference call includes, but is not limited to a discussion of the subcommittee's draft report. The conference call is open to the public.

Information on Services for the Handicapped: Individuals requiring special accommodations at this meeting should contact Greg Susanke, Designated Federal Officer, at (202) 564–9945 at least five business days prior to the meeting so that appropriate arrangements can be made to facilitate their participation.

A. How Can I Get Copies of Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. ORD–2005–0005. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Documents in the official public docket are listed in the index in EPA's electronic public docket and comment system, EDOCKET. Documents are available either electronically or in hard copy. Electronic documents may be viewed through EDOCKET. Hard copies of the draft agenda may be viewed at the Board of Scientific Counselors, Ecological Research Subcommittee Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m.,

Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the ORD Docket is (202) 566–1752.

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

An electronic version of the public docket is available through EDOCKET. You may use EDOCKET at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number (ORD–2005–0005).

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

Public comments submitted on computer disks mailed or delivered to the docket will be transferred to EPA's electronic public docket. Written public comments mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number (ORD–2005–0005) in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment, and it allows EPA to contact you if further information on the substance of the comment is needed or if your comment cannot be read due to technical difficulties. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EDOCKET.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EDOCKET at *http://www.epa.gov/edocket/,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, *http://www.epa.gov,* select ''Information Sources,'' ''Dockets,'' and ''EDOCKET.'' Once in the system, select ''search,'' and then key in Docket ID No. ORD–2005–0005. The system is an anonymous access system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *ORD.Docket@epa.gov,* Attention Docket ID No. ORD–2005–0005. In contrast to EPA's electronic public docket, EPA's e-mail system is not an anonymous access system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM mailed to the mailing address identified in Unit I.B.2. These electronic submissions will be accepted in Word, WordPerfect or rich text files. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: U.S. Environmental Protection Agency, ORD Docket, EPA Docket Center (EPA/DC), Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. ORD–2005–0005.

3. *By Hand Delivery or Courier.* Deliver your comments to: EPA Docket Center (EPA/DC), Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. ORD–2005–0005 (**Note:** this is not a mailing address). Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.A.1.

Dated: March 10, 2005.

Kevin Y. Teichman,

Director, Office of Science Policy.

[FR Doc. 05–5131 Filed 3–15–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

OPP–2004–0162; FRL–7703–4]

Napropamide Risk Assessments and Related Documents; Notice of Availability

AGENCY: Environmental Protection Agency EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's risk assessments and related documents for the pesticide napropamide, and opens a public comment period on these documents. EPA is developing a Reregistration Eligibility Decision (RED) for napropamide through a modified, 4-Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments, identified by docket identification (ID) number OPP–2004–0162, must be received on or before May 16, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Demson Fuller, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8062; fax number: (703) 308–7042; e-mail address: *fuller.demson@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2004–0162. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

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

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

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

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2004–0162. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2004–0162. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address

identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0162.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2004–0162. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

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

8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

A. What Action is the Agency Taking?

EPA is releasing for public comment its human health and environmental fate and effects risk assessments and related documents for napropamide. Napropamide is a selective preemergence herbicide belonging to the amide class of pesticides. It controls weeds by preventing root cell elongation, thus disrupting the growth process during germination. Napropamide is registered to control broadleaf weeds and annual grasses on numerous food/feed and non-food/feed use sites, including fruits and nuts, vegetables, ornamentals, turf/lawns, forestry sites and tobacco. EPA is developing the risk assessments for napropamide through a modified version of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's risk assessments for napropamide. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, such as environmental fate data, ecological aquatic toxicity data, etc., or could address the Agency's risk assessment methodologies and assumptions as applied to this specific pesticide.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to napropamide, compared to the general population.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819)(FRL–7357–9) explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of the issues, and degree of public concern associated with each pesticide. For napropamide, a modified, 4-Phase process with 1 comment period and ample opportunity for public consultation seems appropriate in view of its risk assessments. However, if as a result of comments received during this comment period EPA finds that additional issues warranting further discussion are raised, the Agency may lengthen the process and include a second comment period, as needed.

All comments should be submitted using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION**, and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for napropamide. Comments received after the close of the comment period will be marked ''late'' EPA is not required to consider these late comments.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA.

This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: March 9, 2005.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–5211 Filed 3–15–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0217; FRL–7705–2]

Imazalil; Notice of Availability of the Amendment to the Imazalil RED; Correction of Docket Number

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's amendment to the 2003 Reregistration Eligibility Decision (RED) for the pesticide imazalil and informs the public of a correction of the docket identification (ID) number.

FOR FURTHER INFORMATION CONTACT: Meghan French, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8004; fax number: (703) 308–8005; e-mail address: *french.meghan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2003–0217. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm.119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. What Does this Amendment and Correction Do?

The amendment to the Imazalil RED shows an updated label table that meets current EPA label language requirements. In addition, this amendment alerts the public and technical registrants that the special study to determine the availability of imazalil from treated citrus is no longer required, but that a data gap exists for OPPTS Harmonized Guideline 830.7050. EPA announced the availability of the Imazalil RED in the **Federal Register** of February 25, 2005 (70 FR 9317) (FRL–7700–9). In that document, the docket ID number was inadvertently listed as OPP–2004–0107. The correct docket ID number for imazalil is OPP–2003–0217.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: March 9, 2005.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–5208 Filed 3–15–05; 8:45 am]

BILLING CODE 6560–50– S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0041; FRL–7700–2]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket identification (ID)number [OPP–2005–0041], must be received on or before April 15, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Linda A. DeLuise, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5428; e-mail address: *deluise.linda@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System

(NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2005–0041. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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

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

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

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

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

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.''. EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2005–0041. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2005–0041. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

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

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2005–0041.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2005–0041. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 25, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

FMC Corporation

PP 4F6893

EPA has received pesticide petition (PP4F6893) from FMC Corporation, 1735 Market Street, Philadelphia, PA 19103, proposing pursuant to section 408 (d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR 180.418 by establishing a tolerance for residues of the insecticide zeta-cypermethrin (±α-Cyano(3-phenoxyphenyl)methyl (±) *cis, trans* 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate and its inactive isomers) in or on all food/feed items (other than those covered by a higher tolerance as a result of use on growing crops) in food/feed handling establishments at 0.05 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of cypermethrin in plants is adequately understood. Studies have been conducted to delineate the metabolism of radiolabelled cypermethrin in various crops all showing similar results. The residue of concern is the parent compound only.

2. *Analytical method.* There is a practical analytical method for detecting and measuring levels of cypermethrin in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances (Gas Chromatography with Electron Capture Detection (GC/ECD).

3. *Magnitude of residues.* A food/feed handling establishment study conducted at the maximum label rate for all food/feed items (other than those covered by a higher tolerance as a result of use on growing crops) in food/feed handling establishments show that the proposed zeta-cypermethrin tolerance in or on all food/feed items (other than those covered by a higher tolerance as a result of use on growing crops) in food/feed handling establishments at 0.05 ppm will not be exceeded when the zeta-cypermethrin product labeled for this use are used as directed.

B. Toxicological Profile

1. *Acute toxicity.* For the purposes of assessing acute dietary risk, FMC has used the NOEL of 10.0 mg/kg/day from the zeta-cypermethrin acute neurotoxicity study in rats. The LOAEL of 50.0 mg/kg/day was based on clinical signs. This acute dietary endpoint is used to determine acute dietary risks to all population subgroups.

2. *Genotoxicity.* The following genotoxicity tests were all negative:*in*

vivo chromosomal aberration in rat bone marrow cells; *in vitro* cytogenic chromosome aberration; unscheduled DNA synthesis; CHO/HGPTT mutagen assay; weakly mutagenic: Gene mutation (Ames).

3. *Reproductive and developmental toxicity*. No evidence of additional sensitivity to young rats was observed following pre- or postnatal exposure to zeta-cypermethrin.

i. A two-generation reproductive toxicity study with zeta-cypermethrin in rats demonstrated a NOEL of 7.0 mg/kg/day and a LOEL of 27.0 mg/kg/day for parental/systemic toxicity based on body weight, organ weight, and clinical signs. There were no adverse effects in reproductive performance. The NOEL for reproductive toxicity was considered to be > 45.0 mg/kg/day (the highest dose tested).

ii. A developmental study with zeta-cypermethrin in rats demonstrated a maternal NOEL of 12.5 mg/kg/day and a LOEL of 25 mg/kg/day based on decreased maternal body weight gain, food consumption and clinical signs. There were no signs of developmental toxicity at 35.0 mg/kg/day, the highest dose level tested.

iii. A developmental study with cypermethrin in rabbits demonstrated a maternal NOEL of 100 mg/kg/day and a LOEL of 450 mg/kg/day based on decreased body weight gain. There were no signs of developmental toxicity at 700 mg/kg/day, the highest dose level tested.

4. *Subchronic toxicity*. Short- and intermediate-term toxicity (incidental oral exposure). The NOEL of 10.0 mg/kg/day based on clinical signs at the LEL of 50.0 mg/kg/day in the zeta-cypermethrin acute neurotoxicity study in rats would also be used for short-term %aPAD and MOE calculations (as well as acute, discussed in (1) above), and the NOEL of 5.0 mg/kg/day based on decreased motor activity in the zeta-cypermethrin subchronic neurotoxicity study in rats, would be used for intermediate-term MOE calculations.

5. *Chronic toxicity*. i. The chronic reference dose (RfD) of 0.06 mg/kg/day for zeta-cypermethrin is based on a NOEL of 6.0 mg/kg/day from a cypermethrin chronic feeding study in dogs and an uncertainty factor of 100. The endpoint effect of concern was based on clinical signs.

ii. Cypermethrin is classified as a Group C chemical (possible human carcinogen with limited evidence of carcinogenicity in animals) based upon limited evidence for carcinogenicity in female mice; assignment of a Q* has not been recommended.

6. *Animal metabolism*. The metabolism of cypermethrin in animals is adequately understood. Cypermethrin has been shown to be rapidly absorbed, distributed, and excreted in rats when administered orally. Cypermethrin is metabolized by hydrolysis and oxidation.

7. *Metabolite toxicology*. The Agency has previously determined that the metabolites of cypermethrin are not of toxicological concern and need not be included in the tolerance expression nor in the risk exposure assessments.

8. *Endocrine disruption*. No special studies investigating potential estrogenic or other endocrine effects of cypermethrin have been conducted. However, no evidence of such effects were reported in the standard battery of required toxicology studies which have been completed and found acceptable. Based on these studies, there is no evidence to suggest that cypermethrin has an adverse effect on the endocrine system.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food*. Permanent tolerances, in support of registrations, currently exist for residues of zeta-cypermethrin on: Alfalfa hay, alfalfa forage, alfalfa seed, aspirated grain fractions, sugar beets (roots and tops), head, stem and leafy Brassica vegetables, cabbage, field corn grain, pop corn grain, field corn forage, field corn stover, pop corn stover, sweet corn (K+CWHR), sweet corn forage, sweet corn stover, cottonseed, dried shelled peas and beans, edible podded legume vegetables, fruiting vegetables (except Cucurbits), leafy vegetables, head lettuce, bulb and green onions, pecans, rice grain, rice hulls, rice straw, sorghum forage, sorghum grain, sorghum stover, soybean seed, succulent shelled peas and beans, sugarcane, wheat forage, wheat grain, wheat hay, wheat straw, meat, fat and meat byproducts of cattle, goats, hogs, horses and poultry, eggs, milk and milk fat. For the purposes of assessing the potential dietary exposure for these existing and the subject proposed tolerances, FMC has utilized available information on anticipated residues, monitoring data and percent crop treated as follows:

ii. *Acute exposure and risk*. Acute dietary exposure risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. For the purposes of assessing acute dietary risk for zeta-cypermethrin, FMC has used the NOEL of 10.0 mg/kg/day from the zeta-cypermethrin acute neurotoxicity study in rats with an uncertainty factor (UF) of 100 (acute RfD = 0.10 mg/kg/day). The LEL of 50.0 mg/kg/day was based on clinical signs. This acute dietary endpoint is used to determine acute dietary risks to all population subgroups. Available information on anticipated residues, monitoring data and percent crop treated was incorporated into a Tier 3 analysis, using Monte Carlo modeling for commodities that may be consumed in a single serving. These assessments show that the percent acute Population Adjusted Dose (%aPAD) all fall below the EPA's level of concern (≥100%). The 95th percentile of exposure for the overall U. S. population was estimated to be 0.001177 mg/kg/day (%aRfD of 1.2); 99th percentile 0.003307 mg/kg/day (%aRfD of 3.3); and 99.9th percentile 0.012692 mg/kg/day (%aRfD of 12.7). The 95th percentile of exposure for all infants <1 year old was estimated to be 0.002441 mg/kg/day (%aRfD of 2.4); 99th percentile 0.011178 mg/kg/day (%aRfD of 11.2); and 99.9th percentile 0.029462 mg/kg/day (%aRfD of 29.5). The 95th percentile of exposure for nursing infants <1 year old was estimated to be 0.001247 mg/kg/day (%aRfD of 1.3); 99th percentile 0.004540 mg/kg/day (%aRfD of 4.5); and 99.9th percentile 0.011659 mg/kg/day (%aRfD of 11.7). The 95th percentile of exposure for non-nursing infants <1 year old (the most highly exposed population subgroup) was estimated to be 0.002786 mg/kg/day (%aRfD of 2.8); 99th percentile 0.012899 mg/kg/day (%aRfD of 12.9); and 99.9th percentile 0.033071 mg/kg/day (%aRfD of 33.1). The 95th percentile of exposure for children 1 to 6 years old and children 7 to 12 years old was estimated to be, respectively, 0.001942 mg/kg/day (%aRfD of 1.9) and 0.001244 mg/kg/day (%aRfD of 1.2); 99th percentile 0.005670 mg/kg/day (%aRfD of 5.7) and 0.003082 (%aRfD of 3.1); and 99.9th percentile 0.018280 mg/kg/day (%aRfD of 18.3) and 0.009335 (%aRfD of 9.3). The 95th percentile of exposure for females (13+/nursing) was estimated to be 0.001128 mg/kg/day (%aRfD of 1.1); 99th percentile 0.003112 mg/kg/day (%aRfD of 3.1); and 99.9th percentile 0.012903 mg/kg/day (%aRfD of 12.9). Therefore, FMC concludes that the acute dietary risk of zeta-cypermethrin, as estimated by the dietary risk assessment, does not appear to be of concern.

iii. *Chronic exposure and risk*. The chronic reference dose (cRfD) of 0.06 mg/kg/day for zeta-cypermethrin is based on a NOEL of 6.0 mg/kg/day from a cypermethrin chronic feeding study in dogs and an uncertainty factor of 100.

The endpoint effect of concern was based on clinical signs. A chronic dietary exposure/risk assessment has been performed for zeta-cypermethrin using the above cRfD. Available information on anticipated residues, monitoring data and percent crop treated was incorporated into the analysis to estimate the anticipated residue contribution (ARC). The ARC is generally considered a more realistic estimate than an estimate based on tolerance level residues. The ARC are estimated to be 0.000184 mg/kg body weight (bwt)/day and utilize 0.3 percent of the cRfD for the overall U. S. population. The ARC for non-nursing infants (<1 year) (subgroup most highly exposed) are estimated to be 0.000666 mg/kg bwt/day and utilizes 1.1 percent of the cRfD, respectively. The ARC for children 1-6 years old and children 7-12 years old are estimated to be 0.000477 mg/kg bwt/day and 0.000254 mg/kg bwt/day and utilizes 0.8 percent and 0.4 percent of the cRfD, respectively. The ARC for females (13+/nursing) is estimated to be 0.000180 mg/kg bwt/day and utilizes 0.3 percent of the RfD. Generally speaking, the EPA has no cause for concern if the total dietary exposure from residues for uses for which there are published and proposed tolerances is less than 100 percent of the cRfD. Therefore, FMC concludes that the chronic dietary risk of zeta-cypermethrin, as estimated by the dietary risk assessment, does not appear to be of concern.

iv. *Drinking water*. Laboratory and field data have demonstrated that cypermethrin is immobile in soil and will not leach into groundwater. Other data show that cypermethrin is virtually insoluble in water and extremely lipophilic. As a result, FMC concludes that residues reaching surface waters from field runoff will quickly adsorb to sediment particles and be partitioned from the water column. Drinking water estimated concentrations (DWEC) and the corresponding drinking water level of comparison (DWLOC) values were calculated for chronic and acute exposures. The results show that all DWLOC values exceed the DWEC values. Thus, exposure to zetacypermethrin and cypermethrin residues in drinking water is not of concern.

US EPA's draft SOP for Incorporating Estimates of Drinking Water Exposure Into Aggregate Risk Assessments was used to perform a drinking water analysis. This SOP utilizes a variety of tools to conduct drinking water assessment. These tools include water models such as FQPA Index Reservoir Screening Tool (FIRST), PRZM/EXAMS, SCIGROW and monitoring data. If monitoring data are not available then the models are used to predict potential residues in drinking water. The technique recommended in the drinking water SOP compares a calculated Drinking Water Level of Comparison (DWLOC) value to the Drinking Water Estimated Concentration (DWEC) value. The DWEC value results from either the monitoring data residues or modeled water residues. If the DWLOC value exceeds the DWEC value then there is reasonable certainty that no harm will result from the acute or chronic aggregate exposure.

In the case of cypermethrin and zeta-cypermethrin, monitoring data do not exist. Therefore, the FIRST model was used to estimate a surface water residue. The risk assessment for drinking water compares two values: The DWLOC and the DWEC. The DWLOC is the drinking water level of comparison. This is the maximum allowable drinking water concentration (in ppb). The DWEC is the drinking water environmental concentration, which is derived either from monitoring studies or from modeling. If the DWLOC is greater than the DWEC, then the overall exposure from water, food, and residential is considered to be acceptable. The calculated DWLOC values for acute and chronic exposures for all adults, adult females and children exceed the modeled DWEC surface water residues. Therefore, there is reasonable certainty that no harm will result from cumulative and aggregate (food and water) exposure to cypermethrin and zetacypermethrin residues.

2. *Non-dietary exposure*. Zeta-cypermethrin is registered for agricultural crop applications only, therefore non-dietary exposure assessments are not warranted.

D. Cumulative Effects

In consideration of potential cumulative effects of cypermethrin and other substances that may have a common mechanism of toxicity, to our knowledge there are currently no available data or other reliable information indicating that any toxic effects produced by cypermethrin would be cumulative with those of other chemical compounds; thus only the potential risks of cypermethrin have been considered in this assessment of its aggregate exposure. FMC intends to submit information for the EPA to consider concerning potential cumulative effects of cypermethrin consistent with the schedule established by EPA at 62 FR 42020 (August 4, 1997)(FRL–5734–6) and other EPA publications pursuant to the Food Quality Protection Act.

E. Safety Determination

1. *U. S. population*. The chronic reference dose (cRfD) of 0.06 mg/kg/day for zeta-cypermethrin is based on a NOEL of 6.0 mg/kg/day from a cypermethrin chronic feeding study in dogs and an uncertainty factor of 100. The endpoint effect of concern was based on clinical signs. A chronic dietary exposure/risk assessment has been performed for zeta-cypermethrin using the above cRfD. Available information on anticipated residues, monitoring data and percent crop treated was incorporated into the analysis to estimate the anticipated residue contribution (ARC). The ARC is generally considered a more realistic estimate than an estimate based on tolerance level residues. The ARC are estimated to be 0.000184 mg/kg body weight (bwt)/day and utilize 0.3 percent of the cRfD for the overall U. S. population. The ARC for non-nursing infants (<1 year) (subgroup most highly exposed) are estimated to be 0.000666 mg/kg bwt/day and utilizes 1.1 percent of the cRfD, respectively. The ARC for children 1-6 years old and children 7-12 years old are estimated to be 0.000477 mg/kg bwt/day and 0.000254 mg/kg bwt/day and utilizes 0.8 percent and 0.4 percent of the cRfD, respectively. The ARC for females (13+/nursing) is estimated to be 0.000180 mg/kg bwt/day and utilizes 0.3 percent of the RfD. Generally speaking, the EPA has no cause for concern if the total dietary exposure from residues for uses for which there are published and proposed tolerances is less than 100 percent of the cRfD. Therefore, FMC concludes that the chronic dietary risk of zeta-cypermethrin, as estimated by the dietary risk assessment, does not appear to be of concern.

Acute dietary exposure risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. For the purposes of assessing acute dietary risk for zeta-cypermethrin, FMC has used the NOEL of 10.0 mg/kg/day from the zeta-cypermethrin acute neurotoxicity study in rats with an uncertainty factor (UF) of 100 (acute RfD = 0.10 mg/kg/day). The LEL of 50.0 mg/kg/day was based on clinical signs. This acute dietary endpoint is used to determine acute dietary risks to all population subgroups. Available information on anticipated residues, monitoring data and percent crop treated was incorporated into a Tier 3 analysis,

using Monte Carlo modeling for commodities that may be consumed in a single serving. These assessments show that the percent acute Population Adjusted Dose (%aPAD) all fall below the EPA's level of concern (≥100%). The 95th percentile of exposure for the overall U. S. population was estimated to be 0.001177 mg/kg/day (%aRfD of 1.2); 99th percentile 0.003307 mg/kg/day (%aRfD of 3.3); and 99.9th percentile 0.012692 mg/kg/day (%aRfD of 12.7). The 95th percentile of exposure for all infants <1 year old was estimated to be 0.002441 mg/kg/day (%aRfD of 2.4); 99th percentile 0.011178 mg/kg/day (%aRfD of 11.2); and 99.9th percentile 0.029462 mg/kg/day (%aRfD of 29.5). The 95th percentile of exposure for nursing infants <1 year old was estimated to be 0.001247 mg/kg/day (%aRfD of 1.3); 99th percentile 0.004540 mg/kg/day (%aRfD of 4.5); and 99.9th percentile 0.011659 mg/kg/day (%aRfD of 11.7). The 95th percentile of exposure for non-nursing infants <1 year old (the most highly exposed population subgroup) was estimated to be 0.002786 mg/kg/day (%aRfD of 2.8); 99th percentile 0.012899 mg/kg/day (%aRfD of 12.9); and 99.9th percentile 0.033071 mg/kg/day (%aRfD of 33.1). The 95th percentile of exposure for children 1 to 6 years old and children 7 to 12 years old was estimated to be, respectively, 0.001942 mg/kg/day (%aRfD of 1.9) and 0.001244 mg/kg/day (%aRfD of 1.2); 99th percentile 0.005670 mg/kg/day (%aRfD of 5.7) and 0.003082 (%aRfD of 3.1); and 99.9th percentile 0.018280 mg/kg/day (%aRfD of 18.3) and 0.009335 (%aRfD of 9.3). The 95th percentile of exposure for females (13+/nursing) was estimated to be 0.001128 mg/kg/day (%aRfD of 1.1); 99th percentile 0.003112 mg/kg/day (%aRfD of 3.1); and 99.9th percentile 0.012903 mg/kg/day (%aRfD of 12.9). Therefore, FMC concludes that the acute dietary risk of zeta-cypermethrin, as estimated by the dietary risk assessment, does not appear to be of concern.

2. *Infants and children*— i. *General.* In assessing the potential for additional sensitivity of infants and children to residues of zeta-cypermethrin, FMC considered data from developmental toxicity studies in the rat and rabbit, and a two-generation reproductive study in the rat. The data demonstrated no indication of increased sensitivity of rats to zeta-cypermethrin or rabbits to cypermethrin *in utero* and/or postnatal exposure to zeta-cypermethrin or cypermethrin. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductiveility of mating animals and data on systemic toxicity. FFDCA section 408 provides that EPA may apply an additional margin of safety for infants and children in the case of thresholdeffects to account for pre- and post-natal toxicity and the completeness of the database.

ii. *Developmental toxicity studies.* In the prenatal developmental toxicity studies in rats and rabbits, there was no evidence of developmental toxicity at the highest doses tested (35.0 mg/kg/day in rats and 700 mg/kg/day in rabbits). Decreased body weight gain was observed at the maternal LOEL in each study; the maternal NOEL was established at 12.5 mg/kg/day in rats and 100 mg/kg/day in rabbits.

iii. *Reproductive toxicity study.* In the two-generation reproduction study in rats, offspring toxicity (body weight) and parental toxicity (body weight, organ weight, and clinical signs) was observed at 27.0 mg/kg/day and greater. The parental systemic NOEL as 7.0 mg/kg/day and the parental systemic LOEL was 27.0 mg/kg/day. There were no developmental (pup) or reproductive effects up to 45.0 mg/kg/day, highest dose tested.

iv. *Pre- and post-natal sensitivity*— a. *Pre-natal.* There was no evidence of developmental toxicity in the studies at the highest doses tested in the rat (70.0 mg/kg/day) or in the rabbit (700 mg/kg/day). Therefore, there is no evidence of a special dietary risk (either acute or chronic) for infants and children which wouldrequire an additional safety factor.

b. *Post-natal.* Based on the absence of pup toxicity up to dose levels which produced toxicity in the parental animals, there is no evidence of special post-natal sensitivity to infants and children in the rat reproduction study.

3. Conclusion

Based on the above, FMC concludes that reliable data support use of the standard 100-fold uncertainty factor, and that an additional uncertainty factor is not needed to protect the safety of infants and children. As stated above, aggregate exposure assessments utilized significantly less than 1 percent of the RfD for either the entire U. S. population or any of the 26 population subgroups including infants and children. Therefore, it may be concluded that there is reasonable certainty that no harm will result to infants and children from aggregate exposure to cypermethrin residues.

4. International Tolerances

There are no Canadian, or Mexican residue limits for residues of cypermethrin or zeta-cypermethrin in or on all food/feed items (other than those covered by a higher tolerance as a result of use on growing crops) in food/feed handling establishments.

[FR Doc. 05–5214 Filed 3–15–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0052; FRL–7703–3]

Bacillus Thuringiensis VIP3A Insect Control Protein and the Genetic Material Necessary for its Production; Notice of Filing a Pesticide Petition to Amend an Exemption from the Requirement of a Tolerance for a Certain Pesticide Chemical in or on Food; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces a correction to the Notice of Filing of a pesticide petition proposing an amendment to an existing exemption from the requirement of a tolerance for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket identification (ID) number OPP–2005–0052, must be received on or before April 15, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION** of the September 15, 2004, **Federal Register** Notice.

FOR FURTHER INFORMATION CONTACT: Sharlene Matten, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 605–0514; e-mail address: *matten.sharlene@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the September 15, 2004, Notice of Filing a list of those who may be potentially affected by the action. If you have any questions regarding the applicability of this action to a particular entity, consult

the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

In addition to using EDOCKET (*http://www.epa.gov/edocket/*), you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at*http://www.epa.gov/fedrgstr/*.

II. Background

On July 26, 2004, Syngenta Seeds, 3054 Cornwallis Road, Research Triangle Park, NC 27709–2257 submitted a petition (PP 3G6547) to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting that the temporary tolerance exemption for *Bacillus thuringiensis* VIP3A protein and the genetic material necessary for its production in cotton found at 40 CFR 180.1247 be amended to include all VIP3A events. As it turns out, however, this particular request was unnecessary as the temporary tolerance exemption found at 40 CFR 180.1247 already includes all VIP3A events. In a subsequent letter dated July 29, 2004, Syngenta Seeds also petitioned the Agency to amend the temporary tolerance exemption found at 40 CFR 180.1247 by extending it from May 1, 2005 to May 1, 2006.

On September 15, 2004, EPA published a Notice in the **Federal Register** (69 FR 55605, FRL–7675–1) announcing the filing of the Syngenta Seeds petition. This Notice of Filing, however, was incorrect in two respects. First, it reiterated in summary fashion Syngenta Seeds request that the temporary tolerance exemption found at 40 CFR 180.1247 be amended to include all VIP3A events. As noted above, this was unnecessary since that temporary tolerance exemption already includes all VIP3A events. Second, the Notice failed to include Syngenta Seeds' petition to extend the approved time frame for the temporary exemption.

III. What Does this Correction Do?

The purpose of this document, therefore, is to clarify that pesticide petition 3G6547 from Syngenta Seeds, as summarized and presented in the Agency's September 15, 2004, Notice of Filing, is solely a proposal to amend the temporary tolerance exemption found at 40 CFR 180.1247 by extending it from May 1, 2005 to May 1, 2006. To the extent there is any language in that Notice of Filing discussing or alluding to Syngenta Seeds' request to make that temporary tolerance exemption non-event specific, that language is to be disregarded. All the other information contained in that September 15, 2004, Notice of Filing, however, is intended to support Syngenta Seeds' request to extend the time frame of the subject temporary tolerance exemption.

As noted elsewhere in this document, EPA is providing an additional 30 days for parties to comment on Syngenta Seeds' petition as corrected via this document. Any comments received in response to this document or the original Notice of Filing dated September 15, 2004, will be addressed in any Final Rule issued by the Agency concerning this matter.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 7, 2005.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 05–5212 Filed 3–15–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0051; FRL–7702–8]

Issuance of an Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted an experimental use permit (EUP) to the following pesticide applicant. An EUP permits use of a pesticide for experimental or research purposes only in accordance with the limitations in the permit.

FOR FURTHER INFORMATION CONTACT: Sharlene R. Matten, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 605–0514; e-mail address: *matten.sharlene@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this action, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2005–0051. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

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

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

II. EUP

EPA has issued the following EUP:

67979–EUP–5. Issuance. Syngenta Seeds, 3054 Cornwallis Road, Research Triangle Park, NC 27709–2257. This EUP allows the use of 0.14 pounds of the insecticide Vip3A insect control protein as expressed in Events COT 202 and COT 203-derived cotton plants on 467 acres of cotton to evaluate the control of various lepidopteran insect

pests. The program is authorized only in the States of Alabama, Arizona, Arkansas, California, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Texas. Two comments were submitted in response to the notice of receipt for this permit application, which published in the **Federal Register** on July 28, 2004 (69 FR 45051) (FRL–7371–5). One comment from the National Cotton Council supported issuance of the EUP. The other comment by a private citizen objected to issuance of the EUP based on unspecified environmental and human health effects. The Agency understands the commentor's concerns. Pursuant to its authority under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and under the Federal Food, Drug, and Cosmetic Act (FFDCA), EPA has conducted an assessment of the Vip3A insect control proteins and the genetic material necessary for their production in cotton. EPA has concluded that there is a reasonable certainty that no harm will result from dietary exposure to this protein as expressed in cotton. The Vip3A insect control proteins as expressed in cotton tested under this permit are covered by the temporary tolerance exemption under 40 CFR 180.1247. No adverse effects are anticipated as a result of Vip3A expression in transgenic cotton. The EUP is effective from February 1, 2005 to March 31, 2006.

Authority: 7 U.S.C. 136c.

List of Subjects

Environmental protection, Experimental use permits.

Dated: March 7, 2005.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 05–4958 Filed 3–15–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0030;FRL–7695–8]

Pesticides; Guidance for Pesticide Registrants on Labeling Statements on Products Used for Adult Mosquito Control

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Agency is announcing the availability of a Pesticide Registration Notice (PR Notice) entitled ''Labeling Statements on Products Used for Adult Mosquito Control.'' This PR Notice was issued by the Agency on insert date PR Notice was signed by the OD and is identified as PR Notice 2005–1. PR Notices are issued by the Office of Pesticide Programs (OPP) to inform pesticide registrants and other interested persons about important policies, procedures, and registration related decisions, and serve to provide guidance to pesticide registrants and OPP personnel. This particular PR Notice provides guidance to the registrant concerning EPA's policy on labeling statements for pesticide products used for wide-area applications to control adult mosquitoes. The specific label statements and label organization principles recommended in the draft Notice are intended to improve existing labels by clarifying language conveying environmental hazards posed by these products, as well as specific use directions and instructions to the applicators. The Agency believes that adoption of these recommendations will help pesticide users and pesticide enforcement officials to achieve more effective mosquito control and protection of public health, while ensuring that use of these products will not pose unreasonable risks to the environment.

FOR FURTHER INFORMATION CONTACT: Jim Roelofs, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 703–308–2964; fax number: 703–308–1850; e-mail address:*roelofs.jim@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to pesticide registrants, pesticide regulatory officials, mosquito and vector control agencies, pesticide users and the general public. Although this action may be of particular interest to those persons who have a specific interest in the labeling of pesticide products used for the control of adult mosquitos, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. What Guidance Does this PR Notice Provide?

This PR Notice provides guidance to the registrant concerning seven specific recommendations for labeling statements to be used on pesticide products used for control of adult mosquitos through ground or aerial application of Ultra-Low Volume (ULV) sprays or fogs.

A. Background

In recent years state pesticide regulators and vector control agencies have raised a variety of concerns about the labeling of pesticides used for adult mosquito control. The class of products of most concern have been those used for control of adult mosquitoes through the application of Ultra-Low Volume (ULV) sprays or fogs. Since state agencies enforce pesticide use regulations under cooperative agreements with EPA, and since FIFRA section 12(a)(2)(G) makes it an unlawful act ''to use any registered pesticide in a manner inconsistent with its labeling'', the interpretation of label requirements is a critical issue for EPA, its Regional Offices and state pesticide regulatory agencies, as well as for users.

In 2001, EPA sponsored an Inter-Regional Mosquito Control Conference for EPA and state agency representatives. Although labeling was one of many subjects discussed at the conference, participants felt label improvements were an area that should be addressed. It was agreed that a group representing EPA's Office of Pesticide Programs (OPP), Office of Enforcement and Compliance Assurance (OECA), EPA Regions and state lead agency volunteers would develop initial, informal proposals for improving mosquito control product labels, with the focus on adulticides only. The EPA State workgroup developed a paper which included seven recommendations. In April 2003, the initial recommendations were discussed at a public meeting of the Pesticide Program Dialogue Committee (PPDC). The PPDC is chartered under the Federal Advisory Committee Act to advise EPA on pesticide issues. Its members represent a broad spectrum of interests, including the pesticide industry, grower groups, public health agencies, academic researchers, public interest and advocacy organizations. The PPDC recommended that EPA develop the initial recommendations into more formal Agency positions.

After considering the comments and suggestions of state agencies, the PPDC and other interested parties, as well as public comments received on a draft version of the PR Notice, the Agency is making the recommendations in the PR Notice as a means to achieve improvements in the labeling of adult mosquito control products. The

recommendations consist of some specific statements that should appear on all labels for this class of products, some model statements that registrants may adapt to the specific characteristics of their products, and some principles on organizing elements of the label.

B. Summary of the Labeling Recommendations

The recommendations in the PR Notice are meant to apply only to products labeled for wide-area application by ground or aerial equipment, as Ultra Low Volume (ULV) sprays or fogs, and not to home and garden use products which may list mosquitoes on the label, or for coarse (non-ULV) sprays intended for residual treatment of vegetation or other surfaces. Control of mosquito larvae is a wholly different use pattern from adult mosquito control, and thus, products registered as mosquito larvicides are not included in the scope of the Notice.

The PR Notice sets forth seven recommendations for improving labels of adult mosquito control products. In brief form, the recommendations are:

1. Adult mosquito control applications should be limited to trained personnel.
2. Mosquito control directions and precautions should be clearly distinguished from those applicable to any other use allowed on the label.
3. Label precautions and directions should be revised as needed to make hazards to aquatic life as clear as possible, and also to allow the application of these products over a body of water allowable under some circumstances.
4. Users should consult with the State or Tribal lead agency for pesticide regulation to determine if permits or other regulatory requirements exist.
5. Labels should specify a spectrum of spray/fog droplet sizes, and indicate that droplet size should be determined according to directions from equipment manufacturers or other appropriate sources.
6. Precautionary language to protect bees should have a provision to allow mosquito control applications in order to respond to threats to public health which are identified by health or vector control agencies on the basis of evidence of disease organisms or diseases cases in animals or humans.
7. Mosquito adulticide labels should include specific statements on timing and allowable frequency of applications to a specific site. Exceptions to application limits may be allowed in order to respond to threats to public health which are identified by health or vector control agencies on the basis of evidence of disease organisms or diseases cases in animals or humans.

III. Do PR Notices Contain Binding Requirements?

The PR Notice discussed in this notice is intended to provide guidance to EPA personnel and decision makers and to pesticide registrants. While the requirements in the statutes and Agency regulations are binding on EPA and the applicants, this PR Notice is not binding on either EPA or pesticide registrants, and EPA may depart from the guidance where circumstances warrant and without prior notice. Likewise, pesticide registrants may assert that the guidance is not appropriate generally or not applicable to a specific pesticide or situation.

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

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2005–0030. The official public docket consists of the documents specifically referenced in this action and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

2. *Electronic Access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. You may obtain an electronic copy other PR Notices, both final and draft, at *http://www.epa.gov/opppmsd1/PR_Notices*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

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

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: March 3, 2005.

James Jones,

Director, Office of Pesticide Programs.

[FR Doc.05–4878 Filed 3–15–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7884–9]

Riverhills Battery Superfund Site; Notice of Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of settlement.

SUMMARY: Under Section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has entered into an Agreement for response cost at the Riverhills Battery Superfund Site (Site) located in Tampa, Hillsborough County, Florida, with Henry H. Black.

EPA will consider public comments on settlement of response cost, paragraphs thirty-six (36) and thirty-seven (37), of the Agreement for April 15, 2005.

EPA may withdraw from or modify the Agreement should such comments disclose facts or considerations which

indicate the Agreement is inappropriate, improper, or inadequate. Copies of the Agreement are available from:

Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region 4, Superfund Enforcement & Information Management Branch, Waste Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887, *Batchelor.Paula@epa.gov*.

Written comments may be submitted to Ms. Batchelor at the above address within 30 days of the date of this publication.

Dated: March 2, 2005.

De'Lyntoneus Moore,

Acting Chief, Superfund Enforcement & Information Management Branch.

[FR Doc. 05–5130 Filed 3–15–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 05–607]

Notice of Suspension and of Proposed Debarment File No. EB–03–IH–0684

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Enforcement Bureau (''Bureau'') gives notice to Mr. John Henry Weaver's suspension from the schools and libraries universal service support mechanism. Additionally, the Bureau gives notice that debarment proceeding are commencing against him.

DATES: Opposition requests must be received by April 15, 2005. However, an opposition request by the party to be suspended must be received 30 days from the receipt of suspension letter or April 15, 2005, whichever comes first. The Bureau will decide any opposition request for reversal or modification of suspension or debarment within 90 days of its receipt of such requests.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554; Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, Maryland 20743.

FOR FURTHER INFORMATION CONTACT: Ms. Diana Lee, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–A265, 445 12th Street, SW., Washington, DC 20554. Diana Lee can be contacted on (202) 418–1420 or by e-mail at *diana.lee@fcc.gov*.

SUPPLEMENTARY INFORMATION: The Bureau has suspension and debarment authority under 47 CFR 521 and 47 CFR 0.111(a)(14). Suspension will help to ensure that the party to be suspended cannot continue to benefit from the schools and libraries mechanism pending resolution of the debarment process. Attached is the suspension letter, *Notice of Suspension and of Proposed Debarment Proceedings.* DA05–607, which was mailed to Mr. John Henry Weaver and released on March 8, 2005. The letter (1) gives notice of the suspension and proposed debarment; (2) gives the reasons for the proposed debarment; (3) explains the debarment procedures, and (4) describes the potential effect of debarment. The complete text of the suspension letter is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. In addition, the complete text of this letter may be retrieved from the FCC's Web site at *http://www.fcc.gov.* The text may also be purchased from the Commission's duplicating contractor, BCPI, Portals II, 445 12th Street, SW., Room CY–B400, Washington, DC 20554, telephone (202) 488–5300, facsimile (202) 488–5563, or via e-mail *fcc@bcpiweb.com.*

Federal Communications Commission.

William H. Davenport,

Chief, Investigations and Hearings Division, Enforcement Bureau.

The suspension letter follows:

March 8, 2005.
Via Certified Mail
Return Receipt Requested
John Henry Weaver
146 Weldon Drive
York, PA 17404

Re: Notice of Suspension and of Proposed Debarment; File No. EB–03–IH–0684

Dear Mr. Weaver: The Federal Communications Commission (''FCC'' or ''Commission'') has received notice of your March 1, 2005 conviction pursuant to 18 U.S.C. 371 and 666 for conspiracy to engage in bribery in a federally funded program.[1] Consequently, pursuant to 47 CFR 54.521, this letter constitutes official notice of your suspension from the schools and libraries universal service support mechanism. In addition, the Enforcement Bureau (''Bureau'') hereby notifies you that we are commencing debarment proceedings against you.[2]

I. Notice of Suspension

Pursuant to section 54.521(a)(4) of the Commission's rules.[3] your conviction requires the Bureau to suspend you from participating in any activities associated with or related to the schools and libraries fund mechanism, including the receipt of funds or discounted services through the schools and libraries fund mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism.[4] Your suspension becomes effective upon the earlier of your receipt of this letter or publication of notice in the **Federal Register**.[5]

Suspension is immediate pending the Bureau's final debarment determination. You may contest this suspension or the scope of this suspension by filing arguments in opposition to the suspension, with any relevant documentation. Your request must be received within 30 days after you receive this letter or after notice is published in the **Federal Register** whichever comes first.[6] Such requests, however, will not ordinarily be granted.[7] The Bureau may reverse or limit the scope of suspension only upon a finding of extraordinary circumstances.[8] Absent extraordinary circumstances, the Bureau will decide any request for reversal or modification of suspension within 90 days of its receipt of such request.[9]

II. Notice of Proposed Debarment

A. Reasons for and Cause of Debarment

Commission rules establish procedures to prevent persons who have ''defrauded the government or engaged in similar acts through activities associated with or related to the schools and libraries support mechanism'' from receiving the benefits associated with that program.[10] On March 1, 2005, you were convicted based on a December 8, 2003 plea of guilty to participating in a conspiracy with Ronald R.

[1] Any further reference in this letter to ''your conviction'' refers to your March 1, 2005 conviction based on your December 8, 2003 guilty plea to this count because you ''did knowingly combine, conspire, confederate and agree with persons * * * to corruptly give, offer and agree to give things of value to another person with the intent to influence an agency of the Harrisburg School District.'' See *United States* v. *Weaver,* Criminal Docket No. 03–337, Information at 4 (M.D.Pa. filed December 8, 2003) (''Weaver Information''); *United States* v. *Weaver,* Criminal Docket No. 03–337, Plea Agreement at 1–2 (M.D.Pa. filed December 8, 2003) (''Weaver Plea Agreement''); *United States* v. *Weaver,* Judgment (M.D.Pa. filed on March 1, 2005 and entered on March 4, 2005) (''Weaver Judgment'').

[2] 47 CFR 54.521; 47 CFR 0.111(a)(14) (delegating to the Enforcement Bureau authority to resolve universal service suspension and debarment proceedings pursuant to 47 CFR 54.521).

[3] 47 CFR 54.521(a)(4). See Schools and Libraries Universal Service Support Mechanism, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9225–9227, ¶¶ 67–74 (2003) (''Second Report and Order'').

[4] Second Report and Order, 18 FCC Rcd at 9225, ¶ 67; 47 U.S.C. 254; 47 CFR 54.502–54.503; 47 CFR § 54.521(a)(4).

[5] Second Report and Order, 18 FCC Rcd at 9226, ¶ 69; 47 CFR 54.521(e)(1).

[6] Second Report and Order, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(4).

[7] Second Report and Order, 18 FCC Rcd at 9226, ¶ 70.

[8] 47 CFR 54.521(f).

[9] Second Report and Order, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(5), 54.521(f).

[10] Second Report and Order, 18 FCC Rcd at 9225, ¶ 66.

Morrett, Jr. (''Morrett'') of EMO Communications, Inc. (''EMO'').[11] You admitted to the following acts: (1) Receiving $1.9 million in kickback payments from Morrett while you were responsible for certifying Morrett and EMO had performed work specified in a contract that is 80% funded by the federal E-rate program; and (2) concealing those payments by causing some of the payments to be funneled through various bank accounts belonging to third parties.[12] These actions constitute the conduct or transactions upon which this debarment proceeding is based.[13] Moreover, your conviction on the basis of these acts falls within the categories of causes for debarment defined in section 54.521(c) of the Commission's rules.[14] Therefore, pursuant to section 54.521(a)(4) of the Commission's rules, your conviction requires the Bureau to commence debarment proceedings against you.

B. Debarment Procedures

You may contest debarment or the scope of the proposed debarment by filing arguments and any relevant documentation within 30 calendar days of the earlier of the receipt of this letter or of publication in the **Federal Register**.[15] Absent extraordinary circumstances, the Bureau will debar you.[16] Within 90 days of receipt of any opposition to your suspension and proposed debarment, the Bureau, in the absence of extraordinary circumstances, will provide you with notice of its decision to debar.[17] If the Bureau decides to debar you, its decision will become effective upon the earlier of your receipt of a debarment notice or publication of its decision in the **Federal Register**.[18]

C. Effect of Debarment

If and when your debarment becomes effective, you will be prohibited from participating in activities associated with or related to the schools and libraries support mechanism for at least three years from the date of debarment.[19] The Bureau may, if necessary to protect the public interest, extend the debarment period.[20]

Please direct any responses to the following address: Diana Lee, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C443, 445 12th Street, SW., Washington DC 20554.

If you submit your response via hand-delivery or non-United States Postal Service delivery (Federal Express, DHL, etc.), please send your response to Ms. Lee at the following address: Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, MD 20743.

If you have any questions, please contact Ms. Lee via mail, by telephone at (202) 418–1420 or by e-mail at *diana.lee@fcc.gov*. If Ms. Lee is unavailable, you may contact Hillary DeNigro by telephone at (202) 418–1420 and by e-mail at *hillary.denigro@fcc.gov*.

Sincerely yours,

William H. Davenport,
Chief, Investigations and Hearings Division, Enforcement Bureau.

cc: Gerald Lord, Miller, Poole & Lord, LLP
Kristy Carroll, USAC (E-mail)
Marty Carlson, United States Attorney, Middle District of Pennsylvania (E-mail)

[FR Doc. 05–5168 Filed 3–15–05; 8:45 am]

BILLING CODE 6712–01–P

[11] Weaver Judgment at 1; Weaver Plea Agreement at 1–2.

[12] Weaver Information 2–3, 6–7; Weaver Plea Agreement at 1–2.

[13] Second Report and Order, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(2)(i).

[14] ''Causes for suspension and debarment are the conviction of or civil judgment for attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and other fraud or criminal offense arising out of activities associated with or related to the schools and libraries support mechanism.'' 47 CFR 54.521(c). Such activities ''include the receipt of funds or discounted services through the schools and libraries support mechanism, or consulting with, assisting, or advising applicants or service providers regarding schools and libraries support mechanism described in this section ([47 CFR] 54.500 *et seq.*).'' 47 CFR 54.521(a)(1).

[15] See Second Report and Order, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(2)(i), 54.521(e)(3).

[16] Second Report and Order, 18 FCC Rcd at 9227, ¶ 74.

[17] See id., 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(5).

[18] *Id.* The Commission may reverse a debarment, or may limit the scope or period of debarment upon a finding of extraordinary circumstances, following the filing of a petition by you or an interested party or upon motion by the Commission. 47 CFR 54.521(f).

[19] Second Report and Order, 18 FCC Rcd at 9225, ¶ 67; 47 CFR 54.521(d), 54.521(g).

[20] *Id.*

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 98–67 and CG Docket No. 03–123; DA 05–509]

Comments Requested on Petition for Declaratory Ruling Filed Concerning Video Relay Service (VRS) Interoperability

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document seeks public comment on a petition for declaratory ruling filed by the California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH) on February 15, 2005, requesting that the Federal Communication Commission (Commission) prohibit any Video Relay Service (VRS) provider that receives compensation from the Interstate Telecommunications Relay Service (TRS) Fund from purposely restricting its deaf and hard-of-hearing customers to a single VRS provider via the software or hardware of their VRS equipment or through exclusivity agreements with those customers.

DATES: Comments are due April 15, 2005, and reply comments are due May 2, 2005.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. *See* **SUPPLEMENTARY INFORMATION** For Further Filing Instructions.

FOR FURTHER INFORMATION CONTACT: Dana Jackson, Consumer & Governmental Affairs Bureau, Disability Rights Office at (202) 418–2247 (voice), (202) 418–7898 (TTY), or e-mail at *Dana.Jackson@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice DA 05–509, released March 1, 2005. The full text of the Public Notice and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. When filing comments, please reference CC Docket No. 98–67 and CG Docket No. 03–123. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998. Comments filed through the ECFS can be sent as an electronic file via the Internet to <*http://www.fcc.gov/e-file/ecfs.html*>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comment to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit electronic comments by Internet e-mail. To get filing instructions, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by electronic media, by commercial overnight courier, or by first-class or overnight U.S. Postal Services mail (although we continue to

experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings or electronic media for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial and electronic media sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–B204 Washington, DC 20554. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted, along with three paper copies, to: Dana Jackson, Consumer & Governmental Affairs Bureau, Disability Rights Office, 445 12th Street, SW., Room CY–C417, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case, CC Docket No. 98–67 and CG Docket No. 03–123, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Best Copy and Printing (BCPI), Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Pursuant to § 1.1206 of the Commission's rules, 47 CFR 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which *ex parte* communications are subject to disclosure. The Public Notice and copies of subsequently filed documents in this matters may also be purchased from the Commission's duplicating contract, BCPI, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI, Inc. at their Web site *http://www.bcpiweb.com* or call 1–800–378–3160. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). The Public Notice can also be downloaded in Word or Portable Document Format (PDF) at: *http://www.fcc.gov/cgb/dro*.

Federal Communications Commission.

Jay Keithley,

Deputy Bureau Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. 05–5172 Filed 3–15–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may obtain copies of agreements by contacting the Commission's Office of Agreements at 202–523–5793 or via e-mail at *tradeanalysis@fmc.gov*. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011117–035.

Title: United States/Australasia Discussion Agreement.

Parties: A.P. Moller-Maersk A/S; Australia-New Zealand Direct Line; CMA CGM, S.A.; Compagnie Maritime Marfret, S.A.; Fesco Ocean Management Limited; Hamburg-Sud; Lykes Lines Limited, LLC; P&O Nedlloyd Limited; Safmarine Container Lines NV; and Wallenius Wilhelmsen Lines AS.

Filing Party: Wayne R. Rohde, Esq., Sher & Blackwell, 1850 M Street, NW., Suite 900, Washington, DC 20036.

Synopsis: The amendment clarifies the authority in the agreement and adds provisions dealing with the payment of civil penalties and governing law and arbitration.

Agreement No.: 011874–002.

Title: K-Line/Zim Space Charter Agreement.

Parties: Zim Integrated Shipping Services, Ltd. and Kawasaki Kisen Kaisha, Ltd.

Filing Party: Wayne R. Rohde, Esq., Sher & Blackwell, 1850 M Street, NW., Suite 900, Washington, DC 20036.

Synopsis: The amendment terminates K-line's allocation on the trans-Pacific leg of Zim's AMP service.

Agreement No.: 011907.

Title: ABX/APL Space Charter Agreement.

Parties: CMA CGM S.A.; APL Co. Pte Ltd.; P&O Nedlloyd Limited/P&O Nedlloyd B.V. (acting as a single party).

Filing Party: Neil M. Mayer, Esq., Hoppel, Mayer & Coleman, 1000 Connecticut Avenue, NW., Washington, DC 20036.

Synopsis: The agreement provides that CMA CGM and P&O Nedlloyd as one party will charter 200 TEUs per sailing to APL on their ABX service in the trade between the Atlantic Coast of the U.S. on the one hand and ports on the East Coast of South America, Venezuela and Colombia.

By order of the Federal Maritime Commission.

Dated: March 11, 2005.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. 05–5182 Filed 3–15–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel—Operating Common Carrier Ocean Transportation Intermediary Applicants

Freightcan Global Inc., 200 Middlesex Turnpike, Suite 208, Iselin, NJ 08830.
Officer: Padmini Prasad, President (Qualifying Individual).

Shipping Express Inc., 14435 157th Street, Jamaica, NY 11434.
Officers: Joseph Kawi Lau Au, Secretary, (Qualifying Individual), Li Ying (Lisa) Wong McClain, President.

T.J. Expediters Inc., 150–30 132nd Avenue, Suite 205, Jamaica, NY 11434.

Officers: Chi Young Hu, President (Qualifying Individual), Sunny Kwok Keung Ho, Vice President.

GCS Logistics Inc., 65 West Merrick Road, Valley Stream, NY 11580.
Officer: Jian Fu, President (Qualifying Individual).

Logistics Container Line, LLC, 45 Rason Road, Inwood, NY 11096.
Officer: Thomas McGeary, Managing Partner (Qualifying Individual).

Pack & Send Cargo, Inc., 5455 NW. 72nd Avenue, Miami, FL 33166.
Officer: Jorge Enrique Alvarez, President (Qualifying Individual).

Delta Trans Logistics, Inc., 131 W. Victoria Street, Gardena, CA 90248.
Officer: In Soo Eun, President (Qualifying Individual).

Mobility Express, LLC, 372 Chardonnay Drive, Suite 100, Salinas, CA 93906.
Officers: Roger Arreola, CEO (Qualifying Individual), Cresencia Arreola, Vice President.

TP Express, Inc., 1280 Louis Avenue, Elk Grove Village, IL 60007.
Officer: Young K. Park, President (Qualifying Individual).

La Onion Shipping Co, Inc., 1680 Jerome Avenue, Bronx, NY 10453.
Officer: Carlos Augusto Rivera, President (Qualifying Individual).

Servicarga of America, Inc., 4753 NW., 72nd Avenue, Miami, FL 33166.
Officer: Armando Ripepi, Vice President (Qualifying Individual).

Veco Logistics USA, Inc., 5573 NW. 72nd Avenue, Miami, FL 33166.
Officers: Angela Duran, Secretary (Qualifying Individual), Ivonne J. Jaspe, President.

Dal Investment, Inc., 2919 Rhode Island Avenue, NE., Washington, DC 20018.
Officers: Nojimudeen Adeleke, Vice President (Qualifying Individual), Lawal Abudulganiyu, President.

Non-Vessel—Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Saia Motor Freight Line, Inc., 11465 Johns Creek Parkway, Suite 400, Duluth, GA 30097.
Officer: Tony Albanese, Sen. Vice President (Qualifying Individual).

AGI–Link Cargo Int'l, LLC, 140 Kathi Avenue, Suite A, Fayetteville, GA 30214.
Officer: Arizona Y Li, President (Qualifying Individual).

Air Cargo Global, Corp., 993 McDonald Avenue, Brooklyn, NY 11230.
Officer: Sophie Persits, President (Qualifying Individual).

Apex Logistics International Inc., 9841 Airport Blvd., Suite 522, Los Angeles, CA 90045.
Officers: Liang Qian, Vice President (Qualifying Individual), Minjiang Song, CEO.

TMMAA Line Houston, Inc., 15550 Vickery Drive, Suite #100, Houston, TX 77032.
Officer: Sonia Bauserman, President (Qualifying Individual).

Global Galan Logistics Inc., 401 Broadway, 22 Floor, New York, NY 10013.
Officers: George A. Galan, President (Qualifying Individual), Carmen Galan Vizcaino, Vice President.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants Anchor Customs Brokerage, LLC, 6156 Stockade Drive, Mechanicsville, VA 23111.
Officers: Karen L. Stone, Operations Manager (Qualifying Individual), David C. Stone, Managing Partner.

L.O. Trading Corp., 10800 NW 21st Street, Suite 250, Miami, FL 33172.
Officer: Luis Oberndorfer, President (Qualifying Individual).

Q–Air, Inc., 1227 Buschong, Houston, TX 77039.
Officers: Mary Frances Storemski, OPS (Qualifying Individual), Darrell W. Smith, President.

MVP Global Logistics, LLC, 440 McClellan Highway, Suite 105L, East Boston, MA 02128.
Officers: Patricia Strong, Member (Qualifying Individual), Victor P. Glowik, Member.

Dated: March 11, 2005.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 05–5181 Filed 3–15–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary Licenses; Corrections

In the **Federal Register** notices published March 9, 2005 (70 FR 11661), and March 2, 2005 (70 FR 10094), references to Transatlantic Shipping, Inc. and B.F. Shipping are corrected to read:

''Trans Atlantic Shipping, Inc.''
''B.F Investments and Consulting, Inc. dba B.F Investments''

Dated: March 11, 2005.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 05–5176 Filed 3–15–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL TRADE COMMISSION

[File No. 042 3068]

Vision I Properties, LLC, d/b/a CartManager International; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before April 11, 2005.

ADDRESSES: Comments should refer to ''Vision I Properties, LLC, d/b/a CartManager International, File No. 042 3068,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, as explained in the Supplementary Information section. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form (except comments containing any confidential material) should be sent to the following e-mail box. *consentagreement@ftc.gov*.

FOR FURTHER INFORMATION CONTACT: Jessica Rich, FTC, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3224.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following

Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 10, 2005), on the World Wide Web, at *http://www.ftc.gov/os/2005/03/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Written comments must be submitted on or before April 11, 2005. Comments should refer to ''Vision I Properties, LLC, d/b/a CartManager International, File No. 042 3068,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled ''Confidential.'' [1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form should be sent to the following e-mail box: *consentagreement@ftc.gov.*

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from Vision I Properties, LLC, d/b/a CartManager International (''Vision One''). Vision One licenses shopping cart software and provides related services to thousands of small online retail merchants through its Web site, *http://www.cartmanager.com.*

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns Vision One's collection and rental of personal information obtained from consumers making purchases from online merchants that used Vision One's software. Vision One provides shopping cart software and services to thousands of small online retail merchants. The shopping cart software generates customizable ''shopping cart'' and ''checkout'' Web pages that enable the merchant to process consumer purchases. A consumer uses these pages to select items for purchase. These pages then collect the consumer's payment, shipping, and billing information.

The shopping cart and checkout pages reside on Vision One's Web site, enabling Vision One to collect consumers' personal information through its software. The shopping cart and checkout pages are designed to look like the other pages on the merchant's site and typically display the merchant's name and logo.

Many of the merchants suing Vision One's shopping cart software have posted privacy policy on their Web sites, which generally limit the disclosure of personal information collected from consumers. Many of these privacy policy have stated that the merchant's practice is never to sell or rent personal information to third parties. Notwithstanding the promises made in these merchants' privacy policies, Vision One rented the personal information (including name, address, telephone number, and purchase history) of nearly one million consumers it obtained through its software to third parties for marketing purposes. According to the complaint, Vision One failed to inform adequately these merchants or the consumers shopping at their sites that it intended to disclose this information. The Commission's complaint charges that, by collecting consumers' personal information at these merchant sites and renting it to third parties, knowing that such practices were contrary to these merchants' privacy policies, Vision One engaged in unfair practices prohibited by Section 5 of the Federal Trade Commission Act.

The proposed consent order is designed to stop Vision One from violating Section 5 and to prevent Vision One from engaging in such violations in the future. Part I of the proposed consent order prohibits Vision One from making any misrepresentations regarding its collection, use, or disclosure of consumers' personal information. Part II of the order prohibits Vision One from disclosing to any third party for marketing purposes any personal information it previously collected from consumers through its shopping cart software used at a merchant's site.

Part III of the proposed order addresses Vision One's future collection of personal information. It prohibits Vision One from selling, renting, or disclosing to any third party for marketing purposes any personal information it collects from consumers through its shopping cart software, unless consumers are provided with notice. Vision One must disclose its information practices either to the merchants or directly to consumers prior to its collection of any personal information. If Vision One provides the notice directly to its merchants, it must obtain certifications from the merchants that they received the notice and have either (1) posted a privacy policy stating that consumers' information may be sold, rented, or disclosed to third parties, or (2) posted a clear and conspicuous notice on their Web sites advising consumers that they are leaving the merchant's site and entering Vision One's site where a different privacy policy governs. If Vision One chooses to provide notice directly to consumers rather than to the merchants, it must clearly and conspicuously post the notice on the page(s) where it collects personal information. The notice must state that the consumer is on Vision One's site and that personal information provided by the consumer

will be used, sold, rented, or disclosed to third parties for marketing.

Part IV of the proposed order requires Vision One to pay $9,101.63 to the United States Treasury as disgorgement of the fees it received from renting consumer information.

The remainder of the proposed order contains standard requirements that Vision One: maintain copies of privacy statements and other documents relating to the collection, use, or disclosure of personally identifiable information, and all notices, certifications, and other documents relating to the disclosures required by Part III of the order; distribute copies of the order to certain company officials and employees; notify the Commission of any change in the corporation that may affect compliance obligations under the order; and file one or more reports detailing its compliance with the order. Part IX of the proposed order is a provision whereby the order, absent certain circumstances, terminates twenty years from the date of issuance.

The purpose of this analysis is to facilitate public comment on the proposed order, and is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way its terms.

The proposed order, if issued in final form, will resolve the claims alleged in the complaint against the named respondent. It is not the Commission's intent that acceptance of this consent agreement and issuance of a final decision and order will release any claims against any unnamed persons or entities associated with the conduct described in the complaint.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 05–5217 Filed 3–15–05; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day–05–0465X]

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) 371–5983 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

Audience Research to Identify Middle School Social Norms about Dating Relationships—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Intimate partner violence (IPV) and sexual violence is a significant problem in the United States. According to the National Violence against Women Survey, an intimate partner physically assaults or rapes approximately 1.5 million women and 850,000 men in the United States each year. Many more individuals are subjected to threats of violence and psychological and emotional abuse. Alarmingly, IPV behaviors are manifested in youth populations. The literature suggests that attitudes and behaviors can be shaped and reinforced more easily and more effectively as they are developing in youth than after they have been firmly established. To begin to address IPV and sexual violence in youth populations, the CDC's NCIPC has developed a media campaign entitled ''Choose Respect.'' The campaign targets prevailing norms that support victimization and perpetration of violence against women. Because attitudes and behaviors related to IPV begin to manifest early on, CDC will focus its efforts on early adolescents, and on the people who influence them. The goal of CDC's Media Campaign, Choose Respect, is to increase the social norm among adolescents that any form of violence between intimate partners, whether physical, verbal or sexual is considered inappropriate and unacceptable.

The purpose of the evaluation is to document and provide interim and ongoing feedback to campaign planners regarding the implementation and progress of the campaign. The evaluation will be conducted by collecting data from adolescents, their parents, and teachers following campaign implementation in the target markets for a broad perspective of campaign awareness. The pilot campaign will target youth as the primary audience, with parents, teachers, and counselors targeted as secondary audiences in two market areas: Austin, Texas and Kansas City, Kansas. The teachers will be screened prior to participating in the campaign. A post-campaign survey will be conducted with adolescents, their parents and their teachers or counselors to determine attitudes, beliefs and intended behaviors toward IPV and sexual violence after implementation of the campaign.

The post research design of this campaign's evaluation will aid CDC in assessing the changes in attitudes, beliefs and behaviors associated with the pilot campaign and will suggest revision of the campaign materials for a future launch nationwide. There are no costs to respondents except their time to respond. The total annual burden for this data collection is 1,125 hours.

ANNUALIZED BURDEN TABLE

Respondents	Number of respondents	Number of responses/ respondent	Avg. burden/ response (in hrs.)
Teacher Screener	60	1	5/60
Teacher's Post-campaign Survey	60	1	20/60
Parent's Post-campaign Survey	1100	1	15/60
Adolescent's Post-campaign Survey	1100	1	45/60

Dated: March 10, 2005.

Betsey Dunaway,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 05–5143 Filed 3–15–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Revision of OMB# 0925–0002 Ruth L. Kirschstein NRSA Individual Fellowship Application

SUMMARY: 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 Office of Extramural Research, the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Ruth L. Kirschstein NRSA Individual Fellowship Application. *Type of Information Collection Request:* Revision of a currently approved collection. *Form Numbers:* The PHS 416–1, 416–9, 416–5, 416–6031, 6031–1, *Need and Use of Information Collection:* The PHS 416–1 and 416–9 are used by individuals to apply for direct research training support. Awards are made to individual applicants for specified training proposals in biomedical and behavioral research, selected as a result of a national competition. The other related forms (PHS 416–5, 416–7, 6031, 6031–1) are used by these individuals to activate, terminate, and provide for payback of a National Research Service Award. *Affected Public:* Individuals or households; business or other for profit; not-for-profit institutions; Federal Government; and State, Local or Tribal government. *Type of Respondents:* Adult scientific trainees and professionals. The annual reporting burden is represented in the following table:

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Applicants	81,837.60	1.0834	2.658	235,665.86
Referee	7,268.56	1.0834	2.658	20,931.11
Totals	89,106.16	1.0834	2.658	256,596.97

There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request For Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function 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 the use of appropriated automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Ms. Mikia Currie Division of Grants Policy for Extramural Research Administration, NIH, Rockledge 1 Suite 350, Room 3505, 6705 Rockledge Drive, Bethesda, MD 20892–7974, or call non-toll-free number (301) 435–0941 or E-mail your request, including your address to: *curriem@od.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: March 7, 2005.

Joe Ellis,

Acting Director for OPERA.

[FR Doc. 05–5200 Filed 3–15–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the meeting of the President's Cancer Panel.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended, because the premature disclosure of information and the discussions would be likely to significantly frustrate implementation of recommendations.

Name of Committee: President's Cancer Panel.

Date: March 30, 2005.

Time: 1 p.m. to 3 p.m.

Agenda: The Panel will review the first draft of the upcoming PCP annual report on ''Translating Research to Reduce the Burden of Cancer.''

Place: National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Building 6116, Room 212, Bethesda, MD 20892, (Teleconference).

Contact Person: Abby B. Sandler, PhD, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Building 6116, Room 212, Bethesda, MD 20892, 301/451–9399.

This meeting is being published less than 15 days prior to the meeting due to scheduling conflicts.

Any interested person may file written comments with the committee by forwarding the comments 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.

Information is also available on the Institute's/Center's home page: *http://www.deainfo.nci.nih.gov/advisory/pcp/pcp.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93,397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 10, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–5163 Filed 3–15–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Review of Research Applications (R01s).

Date: April 7, 2005.

Time: 10 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Patricia A. Haggerty, PhD, Scientific Review Administrator, National Heart, Lung, and Blood Institute/NIH, Clinical Studies & Training Studies Rev. Grp., Division of Extramural Affairs/Section Chief, 6701 Rockledge Drive, Room 7194, Bethesda, MD 20892, 301/435–0288.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Heart, Lung and Blood Institute Special Emphasis Panel, Review of Research Scientist Development Awards (K02s) and Clinical Investigator Awards (K08s).

Date: April 7–8, 2005.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Zoe Huang, MD, Health Scientist Administrator, Review Branch, Room 7190, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7924, Bethesda, MD 20892–7924, 301–435–0314.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: March 10, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–5162 Filed 3–15–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(b)(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Institutional Training and Career Development.

Date: March 22, 2005.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Raul A. Saaverdra, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, NSC; 6001 Executive Blvd., Ste. 3208, Bethesda, MD 20892–9529, 301–496–9223, *saavedrr@ninds.nih.gov.*

This notice is being published less than 15 day prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Research on Research Integrity Review.

Date: March 30–31, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Lucerene Hotel, 201 West 79th Street, New York, NY 10024.

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, DHHS/NIH/NINDS/DER/SRB, 6001 Executive Boulevard, MSC 9529, Neuroscience Center, Room 3203, Bethesda, MD 20892–9529, 301–496–5388, *wiethorp@ninds.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS).

Dated: March 10, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–5160 Filed 3–15–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Migration and Reproductive Health Risks.

Date: April 7, 2005.

Time: 9:30 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Kishena C. Wadhwani, PhD, MPH, Scientific Review Administrator, Division of Scientific Review, 9000 Rockville Pike, MSC 7510, 6100 Building, Room 5B01, Bethesda, MD 20892–7510, (301) 496–1485, *wadhwank@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS.)

Dated: March 9, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–5201 Filed 3–15–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Child Interventions Research II.

Date: March 15, 2005.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Christopher S. Sarampote, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9608, Bethesda, MD 20892–9608, 301–443–1959. *csarampo@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientists Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: March 9, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–5202 Filed 3–15–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Measurement Tools for Altered Autonomic Function in Spinal Cord Injury and Diabetes, SBIR/STTR.

Date: April 7, 2005.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Kishena C. Wadhwani, PhD, MPH, Scientific Review Administrator, Division of Scientific Review, 9000 Rockville Pike, MSC 7510, 6100 Building, Room 5B01, Bethesda, MD 20892–7510, (301) 496–1485, *wadhwank@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 9, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–5203 Filed 3–15–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Role of Nitric Oxide Insufficiency in Oocyte Aging.

Date: April 7, 2005.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Jon M. Ranhand, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892, (301) 435–6884, *ranhandj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 9, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–5204 Filed 3–15–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine, Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice

is hereby given of a meeting of the Board of Scientific Counselors, National Library of Medicine.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6). Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Library of Medicine, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Library of Medicine, Board of Scientific Counselors, Lister Hill Center.

Date: May 12–13, 2005.

Open: May 12, 2005, 9 a.m. to 1 p.m.

Agenda: Review of research and development programs and preparation of reports of the Lister Hill Center for Biomedical Communications.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Closed: May 12, 2005, 1 p.m. to 2 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Open: May 12, 2005, 2 p.m. to 5 p.m.

Agenda: Review of research and development programs and preparation of reports of the Lister Hill Center for Biomedical Communications.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Open: May 13, 2005, 9 a.m. to 12 p.m.

Agenda: Review of research and development programs and preparation of reports of the Lister Hill Center for Biomedical Communications.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Jackie Duley, Program Assistant, Lister Hill National Center for Biomedical Communications, National Library of Medicine, Building 38A, Room 7N–707, Bethesda, MD 20892, (301) 496–4441.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.789, Medical Library Assistance, National Institutes of Health, HHS)

Dated: March 10, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–5161 Filed 3–15–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, March 14, 2005, 8 p.m. to March 15, 2005, 5 p.m., Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD, 20814 which was published in the **Federal Register** on February 22, 2005, 70 FR 8597–8599.

The starting time of the meeting on March 14, 2005 has been changed to 8 a.m. until adjournment. The meeting dates and location remain the same. The meeting is closed to the public.

Dated: March 10, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–5164 Filed 3–15–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; 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 a meeting of the National Institutes of Health Peer Review Advisory Committee.

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.

Name of Committee: National Institutes of Health Peer Review Advisory Committee.

Date: May 16, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: Provide technical and scientific advice to the Director, National Institutes of Health (NIH), the Deputy Director for Extramural Research, NIH and the Director, Center for Scientific Review (CSR), on matters relating broadly to review procedures and policies for the evaluation of scientific and technical merit of applications for grants and awards.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Karl Malik, PhD, Executive Secretary, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, room 3110, MSC 7776, Bethesda, MD 20892, (301) 594–6806, *malikk@csr.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 98.893, National Institutes of Health, HHS)

Dated: March 10, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–5165 Filed 3–15–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Hematopoietic Stem Cells.

Date: March 18, 2005.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Delia Tang, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892, 301–435–2506, *tangd@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 NCF (09).

Date: March 22, 2005.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant application.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lawrence Baizer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7850, Bethesda, MD 20892, (301) 435–1257, *baizer@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict-Motivated Behaviors.

Date: March 24, 2005.

Time: 12:15 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Christine L. Melchior, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1713, *melchioc@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Sensory-Motor Integration.

Date: March 25, 2005

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1255, *kenshalod@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Genetic Bases of Psychiatric Disorders

Date: March 28, 2005.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: David J. Remondini, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2210, MSC 7890, Bethesda, MD 20892, 301/435–1038, *remondid@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Gene Expression in Vascular Myocytes.

Date: March 28, 2005.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ai-Ping Zou, PhD, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301–435–1777, *zouai@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Radiation Biology.

Date: March 28, 2005.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Syed M. Quadri, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892, (301) 435–1211, *quadris@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neurodegeneration, Neurogenesis, and Regeneration.

Date: March 31, 2005.

Time: 2 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lawrence Baizer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7850, Bethesda, MD 20892, (301) 435–1257, *baizerl@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Dental-Small Business Applications Special Emphasis Panel.

Date: April 1, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Betehsda Marriott Suites, 6711 Democracy Boulebard, Betehsda, MD 20817.

Contact Person: Donald F. McDonald, PhD, Chief, Renal and Urological Scineces IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, (301) 435–1215, *mcdonald@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Chemoprevention of Cancer.

Date: April 4, 2005.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eun Ah Cho, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, (301) 435–4467, *choe@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Molecular Dissection of E. Histolytica Pathogenesis.

Date: April 4, 2005.

Time: 3 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joseph D. Mosca, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7808, Bethesda, MD 20892, (301) 435–2344, *moscajos@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Hematology Bioengineering.

Date: April 8, 2005.

Time: 10:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Delia Tang, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892, 301–435–2506, *tangd@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.306, 93.333, 93.337, 903.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 10, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–5166 Filed 3–15–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are 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.

Proposed Project: The Workplace Prevention and Early Intervention Transitioning Youth Into the Workplace (YIW) Cross-Site Evaluation—New

The Substance Abuse and Mental Health Services Administration's (SAMHSA), Center for Substance Abuse Prevention (CSAP) plans to conduct a cross-site evaluation of the effectiveness of workplace-based substance abuse prevention and early intervention programs for young adults (ages 16–24). These programs will be implemented by 9–10 CSAP-funded grantees and their partnering worksites. The primary purpose of the evaluation will be to study the effectiveness of modified model and effective drug-free workplace prevention and early intervention programs and interventions for incoming populations of young employees. This will provide the Nation's public and private employers with empirical information about effective strategies to utilize for these incoming employees in preventing and intervening early with substance abuse. A web-based survey will be used to collect data from employees at the participating grantee worksites at baseline and at 1- and 2-year follow-up points. The survey is composed of OMB approved CSAP's Government Performance and Results Act (GPRA) outcome measures such as prevalence of drug and alcohol use, perceptions of risk, and attitudes and beliefs and a set of supplementary questions capturing workplace outcomes such as productivity, absenteeism and accidents.

TOTAL BURDEN HOURS FOR THE CROSS-SITE WEB-BASED SURVEY

Instrument/Activity	Number of respondents	Number of responses per respondent	Average burden hours per respondent	Total burden hours
Baseline Data Collection	6,500	1	35 mins	3,792
1-year Follow-up Data Collection (80% of baseline)	5,200	1	35 mins	3,033
2-year Follow-up Data Collection (80% of 1-year follow-up)	4,160	1	35 mins	2,427
Total	15,860			9,252
Annualized Burden (over 3 years)	5,287			3,084

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 71–1045, One Choke Cherry Road, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: March 9, 2005.

Patricia S. Bransford,

Acting Executive Officer, SAMHSA.

[FR Doc. 05–5142 Filed 3–15–05; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[CGD08–05–013]

Implementation of Sector Mobile

AGENCY: Coast Guard, DHS.

ACTION: Notice of organizational change.

SUMMARY: The Coast Guard announces the stand-up of Sector Mobile. Sector Mobile Commanding Officer has the authority, responsibility and missions of Group Mobile and Marine Safety Office Mobile in one command. 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 or document.

DATES: This notice is effective March 25, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD08–05–013 and are available for inspection or copying at Commander (rpl), Eighth Coast Guard District, 500 Poydras Street, New Orleans, Louisiana 70130–3310 between 7:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Michael Roschel, Eighth District Planning Office at 504–589–6293.

SUPPLEMENTARY INFORMATION:

Discussion of Notice

Sector Mobile is located at Building 102, Brookley Complex, Mobile, AL 36615–1390 and contains a single Command Center. Sector Mobile is composed of a Response Department, Prevention Department, and Logistics Department. All existing missions and functions performed by Group Mobile and Marine Safety Office Mobile have been operating under this new organizational structure since September 15, 2004. Effective March 25, 2005, Group Mobile and Marine Safety

Office Mobile no longer exist as organizational entities. Sector Mobile is responsible for all Coast Guard Missions in the following zone: ''The boundary of Sector Mobile starts at the Florida coast at 83°50′ W. longitude; thence proceeds north to 30°15′ N. latitude, 83°50′ W. longitude; thence west to 30°15′ N. latitude, 84°45′ W. longitude; thence north to the southern shore of the Jim Woodruff Reservoir at 84°45′ W. longitude; thence northeasterly along the eastern shore of Jim Woodruff Reservoir and northerly along the eastern bank of the Flint River to 32°20′ N. latitude, 84°02′ W. longitude; thence northwesterly to the intersection of the Georgia-Alabama boundary at 32°53′ N. latitude; thence northerly along the Georgia-Alabama boundary to 34°00′ N. latitude; thence west to the Alabama-Mississippi boundary at 34°00′ N. latitude; thence northerly along the Alabama-Mississippi boundary to the southern boundary of Tishomingo County, Mississippi; thence westerly and southerly along the southern boundaries of Tishomingo and Prentiss Counties, Mississippi, including that area of the Tennessee-Tombigby Waterway south of the Bay Springs Lock and Dam; thence southerly and westerly along the eastern and southern boundaries of Lee, Chickasaw, and Calhoun Counties, Mississippi; thence southerly along the western boundaries of Webster, Choctaw, Winston, Neshoba, Newton, Jasper, Jones, Forrest and Stone Counties, Mississippi; thence easterly along the northern boundary of Harrison County, Mississippi, to 89°10′ W. longitude; thence south to the Mississippi coast; thence southeasterly to 29°10′ N. latitude, 88°00′ W. longitude; thence south to the outermost extent of the EEZ; thence easterly along the outermost extent of the EEZ to the intersection with a line bearing 199° T from the intersection of the Florida coast at 83°50′ W. longitude; thence northeasterly along a line bearing 199° T from the Florida coast at 83°50′ W. longitude to the coast.''

Sector Mobile's zone will be modified in the future upon the stand-up of adjoining sectors. Notice will be published in the **Federal Register**.

The Sector Mobile Commander is vested with all the rights, responsibilities, duties, and authority of a Group Commander and Commanding Officer Marine Safety Office, as provided for in Coast Guard regulations, and is the successor in command to the Commanding Officers of Group Mobile and Marine Safety Office Mobile. The Sector Mobile Commander is designated: (a) Captain of the Port (COTP) for the Mobile COTP zone; (b) Federal Maritime Security Coordinator (FMSC); (c) Federal On Scene Coordinator (FOSC) for the Mobile COTP zone, consistent with the National Contingency Plan; (d) Officer in Charge of Marine Inspection (OCMI) for the Mobile 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 Group Mobile and Marine Safety Office Mobile practices and procedures will remain in effect until superseded by Commander, Sector Mobile. 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 Mobile.

Address: Commander, U.S. Coast Guard Sector Mobile, Building 102, Brookley Complex, Mobile, AL 36615–1390.

Contact: General Number, (251) 441–5720, Sector Commander: Captain James D. Bjostad; Deputy Sector Commander: Captain Steven D. Hardy.

Chief, Prevention Department: (251) 441–5284, *Chief, Response Department:* (251) 441–5962, *Chief, Logistics Department:* (251) 441–5503.

Dated: March 3, 2005.

R.F. Duncan,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 05–5189 Filed 3–15–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of Draft Comprehensive Conservation Plan, Draft Environmental Impact Statement, and Draft Wilderness Stewardship Plan for Cabeza Prieta National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) will make available copies of the Draft Comprehensive Conservation Plan (CCP), Draft Environmental Impact Statement (EIS), and Draft Wilderness Stewardship Plan for the Cabeza Prieta National Wildlife Refuge in Pima and Yuma Counties, Arizona, for public review and comment. This draft CCP was prepared in compliance with the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd *et seq.*), and the National Environmental Policy Act of 1969. It describes how the Service intends to manage the Refuge over the next 15 years.

DATES: Please submit written comments on the draft CCP on or before June 14, 2005.

ADDRESSES: The draft CCP is available on a compact disk or as a hard copy. To request a copy of the draft CCP please contact: Mr. John Slown, Biologist/Conservation Planner, U.S. Fish and Wildlife Service, National Wildlife Refuge System, Southwest Region, Division of Planning, P.O. Box 1306, Albuquerque, NM 87103; please specify the format you prefer. You may also access or download a copy of the draft CCP at the following Web site address: *http://southwest.fws.gov/refuges/Plan/index.html.*

FOR FURTHER INFORMATION CONTACT: Mr. John Slown, 505–248–7458; or e-mail: *john_slown@fws.gov.*

SUPPLEMENTARY INFORMATION: The National Wildlife System Administration Act of 1966, as amended by the National Wildlife Refuge Improvement Act of 1997, requires the Service to develop a CCP for each National Wildlife Refuge.

The purpose in developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, the CCP identifies wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation.

Review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), NEPA Regulations (40 CFR parts 1500–1508), other appropriate Federal laws and regulations, including the National Wildlife Refuge System Improvement

Act of 1997, Executive Order 12996, and Service policies and procedures for compliance with those regulations.

Background

Cabeza Prieta National Wildlife Refuge was established in 1939 by Executive Order to protect wildlife and forage resources of the Sonoran Desert. In 1990 approximately 93 percent of the Refuge land area was designated Federal Wilderness by the Arizona Desert Wilderness Act of 1990.

The Refuge occupies approximately 860,010 acres of Sonoran Desert, including mountains, broad desert, and bajadas. The Refuge and adjacent Federal lands; including the Organ Pipe National Monument, managed by the U.S. National Park Service, and the USAF Barry M. Goldwater Range military training area; comprise the United States' range of the Endangered Sonoran pronghorn. The desert bighorn sheep is another species of conservation interest occurring on the Refuge.

The draft CCP and EIS propose and evaluate five management alternatives for the Refuge. All management alternatives implement recovery actions for the Endangered Sonoran pronghorn. The alternatives differ primarily in the level of active management intervention proposed to support the desert bighorn sheep. The first alternative is ''no action'' or continuance of current Refuge management. Under this alternative, the Refuge would continue to offer a limited desert bighorn sheep hunt each year in cooperation with the Arizona Game and Fish Department. Refuge staff would continue to maintain and supply supplemental water to exiting developed waters in desert bighorn sheep habitat. The second alternative focuses on limiting management interventions within Refuge wilderness. Under this alternative, developed wildlife waters in sheep habitat within the Refuge wilderness would not be maintained or supplied with supplemental water. The desert bighorn sheep hunt would also be discontinued. The third alternative includes limited management intervention in wilderness. Under this alternative, the Refuge would supply supplemental water to developed waters in sheep habitat within Refuge wilderness only during periods of severe drought. The desert bighorn sheep would be continued, but no hunting would be allowed during years of severe drought. The fourth alternative, identified as the Service's proposed alternative, would allow continued maintenance and water supply to existing developed waters in sheep habitat within Refuge wilderness and would include projects to increase the water collection efficiency of such waters. The Refuge desert bighorn sheep hunt program would continue unchanged under this alternative. The fifth alternative would include the maximum management intervention within Refuge wilderness. Under this alternative all existing developed waters in Refuge wilderness would be maintained and supplied with water, and new developed waters would be created. The desert bighorn sheep hunt program would continue unchanged under this alternative.

Public Meetings

The Service will hold public meetings to present the draft CCP, answer questions, and receive formal public comments in Yuma, Tucson, Sells, and Ajo, Arizona, during the public comment period. The exact location, time, and date of these meetings will be determined based on logistic issues. Notice of the meetings will be posted in local newspapers and other media outlets and given through mailings to individuals and organizations that have expressed interest in this planning effort.

Dated: March 4, 2005.

Domenick R. Ciccone,

Acting, Regional Director, Albuquerque, New Mexico.

[FR Doc. 05–5145 Filed 3–15–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–030–1020–PG; HAG 05–0082]

Meeting Notice Changes for the John Day/Snake Resource Advisory Council

AGENCY: Bureau of Land Management (BLM), Vale District

SUMMARY: The John Day/Snake Resource Advisory Council (JDSRAC) meeting scheduled for March 23 and 24, 2005, in Baker City, Oregon, has been cancelled.

The John Day/Snake Resource Advisory Council meeting scheduled for June 15 has been rescheduled to June 20. The meeting time and location remains the same: 8 a.m. to 4 p.m. at the Quality Inn, 700 Port Drive, Clarkston, WA. The meeting may include such topics as OHV, Noxious Weeds, Planning, Sage Grouse, and other matters as may reasonably come before the council. A field trip to Hells Canyon is scheduled for June 21 to discuss noxious weeds and other matters as identified.

The meeting is open to the public. Public comment is scheduled for 11 a.m. to 11:15 a.m. (Pacific time) June 20. For a copy of the information to be distributed to the Council members, please submit a written request to the Vale District Office 10 days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the John Day/Snake Resource Advisory Council may be obtained from Debbie Lyons, Public Affairs Officer, Vale District Office, 100 Oregon Street, Vale, Oregon 97918, (541) 473–6218 or e-mail *Debra_Lyons@or.blm.gov.*

Dated: March 10, 2005.

David R. Henderson,

District Manager.

[FR Doc. 05–5136 Filed 3–15–05; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–014–01–1430–EU; GP–05–0048]

Public Land Sale, OR 53188

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Amended notice of realty action.

SUMMARY: This Notice amends the Notice of Realty Action (NORA) published October 14, 2004, (69FR61038) for the competitive sale of a 520 acre parcel of public land in Klamath County, Oregon.

DATES: Sealed bids for the competitive sale will be opened on the first Tuesday of each month beginning on April 5, 2005.

ADDRESSES: BLM, Klamath Falls Field Office, 2795 Anderson Avenue, Building 25, Klamath Falls, Oregon 97603.

FOR FURTHER INFORMATION CONTACT: Linda Younger, Realty Specialist, at (541) 883–6916.

SUPPLEMENTARY INFORMATION: The NORA published on October 14, 2004 provided for the competitive sale of a 520 acre parcel of public land (Parcel I) in Klamath County, Oregon. This parcel was not sold in the competitive sale held on December 15, 2004. This Notice amends the NORA published in October 2004 and identifies additional sale dates for this parcel of public land.

In accordance with the provisions of 43 CFR Part 2711.3–1(e), the following described public land in Klamath County, Oregon, remains available for competitive sale until sold pursuant to Sections 203 and 209 of the Federal Land Policy and Management Act of

1976, (43 U.S.C. 1713 and 1719). The parcel is described as follows:

Parcel I (Competitive Sale)

Willamette Meridian, Oregon

T. 40 S., R. 11 E.,
sec. 27, SE¼SW¼, S½SE¼;
sec. 33, E½NE¼;
sec. 34, N½.

The area described contains 520 acres, more or less. The appraised market value for Parcel I is $182,000.00.

Sealed bids will be opened to determine the high bidder at 10:00 a.m. PST, on the first Tuesday of each month, beginning with April 5, 2005, at the BLM, Klamath Falls Field Office (address stated above), until the parcel is sold.

Offers to purchase Parcel I will be made only by sealed bids. All bids must be received at the BLM, Klamath Falls Field Office, not later than 4:30 p.m. PST, on the day prior to the sale or April 4, 2005, for the first offering.

The outside of bid envelopes must be clearly marked on the front lower left-hand corner with ''BLM Land Sale OR 53188,'' and the bid opening date. Bids must be for not less than the appraised market value of $182,000.00. Each sealed bid shall be accompanied by a certified check, postal money order, bank draft, or cashier's check made payable in U.S. Currency to the order of the Bureau of Land Management, for not less than 20 percent of the amount bid.

The bid envelope must also contain a statement showing the total amount bid and the name, mailing address, and phone number of the entity making the bid.

Additional Terms and Conditions of Sale

All terms and conditions remain the same as those published in the October 2004 NORA (69FR61038).

All rights, reservations, and conditions to be included in the patent remain the same as those published in the October 2004 NORA (69FR61038).

The land described herein remains segregated from appropriation under the public land laws, including the mining laws, pending issuance of a patent, publication of a notice in the **Federal Register** terminating the segregation, or September 15, 2005, whichever occurs first.

(Authority: 43 CFR 2711.1–2).

Jon Raby,

Field Manager, Klamath Falls Resource Area.

[FR Doc. 05–5187 Filed 3–15–05; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

Advisory Board Meeting

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act and 36 CFR part 65 that a meeting of the Landmarks Committee of the National Park System Advisory Board will be held beginning at 1 p.m. on April 20, 2005 and at the following location. The meeting will continue beginning at 9 a.m. on April 21.

DATES: April 20–21, 2005.

LOCATION: The Charles Sumner School, 1201 Seventeenth Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Patricia Henry, National Historic Landmarks Survey, National Register, History, and Education, National Park Service; 1849 C Street, NW. (2280); Washington, DC 20240; Telephone (202) 354–2216.

SUPPLEMENTARY INFORMATION: The purpose of the meeting of the Landmarks Committee of the National Park System Advisory Board is to evaluate nominations of historic properties in order to advise the National Park System Advisory Board of the qualifications of the property being proposed for National Historic Landmark (NHL) designation, and to recommend to the National Park System Advisory Board at their subsequent meeting, the date and place of which have not been set, if the Landmarks Committee finds that each property meets the criteria for designation as a National Historic Landmark. The Committee also makes recommendations to the National Park System Advisory Board regarding amendments to existing designations, and proposals for withdrawal of designation. The members of the National Landmarks Committee are:

Mr. Larry E. Rivers, Ph.D., Chair;
Mr. Ian W. Brown, Ph.D.;
Ms. Mary Werner DeNadai, FAIA;
Ms. Alferdteen Brown Harrison, Ph.D.;
Mr. Bernard L. Herman, Ph.D.;
Mr. E.L. Roy Hunt, J.D., Professor Emeritus;
Mr. Ronald James;
Ms. Paula J. Johnson;
Mr. William J. Murtagh, Ph.D.;
Mr. William D. Seale, Ph.D.

The meeting will be open to the public. Pursuant to 36 CFR part 65, any member of the public may file for consideration by the National Park System Advisory Board and its Landmarks Committee written comments concerning the National Historic Landmarks nominations, amendments to existing designations, or proposals for withdrawal of designation.

Comments should be submitted to Carol D. Shull, Chief, National Historic Landmarks Survey and Keeper of the National Register of Historic Places; National Register, History, and Education; National Park Service; 1849 C Street, NW., (2280); Washington, DC 20240.

The National Park System Advisory Board and its Landmarks Committee will consider the following nominations and proposals for withdrawal of designation:

Nominations

Alabama

- Sixteenth Street Baptist Church, Birmingham, AL

California

- Tule Lake Segregation Center, Newell, Modoc County, CA

Colorado

- Granada Relocation Center, Granada, CO

Florida

- Miami Circle at Brickell Point, Miami, FL

Illinois

- Farnsworth House, Kendall County, IL

Indiana

- Madison Historic District, Madison, IN

Iowa

- Reverend George B. Hitchcock House, Cass County, IA

Maine

- Portland Observatory, Portland, ME

Massachusetts

- William J. Rotch Gothic Cottage, New Bedford, MA

Michigan

- Ford Piquette Avenue Plant, Detroit, MI

New Jersey

- Navesink Light Station, Highlands, NJ

New York

- Priscilla, West Sayville, NY

Oregon

- Kam Hah Chung Company Building, John Day, OR

Tennessee

• Graceland (Elvis Presley Home), Memphis, TN

Wyoming

• Murie Ranch Historic District, Teton County, WY

Proposals for Withdrawal of Designation:

Illinois

• Grant Park Stadium (Soldier Field), Chicago, IL

Maryland

• Resurrection Manor, St. Mary's County, MD

Dated: February 25, 2005.

Carol D. Shull,

Chief, National Historic Landmarks Survey and Keeper of the National Register of Historic Places; National Park Service, Washington, DC.

[FR Doc. 05–5115 Filed 3–15–05; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on March 1, 2005, a proposed Consent Decree in *United States* v. *Domenic Lombardi Realty Inc.,* Civil Action No. 98–CV–591, was lodged with the United States District Court for the District of Rhode Island.

The proposed Consent Decree resolves a claim for reimbursement of response costs, pursuant to section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9607(a), against Domenic Lombardi Realty, Inc. (''Lombardi''), in connection with the Robin Hollow Road Superfund Site, in West Greenwich, Rhode Island (''Site''). Under the proposed Decree, Lombardi will: (1) Pay $650,000 in two installments—$400,000 within 30 days, and $250,000 within six months, after entry (without interest); and (2) covenant not to appeal or otherwise challenge any judgment issued in this case. To become effective, the Consent Decree must be approved by the United States District Court for the District of Rhode Island.

For a period of thirty (30) days after the date of this publication, the U.S. Department of Justice will accept comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, c/o David L. Weigert, Esq., Environmental Enforcement Section, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044–7611, and should refer to *United States* v. *Lombardi Realty Inc.,* Civil Action No. 98–CV–591, DJ # 90–11–3–06538.

The proposed Consent Decree may be examined at the Office of the United States Attorney, District of Rhode Island, Fleet Center, 50 Kennedy Plaza, Providence, RI and office of the U.S. Environmental Protection Agency Region I, One Congress Street, Boston, MA. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* Copies of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax number (202) 514–0097, phone confirmation number (202) 514–1547. If requesting a copy of the proposed Consent Decree, please enclose a check in the amount of $3 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ronald G. Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 05–5196 Filed 3–15–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Between the United States and Illinois Power Company and Dynegy Midwest Generation Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on March 7, 2005, a proposed consent decree (''Consent Decree'') between Illinois Power Company, Dynegy Midwest Generation, Inc. and the United States, Civil Action No. 99–833–MJR, was lodged with the United States District Court for the Southern District of Illinois.

The Consent Decree would resolve claims asserted by the United States against Illinois Power Company and Dynegy Midwest Generation in a Complaint filed against Illinois Power Company on November 3, 1999 and in Amended Complaints filed against both Illinois Power Company and Dynegy Midwest Generation, Inc. in 2001, 2002 and 2003, pursuant to sections 113(b) and 167 of the Clean Air Act (the ''Act''), 42 U.S.C. 7413(b) and 7477, seeking injunctive relief and the assessment of civil penalties for violations at the Baldwin Generating Station of:

(a) The Prevention of Significant Deterioration provisions in part C of subchapter I of the Act, 42 U.S.C. 7470–92;

(b) The New Source Performance Standards provision in part A of subchapter I of the Act, 42 U.S.C. 7411; and

(c) The federally-enforceable State Implementation Plan developed by the State of Illinois (the ''Illinois SIP'').

In addition, the proposed Consent Decree would require Dynegy Midwest Generation to spend no less than $15 million to implement mitigation projects that will finance the installation of enhanced mercury reduction technology, the acquisition and preservation of ecologically valuable lands and habitat in the St. Louis Metro East area and along the Illinois River, municipal building energy conservation, advanced truck stop electrification to reduce air emissions from diesel exhaust, and the transfer of an approximately 1,135 acre parcel of land along the Middle Fork of the Vermillion River in Vermillion County, Illinois, to the State of Illinois, Department

The Complaints filed by the United States allege, among other things, that between approximately 1982 and the present, Illinois Power Company modified and thereafter operated the three coal-fired electricity generating units at the Baldwin Generating Station in Baldwin, Illinois, without first obtaining a PSD permit authorizing the construction and without installing the best available technology to control emissions of sulfur dioxide, nitrogen oxides, and particulate matter, as required by the Act, applicable Federal regulations, and the Illinois SIP. These modifications resulted in significant net emissions increases, as defined by 40 CFR 52.21(b)(3)(i), of none or more of the following pollutants: NO_X, SO_2, and PM.

The proposed Consent Decree would require the current owner and operator of the Baldwin Generating Station, Dynegy Midwest Generation, to reduce SO_2, NO_X and PM emissions at the Baldwin Generating Station, as well as at four other coal-fired plants it owns in Illinois—the Havana Generating Station in Havana, IL, the Hennepin Generating Station in Hennepin, IL, the Vermilion Generating Station in Oakwood, IL, and the Wood River Generating Station in Alton, Illinois—through the installation of state-of-the-art pollution control

technologies and compliance with specified emission limits of Natural Resources. Finally, the proposed Consent Decree would require Dynegy Midwest Generation to pay a $9.0 million civil penalty.

The United States was joined in the settlement by Plaintiff-Intervenors the State of Illinois and four citizen groups—the American Bottom Conservancy; Health and Environmental Justice—St. Louis; Illinois Stewardship Alliance; and the Prairie Rivers Network.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Illinois Power Company and Dynegy Midwest Generation, Inc.,* D.J. Ref. No. 90–5–2–1–06837.

The Consent Decree may be examined at the Office of the United States Attorney, Southern District of Illinois, 9 Executive Drive, Suite 300, Fairview Heights, IL 62208, and at U.S. EPA Region V, 77 West Jackson Blvd., Chicago, IL 60604–3507. During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $21.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

W. Benjamin Fisherow,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–5198 Filed 3–15–05 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Resource Conservation and Recovery Act

Notice is hereby given that, on February 16, 2005, a proposed Consent Decree in *United States* v. *Shell Oil Company,* et al., Civil Action No. 05–1175 FMC PJWx, was lodged with the United States District Court for the Central District of California Western Division. In this action, the United States brought suit against Shell Oil Company, Shell Oil Products LLC (as successor in interest to Shell Oil Products Company), Equilon Enterprises LLC, Shell Pipeline Company LP (for itself and as successor in interest to Equilon Pipeline Company), TRM Company (formerly known as Texaco Refining & Marketing Company, ChevronTexaco Corporation, Chevron USA Inc., Exxon Mobil Corporation, Mobil Oil Corporation, ExxonMobil Corporation, Thrifty Oil Co., and Best California Gas, Ltd. (''Oil Companies'') pursuant to section 9003(h)(2) and section 9003(h)(6)(A) of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6991b(h)(2) and 6991b(h)(6)(A), seeking reimbursement of costs incurred in connection with the Charnock Sub-Basin located in the vicinity of Santa Monica, California. The complaint alleges that the releases of petroleum containing MTBE and other constituents from underground storage tanks owned or operated by Defendants contributed to the contamination of the Charnock Sub-Basin. Under the terms of the Consent Decree, the Oil Companies agree to pay $1.5 million to reimburse the United States' costs relating to the Charnock Sub-Basin.

Pursuant to 28 CFR 50.7, the Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Shell Oil Company,* et al., D.J. Ref. #90–11–3–1727.

The Consent Decree may be examined during the public comment period on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax number (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $10.75 (25 cents per page reproduction cost) payable to the U.S. Treasury. Additional information on the Charnock MTBE contamination site and the current status of the cleanup may be found at *http://www.epa.gov/region09/charnock.*

Ellen M. Mahan,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–5197 Filed 3–15–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Amendments to Partial Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

Notice is hereby given that on March 8, 2005, proposed Amendments to Partial Consent Decree were lodged with the United States District Court for the Western District of Tennessee in *United States* v. *Velsicol Chemical Corp.,* No. 91–2815–G (W.D. Tenn.). The proposed Amendments entered into among the United States on behalf of the Environmental Protection Agency, Velsicol Chemical Corporation (''Velsicol''), and the City of Memphis would substitute the Custodial Trust created in the bankruptcy settlement agreement in *In re Fruit of the Loom, Inc.,* No. 99–4497 (Bankr. D. Del.) for Velsicol and would resolve Velsicol's obligations under the Partial Consent Decree as provided in the Amendments and the bankruptcy settlement agreement. The 1991 Partial Consent Decree concerns the North Hollywood Dump Site located in Memphis, Tennessee.

The Department of Justice will receive comments relating to the proposed Amendments for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Velsicol Chemical Corp.,* DJ Ref. No. 90–11–2–629.

The proposed Amendments may be examined at the Office of the United States Attorney for the Western District of Tennessee, 800 Clifford Davis Federal Office Building, 167 N. Main Street, Memphis, Tennessee 38103, and at the Region 4 Office of the United States Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303. During the public comment period, the proposed Amendments may also be examined on the following

Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the proposed Amendments may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood *(tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $29.50 (25 cents per page reproduction cost) payable to the U.S. Treasury for the entire Stipulated Order and attachments or the amount of $3.00 for the Amendments without attachments.

Bruce S. Gelber,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–5195 Filed 3–15–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Records and supporting data: importation, receipt, storage, and disposition by explosives importers, manufacturers, dealers, and users licensed under Title 18 U.S.C. Chapter 40 Explosives.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** volume 69, number 238, page 72220 on December 13, 2004, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until April 15, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Records and Supporting Data: Importation, Receipt, Storage, and Disposition by Explosives Importers, Manufacturers, Dealers, and Users Licensed Under Title 18 U.S.C. Chapter 40 Explosives.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* Recordkeeping Number: ATF REC 5400/3. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. The records used for this collection show the daily activities in the importation, manufacture, receipt, storage, and disposition of all explosive materials covered under 18 U.S.C. Chapter 40 Explosives. They are also used to show where and to whom explosive materials are sent, thereby ensuring that any diversions will be readily apparent; and, if lost or stolen, ATF will be immediately notified.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 50,519 respondents will take 1 hour to maintain records.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 637,570 annual total burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: March 10, 2005.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 05–5116 Filed 3–15–05; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

March 3, 2005.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Bureau of Labor Statistics (BLS), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the

proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Bureau of Labor Statistics.

Type of Review: New collection of information.

Title: Survey of Workplace Violence Prevention.

OMB Number: 1220–0NEW.

Frequency: One time.

Type of Response: Reporting.

Affected Public: Business of other for-profit; Not-for-profit institutions; farms; and State, Local, or Tribal Government.

Number of Respondents: 40,000.

Number of Annual Responses: 40,000.

Estimated Time Per Response: 20 minutes.

Total Burden Hours: 13,334.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The National Institute for Occupational Safety and Health and the Bureau of Labor Statistics, U.S. Department of Labor, have agreed to conduct a survey to evaluate the employer's perspective regarding policies, training, and other related issues on workplace violence prevention, including risk factors associated with workplace violence and prevention strategies, in workplaces within the United States.

The findings of the survey will allow characterization of how the issue of workplace violence is being addressed in workplaces and may be useful to identify where educational interventions and prevention strategies are needed.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 05–5148 Filed 3–15–05; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Office of the Secretary

All Items Consumer Price Index for All Urban Consumers; United States City Average

Pursuant to Section 112 of the 1976 amendments to the Federal Election Campaign Act (Pub. L. 94–283, 2 U.S.C. 441a(c)(1)(A)), the Secretary of Labor has certified to the Chairman of the Federal Election Commission and publishes this notice in the **Federal Register** that the United States City Average All Items Consumer Price Index for All Urban Consumers (1967=100) increased 283.1 percent from its 1974 annual average of 147.7 to its 2004 annual average of 565.8 and that it increased 6.7 percent from its 2001 annual average of 530.4 to its 2004 annual average of 565.8. Using 1974 as a base (1974=100), I certify that the United States City Average All Items Consumer Price Index for All Urban Consumers thus increased 283.1 percent from its 1974 annual average of 100 to its 2004 annual average of 383.1. Using 2001 as a base (2001=100), I certify that the United States City Average All Items Consumer Price Index for All Urban Consumers thus increased 6.7 percent from its 2001 annual average of 530.4 to its 2004 annual average of 565.8.

Signed at Washington, DC, on the 3rd day of March 2005.

Elaine L. Chao,

Secretary of Labor.

[FR Doc. 05–5147 Filed 3–15–05; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,458]

The Arthur G. Russell Company, Incorporated, Bristol, CT; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 1, 2005, in response to a worker petition filed by a company official on behalf of workers at the Arthur G. Russell Company, Incorporated, Bristol, Connecticut.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 2nd day of March, 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–1139 Filed 3–15–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,391]

AVX Corporation, Raleigh, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 25, 2005, in response to a petition filed by United Steelworkers of America Local 1028T on behalf of workers at AVX Corporation, Raleigh, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC this 7th day of February, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–1135 Filed 3–15–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,540]

G & H Machine Company, Inc., Kinzee, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 9, 2005, in response to a petition filed on behalf of workers at G & H Machine Company, Inc., Kinzee, Pennsylvania.

The petition regarding the investigation contained no company contact information and has therefore been deemed invalid. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 14th day of February 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–1144 Filed 3–15–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,498]

Marsh Advantage America, Spartanburg, SC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 4, 2005, in response to a petition filed on behalf of workers of Marsh Advantage America, Spartanburg, South Carolina.

The petition regarding the investigation has been deemed invalid. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 8th day of February, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–1140 Filed 3–15–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,434]

Metso Minerals Industries, Inc., Keokuk, IA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on January 31, 2005, in response to a petition filed by a company official on behalf of workers at Metso Minerals Industries, Inc., Keokuk, Iowa.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 7th day of February, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–1137 Filed 3–15–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,580]

Milliken & Company, Magnolia Finishing Plant Division, Blacksburg, SC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 15, 2005, in response to a worker petition filed by a company official on behalf of workers at Milliken & Company, Magnolia Finishing Plant Division, Blacksburg, South Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC this 24th day of February, 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–1154 Filed 3–15–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W–50,588]

Murray Engineering, Inc. Complete Design Service, Flint, MI; Notice of Negative Determination on Remand

The United States Court of International Trade (USCIT) remanded to the Department of Labor for further investigation *Former Employees of Murray Engineering* v. *U.S. Secretary of Labor*, USCIT 03–00219. The Department concludes that the subject worker group does not qualify for eligibility to apply for Trade Adjustment Assistance (TAA) benefits. There was neither a shift of production, nor increased imports of articles like or directly competitive with those produced at the subject facility, as required under section 222(a) of the Trade Act of 1974, as amended (Trade Act). The workers also do not qualify as adversely affected secondary workers under section 222(b) of the Trade Act.

On January 15, 2003, a petition was filed on behalf of workers of Murray Engineering, Inc., Complete Design Service, Flint, Michigan (''Murray Engineering'') for TAA. The petition stated that workers design automotive gauges, tools, fixtures, and dies.

The Department's initial negative determination for the former workers of Murray Engineering was issued on February 5, 2003. The Notice of Determination was published in the **Federal Register** on February 24, 2003 (68 FR 8620). The Department's determination was based on the finding that workers provided industrial design and engineering services and did not produce an article within the meaning of Section 222 of the Trade Act.

In a letter dated February 19, 2003, the petitioner requested administrative reconsideration of the Department's negative determination. The petitioner alleged that Murray Engineering produced a ''tangible drawing essential and integral to the making or building of a product'' and that the Department was misled by the word ''Service'' in the company's name.

The Department denied the petitioner's request for reconsideration on March 31, 2003, stating that the engineering drawings, schematics, and electronically generated information prepared by the subject worker group were not considered production within the meaning of the Trade Act. The Department further stated that the fact that the information is generated on paper is irrelevant to worker group eligibility for TAA. The Department's Notice of Negative Determination Regarding Application for Reconsideration was published in the **Federal Register** on April 15, 2003 (68 FR 18264).

By letter of April 30, 2003, the petitioner appealed the Department's denial of eligibility to apply for TAA to the USCIT, asserting that ''machine drawings (plans) are an article.'' The petitioner asserted that the subject worker group should be eligible to apply for TAA due to imports of like or directly competitive articles and, alternatively, because they are adversely affected secondary workers.

The Department filed a motion requesting that the USCIT remand the case to the Department for further investigation, and the USCIT granted the motion.

The Department issued its Notice of Negative Determination on Remand on August 20, 2003. The Notice was published in the **Federal Register** on September 10, 2003 (68 FR 53395). The remand determination stated that the workers did not produce an article and were not eligible for certification as workers producing an article affected either by a shift of production or by imports, or as adversely affected secondary workers.

On May 4, 2004, the USCIT remanded the matter to the Department for further investigation, directing the Department to investigate: (1) The nature of the

designs provided by Murray Engineering to its customers; (2) how the designs are sold to Murray Engineering's customers; (3) what proportion of the designs are printed or embodied on CD-Rom/diskette; and (4) how the petitioner's eligibility to apply for TAA is affected by the different formats in which the designs are embodied. The USCIT reserved judgment whether the Murray Engineering workers are qualified for certification as adversely affected secondary workers.

The Department's Notice of Negative Determination on Remand was issued on August 19, 2004, and was published in the **Federal Register** on August 30, 2004 (69 FR 52935). In the second remand determination, the Department affirmed its previous determination that workers at Murray Engineering do not qualify for eligibility to apply for TAA. The Department again concluded the subject firm does not produce an article for TAA purposes, and also found there was neither a shift of production from the subject facility nor increased imports of like or directly competitive articles as required by section 222(a) of the Act. Finally, the Department again concluded the subject firm does not supply a component part to a TAA-certified company as required by section 222(b) of the Act for certification of a worker group as adversely affected secondary workers.

Although the Department determined that designs created by Murray Engineering are conveyed and transmitted via physical media, the Department concluded that rote application of HTSUS classification codes is not the sole arbiter in determining whether the designs in question constitute articles for TAA purposes, and relied on other sources of information in concluding designs are not articles.

The second remand investigation also revealed that, even if one concludes that designs are articles, Murray Engineering did not shift design production abroad and did not import designs during 2001 or 2002. The Department's survey of Murray Engineering's major declining customers also revealed no imports of designs like or directly competitive with those made at the subject firm during 2001 and 2002.

In its November 15, 2004, decision, the USCIT concluded that designs are articles, remanded the case to the Department for further review, and deferred consideration of the claim that the subject worker group is eligible for TAA certification as adversely affected secondary workers.

The USCIT, citing the definition of ''like or directly competitive'' in 29 CFR 90.2, stated that the ''the record fails to show the legal basis for Labor's finding that there were no imports of directly competitive articles.'' The relevant definition under 29 CFR 90.2 (emphasis in original) states that:

Like or directly competitive means that *like* articles are those which are substantially identical in inherent or intrinsic characteristics (*i.e.*, materials from which the article are made, appearance, quality, texture, etc.); and *directly competitive* articles are those which, although not substantially identical in their inherent or intrinsic characteristics, are substantially equivalent for commercial purposes (*i.e.*, adapted to the same sues and essentially interchangeable therefor).

An imported article *is directly competitive with* a domestic article at an earlier or later stage of processing, and a domestic article is *directly competitive with* an imported article at an earlier or later stage of processing, if the importation of the article has an economic effect on producers of the domestic article comparable to the effect of importation of articles in the same stage of processing as the domestic article.

The USCIT ordered the Department to interpret and apply this definition to determine whether or not ''designs for heavy machinery'' represent an ''earlier stage of processing'' of either the machinery or the products manufactured on such machines, and if designs are an ''earlier stage of processing'' of machinery or manufactured products, whether the importation of such machinery or manufactured goods has an economic effect comparable to importation of articles in the same stage of processing as the domestic article, *i.e.*, the designs.

The issue is whether there were increased imports of articles directly competitive with the designs produced by Murray Engineering during the investigatory period of 2001 and 2002. The issue must be resolved by determining whether the Murray Engineering designs are directly competitive with either the machinery designed, or the products manufactured by such machinery. The USCIT suggested that Murray's designs might be ''directly competitive'' with ''items of manufacturing which formerly would have been built in the United States on machines produced by Murray's customers,'' on the ground that the designs might represent an ''earlier stage of processing'' of those goods under the 29 CFR 90.2 definition of ''directly competitive.'' Slip Op. at 11.

Examples of what Congress meant by ''directly competitive'' are found in the legislative history of the first adoption of that term in the Trade Expansion Act of 1962 (which created the original worker adjustment assistance program that evolved into the current TAA program), as follows:

> Your committee has incorporated in the bill a provision which has the effect of permitting an extension of the scope of the term 'directly competitive'. Under this provision, an imported article may be considered 'directly competitive with' a domestic article, or vice versa, if the one is at an earlier or later stage of processing than the other, or if one is a processed and the other an unprocessed form of the same article, and if the economic effect of importation of articles in the same stage of processing as the domestic article.
>
> The term 'earlier or later stage of processing' contemplates that the article remains substantially the same during such stages of processing, and is not wholly transformed into a different article. Thus, for example, zinc oxide would be zinc ore in a later stage of processing, since it can be processed directly from zinc ore. For the same reason, a raw cherry would be a glace cherry in an earlier stage of processing, and the same is true of a live lamb and dressed lamb meat. * * *
>
> H.R. Rep. No. 1818, 87th Cong., 2d Sess. 24 (1962).

This legislative history, whose language very closely mirrors the definition of ''directly competitive'' in 29 C.F.R. § 90.2, supports that the phrase ''earlier stage of processing'' has a limited meaning as recognized later in TAA court decisions. The court in *United Shoe Workers* v. *Bedell*, 506 F.2d 174, 186 n.80 (DC Cir. 1974), quoted from the above House report in reinforcing that ''[t]he term 'earlier or later stage of processing' contemplates that the article remains substantially the same during such stages of processing, and is not wholly transformed into a different article.'' *See also United Steelworkers* v. *Donovan*, 632 F.Supp. 17, 22 (Ct. Int'l Trade 1986). Under this interpretation, even component parts of finished domestic products are not ''directly competitive'' with imported finished products, as explained with regard to component parts of television sets in *Morristown Magnavox Former Employees* v. *Marshall*, 671 F.2d 194, 197–198 (6th Cir. 1982), *cert. denied*, 459 U.S. 1041 (1982). Also illustrating this point were the USCIT decisions in *ACTWU Local 1627, AFL-CIO* v. *Donovan*, 7 CIT 212, 587 F.Supp. 74 (1984), concerning automotive batteries for cars, and *Gropper* v. *Donovan*, 6 CIT 103, 569 F.Supp. 883 (1983), concerning fabric for knit fabric garments.

Other TAA court decisions further clarified the meaning of directly competitive. *Sugar Workers Union* v. *Dole*, 755 F.Supp. 1071, 1075 (Ct. Int'l Trade 1990), held that:

> Congress chose to make adjustment assistance available not to all persons or industries displaced by 'imports', nor even to just those displaced by 'competitive' imports, but instead to those displaced by 'directly competitive' imports. It is not enough, then, that the imports compete with or affect the plaintiffs' product indirectly or circuitously. [Emphasis in original.]

The point in the text quoted above from *Sugar Workers Union* was illustrated in an earlier case, *Machine Printers and Engravers Association* v. *Marshall*, 595 F.2d 860 (DC Cir. 1979) (per curium). There, the Secretary denied certification to workers who were employed by firms ''engaged in the business of engraving copper or plastic rollers and rotary screens for use by domestic textile manufacturers to print designs and fabrics.'' 595 F.2d at 861. The workers claimed that they were entitled to assistance ''because increased imports of textile fabrics have reduced the demand for the engraved rollers which are produced by their employers.'' *Ibid.* Affirming the Secretary, the DC Circuit Court noted that the imported textile fabrics that were harming the domestic textile industry were ''plainly'' not ''directly competitive'' with the engraved rollers and screens produced and engraved by the workers'' seeking assistance. *Ibid.* Another illustration of this point was in *Kelley* v. *Secretary, United States Dep't of Labor*, 626 F.Supp. 398, 402 (Ct. Int'l Trade 1985). In *Kelley*, the USCIT rejected the plaintiffs' argument that the Department should have considered the effect of imported finished articles and immigrant labor in determining whether imports caused a producer of cotton and synthetic thread to reduce its labor force.

That component parts of an article are not directly competitive with the article itself is further reinforced by 2002 amendments to the worker adjustment assistance provisions of the Trade Act. The 2002 amendments added paragraph (b) to Trade Act section 222 to authorize TAA certification of workers—referred to as adversely affected secondary workers—who, among other things, produce component parts for an article produced by another TAA-certified worker group. That Congress enacted this provision as an alternative basis for TAA certification supports that Congress believed that makers of component parts did not qualify for certification under the criteria of Trade Act section 222(a) because component parts of an article are not directly competitive with the article itself.

The Department conducted the third remand investigation mindful of the above principles and also the CIT's November 15, 2004, orders. In the third remand investigation, the Department conducted a survey to determine the various uses of those designs purchased by Murray Engineering's major declining customers. The survey revealed that Murray Engineering's designs were used to make several types of dies (a type of machinery used in manufacturing) and other machinery related to dies. The Department surveyed five customers, one of whom did not conduct business with the subject firm during the relevant period (2001 and 2002). Three customers purchased designs which were used to make dies used to produce automotive parts, and one customer used the designs purchased from the subject firm to make dies used to make machinery used to produce automotive parts. None of the customers surveyed imported dies or related machines.

The Department also inquired into whether the subject firm's major declining customers' customers imported those automotive parts which were produced using machines or dies which were produced using designs created by the subject firm. The investigation revealed that the subject firm's major declining customers all produced their dies or other machines for the same single customer, which was the firm that made the automotive parts which were the finished product. According to this end-user customer, all of the automotive parts used in its domestic cars are made in the United States; therefore, there were no imports of automotive parts.

Applying the principles in the legislative history and case law cited above to the Murray Engineering worker group, it is clear that the workers do not meet the certification criteria of Trade Act section 222(a) because their designs are not, under the meaning of the definition of ''directly competitive'' in 29 CFR 90.2, directly competitive with either the machinery designed or the finished products made by such machinery.

The Murray Engineering designs do not represent an earlier stage of processing, as that phrase is used both in the definition of ''directly competitive'' in 29 CFR 90.2 and in the legislative history discussed above. This is because the designs, machinery, and finished products do not constitute an article that remains substantially the same from the development of the design to the manufacture of the finished products. Rather, the designs are a wholly different article from both the machinery designed and the finished products—dies and automotive parts—made by such machinery.

Nor can the designs in question be considered component parts of the machinery designed, let alone of the finished products made by such machinery. The Department interprets a component to be a physical part of an article that helps the article to function. A design is helpful to creating the machinery, but it is not incorporated into the machinery as a physical part and does not help the machinery function. A machine's design is a wholly separate thing from both the machine itself and the products made by the machine.

Applying the USCIT decision in *Sugar Workers Union*, neither the machinery designed by Murray Engineering nor the automotive parts produced by such machinery directly competitive with Murray Engineering's designs. At most, imports—of which there were none in this case—of automotive parts or machinery to make such parts might affect design makers only indirectly or circuitously, which is not enough to consider either automotive parts, or machinery to make such automotive parts, directly competitive with designs under *Sugar Workers Union*. Applying the principle of the court decision in *Machine Printers*, the economic impact of imported dies or automotive parts—again, of which there were none in this case—has no bearing on whether the makers of designs for machinery that makes those items are entitled to adjustment assistance. All that matters regarding imports is whether the importation of designs, or items that directly compete with designs, contributed importantly to the workers' layoffs. The Department addressed this question in a previous Murray Engineering remand investigation and found there were no such imports.

In sum, the Department interprets the definition of ''directly competitive'' in 29 CFR 90.2 as meaning, consistent with Congressional intent and TAA case law, that an article, in order to be directly competitive with an article in a different stage of processing, remains substantially the same during such stages of processing, and is not wholly transformed into a different article. The Murray Engineering designs are not directly competitive with either the machinery designed or the finished products made by such machinery because the designs do not remain substantially the same but rather are wholly different articles from machinery and automotive parts.

Regarding TAA eligibility as adversely affected secondary workers under section 222(b) of the Trade Act, the Department examined this issue in

previous investigation of this case. The subject worker group can be certified as eligible to apply for TAA as adversely affected secondary workers only if Murray Engineering either: (1) Supplied components or unfinished or semi-finished goods to a firm employing workers who are covered by a certification of eligibility for adjustment assistance; or (2) assembled or finished products made by such a firm. In the case at hand, neither criterion is met because Murray Engineering did no assembly or finishing work, nor did any of Murray Engineering's customers' workers receive a certification of eligibility to apply for TAA during the relevant time period.

In order to be eligible as suppliers of components or unfinished or semi-finished goods, as petitioner claims the subject worker group to be, the subject worker group must have produced a component part of the product that is the basis of the TAA certification. Because Murray Engineering did not produce a component part of a final product, they were not secondary suppliers of a TAA-certified facility, as required by section 222(b) of the Trade Act. Even if the design specifications were sometimes mounted or affixed to their customers' manufacturing equipment, the display of the design specifications on the equipment is not necessary for the equipment to function properly and does not enhance the equipment's performance; thus, the designs are not component parts.

Further, Murray Engineering did no business with a TAA-certified company during the relevant time period. The petitioning worker specifically claims that Murray Engineering provided designs to Lamb Technicon, a TAA-certified company (TA–W–40,267 & TA–W–40,267A). However, Murray Engineering did business with Lamb Technicon most recently in 1999, which is before the relevant time period for the Murray Engineering petition at issue in this case. Therefore, Lamb Technicon's certification (TA–W–40,267 & TA–W–40,267A) is not a valid basis for certifying Murray Engineering workers as adversely affected secondary workers eligible to apply for TAA.

Conclusion

As the result of the findings of the investigation on remand, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance for workers and former workers of Murray Engineering, Inc., Complete Design Service, Flint, Michigan.

Signed in Washington, DC this 28th day of February, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–1134 Filed 3–15–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,456]

Parker Cone Company, Maiden, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 1, 2005, in response to a petition filed by a company official on behalf of workers of Parker Cone Company, Maiden, North Carolina.

The petition regarding the investigation has been deemed invalid. In order to establish a valid worker group, there must be at least three full-time workers employed at some point during the period under investigation. Workers of the group subject to this investigation did not meet this threshold level of employment. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 1st day of March 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–1138 Filed 3–15–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,517]

Shirley's Sewvac, Hermiston, OR; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 12, 2004, in response to a worker petition filed by a company official on behalf of workers at Shirley's SewVac, Hermiston, Oregon.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC this 17th day of February, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–1142 Filed 3–15–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,606]

Solo Cup Company, Springfield, MO; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on February 18, 2005, in response to a petition filed by the International Brotherhood of Electrical Workers Union, Local 1553 on behalf of workers at Solo Cup Company, Springfield, Missouri.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 1st day of March, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–1158 Filed 3–15–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Snyder Coal Company

[Docket No. M–2005–007–C]

Snyder Coal Company, 66 Snyder Lane, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 77.403(a) (Mobile equipment; rollover protective structures (ROPS) to its N & L Slope Mine (MSHA I.D. No. 36–02203) located in Northumberland County, Pennsylvania. The petitioner requests a modification of the existing standard to permit the Case Front End Loader, Model W26B, S/N No. 9107513 to be used at the N & L Slope Mine without being equipped with rollover protection structures (ROPS). The petitioner asserts that the proposed alternative method would provide at least the same

measure of protection as the existing standard.

2. Ohio Valley Coal Company (The)

[Docket No. M–2005–008–C]

Ohio Valley Coal Company (The), 56854 Pleasant Ridge Road, Alledonia, Ohio 43902 has filed a petition to modify the application of 30 CFR 75.380 (Escapeways; bituminous and lignite mines) to its Powhatan No. 6 Mine (MSHA I.D. No. 33–01159) located in Belmont County, Ohio. Due to deteriorating roof conditions throughout the portion of Main North which extends from the junction of A-West Submain to the Portal of Hope, the petitioner proposes to mine and/or rehabilitate a set of entries parallel to the existing Main North entries. The petitioner states that the majority of the development will consist of rehabilitation of existing entries and crosscuts, and some extraction of coal in areas between the existing gate sections. The petitioner will use specific terms and conditions listed in this petition when the proposed alternative method is implemented. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. Eastern Associated Coal Corporation

[Docket No. M–2005–009–C]

Eastern Associated Coal Corporation, P.O. Box 148, Graham, Kentucky 42344 has filed a petition to modify the application of 30 CFR 77.214(a) (Refuse file; general) to its Kopperston Preparation Plant (MSHA I.D. No. 46–03157) located in Wyoming County, West Virginia. The petitioner proposes to backfill four (4) existing mine openings associated with the Longbranch Energy Mine No. 20, with non-acid producing soil. The soil will extend approximately 25 feet into the mine and at least 4 feet in all directions beyond the limits of the mine opening. The petitioner also proposes to cover any exposed coal seam along the mine bench with soil to at least 4 feet above the coal seam. The petitioner has listed in this petition specific terms and conditions that will be followed when the proposed alternative method is implemented. The petitioner asserts that since the existing mine is abandoned, the proposed alternative method would provide at least the same measure of protection as the existing standard.

4. Thunder Basin Coal Company, LLC

[Docket No. M–2005–010–C]

Thunder Basin Coal Company, LLC, P.O. Box 406, Wright, Wyoming 82732 has filed a petition to modify the application of 30 CFR 77.700–1 (Grounding metallic sheaths, armors, and conduits enclosing power conductors) to its Black Thunder Mine (MSHA I.D. No. 48–00977), and Coal Creek Mine (MSHA I.D. No. 48–01215) both located in Campbell County, Wyoming. The petitioner requests a modification of the existing standard to permit an alternative method of compliance for the grounding of a diesel electric generator. The petitioner proposes to use a portable diesel-powered electric generator to electrically power shovels while moving them from point to point around the mine. The petitioner also proposes to use a portable diesel electric generator to provide temporary power to mobile equipment where substations are not readily available and where substations cannot easily be installed without major construction work, and to provide temporary power to stationary loads when utility power is unavailable. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

5. Powder River Coal Company

[Docket No. M–2005–011–C]

Powder River Coal Company, 1013 E. Boxelder Road, Caller Box 3034, Gillette, Wyoming 82717–3034 has filed a petition to modify the application of 30 CFR 77.700–1 (Grounding metallic sheaths, armors, and conduits enclosing power conductors) to its North Antelope/Rochelle Mine (MSHA I.D. No. 48–01353), Caballo Mine (MSHA I.D. No. 48–01034), and Rawhide Mine (MSHA I.D. No. 48–00993) all located in Campbell County, Wyoming. The petitioner requests a modification of the existing standard to permit an alternative method of compliance for the grounding of a diesel electric generator. The petitioner proposes to use a portable diesel powered electric generator for temporary power and/or to move electrically powered mining equipment in and around the mine. The petitioner asserts that application of the existing standard would result in a diminution of safety to the miners, and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

6. Goodin Creek Mining Company, Inc.

[Docket No. M–2005–012–C]

Goodin Creek Mining Company, Inc., has filed a petition to modify the application of 30 CFR 75.342 (Methane monitors) to its Mine #2 (MSHA I.D. No. 15–18606) located in Whitley County, Kentucky. The petitioner proposes to use hand-held continuous-duty methane and mounted methane monitors on three-wheel tractors with drag bottom buckets. The petitioner states that the operator will be qualified in the proper use of the detector. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via Federal eRulemaking Portal: *http://www.regulations.gov;* e-mail: *zzMSHA-Comments@dol.gov;* Fax: (202) 693–9441; or Regular Mail/Hand Delivery/Courier: Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before April 15, 2005. Copies of these petitions are available for inspection at that address.

Dated in Arlington, Virginia this 11th day of March, 2005.

Rebecca J. Smith,

Acting Director, Office of Standards, Regulations, and Variances.

[FR Doc. 05–5185 Filed 3–15–05; 8:45 am]

BILLING CODE 4510–43–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–317 and 50–318]

Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2; Notice of Consideration of Issuance of Amendment to Renewed Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Renewed Facility Operating License No. DPR–53 and No. DPR–69, issued to Calvert Cliffs Nuclear Power Plant, Inc. (the licensee), for operation of the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2 located in Lusby, MD.

The proposed amendments would increase the licensed core power level by 1.38 percent to 2737 MWt (megawatts-thermal) with the installation of the CROSSFLOW ™ feedwater flow measurement system.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended

(the Act), and the Commission's regulations.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner/requestor in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted, with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to Carey Fleming, Esquire, Counsel, Constellation Energy Group, Inc., 750 East Pratt Street, 17th floor, Baltimore, MD 21202, attorney for the licensee.

For further details with respect to this action, see the application for amendment dated January 31, 2005, which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 10th day of March 2005.

For the Nuclear Regulatory Commission.

Richard V. Guzman,

Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 05–5121 Filed 3–15–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–269, 50–270, and 50–287]

Duke Energy Corporation; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The Nuclear Regulatory Commission (NRC, the Commission) is considering issuance of amendments to Renewed Facility Operating License Nos. DPR–38, DPR–47, and DPR–55, issued to Duke Energy Corporation (the licensee), for operation of the Oconee Nuclear Station, Units 1, 2, and 3, located in Seneca, South Carolina.

The proposed amendments would revise the Technical Specifications to accommodate the replacement of the current analog-based Reactor Protective

System (RPS) and Engineered Safeguards Protective System (ESPS) with a digital computer-based RPS and ESPS.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's public document record (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner/requestor in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, Nuclear Regulatory Commission, *hearingdocket@nrc.gov*; or (4) facsimile transmission addressed to the Office of the Secretary, Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent Anne W. Cottingham, Winston and Strawn LPP, 1400 L Street, NW., Washington, DC 20005, attorney for the licensee.

For further details with respect to this action, see the application for amendment dated February 14, 2005, which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 3rd day of March 2005.

For the Nuclear Regulatory Commission.

Leonard N. Olshan,

Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 05–5122 Filed 3–15–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NUREG–1600]

NRC Enforcement Policy

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing its intent to use the NRC public Web site and the NRC's Agencywide Documents Access and Management System

(ADAMS) to communicate its ''General Statement of Policy and Procedure for NRC Enforcement Actions—Enforcement Policy,'' to discontinue publication of the paper document, NUREG–1600, and to simplify the official policy statement title. The NRC is taking these actions because the policy statement is available electronically on the NRC public Web site and is widely known as the ''NRC Enforcement Policy.''

DATES: Comments on this initiative may be submitted on or before April 15, 2005.

ADDRESSES: Submit written comments to: Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop: T6D59, U. S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m., Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, Room O1F21, 11555 Rockville Pike, Rockville, MD. You may also e-mail comments to *nrcrep@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Renée Pedersen, Senior Enforcement Specialist, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, (301) 415–2742, e-mail *rmp@nrc.gov.*

SUPPLEMENTARY INFORMATION: The Commission first published its ''General Statement of Policy and Procedure for NRC Enforcement Actions—Enforcement Policy,'' (Enforcement Policy) on October 7, 1980 (45 FR 66754). The Policy was codified as Appendix C to Part 2 of Title 10 of the Code of Federal Regulations to provide widespread dissemination. However, the Enforcement Policy has always included a statement recognizing that it is a policy statement and not a regulation. An underlying basis of the Enforcement Policy reflected throughout it is that the determination of the appropriate sanction requires the exercise of discretion such that each action is tailored to the particular factual situation.

On June 30, 1995, the NRC announced that it was removing the Enforcement Policy from the Code of Federal Regulations (60 FR 34380). This action was part of an enforcement program review, to avoid any interpretation that the policy should be construed as a regulation. To continue to ensure widespread dissemination, the NRC published the Enforcement Policy in its NUREG-series publications as NUREG–1600 and continued to publish revisions to the Enforcement Policy in the **Federal Register**. NUREG–1600 was first published in July of 1995. The last complete revision that was issued as a NUREG-series publication (NUREG–1600) was dated May 1, 2000. However, the Enforcement Policy has been revised on multiple occasions (as published in the **Federal Register**) without being republished as a NUREG document.

The NRC maintains the current Enforcement Policy on its Web site at *http://www.nrc.gov,* select What We Do, Enforcement, then Enforcement Policy. The Enforcement Web site also includes a history of the Enforcement Policy by including and/or referencing the **Federal Register** notice for each policy revision since it was first published in 1980. This section of the Web site will continue to be updated with any future revisions to the Enforcement Policy.

Preparation and publication of the NUREG is costly and consumes resources, personnel, and paper. The Commission believes that widespread dissemination of the NRC's Enforcement Policy can now be accomplished more effectively and efficiently by posting it on the NRC public Web site and maintaining it in ADAMS. Continuing to publish material in hard copy when the information is currently and promptly available electronically is not consistent with the Congressional mandate to maximize the value of Information Technology acquisitions and the direction the NRC has taken with its implementation of ADAMS. The staff will continue to publish revisions to the Enforcement Policy in the **Federal Register**. Additionally, the staff will continue its practice of sending printed copies of the most current Enforcement Policy to those licensees and individuals being considered for significant enforcement action who may not have access to the Web site; and to any interested stakeholder upon request.

On July 13, 2000, the NRC made a similar announcement in the **Federal Register** proposing to discontinue publishing NUREG–0940, ''Enforcement Actions: Significant Actions Resolved,'' (65 FR 43383). The NRC only received comments supporting this initiative.

For the above reasons, the Commission believes that publication of NUREG–1600 is no longer needed. In addition, in keeping with plain English initiatives, the staff believes that it is appropriate to simplify the official title from, ''General Statement of Policy and Procedure for NRC Enforcement Actions—Enforcement Policy,'' to ''NRC Enforcement Policy.''

Dated at Rockville, MD, this 10th day of March, 2005.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 05–5119 Filed 3–15–05; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 26781; 812–12901]

The Brazilian Equity Fund, Inc., et al.; Notice of Application

March 9, 2005.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 17(b) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 17(a) of the Act and under rule 17d–1 under the Act to permit certain joint transactions.

SUMMARY OF APPLICATION: Applicants request an order permitting the proposed settlement of certain litigation in which the applicants are named as defendants.

APPLICANTS: The Brazilian Equity Fund, Inc. (''Fund''), Credit Suisse Asset Management, LLC (''Adviser''), Enrique R. Arzac (''Arzac''), James J. Cattano (''Cattano''), George W. Landau (''Landau''), Martin M. Torino (''Torino'') and Richard W. Watt (''Watt,'' and together with Arzac, Cattano, Landau and Torino, the ''Director Applicants'').

FILING DATES: The application was filed on November 8, 2002 and amended on February 15, 2005.

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 March 30, 2005, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC

20549–0609; Applicants, c/o Credit Suisse Asset Management, LLC, 466 Lexington Avenue, New York, NY 10017.

FOR FURTHER INFORMATION, CONTACT: Courtney S. Thornton, Senior Counsel, at (202) 551–6812, or Michael W. Mundt, Senior Special Counsel, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Fund, a corporation organized under the laws of the state of Maryland, is a closed-end management investment company registered under the Act. Shares of the Fund trade on the New York Stock Exchange (''NYSE''). The Adviser, which is an investment adviser registered under the Investment Advisers Act of 1940, serves as the Fund's investment adviser.

2. The Adviser, the Fund, and certain of the Fund's current and former directors (the ''Director Defendants'') are defendants in a derivative and class action lawsuit filed in the United States District Court for the Southern District of New York (''District Court'').[1] The action (''Rights Offering Litigation''), which commenced in May 1997, arose out of the Fund's 1996 rights offering of its common stock (''Rights Offering''). In his derivative capacity, the plaintiff alleged that, in approving the Rights Offering, the Director Defendants put the interests of the Adviser ahead of the interests of the Fund's shareholders, thereby breaching their duties of loyalty and due care to the shareholders of the Fund. The class action claim included similar assertions but alleged that the Fund's shareholders were injured directly by the Director Defendants' breach of their fiduciary duties. Specifically, the complaint alleged violations of section 36(b) of the Act (derivatively against the Adviser), section 36(a) of the Act (against all defendants except the Fund), section 48 of the Act (against the Director Defendants and the Fund), section 36(a) of the Act (derivatively against all defendants except the Fund), and for breach of fiduciary duty at common law.

3. On September 15, 1997, the defendants filed a motion to dismiss the complaint in its entirety. The District Court granted the motion to dismiss with respect to all class action claims and the section 36(b) claim, but denied it with respect to all remaining derivative claims. Thereafter, the Fund named from among its directors who are not ''interested persons'' of the Fund within the meaning of section 2(a)(19) of the Act (''Independent Directors'') two directors who are not Director Defendants to act as a special litigation committee (''Special Litigation Committee'') to investigate the matter and determine whether any of the claims asserted in the complaint ought to be prosecuted on behalf of the Fund. The Special Litigation Committee concluded that the litigation should be discontinued and filed a motion to dismiss the complaint in the derivative action. On September 15, 2000, the District Court granted summary judgment and dismissed all remaining derivative claims on the basis of the Special Litigation Committee's determination that continued prosecution of the derivative action was not in the best interests of the Fund or its shareholders. The plaintiff appealed this judgment on the grounds that the District Court had erroneously dismissed the class action claims in the response to the original (September 1997) motion to dismiss. On February 28, 2002, the Second Circuit Court of Appeals (''Second Circuit'') reversed the decision of the District Court and reinstated the class action claims, predicating its decision on its determination that the plaintiff had shareholder standing under Maryland state law to bring direct claims (as opposed to derivative claims). The Second Circuit left the Rights Offering Litigation to the District Court on remand.

4. In addition to the Rights Offering Litigation, the Adviser is a defendant in a separate action commenced on May 21, 1998 in the District Court (''Fee Litigation'' [2] and together with the Rights Offering Litigation, the ''Actions''). The initial complaint alleged that in negotiating the investment advisory fee with the Independent Directors (who were alleged to be not truly independent), the Adviser violated its fiduciary duty pursuant to section 36(b) of the Act.

5. The District Court dismissed the initial complaint upon motion by the Adviser, but gave the plaintiff leave to replead. The amended complaint restated the claim in the initial complaint but added an additional claim under Section 36(a) of the Act asserting that the Adviser was liable for breach of duty for negotiating an advisory agreement with directors who were allegedly not independent. The Adviser filed a motion to dismiss the amended complaint, but the District Court denied the motion subject to the plaintiff adding the Fund as a nominal defendant. The plaintiff subsequently filed a second amended complaint to add the Fund as a defendant. The defendants moved for summary judgment, and the District Court granted the motion on February 28, 2002. The plaintiff filed a notice of appeal of the judgment of the District Court on March 28, 2002.

6. Applicants state that, due to the inherent uncertainties of litigation, as well as the additional costs and expenses that would be necessary to further litigate the Actions, all parties to the Actions reached a settlement on September 12, 2002, following extensive settlement discussions. The settlement involves three separate agreements: A settlement agreement between the plaintiff and the defendants that has been approved by the District Court (''Settlement Agreement''); an agreement among the Fund, the Adviser, and Gulf Insurance Company (''Gulf'') relating to insurance coverage for certain expenses in connection with the litigation and settlement of the Actions (''Insurance Settlement Agreement''); and an agreement between the Fund and the Adviser to share insurance proceeds and certain expenses in connection with the litigation and settlement of the Actions (''Settlement Costs Sharing Agreement''). The complete terms and conditions of the proposed settlement were presented to and unanimously approved by the Fund's board of directors, including all of the Independent Directors, at a meeting held on June 27, 2002. In evaluating the settlement and throughout the settlement negotiation and evaluation process, the Independent Directors were advised by independent legal counsel.

7. The District Court approved the Settlement Agreement on April 7, 2003 and entered an order approving the Settlement Agreement on April 9, 2003. The principal terms and conditions of the Settlement Agreement are as follows:

a. The Fund will be liquidated and its net assets distributed to shareholders.

b. Class members in the Rights Offering Litigation will be entitled to receive either $1.00 or $0.25 per share (''Settlement Payments''), depending on whether they exercised their rights in the Rights Offering. The Settlement Payments have been fixed at $253,922.

[1] Robert Strougo v. Bassini, *et al.* (97 Civ. 3579) (RWS).

[2] Robert Strougo v. BEA Associates (98 Civ. 3725) (RWS).

c. Plaintiff was to apply to the District Court for an award of attorneys' fees and related amounts, not to exceed $735,000 plus reimbursement of expenses not exceeding $75,000, and a compensatory award not to exceed $15,000. Following an objection made by a Fund shareholder to the plaintiff's requested attorneys' fees, the amount awarded by the District Court was fixed at $500,000 plus $70,561 of disbursements, together with the $15,000 compensatory award, for a total award of $585,561 (collectively, ''Plaintiff's Fees and Expenses'').

d. The consummation of the Settlement Agreement is subject to certain other conditions including: (i) The Fund shareholder class shall have been certified for settlement by the District Court; (ii) the Fund's shareholders shall have duly approved the liquidation of the Fund, subject to the satisfaction of certain conditions; and (iii) the Adviser shall not have been terminated as adviser to the Fund by a shareholder vote. These conditions currently are satisfied.

8. The Fund and the Adviser asserted the right to insurance coverage from Gulf under an errors and omissions policy insuring both the Adviser and the Fund against certain losses, liabilities, and related defense costs. Gulf has agreed to fund the settlement of the Actions and to pay a portion of the defense costs incurred by the Adviser and the Fund in connection with the Actions.

9. Under the Insurance Settlement Agreement, which has not been reviewed or approved by the District Court, Gulf has agreed to reimburse: (a) The Fund and the Adviser for the Plaintiff's Fees and Expenses in the amount of $585,561; (b) the Fund and the Adviser for $253,922 to fund the Settlement Payments plus mailing and related expenses (estimated to be $25,000); and (c) $514,720 of certain costs and attorneys' fees billed to the Adviser, the Fund and the Director Defendants for defense of the Actions (''Defense Fee'') on or prior to December 31, 2001, and 87.5% of certain costs and fees billed to the Adviser, the Fund and the Director Defendants in connection with the litigation and settlement of the Actions after December 31, 2001. Any legal fees and expenses incurred in connection with the liquidation of the Fund (currently estimated at $103,350) will be borne by the Fund to the extent they are not paid by Gulf, and any legal fees and expenses incurred in connection with the Application (currently estimated at $75,000) will be split equally between the Fund and the Adviser, to the extent they are not paid by Gulf.

10. Applicants state that the Settlement Costs Sharing Agreement was the result of extensive negotiation between the Independent Directors and the Adviser. Pursuant to the Settlement Costs Sharing Agreement, which has not been reviewed or approved by the District Court, the Adviser and the Fund have agreed to share in equal parts the 12.5% portion of the certain costs and fees they have incurred or will incur in connection with the litigation and settlement of the Actions after December 31, 2001, that are not paid by Gulf. In addition, under the Settlement Costs Sharing Agreement:

a. The Adviser and the Fund agreed to bear equally any portion of the Settlement Payments not reimbursed by Gulf, although it has since been determined that Gulf's contribution will be sufficient to satisfy all claims.

b. The Adviser and the Fund have agreed that the Defense Fee will be payable $507,360 to the Adviser and $7,360 to the Fund. In consideration for this payment, the Adviser has agreed to waive any and all rights to indemnification from the Fund for the approximately $1.01 million in certain costs and fees incurred by it in connection with the Fee Litigation prior to December 31, 2001.[3] In addition, as consideration for receiving from Gulf 87.5% of certain of the Adviser's additional costs and fees in connection with the Actions after December 31, 2001, the Adviser has agreed to waive any and all rights to indemnification from the Fund for any such costs and fees not paid by Gulf.

c. The Adviser and the Fund also have agreed that all costs and fees not otherwise reimbursed by Gulf associated with (i) liquidating the Fund will be borne by the Fund, and (ii) applying for and obtaining the order requested by the application (''Order'') will be shared equally by the Adviser and the Fund.

11. Applicants state that in considering whether to approve the terms of the settlement, the Board, advised by independent legal counsel, reviewed and discussed at length the expected benefits to shareholders from the liquidation and dissolution of the Fund, including the realization by shareholders of their investment in the Fund at net asset value. The Board also reviewed information about the investment outlook for the Fund and the possible delisting of the Fund's shares from the NYSE as a result of the steady deterioration of the Fund's average market capitalization at that time. In approving the terms upon which the Fund participated in the settlement arrangements, the Board considered a number of factors, including: (i) The possibility that the Fund would have to reimburse the Adviser for additional legal expenses if the plaintiff appealed the District Court's granting of the Adviser's motion for summary judgment in the Fee Litigation; (ii) the conclusion by the Special Litigation Committee that there was no basis on the merits to institute an action against the Adviser in the Rights Offering Litigation; (iii) the re-institution by the Second Circuit of the class action claims in the Rights Offering Litigation, which could entail considerable legal expenses to defend; and (iv) the fact that under the terms of the settlement, most of the settlement costs would be absorbed by Gulf, and the Fund would be relieved of substantial reimbursement obligations to the Adviser. The Board also noted that extensive negotiations had been conducted between the Adviser and Gulf and between the Fund and the Adviser and concluded that the terms agreed upon were as favorable to the Fund as possible, short of commencing an action against Gulf to seek further recovery.

Applicants' Legal Analysis

1. Section 17(a)(1) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any securities or other property to the company. The Adviser is an affiliated person of the Fund within the meaning of section 2(a)(3)(E) of the Act, which defines an affiliated person of an investment company to include any investment adviser to that investment company. Applicants state that the release by the Adviser of its right to indemnification (pursuant to the Advisory Agreement) from the Fund for fees and expenses incurred by the Adviser in the defense of the Actions in consideration of the Settlement Costs Sharing Agreement could be viewed as a sale of a property right by the Adviser to the Fund.

2. Section 17(b) of the Act authorizes the Commission to exempt a proposed

[3] Pursuant to the investment advisory agreement between the Adviser and the Fund (''Advisory Agreement''), the Adviser is entitled to (i) indemnification from the Fund for any losses arising from matters to which the Advisory Agreement relates (provided the Adviser has not engaged in ''disabling conduct'' (*i.e.*, willful misfeasance, bad faith or gross negligence)), and (ii) advances from the Fund for payment of reasonable expenses in connection with the matter as to which it is seeking indemnification, provided certain requirements are met. Accordingly, applicants state that the Adviser's waiver of its right to indemnification will result in a significant measurable economic benefit to the Fund and a significant economic cost to the Adviser.

transaction from section 17(a) provided that the terms of the transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of the registered investment company as recited in its registration statement and with the general purposes of the Act.

3. Section 17(d) of the Act and rule 17d–1 under the Act generally prohibit an affiliated person of a registered investment company, or affiliated persons of an affiliated person, when acting as principal, from effecting any transaction in which the company is a joint or joint and several participant unless permitted by Commission order upon application. Applicants state that because the Adviser and the Director Applicants are affiliated persons of the Fund,[4] the proposed settlement could be deemed a transaction or arrangement prohibited by section 17(d) and rule 17d–1. In considering an application for an order under rule 17d–1, the Commission must determine whether the participation of the investment company in a joint enterprise or joint arrangement is consistent with the provisions, policies and purposes of the Act and the extent to which the company's participation would be on a basis different from or less advantageous than that of the other participants.

4. Applicants believe that the relative benefits from the proposed settlement to the Fund markedly outweigh its contributions to the settlement, and that the Fund's participation in the proposed settlement is on terms that are at least as favorable to the Fund as to the Adviser and the Director Applicants. Under the terms of the proposed settlement, the Fund's contributions are limited to the following: (a) 6.25% (50% of 12.5%) of the costs and fees incurred after December 31, 2001 in connection with the litigation and settlement of the Actions (the balance being paid by Gulf and the Adviser); (b) 50% of the costs associated with obtaining the Order after any contribution by Gulf; and (c) the costs associated with liquidating the Fund after any contribution by Gulf. The Fund will make no contribution in respect of the Settlement Payments and will be relieved of any payment obligations to the class members in the Rights Offering Litigation. In addition, as noted above, the Fund will be relieved of its obligation to indemnify the Adviser for the legal fees and expenses it has incurred in connection with the Actions.

5. Applicants state that the participation by the Director Applicants in the proposed settlement is also consistent with the provisions of section 17(d) and rule 17d–1. As part of the Settlement Agreement, the Director Applicants will be released from any liability in connection with the Rights Offering Litigation. Although the Director Applicants' legal expenses incurred in connection with the Rights Offering Litigation have been paid by the Fund, the Fund is obligated under its articles of incorporation and by-laws (and, in the case of the Independent Directors, under separate indemnification agreements with each such Director) to pay those expenses regardless of whether the Actions are settled, provided the Director Applicants have not engaged in willful misfeasance, bad faith, gross negligence or reckless disregard of their duties. Furthermore, the proposed settlement is predicated upon the settlement of both Actions in their entirety. Consequently, if the Director Applicants could not participate, applicants state that the proposed settlement in all likelihood would not be consummated, and the Fund would continue to incur legal fees and expenses in connection with its indemnification of the Director Applicants.

6. Applicants represent that the liquidation of the Fund cannot occur without settlement of the Actions. Applicants state that the liquidation of the Fund will benefit shareholders because it will enable them to realize immediately the full net asset value of their shares. Applicants note that at the Fund's annual meeting of shareholders held on January 16, 2003, the holders of a majority of the Fund's outstanding shares voted in favor of the Fund's liquidation. Applicants also assert that the continued litigation of the Actions would be detrimental to both the Fund and its shareholders because of the costs and expenses to the Fund in connection with its defense of the Actions.

7. Accordingly, applicants submit that the terms of the proposed settlement, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching and that the proposed transaction is consistent with the policy of the Fund and with the general purposes of the Act. Applicants further submit that the Fund's participation in the proposed settlement would not be on a basis different from or less advantageous than that of the other participants.

[4] Each Director Applicant is an affiliated person of the Fund pursuant to section 2(a)(3)(D) of the Act, which defines an ''affiliated person'' of another person to include any director of such other person.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–1133 Filed 3–15–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 70 FR 11720, March 9, 2005.

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Monday, March 14, 2005, at 3:30 p.m.

CHANGE IN THE MEETING: Cancellation of meeting.

The closed meeting scheduled for Monday, March 14, 2005, has been cancelled.

For further information please contact the Office of the Secretary at (202) 942–7070.

Dated: March 11, 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–5267 Filed 3–11–05; 4:16 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51337; File No. SR–Amex–2004–109]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment Nos. 1, 2 and 3 Thereto Relating to Split Price Priority

March 9, 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 23, 2004, the American Stock Exchange LLC (''Amex'' or the ''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 Amex. On February 4, 2005, the Amex amended the proposed rule change (''Amendment

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

No. 1'').[3] On February 14, 2005, the Amex amended the proposed rule change (''Amendment No. 2'').[4] On March 8, 2005, the Amex amended the proposed rule change (''Amendment No. 3'').[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons. In addition, the Commission is granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex seeks to amend Amex Rules 950 and 950—ANTE to permit a limited exception to the existing split price priority requirement. The text of the proposed rule change is set forth below. Proposed new language is in *italics*; deletions are in [brackets].

* * * * *

Rule 950

Rules of General Applicability

(a)–(c) No change.

(d) The provisions of Rule 126, with the exception of subparagraphs (a) and (b) thereof, shall apply to Exchange option transactions and the following additional commentary shall also apply:

Commentary . . .

.01–.04 No change.

.05 *(a)* Purchase *or Sale* Priority. If a member purchases (*sells*) one or more option contracts of a particular series at a particular price or prices such member shall, at the next lower (*higher*) price at which a member other than [an Exchange] *a floor* [B]*b*roker or specialist representing a customer agency order entitled to priority pursuant to Rule 950(c), have priority in purchasing (*selling*) up to the equivalent number [(or a reasonably larger number)] of option contracts of the same series that he purchased (*sold*) at the higher (*lower*) price or prices, but only if his bid (*offer*) is made promptly and the purchase (*sale*) so effected represents the opposite side of a transaction with the same order or offer (*bid*) as the earlier purchase or purchases *(sale or sales). This paragraph only applies to transactions effected in open outcry.* [Sale Priority. If a member sells one or more option contracts of a particular series at a particular price or prices, he shall, at the next higher price at which a member other than an Exchange Broker or specialist representing a customer agency order entitled to priority pursuant to Rule 950(c), have priority in selling up to the equivalent number (or a reasonable larger number) of option contracts of the same series that he sold at the lower price or prices, but only if his offer is made promptly and the sale so effected represents the opposite side of a transaction with the same order or bid as the earlier sale or sales.]

(b) Purchase or sale priority for orders of 100 contracts or more. If a member purchases (sells) fifty or more options contracts of a particular series at a particular price or prices, such member shall, at the next lower (higher) price have priority in purchasing (selling) up to the equivalent number of option contracts of the same series that he purchased (sold) at the higher (lower) price or prices, but only if his bid (offer) is made promptly and the purchase (sale) so effected represents the opposite side of a transaction with the same order or offer (bid) as the earlier purchase or purchases (sale or sales). The Options Trading Committee may increase the ''minimum qualifying order size'' above 100 contracts for all products under its jurisdiction. Announcements regarding changes to the minimum qualifying order size shall be made via Regulatory Circular. This paragraph only applies to transactions effected in open outcry.

(c) Two or more members entitled to priority. If the bids or offers of two or more members are both entitled to priority in accordance with paragraph (a) or paragraph (b), it shall be afforded them insofar as practicable, on a pro-rata basis.

(d) Floor brokers are able to achieve split price priority in accordance with paragraphs (a) and (b) above. Provided, however, that a floor broker who bids (offers) on behalf of a non-market-maker Amex member broker-dealer (''Amex member BD'') must ensure that the Amex member BD qualifies for an exemption from Section 11(a)(1) of the Exchange Act or that the transaction satisfies the requirements of Exchange Act Rule 11a2–2(T), otherwise the floor broker must yield priority to orders for the accounts of non-members.

.06–.07 No change.

(e)–(p) No change.

* * * * *

Rule 950—ANTE

Rules of General Applicability

(a)–(c) No change.

(d) The provisions of Rule 126, with the exception of subparagraphs (a) and (b) of such Rule, shall apply to Exchange option transactions as modified by Commentaries .01 and .02 to Rule 950(c), and the following additional commentary shall also apply:

Commentary . . .

.01–.05 No change.

.06 (a) Purchase *or Sale* Priority—For trades occurring outside the ANTE System only, if a member purchases (*sells*) one or more option contracts of a particular series at a particular price or prices such member shall, at the next lower (*higher*) price at which a member other than [an Exchange] *a floor* [B]*b*roker or specialist representing a customer agency order entitled to priority pursuant to Rule 950—ANTE(c), have priority in purchasing (*selling*) up to the equivalent number [(or a reasonably larger number)] of option contracts of the same series that he purchased (*sold*) at the higher (*lower*) price or prices, but only if his bid (*offer*) is made promptly and the purchase (*sale*) so effected represents the opposite side of a transaction with the same order or offer (*bid*) as the earlier purchase or purchases *(sale or sales). This paragraph only applies to transactions effected in open outcry.*

[(b) *Sale Priority*—For trades occurring outside the ANTE System only, if a member sells one or more option contracts of a particular series at a particular price or prices, he shall, at the next higher price at which a member other than an Exchange Broker or specialist representing a customer agency order entitled to priority pursuant to Rule 950—ANTE(c), have priority in selling up to the equivalent number (or a reasonable larger number) of option contracts of the same series that he sold at the lower price or prices, but only if his offer is made promptly and the sale so effected represents the opposite side of a transaction with the same order or bid as the earlier sale or sales.]

(b) Purchase or sale priority for orders of 100 contracts or more. If a member purchases (sells) fifty or more options contracts of a particular series at a particular price or prices, such member shall, at the next lower (higher) price have priority in purchasing (selling) up to the equivalent number of option contracts of the same series that he purchased (sold) at the higher (lower) price or prices, but only if his bid (offer) is made promptly and the purchase (sale) so effected represents the opposite side of a transaction with the same order or offer (bid) as the earlier purchase or purchases (sale or sales). The Options Trading Committee may increase the ''minimum qualifying order size'' above 100 contracts for all products under its jurisdiction. Announcements regarding changes to

[3] In Amendment No. 1, the Amex restated the proposed rule change in its entirety.

[4] In Amendment No. 2, the Amex corrected a reference to the Options Trading Committee in proposed Commentary .06(b) to Amex Rule 950–ANTE(d).

[5] In Amendment No. 3, the Amex requested accelerated approval of the proposed rule change.

the minimum qualifying order size shall be made via Regulatory Circular. This paragraph only applies to transactions effected in open outcry.

(*c*) Two or more members entitled to priority. If the bids or offers of two or more members are both entitled to priority in accordance with paragraph (a) or paragraph (b), it shall be afforded them insofar as practicable, on a pro-rata basis.

(d) Floor brokers are able to achieve split price priority in accordance with paragraphs (a) and (b) above. Provided, however, that a floor broker who bids (offers) on behalf of a non-market-maker Amex member broker-dealer (''Amex member BD'') must ensure that the Amex member BD qualifies for an exemption from Section 11(a)(1) of the Exchange Act or that the transaction satisfies the requirements of Exchange Act Rule 11a2–2(T), otherwise the floor broker must yield priority to orders for the accounts of nonmembers.

.07 No change.

(e)–(n) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Amex Rules 950(d), Commentary .05 and 950—ANTE(d), Commentary .06 establish priority principles for split-price transactions. Generally, a member buying (selling) at a particular price shall have priority over other members in purchasing (selling) up to an equivalent number of contracts of the same order at the next lower (higher) price. Awarding split price priority serves as an inducement to members to bid (offer) more aggressively for an order that may require a split-price execution by giving them priority at the next lower (higher) price point. For example, assume the market is $1.00–$1.20, 300-up when a floor broker (''FB'') receives instructions from a customer that he/she would like to buy 500 options at a price or prices no higher than $1.20. The FB could attempt to execute the order in open outcry at a price better than the displayed market of $1.20. Assume a Specialist is willing to sell 250 contracts at $1.15 provided he/she can also sell the remaining 250 contracts at $1.20. Under current rules, that Specialist could offer $1.15 for 250 contracts and then, by virtue of the split price priority rule, he/she would have priority for the balance of the order (up to 250 contracts) over other crowd members. If executed, the resulting net price of $1.175 is better than the current displayed market of $1.20, which results in a better fill for the customers.[6]

One limitation on the ability of crowd participants to use the split price priority rule is the rule's requirement that orders in the limit order book (''book'') have priority over the member attempting to fill the balance of the order at the split price. Using the example above, if the $1.20 price represented orders in the book, those orders would have priority over the Specialist at $1.20. This means that a Specialist who is willing to trade at $1.15 and $1.20 may be completely unwilling to trade at the better price of $1.15 if he/she cannot trade the balance of the order at $1.20 because of the requirement to yield to existing customer interest in the book. This jeopardizes the FB's ability to execute the first part of the order at a price of $1.15, thereby potentially making it difficult to achieve price improvement for the customer on the Amex. Instead, the order may trade at another exchange that has no impediments, *e.g.,* no customer interest at those price levels. Accordingly, the Exchange is proposing to adopt a limited exception to the existing priority requirement.

Under newly-proposed paragraph (b) to Rules 950(d), Commentary .05 and 950—ANTE(d), Commentary .06, a member with an order for at least 100 contracts who buys (sells) at least 50 contracts at a particular price shall have priority over all others in purchasing (selling) up to an equivalent number of contracts of the same order at the next lower (higher) price.[7]

Using the above example, the Specialist trading at $1.15 would have priority over members and orders in the book at $1.20 to trade at $1.20 with the balance of the order in the trading crowd. The Exchange believes the proposal will lead to more aggressive quoting by Specialists, which in turn could lead to better executions. As indicated above, a Specialist may be willing to trade at a better price for a portion of an order if he/she is assured of trading with the balance of the order at the next pricing increment. As a result, FBs representing orders in the trading crowd may receive better-priced executions. As proposed, the Options Trading Committee (consisting of Floor Governors, Heads of the Specialist Association, FB Association, and the Options Market Maker Association) will have the ability to increase the minimum qualifying order size to a number larger than 100 contracts. Any changes, which must apply to all products under the committee's jurisdiction, will be announced to the membership via Regulatory Circular.

The Amex believes it is reasonable to make a limited exception to the customer priority rule to allow split price trading. In this regard, the proposed exception is similar in operation to the limited priority exception that exists for complex orders (contained in Rules 950(d), Commentary .01 and 950—ANTE(d), Commentary .01). The complex order priority exception generally provides that a member affecting a qualifying complex order may trade ahead of the book on one side of the order provided the other side of the order betters the book. This exception was intended to facilitate the trading of complex orders, which by virtue of their multi-legged composition could be more difficult to trade without a limited exception to the priority rule for one of the legs. The purpose behind the proposed split-price priority exception is the same—to facilitate the execution of large orders, which by virtue of their size and the need to execute them at multiple prices operate in the same manner as the complex order exception by allowing a member affecting a trade that betters the market to have priority on the balance of that trade at the next pricing increment even if there are orders in the book at the same price.

To address potential concerns regarding Section 11(a) of the Act,[8] the Amex proposes to adopt new subparagraph (d) to Rules 950(d), Commentary .05 and 950—ANTE(d), Commentary .06. Section 11(a) generally

[6] If successful, two trades will be reported (at $1.15 and $1.20) and the net price result to the customer will be $1.175.

[7] Orders for less than 100 contracts would be unaffected by this proposal. The Exchange also takes the opportunity to consolidate current paragraphs (a) and (b) of each of Commentary .05 to Amex Rule 950(d) and Commentary .06 to Amex Rule 950—ANTE(d) into one paragraph (paragraph (a) in each). This consolidation would not effect the operation of the rule in any way; it simply would make the rule shorter.

[8] 15 U.S.C. 78k(a).

prohibits members of national securities exchanges from effecting transactions for the member's own account, absent an exemption. With respect to the proposal, there could be situations where because of the limited exception to customer priority, orders on behalf of members could trade ahead of orders of nonmembers in violation of Section 11(a). The proposed rule text makes clear that FBs may avail themselves of the split-price priority rule, but that they will be obligated to ensure compliance with Section 11(a). In this regard, a FB that bids (offers) on behalf of a non-market-maker Amex member broker-dealer (''Amex member BD'') must ensure that the Amex member BD qualifies for an exemption from Section 11(a)(1) of the Act or that the transaction satisfies the requirements of Rule 11a2–2(T) under the Act. Otherwise, the FB must yield priority to orders for the accounts of non-members.

The Exchange further proposes to amend Amex Rule 905(d), Commentary .05(b) and Amex Rule 905—ANTE(d), Commentary .06(b) to remove the parenthetical ''(or a reasonably larger number)''.[9]

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b)[10] of the Act in general and furthers the objectives of Section 6(b)(5)[11] in particular in that it is designed to perfect the mechanisms of a free and open market and the national market system, protect investors and the public interest and promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change, as amended, will impose no 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

No written comments were solicited or received by the Exchange on this proposal.

[9] *See* Amendment No. 1. The Exchange believes this language to be unnecessary to achieve the intent of the rule, which is to allow FBs to have priority for up to an equivalent number of contracts purchased or sold at the preceding price, as specified in the rule. Telephone conference on March 8, 2005, between Laura Clare, Assistant General Counsel, Amex and Ira Brandriss, Assistant Director, Division of Market Regulation, Commission.

[10] 15 U.S.C. 78(f)(b).

[11] 15 U.S.C. 78(f)(b)(5).

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Amex–2004–109 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–Amex–2004–109. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. 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–Amex–2004–109 and should be submitted on or before April 6, 2005.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[12] In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[13] which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change should encourage more aggressive quoting by market makers in competition for large-sized orders, and, in turn, lead to better-priced executions. The Commission notes that the proposed rule change includes interpretive language that clarifies that floor brokers who avail themselves of the split priority rule are obligated to ensure compliance with Section 11(a) of the Act.

The Amex has requested that the Commission approve the proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register**. The Commission notes that granting accelerated approval of the proposal will allow the Amex to immediately implement a rule that is similar to rules already in place at other exchanges.[14] Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[15] for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–Amex–2004–109), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–1130 Filed 3–15–05; 8:45 am]

BILLING CODE 8010–01–P

[12] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b).

[14] *See* Securities Exchange Act Release Nos. 51148 (February 8, 2005), 70 FR 7783 (February 15, 2005) (SR–CBOE–2004–67) and 51318 (March 4, 2005) (SR–PCX–2005–25).

[15] 15 U.S.C. 78s(b)(2).

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51346; File No. SR–CBOE–2005–08]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Incorporated Relating to Listing Standards for Options on Narrow-Based Security Indexes

March 9, 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 January 14, 2005, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the CBOE. On March 3, 2005, the Exchange amended its proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its rules regarding listing standards for options on narrow-based security indexes. The text of the proposed rule change is available on the CBOE's Web site (*http://www.cboe.com*), at the CBOE'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, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CBOE is proposing to amend CBOE Rule 24.2(b), which provides for generic listing standards that allow the Exchange to list and trade options on certain narrow-based stock indexes pursuant to Rule 19b–4(e) under the Act.[4] Rule 19b–4(e) provides that the listing and trading of a new derivatives securities product by a self-regulatory organization shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4,[5] if the Commission has approved, pursuant to Section 19(b) of the Act,[6] the self-regulatory organization's trading rules, procedures, and listing standards for the product class that would include the new derivatives securities product, and the self-regulatory organization has a surveillance program for the product class.[7] Thus, CBOE Rule 24.2(b) allows the Exchange to list options on certain narrow-based securities indexes pursuant to Rule 19b–4(e) under the Act[8] without having to submit a formal rule change under Section 19(b) of the Act[9] as long as the stock indexes satisfy the requisite criteria provided for under CBOE Rule 24.2(b).[10] One of these criteria, provided for under CBOE Rule 24.2(b)(2), requires that the subject index be capitalization-weighted, price-weighted, or equal-dollar weighted and consist of ten or more component securities.

The Exchange hereby proposes to amend CBOE Rule 24.2(b)(2) to include the modified capitalization-weighted methodology as an acceptable generic listing standard for options on a narrow-based index.[11] In addition to being a widely established method of weighting securities indexes,[12] the modified capitalization-weighted methodology is already an approved criterion under the Exchange's generic listing standards for micro narrow-based securities indexes, as provided under CBOE Rule 24.2(d)(2).[13] As such, the CBOE believes it is appropriate to adopt the modified capitalization-weighted methodology as a standard for listing options on narrow-based indexes that satisfy the Exchange's generic listing criteria for options on narrow-based securities indexes under CBOE Rule 24.2(b).

2. Statutory Basis

The CBOE believes the proposed rule change, as amended, is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Section 6(b)(5),[15] in particular, in that it should promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. The CBOE believes that the adoption of the proposed rule change, as amended, also would enable the CBOE to act expeditiously in listing options on new narrow-based security indexes using standards that are currently applicable to options on micro narrow-based indexes listed on the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that this proposed rule change, as amended, does not 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

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Amendment No. 1, dated March 3, 2005 (''Amendment No. 1''). In Amendment No. 1, the Exchange supplemented its description of the modified market capitalization methodology. Amendment No. 1 replaced the CBOE's original filing in its entirety.

[4] 17 CFR 240.19b–4(e).

[5] 17 CFR 240.19b–4(c)(1).

[6] 15 U.S.C. 78s(b).

[7] *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

[8] 17 CFR 240.19b–4(e).

[9] 15 U.S.C. 78s(b).

[10] *See* Securities Exchange Act Release No. 41374 (May 5, 1999), 64 FR 25936 (May 13, 1999) (Order approving CBOE Rule 24.2(b)—Generic Narrow-Based Index Listing Criteria).

[11] A modified capitalization weighted index is similar to a capitalization weighted index, where the components are weighted according to the total market value compared to the market value of the outstanding shares, except that an adjustment to the weighting of one or more of the components occurs. The general purposes for using this methodology are to: (1) Retain the economic attributes of capitalization weighting; (2) promote portfolio weight diversification; (3) reduce index performance distortion by preserving the capitalization ranking of companies; and (4) reduce market impact on the smallest underlying components from necessary weight rebalancing.

[12] For example, indexes such as the Nasdaq-100 Index, KBW Bank Index, KBW Capital Markets Index, and the Goldman Sachs Technology Indexes are calculated using the modified capitalization-weighted methodology.

[13] *See* Securities Exchange Act Release No. 49932 (June 28, 2004), 69 FR 40994 (July 7, 2004) (Order approving the CBOE's micro narrow-based securities index generic listing standards).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2005–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CBOE–2005–08. 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 Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2005–08 and should be submitted by April 6, 2005.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[16] and, in particular, the requirements of Section 6(b)(5) thereunder.[17] The proposed rule change, as amended, would facilitate the listing and trading of options on certain types of narrow-based securities indexes on the Exchange for the benefit of its members and their customers, specifically those that are calculated using the modified capitalization-weighted methodology and otherwise meet all applicable generic listing standards under CBOE Rule 24.2(b). The Commission also notes that the modified capitalization-weighted methodology is an established method for calculating securities indexes, including the Nasdaq 100 index, and has been approved, pursuant to Rule 19b–4(e) under the Act,[18] as a generic listing standard for index-based securities.[19] Accordingly, the Commission believes that approving this proposed rule change, as amended, would promote a fair, orderly, and competitive options market.

The Exchange has requested that this proposed rule change, as amended, be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act.[20] The Commission finds good cause for approving this proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission believes that accelerating the effectiveness of the proposed rule change, as amended, would facilitate the availability of additional investment choices to investors. In addition, the Commission notes that it has previously approved the modified market capitalization methodology in generic listing standards for other derivative products. Accordingly, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act,[21] 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,[22] that the proposed rule change, as amended, (SR–CBOE–2005–10) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–1141 Filed 3–15–05; 8:45 am]

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[16] In approving this rule, the Commission notes that it has considered its impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78f(b)(5).

[18] 17 CFR 240.19b–4(e).

[19] *See* Securities Exchange Act Release Nos. 51256 (February 25, 2005), 70 FR 10447 (March 3, 2005); 49932 (June 28, 2004), 69 FR 40994 (July 7, 2004) (Order approving the CBOE's micro narrow-based securities index generic listing standards).

[20] 15 U.S.C. 78s(b)(2).

[21] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51351; File No. SR–CBOE–2005–14]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Transaction Fees for Options on the Mini-Nasdaq-100 Index and Options on the Nasdaq-100 Index

March 9, 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 January 31, 2005, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by CBOE. On March 2, 2005, CBOE amended the proposed rule change (''Amendment No. 1'').[3] The proposed rule change, as amended, has been filed by CBOE as a non-controversial filing pursuant to Section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission.[6] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend its Fee Schedule relating to transaction fees for options on the Mini-Nasdaq-100 Index (''MNX'') and the Nasdaq-100 Index (''NDX''). The text of the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange changed the basis under Rule 19b–4 for filing the proposed rule change from paragraph (f)(2) to paragraph (f)(6) of Rule 19b–4 and made certain clarifying changes.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] The Exchange requested the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

change is available on the CBOE Web site (*http://www.cboe.com*), at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule to amend certain transaction fees for MNX and NDX options and to expand the application of the license fee that is currently charged to the MNX Designated Primary Market-Maker (''DPM'') and MNX market-makers.

Specifically, the Exchange proposes to reduce public customer transaction fees to $.15 per contract for transactions in MNX and NDX options. Currently, MNX customer transaction fees are $.20 per contract and NDX customer transaction fees are $.45 if the premium is greater than or equal to $1 and $.25 if the premium is less than $1.

Member firm proprietary transaction fees for MNX and NDX options are currently $.20 per contract for facilitation of customer orders and $.24 per contract for non-facilitation orders. The Exchange proposes to increase the transaction fee for facilitation of MNX and NDX customer orders to $.24 per contract, making it equivalent to the fee for non-facilitation orders. The facilitation transaction fee increase will help the Exchange offset the proposed fee reductions. Broker-dealer transaction fees for MNX and NDX options are currently $.45 per contract if the premium is greater than or equal to $1 and $.25 per contract if the premium is less than $1. The Exchange proposes to reduce MNX and NDX broker-dealer transaction fees to $.25 per contract regardless of the premium.

The Exchange proposes to expand the application of the license fee that is currently charged to the MNX DPM and MNX market-makers. Currently, the Exchange charges the MNX DPM and MNX market-makers a license fee of $.10 per contract, in addition to the regular transaction fee of $.24 per contract, to assist the Exchange in offsetting some of the royalty fees that the Exchange must pay to the Nasdaq Stock Market (''Nasdaq'') for its license to trade the MNX product. The Exchange also has paid royalty fees to Nasdaq for its license to the trade the NDX product but to date has not imposed any license fee on the market participants who trade NDX. The Exchange proposes to assess the $.10 license fee to transactions of all market participants in MNX and NDX options except for public customers (*i.e.*, CBOE and non-member market-maker, member firm and broker-dealer). The license fee would apply to linkage orders, except for Satisfaction Orders.[7] The Exchange notes that the proposed application of the license fee to linkage orders is similar to the surcharge imposed on certain linkage orders by the International Securities Exchange. Expanding the application of the license fee would further assist the Exchange in recovering some of its costs for its licenses to trade the MNX and NDX products, and is similar to surcharge fees charged by other exchanges.[8]

The Exchange believes the proposed fee changes would help the Exchange to compete more effectively for order flow in these products. The Exchange intends to implement these fee changes on February 1, 2005.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(4) of the Act[10] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change, as amended, has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder[12] because the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6)[14] thereunder.

The Exchange has requested that the Commission waive the five-day pre-filing notice requirement and the 30-day operative delay.[15] The Commission is exercising its authority to waive the five-day pre-filing notice requirement and believes that the waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative delay would allow CBOE to implement as of February 1, 2005, new and revised fees applicable to MNX and NDX options that in the case of their application to linkage transactions is similar to those charged by another exchange.[16] In addition, accelerating the operative date should allow public customers to benefit promptly from the reduced transaction fees in these index option classes. For these reasons, the Commission designates the proposed rule change, as amended, to be effective upon filing with the Commission.[17]

At any time within 60 days of the filing of the proposed rule change the Commission may summarily abrogate such rule change if it appears to the

[7] Linkage order transaction fees are currently in effect as a pilot program that is due to expire on July 31, 2005. The Commission notes that in Amendment No. 1, the Exchange clarified that the MNX and NDX license fee as applied to linkage orders, except for Satisfaction Orders, is incorporated in CBOE's pilot program for linkage transaction fees that expires on July 31, 2005.

[8] *See, e.g.* Securities Exchange Act Release No. 47564 (March 24, 2003), 68 FR 15256 (March 28, 2003) (SR–ISE–2003–13).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] *See supra* note 7.

[17] For purposes of only accelerating the operative date of this proposal, the Commission has considered the rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.[18]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2005–14 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CBOE–2005–14. 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. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2005–14 and should be submitted on or before April 6, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

J. Lynn Taylor,

Assistant Secretary.

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[18] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on March 2, 2005, the date the Exchange filed Amendment No. 1 to the proposed rule change. *See* 15 U.S.C. 78s(b)(3)(C).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51355; File No. SR–FICC–2004–08]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving Proposed Rule Change To Provide Interpretive Guidance to Members Regarding the Criteria Used To Place Members on Surveillance Status

March 10, 2005.

I. Introduction

On March 29, 2004, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') and on February 28, 2005,[1] and March 3, 2005, amended [2] proposed rule change SR–FICC–2004–08 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[3] Notice of the proposal was published in the **Federal Register** on November 23, 2004.[4] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

FICC is seeking to provide interpretive guidance to members pertaining to the member surveillance rules of the Government Securities Division (''GSD'') and the Mortgage-Backed Securities Division (''MBSD'') of FICC.

1. Background

Prior to the Commission's approval of SR–FICC–2003–03,[5] the GSD had the ability to place a member in a surveillance status class depending on whether the member satisfied one or more of the enumerated financial and operational criteria. Upon approval of SR–FICC–2003–03, FICC implemented new criteria for placing members on surveillance. Specifically, all domestic broker-dealers and banks that are GSD netting members and/or MBSD clearing members are now assigned a rating that is generated by entering financial data of the member into a risk assessment matrix (''Matrix''). The Matrix is used by FICC and its affiliated clearing agency, National Securities Clearing Corporation. Specifically, in order to run the Matrix, credit risk staff uses the financial data of each applicable FICC member and the financial data of each applicable member of NSCC. In this way, each applicable member of GSD, MBSD, and NSCC is rated against other applicable members of FICC and NSCC. Members who receive a low rating are placed on an internal ''watch list'' and are monitored more closely. All members that are not domestic banks or broker-dealers are not included in the Matrix process but are monitored by FICC's credit risk staff using financial criteria deemed relevant by FICC.

FICC will continually evaluate the methodology and its effectiveness and make such changes as it deems prudent and practicable within such time frame as is determined to be appropriate by FICC. FICC will update the Commission staff on its evaluations of the Matrix pursuant to a schedule developed by FICC, NSCC, and Commission staff.

2. Clarification of Rules Provisions

In describing the process by which credit risk staff will implement the Matrix process and review members, FICC included in SR–FICC–2003–03 explanatory footnotes 2 and 3. FICC at this time wishes to clarify its procedures with regard to application of the Matrix.

Credit risk staff approaches its analysis of members pursuant to the new procedures in the following manner. First, as mentioned above, domestic broker-dealers and domestic banks are run through the Matrix and assigned a rating. Low-rated members are placed on the watch list. At this point, credit risk staff may downgrade a particular member's score based on various qualitative factors. For example, one qualitative factor might be that the member in question received a qualified audit opinion on its annual audit. In order to protect FICC and its other members, it is important that credit risk staff maintain the discretion to downgrade a member's rating on the Matrix and thus subject the member to closer monitoring. All rated members, including those on the watch list, are

[1] The February 28, 2005, amendment was withdrawn by FICC on March 3, 2005.

[2] In the March 3, 2005, amendment, FICC elaborated on how it applies and monitors the matrix. The amendment did not modify the substance of the proposed rule change and therefore did not require republication of notice.

[3] 15 U.S.C. 78s(b)(1).

[4] Securities Exchange Act Release No. 50671 (November 16, 2004), 69 FR 68200.

[5] Securities Exchange Act Release No. 49158 (January 30, 2004), 69 FR 5624 (February 5, 2004).

monitored monthly or quarterly, depending upon the member's financial filing frequency, against basic minimum financial requirements and other parameters.

All broker-dealer members included on the watch list are monitored more closely. This means that they are also monitored for various parameter breaks which may include but are not limited to such things as a defined decline in excess net capital over a one month or three month period, a defined period loss, a defined aggregate indebtedness/net capital ratio, a defined net capital/aggregate debit items ratio, and a defined net capital/regulatory net capital ratio. All bank members included on the watch list are also monitored more closely for watch list parameter breaks which may include but are not limited to such things as a defined quarter loss, a defined decline in equity, a defined tier one leverage ratio, a defined tier one risk-based capital ratio, and a defined total risk-based capital ratio. FICC wishes to make clear that monitoring for the above more stringent parameter breaks is only applicable to those members placed on the watch list.

In addition, FICC would like to address footnote 5 of Amendment I to rule filing SR–FICC–2003–03. That footnote stated that credit risk staff would monitor those members not included in the Matrix process (this includes members that are not domestic banks and broker dealers) using the same criteria as those used for members included on the Matrix. FICC wishes to make clear that credit risk staff will not be using the same criteria to monitor these members but will use similar criteria. As stated in the narrative of SR–FICC–2003–03, these criteria may include but are not limited to such things as failure to meet minimum financial requirements, experiencing a significant decrease in equity or net asset value, or a significant loss. This class of members may be placed on the watch list based on credit risk staff's analysis of this information.

III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to facilitate the safeguarding of securities and funds which are in its custody or control or for which it is responsible.[6] The Commission finds that FICC's proposed rule change is consistent with this requirement because it improves FICC's member surveillance process which should better enable FICC to safeguard the securities and funds which are in its custody or control or for which it is responsible.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–FICC–2004–08) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

J. Lynn Taylor,

Assistant Secretary.

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[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51354; File No. SR–FICC–2004–18]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Granting Approval of a Proposed Rule Change To Clarify Certain Sections of the Loss Allocation Rule of Its Government Securities Division

March 10, 2005.

I. Introduction

On October 1, 2004, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') and on October 27, 2004, amended proposed rule change File No. SR–FICC–2004–18 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposed rule change was published in the **Federal Register** on January 24, 2005.[2] No comment letters were received. For the reasons discussed below, the Commission is now granting approval of the proposed rule change.

II. Description

The purpose of this proposed rule change is to clarify certain sections of the loss allocation rule of the Government Securities Division (''GSD'') of FICC. If the GSD, upon liquidating a defaulting member's positions, incurs a loss due to the failure of the defaulting member to fulfill its obligations to the GSD, the GSD looks to the margin collateral deposited by that defaulting member to satisfy the loss. If the defaulting member's margin collateral is insufficient to cover the loss and if there are no other funds available from any applicable cross-margining and/or cross-guaranty arrangements, the GSD would have a ''Remaining Loss''[3] and would institute its loss allocation process to cover such Remaining Loss. In doing so, the GSD would determine the types of transactions from which the Remaining Loss has arisen (such as direct transactions and member brokered transactions) and would allocate the Remaining Loss as set forth in Sections 8(d)(i) through (v) of Rule 4 of the GSD Rules.

The allocations in Section 8(d)(ii) of Rule 4 to cover a Remaining Loss that is due to member brokered transactions distributes the loss between the affected broker, including repo brokers, and non-broker members that dealt with the defaulting member, are limited as an initial matter. Specifically, a broker netting member will not be subject to an allocation of loss, for any single loss-allocation event in an amount greater than $5 million, and a non-broker netting member will not be subject to an allocation of loss for any single loss-allocation event in an amount greater than the lesser of $5 million or five percent of the overall loss amount allocated to non-broker netting members. If the Remaining Loss from member brokered transactions is not covered due to these limitations on allocations, the uncovered loss will be reallocated as set forth in Section 8(e) of Rule 4. This section calls for a pro rata allocation to the netting membership in general based on each netting member's average daily required clearing fund deposit over the twelve-month period immediately prior to the insolvency. The rule change makes clear that the amounts allocated pursuant to Section 8(e) will be assessed to a netting member in addition to any loss amount allocated pursuant to Section 8(d)(ii). Therefore, a netting member may be subject to an aggregate allocation of loss that may exceed the applicable limitation set forth in Section 8(d)(ii).

Even with the allocation pursuant to Section 8(e) of Rule 4, a broker netting member would not be subject to an aggregate loss allocation for any single loss allocation event in an amount greater than $5 million. In addition, what has been intended, but is not clear in the current rules, is that a non-broker netting member can terminate its GSD

[1] U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 51037 (January 13, 2005), 70 FR 3410.

[3] GSD Rules, Rule 4, Section 8(d).

membership and thus cap any additional loss allocation obligation due to the application of Section 8(e) at the amount of its required clearing fund deposit. Therefore, FICC is making its GSD rules clear that any allocations to members resulting from the application of Section 8(e) of Rule 4 or another firm's failure to pay its assessed share are limited to the extent of a member's required clearing fund deposit if such member chooses to terminate its GSD membership.[4]

In addition, FICC is making it clear that the ability to terminate and cap a loss allocation obligation at the amount of the clearing fund deposit is also applicable to a netting member (aside from the defaulting party) where an auction purchase is the reason for any Remaining Loss. In these instances, as in the instances described above, the netting member assessed a loss allocation obligation will have had no participation in the transaction which led to the Remaining Loss and therefore will be allowed to cap its total losses at the amount of the clearing fund deposit.

III. Discussion

Section 17A(b)(3)(F) of the Act requires among other things that the rules of a clearing agency be designed to assure the safeguarding of securities and funds in its custody or control or for which it is responsible.[5] The Commission finds that FICC's proposed rule change is consistent with this requirement because clarifying the GSD's rules and procedures with regard to loss allocation assessments to netting members in the event of a default provides enhanced protections to FICC and its members.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (File No. SR–FICC–2004–18) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

J. Lynn Taylor,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51336; File No. SR–NASD–2005–026]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change Relating to TRACE Market Data Fees

March 9, 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 February 11, 2005, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend NASD Rule 7010(k) relating to Transaction Reporting and Compliance Engine (''TRACE'') transaction data to: (i) Terminate the Bond Trade Dissemination Service (''BTDS'') Internal Usage Authorization Fee and the BTDS External Usage Authorization Fee and, in lieu of both fees, establish a Vendor Real-Time Data Feed Fee; (ii) define the term ''Tax Exempt Organization,'' and amend the defined term ''Non-Professional'' for purposes of NASD Rule 7010(k)(3); and (iii) make other minor, technical amendments. The text of the proposed rule change is available on NASD's Web site (*http://www.nasd.com*), at NASD's principal office, 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, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD seeks to amend NASD Rule 7010(k) to streamline market data services and fees for TRACE transaction data. Specifically, NASD proposes to replace two fees currently charged to receive delayed-time and real-time TRACE transaction data—the BTDS Internal Usage Authorization Fee of $500 per month per application and the BTDS External Usage Authorization Fee of $1,000 per month per application—with the Vendor Real-Time Data Feed Fee, a single monthly fee of $1,500 (subject to certain exceptions) for a feed of real-time TRACE transaction data that the recipient may use in multiple applications. In addition, NASD proposes to amend NASD Rule 7010(k) to define the term ''Tax-Exempt Organization'' for purposes of identifying the tax-exempt organizations that would qualify to receive a real-time TRACE transaction data feed for a reduced fee of $400 per month. Also, NASD proposes to amend the defined term ''Non-Professional'' in NASD Rule 7010(k) to make explicit NASD's current interpretation that a natural person who is a financial professional, or an employee of a financial services entity as specified in the rule, is considered a Non-Professional in those instances where the person accesses the TRACE transaction data to use it solely for personal, non-commercial uses (*e.g.,* a registered associated person of a broker-dealer accesses the free TRACE data at home to obtain information about bonds held in his personal account). Finally, NASD is proposing other minor, technical amendments to NASD Rule 7010(k).

[4] If a member elects to terminate its membership in FICC, its liability for a loss allocation obligation is limited to the amount of its required clearing fund for the business day on which the notification of such loss allocation is provided to the member.

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Current TRACE Market Data Services and Fees

Currently, under NASD Rule 7010(k)(3)(A)(iii), NASD charges a BTDS Internal Usage Authorization Fee of $500 per month per application or service. For this fee, a party is entitled to receive and use real-time and/or delayed-time TRACE transaction data,[3] for internal dissemination and use.[4] Under NASD Rule 7010(k)(3)(A)(iv), a party paying a BTDS External Usage Authorization Fee of $1,000 per month per application or service is entitled to use real-time and/or delayed time TRACE transaction data and repackage it for delivery and dissemination externally (*i.e.,* outside the contracting party's organization), such as delivering indices or other products derived from the TRACE data.

Proposed Vendor Real-Time Data Feed Fee

NASD proposes to eliminate the two current fees, the $500 BTDS Internal Usage Authorization Fee and the $1,000 BTDS External Usage Authorization Fee, and replace them with one consolidated fee, the Vendor Real-Time Data Feed Fee. The Vendor Real-Time Data Feed Fee would be $1,500 for most TRACE data recipients and $400 for certain qualifying Tax-Exempt Organizations that intend to use the data solely to provide access to TRACE data to Non-Professional users, such as individual investors, at no charge, as discussed in greater detail below.

NASD would charge each person or organization that receives real-time TRACE data via any data feed (except certain qualifying Tax-Exempt Organizations) the Vendor Real-Time Data Feed Fee of $1,500 in proposed NASD Rule 7010(k)(3)(A)(ii), whether the data is received directly from NASD or from a vendor that redistributes TRACE transaction data in real time. As is currently the case, each organization or person receiving such data, whether from NASD or a vendor, would enter into an agreement with NASD. The data recipient would be entitled to use the TRACE transaction data in an unlimited number of internal and external applications, as described in proposed NASD Rule 7010(k)(3)(A)(ii), in contrast to the single-use or single-application limits that are in effect currently under either the $500 BTDS Internal Usage Authorization Fee or the $1,000 BTDS External Usage Authorization Fee. However, the Vendor Real-Time Data Feed Fee of $1,500 would not include NASD's monthly charge for each desktop or other interrogation display device receiving the real-time data.[5]

NASD believes that introducing a single fee for any party that desires to be a vendor (or a third-party recipient) taking a real-time TRACE transaction data feed would better reflect NASD's administrative costs, allocate such costs appropriately among real-time TRACE transaction data recipients based upon use and misappropriation risk, and simplify the fee structure. Under the current BTDS TRACE transaction data fee structure, a vendor taking a real-time TRACE transaction data feed that uses the data only on a next-day basis does not pay NASD a fee. However, for such vendors, NASD is exposed to the same risk—the risk of misappropriation of TRACE data—that it bears in connection with vendors or third-party data recipients that pay to receive and use such data real-time.

Currently, any vendor taking a real-time TRACE transaction data feed has the technical capability to use the real-time data wrongfully in violation of the terms of its service and fee agreement with NASD, such as redistributing real-time TRACE transaction data without appropriate authorization or failing to maintain proper controls or to adequately track data usage. To prevent or limit such misuse and misappropriation, NASD requires direct contractual relationships with anyone receiving a feed of real-time TRACE transaction data. These agreements, and the usage tracking that go along with them, result in NASD bearing the administrative cost for contract creation, management, and the monitoring of the usage of TRACE data through audits. NASD believes that the proposal to apply a single fee to *any* party desiring to receive a real-time TRACE transaction data feed would better reflect and allocate NASD's administrative costs.

NASD believes that the single fee for all recipients of a real-time TRACE transaction data feed also simplifies the fee structure and eliminates many of the questions regarding permitted uses by vendors and other TRACE transaction data recipients. For example, the new Vendor Real-Time Data Feed Fee is based on per-organization usage, rather than per-application, and vendors of real-time TRACE transaction data (or recipients of such data through a vendor) would be better able to use the TRACE data in multiple internal or external applications without bearing additional costs.

Reduced Vendor Real-Time Data Feed Fee for Tax-Exempt Organizations

NASD is proposing in NASD Rule 7010(k)(3)(A)(iii) that the Vendor Real-Time Data Feed Fee be reduced to $400 per month for qualifying Tax-Exempt Organizations. By reducing the fee, NASD seeks to accommodate such organizations that intend to use the TRACE transaction data solely for distribution to Non-Professionals at no charge.

In proposed NASD Rule 7010(k)(3)(C)(ii), NASD proposes to define ''Tax-Exempt Organization'' for purposes of NASD Rule 7010(k)(3) to mean ''an organization that is described in Section 501(c) of the Internal Revenue Code (26 U.S.C. § 501(c)); has received recognition of the exemption from federal income taxes from the Internal Revenue Service; and obtains and uses real-time TRACE transaction data solely for redistribution to Non-Professionals, as defined for purposes of Rule 7010(k)(3), at no charge.'' Tax-exempt organizations that wish to obtain a real-time TRACE transaction data feed, but do not intend to provide access or redistribute data exclusively to Non-Professionals as defined under proposed NASD Rule 7010(k)(3)(C)(ii) at no charge would be required to pay the Vendor Real-Time Data Feed Fee of $1,500 per month. Similarly, tax-exempt organizations that intend to obtain a real-time TRACE transaction data feed and use it not only for providing access or redistributing the TRACE data to Non-Professionals, but also for other uses, would be required to pay the $1,500 fee per month.

NASD believes that the fee reduction for qualifying Tax-Exempt Organizations providing TRACE information to Non-Professionals at no charge furthers an NASD goal of making TRACE transaction information more

[3] NASD recently filed a rule change eliminating the fee it charges for use solely of delayed-time TRACE transaction data, the BTDS Professional Delayed-Time Data Display Fee pilot program (*i.e.,* a $15 fee per month per terminal). The BTDS Professional Delayed-Time Data Display Fee pilot program will end on June 1, 2005. *See* Securities Exchange Act Release No. 50977 (January 6, 2005), 70 FR 2202 (January 12, 2005) (SR–NASD–2004–189) (notice of rule change for immediate effectiveness filed on December 28, 2004). *See also NASD Notice to Members* 05–05 (January 2005). In the current proposed rule change, NASD is proposing to eliminate the two remaining fees that are based partially on the receipt of delayed-time TRACE transaction data, and proposing a new fee, the Vendor Real-Time Data Feed Fee, that is based upon the receipt of real-time TRACE transaction data only.

[4] Permitted internal uses include, but are not limited to, internal operational and processing systems, internal monitoring and surveillance systems, internal price validation, internal portfolio valuation services, internal analytical programs leading to purchase/sale or other trading decisions, and other related activities.

[5] Similarly, neither the BTDS Internal Usage Authorization Fee nor the BTDS External Usage Authorization Fee currently in effect includes the monthly charge for each desktop or interrogation display device receiving real-time data.

accessible to individual investors. Also, NASD believes that the proposed $400 Vendor Real-Time Data Feed Fee for qualifying Tax-Exempt Organizations would appropriately reduce the costs of obtaining the data when the data would be used exclusively for the benefit of Non-Professionals (primarily, individual investors).

''Non-Professional''

NASD is proposing to amend NASD Rule 7010(k)(3)(C)(ii) to clarify the definition of ''Non-Professional'' and renumber the provision as NASD Rule 7010(k)(3)(C)(i). NASD believes that the current definition of ''Non-Professional'' is unclear as to whether a natural person who is registered in one of several capacities as a securities or commodities professional, or performs similar functions but is not required to be registered due to an exemption, or is an employee of certain financial services businesses,[6] may be a Non-Professional if the natural person uses TRACE transaction information solely for personal, non-commercial uses. NASD currently interprets the term Non-Professional to include any natural person who obtains access to TRACE transaction data and uses it for his or her personal, non-commercial use, even if such natural person is registered personnel or otherwise an employee of a financial services entity (*e.g.,* broker-dealer or investment adviser), or is himself or herself registered or qualified in some capacity with the Commission, or another federal or state agency that regulates and monitors financial services business activities and the individuals engaged in such businesses, as specified in current NASD Rule 7010(k)(3)(C)(ii), subparagraphs (a) through (c).

NASD proposes to make clear that such professionals and other employees in the financial services industry may be considered Non-Professionals when they are accessing and using the TRACE transaction data solely for personal, non-commercial uses. For example, under proposed NASD Rule 7010(k)(3)(C)(i), subparagraph (c), a natural person who is engaged as an investment adviser and accesses TRACE data to review transaction pricing in TRACE-eligible bonds in his personal account would be considered using the data solely for his personal, non-commercial use and during that access and use would be a Non-Professional. Also, NASD proposes to clarify in subparagraph (d) of proposed NASD Rule 7010(k)(3)(C)(i) that, in addition to persons employed by a bank, insurance company, or other organization exempt from registration under federal or state securities laws to perform functions that ordinarily would require registration, other employees of such organizations who use TRACE transaction information solely for their personal, non-commercial use, would be Non-Professionals. NASD also proposes to make other technical, clarifying amendments to the definition of ''Non-Professional'' and to NASD Rule 7010(k).

NASD would announce the effective date of the proposed rule change in a *Notice to Members* to be published no later than 60 days following Commission approval if the Commission approves the proposed rule change. The effective date would be no later than 45 days following publication of the *Notice to Members* announcing Commission approval.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[7] which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 15A(b)(5) of the Act,[8] which requires, among other things, that NASD rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system that NASD operates or controls.

NASD believes that providing a reduced TRACE data fee for qualifying Tax-Exempt Organizations and clarifying the term Non-Professional would foster the continued dissemination of TRACE data for the protection of investors and in furtherance of the public interest. NASD believes that consolidating the two TRACE data fees into one fee and providing a reduced TRACE data fee for qualifying Tax-Exempt Organizations would equitably allocate fees among subscribers of TRACE data that desire TRACE transaction data for commercial use or benefit, or redistribution to Non-Professionals, and would not adversely affect the use and distribution of TRACE data, for the protection of investors and in furtherance of the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change could result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which NASD consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2005–026 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2005–026. This file

[6] *See* NASD Rule 7010(k)(3)(C)(ii), subparagraph (a), regarding a natural person ''registered'' or ''qualified in any capacity with the Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association''; subparagraph (b), regarding a natural person ''engaged as an 'investment adviser' as that term is defined in Section 202(a)(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act)''; and subparagraph (c), regarding a natural person ''employed by a bank, insurance company or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt.''

[7] 15 U.S.C. 78o–3(b)(6).

[8] 15 U.S.C. 78o–3(b)(5).

number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NASD–2005–026 and should be submitted on or before April 6, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–1129 Filed 3–15–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51356; File No. SR–NASD–2004–159]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto To Allow NASD, on a Pilot Basis, To Review Denial of Access Complaints Related to the Alternative Display Facility

March 10, 2005.

On October 22, 2004, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to allow NASD, on a pilot basis, to review denial of access complaints related to the Alternative Display Facility (''ADF''). On January 11, 2005, NASD filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended, was published in the **Federal Register** on February 4, 2005.[4] The Commission received no comments on the proposal.

The proposed rule change would establish on a pilot basis new NASD Rule 4400A, which would give NASD the authority to receive and review complaints against an NASD Market Participant alleging denial of direct or indirect access of the NASD Market Participant's quotations in the ADF that the NASD Market Participant is required to provide pursuant to NASD Rule 4300A. In addition, proposed NASD Rule 4400A would set forth procedures for reviewing such complaints and would delegate authority to NASD's Market Regulation Committee to review denial of access determinations rendered in accordance with Rule 4400A.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[5] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[6] which requires, among other things, that the rules of an association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

New NASD 4400A affords some due process to a party claiming that an NASD Market Participant quoting ADF has denied it access to the NASD Market Participant's system. Establishing such a process should help deter improper denials of access. The Commission believes that it is reasonable and consistent with the Act for NASD to deter such denials by requiring an NASD Market Participant to respond to a complaint in the manner set forth in the new rule. Furthermore, where such deterrence is not effective, NASD will have the authority to direct the NASD Market Participant to restore the complainant's access promptly, which should help minimize any market disruption caused by an improper denial of access.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (SR–NASD–2004–159), as amended, be hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–1157 Filed 3–15–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51322, File No. SR–NYSE–2004–20]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, 3, 4, 5, 6, and 7 Thereto by the New York Stock Exchange, Inc., To Amend Its Original and Continued Quantitative Listing Standards

March 8, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 13, 2004, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On May 20, 2004, NYSE submitted Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on July 2, 2004.[4] On August 31, 2004, NYSE submitted Amendment No. 2 to the proposed rule change.[5] On November 29, 2004, NYSE submitted Amendment No. 3 to the proposed rule change.[6] On December

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the NASD clarified the scope of authority it and the Market Regulation Committee would have to review denials of access.

[4] *See* Securities Exchange Act Release No. 51092 (January 28, 2005), 70 FR 6061.

[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78o–3(b)(6).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced and superseded the original filing in its entirety.

[4] *See* Securities Exchange Act Release No. 49917 (June 25, 2004), 69 FR 40439.

[5] Amendment No. 2 replaced and superseded the original filing in its entirety.

[6] Amendment No. 3 replaced and superseded the original filing in its entirety.

17, 2004, NYSE withdrew Amendment No. 3. On December 17, 2004, NYSE submitted Amendment No. 4 to the proposed rule change.[7] On January 25, 2005, NYSE submitted Amendment No. 5 to the proposed rule change.[8] On February 17, 2005, NYSE submitted Amendment No. 6 to the proposed rule change.[9] On March 4, 2005, NYSE submitted Amendment No. 7 to the proposed rule change.[10] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE is proposing to amend Sections 102.01C, 103.01B, 802.01A, 802.01B, 802.01C, 802.02, and 802.03 of the NYSE's Listed Company Manual regarding the minimum numerical original and continued listing standards. Proposed new language is *italicized;* deletions are bracketed.[11]

* * * * *

102.00 Domestic Companies

* * * * *

102.01C A company must meet one of the following financial standards.

(I) Earnings Test

(1) Pre-tax earnings from continuing operations and after minority interest, amortization and equity in the earnings or losses of investees, [as] adjusted [(E)] for items specified in (2)(a) through *(2)*(i) below [(F)] must total at least[.] [$2,500,000 in the latest fiscal year together with $2,000,000 in each of the preceding two years; or $6,500,000] *$10,000,000* in the aggregate for the last three fiscal years together with a minimum of $[4,5]*2,0*00,000 in *each of* the *two* most recent fiscal years, and positive amounts [for] *in all* [each of the preceding two] *three* years.

(2) Adjustments *(E)(F)* that must be included in the calculation of the amounts required in paragraph (1) are as follows:

(a) Application of Use of Proceeds[.]—If a company is in registration with the SEC and is in the process of an equity offering, adjustments should be made to reflect the net proceeds of that offering, and the specified intended application(s) of such proceeds to:

(i) Pay off existing debt[.]: The adjustment will include elimination of the actual historical interest on debt being retired with offering proceeds of all relevant periods. If the event giving rise to the adjustment occurred during a time-period such that pro forma amounts are not set forth in the SEC registration statement (typically, the pro forma effect of repayment of debt will be provided in the current registration statement only with respect to the last fiscal year plus any interim period in accordance with SEC rules), the company must prepare the relevant adjusted financial data to reflect the adjustment to its historical financial data, and its outside audit firm must provide a report of having applied agreed-upon procedures with respect to such adjustments. Such report must be prepared in accordance with the standards established by the American Institute of Certified Public Accountants.

(ii) Fund an acquisition:

(1) The adjustments will include those applicable with respect to acquisition(s) to be funded with the proceeds. Adjustments will be made that are disclosed as such in accordance with Rule 3–05 ''Financial Statements of Business Acquired or to be Acquired'' and Article 11 of Regulation S–X. Adjustments will be made for all the relevant periods for those acquisitions for which historical financial information of the acquiree is required to be disclosed in the SEC registration statement; and

(2) Adjustments applicable to any period for which pro forma numbers are not set forth in the registration statement shall be accompanied by the relevant adjusted financial data to combine the historical results of the acquiree (or relevant portion thereof) and acquiror, as disclosed in the company's SEC filing. Under SEC rules, the number of periods disclosed depends upon the significance level of the acquiree to the acquiror. The adjustments will include those necessary to reflect (a) the allocation of the purchase price, including adjusting assets and liabilities of the acquiree to fair value recognizing any intangibles (and associated amortization and depreciation), and (b) the effects of additional financing to complete the acquisition. The company must prepare the relevant adjusted financial data to reflect the adjustment to its historical financial data, and its outside audit firm must provide a report of having applied agreed-upon procedures with respect to such adjustments. Such report must be prepared in accordance with the standards established by the American Institute of Certified Public Accountants[.]*;*

(b) Acquisitions and Dispositions[:]—In instances other than acquisitions (and related dispositions of part of the acquiree) funded with the use of proceeds, adjustments will be made for those acquisitions and dispositions that are disclosed as such in a company's financial statements in accordance with Rule 3–05 ''Financial Statements of Business Acquired or to be Acquired'' and Article 11 of Regulation S–X. If the disclosure does not specify pre-tax earnings from continuing operations, minority interest, and equity in the earnings or losses of investees, then such data must be prepared by the company's outside audit firm for the Exchange's consideration. In this regard, the audit firm would have to issue an independent accountant's report on applying agreed-upon procedures in accordance with the standards established by the American Institute of Certified Public Accountants[.]*;*

(c) Exclusion of Merger or Acquisition Related Costs Recorded under Pooling of Interests*;*

(d) Exclusion of Charges or Income Specifically Disclosed in the Applicant's SEC Filing for the Following[:]—

(i) In connection with exiting an activity for the following:

(1) Costs of severance and termination benefits

(2) Costs and associated revenues and expenses associated with the elimination and reduction of product lines

(3) Costs to consolidate or relocate plant and office facilities

(4) Loss or gain on disposal of long-lived assets

(ii) Environmental clean-up costs

(iii) Litigation settlement[.];

(e) Exclusion of Impairment Charges on Long-lived Assets (goodwill, property, plant, and equipment, and other long-lived assets);

(f) Exclusion of Gains or Losses Associated with Sales of a Subsidiary's or Investee's Stock;

(g) Exclusion of In-Process Purchased Research and Development Charges;

(h) Regulation S–X Article 11 Adjustments—Adjustments will include those contained in a company's pro forma financial statements provided in a current filing with the SEC pursuant to SEC rules and regulations governing

[7] Amendment No. 4 replaced and superseded the original filing in its entirety.

[8] Amendment No. 5 replaced and superseded the original filing in its entirety.

[9] Amendment No. 6 partially amended Sections 802.01B, 802.02, and 802.03 of the proposed rule text.

[10] Amendment No. 7 partially amended Sections 802.03 of the proposed rule text.

[11] NYSE amended the proposed rule change to make technical corrections to Exhibit 5 of the proposed rule change. E-mail from Annemarie Tierney, Assistant General Counsel, and Glenn Tyranski, Vice President, Financial Compliance, NYSE, dated February 24, 2005.

Article 11 ''Pro forma information of Regulation S–X Part 210—Form and Content of and Requirements for Financial Statements[.];''

(i) Exclusion of the Cumulative Effect of Adoption of New Accounting Standards (APB Opinion No. 20).

OR

(II) Valuation/Revenue Test

Companies listing under this standard may satisfy either (a) the Valuation/Revenue with Cash Flow Test or (b) the Pure Valuation/Revenue Test.

(a) Valuation/Revenue with Cash Flow Test—[A Company with]

(1) [not less than] *at least* $500,000,000 *in global* market capitalization*,* [and]

(2) *at least* $100,000,000 in revenues during the most recent 12-month period*,* [must] *and*

(3) [demonstrate from the operating activity section of its cash flow statement that its cash flow, which represents net income adjusted to (a) reconcile such amounts to cash provided by operating activities, and (b) exclude changes in operating assets and liabilities, is] at least $25,000,000 [in the] aggregate *cash flows* for the last three fiscal years [and each year is reported as a] *with* positive amounts *in all three years, as* adjusted [(E)(F)] pursuant to Para*s.* 102.01C (I)(2)(a) and (b)*,* as applicable.

A Company must demonstrate cash flow based on the operating activity section of its cash flow statement. Cash flow represents net income adjusted to (a) reconcile such amounts to cash provided by operating activities, and (b) exclude changes in operating assets and liabilities. With respect to reconciling amounts pursuant to this Paragraph, all such amounts are limited to the amount included in the company's income statement.

In the case of companies listing in connection with an IPO, the company's underwriter (or, in the case of a spin-off, the parent company's investment banker or other financial advisor) must provide a written representation that demonstrates the company's ability to meet the $500,000,000 global market capitalization requirement based upon the completion of the offering (or distribution).

(b) Pure Valuation/Revenue Test—

(1) *at least $750,000,000 in global market capitalization, and*

(2) *at least $75,000,000 in revenues during the most recent fiscal year.*

In the case of companies listing in connection with an IPO, the company's underwriter (or, in the case of a spin-off, the parent company's investment banker or other financial advisor) must provide a written representation that demonstrates the company's ability to meet the $750,000,000 global market capitalization requirement based upon the completion of the offering (or distribution). For all other companies, market capitalization valuation will be determined over a six-month average.

[OR

(III) For companies with not less than $1 billion in total worldwide market capitalization and with not less than $100 million revenues in the recent fiscal year, there are no additional financial requirements. For such companies listing in connection with an IPO, the market capitalization valuation must be demonstrated by written representation from the underwriter (or, in the case of a spin-off, by a written representation from the parent company's investment banker or other financial advisor) of the total market capitalization of the company upon completion of the offering (or distribution). For all other such companies, the market capitalization valuation will be determined over a six-month average.]

OR

(III) Affiliated Company Test

(1) at least $500,000,000 in global market capitalization;

(2) at least 12 months of operating history (although a company is not required to have been a separate corporate entity for such period); and

(3) the company's parent or affiliated company is a listed company in good standing (as evidenced by written representation from the company or its financial advisor excluding that portion of the balance sheet attributable to the new entity); and

(4) the company's parent or affiliated company retains control of the entity or is under common control with the entity.

In the case of companies listing in connection with an IPO, the company's underwriter (or, in the case of a spin-off, the parent company's investment banker or other financial advisor) must provide a written representation that demonstrates the company's ability to meet the $500,000,000 global market capitalization requirement based upon the completion of the offering (or distribution).

''Control'' for purposes of the Affiliated Company Test will mean having the ability to exercise significant influence over the operating and financial policies of the listing company, and will be presumed to exist where the parent or affiliated company holds 20% or more of the listing company's voting stock directly or indirectly. Other indicia that may be taken into account when determining whether control exists include board representation, participation in policy making processes, material intercompany transactions, interchange of managerial personnel, and technological dependency. The Affiliated Company Test is taken from and intended to be consistent with generally accepted accounting principles regarding use of the equity method of accounting for an investment in common stock.

(E) Only adjustments arising from events specifically so indicated in the company's SEC filing(s) as to both categorization and amount can and must be made. Any such adjustment applies only in the year in which the event occurred except with regard to the use of proceeds or acquisitions and dispositions. Any company for which the Exchange relies on adjustments in granting clearance must include all relevant adjusted financial data in its listing application as specified in Section 702.04, and disclose the use of adjustments by including a statement in a press release (i) that additional information is available upon which the NYSE relied to list the company and is included in the listing application and (ii) that such information is available to the public upon request. *This press release must be issued concurrently with any listing announcement issued by the company or, if a listing announcement is not issued, within 30 days from the date the company lists on the NYSE.*

(F) [The above-referenced adjustments are measured and recognized] *Interested parties should apply the list of adjustments* in accordance with any relevant accounting literature, such as that published by the Financial Accounting Standards Board (''FASB''), the Accounting Principles Board (''APB''), the Emerging Issues Task Force (''EITF''), the American Institute of Certified Public Accountants (''AICPA''), and the SEC. Any literature is intended to guide issuers and investors regarding the affected adjustment listed. If successor interpretations (or guidelines) are published with respect to any particular adjustment, the most recent relevant interpretations (or guidelines) should be consulted.

* * * * *

[(IV) Affiliated Company Standard

(1) Market capitalization of $500,000,000 million or greater (as evidenced by written representation

from the underwriter, company, or its investment advisor);

(2) Minimum of 12 months of operations (although it is not required to have been a separate corporate entity for such period);

(3) Parent or affiliated company is a listed company in good standing (as evidenced by written representation from the company or its financial advisor excluding that portion of the balance sheet attributable to the new entity); and

(4) Parent/affiliated company retains control* of the entity or is under common control* with the entity.

* ''Control'' for these purposes will mean the ability to exercise significant influence over operating and financial policies, and will be presumed to exist when the parent involved holds directly or indirectly 20% or more of the entity's voting stock. Other indicia that may be taken into account for this purpose include board representation, participation in policy making processes, material intercompany transactions, interchange of managerial personnel, and technological dependency. This test is taken from and intended to be consistent with generally accepted accounting principles regarding use of the equity method of accounting for an investment in common stock.]

* * * * *

103.00 Non-U.S. Companies

* * * * *

103.01 Minimum Numerical Standards—Non-U.S. Companies—Equity Listings Distribution

* * * * *

103.01B A company must meet one of the following financial standards:

(I) Earnings Test

(1) Pre-tax earnings from continuing operations and after minority interest, amortization and equity in the earnings or losses of investees, adjusted [(C)(D)] for items specified in Section 102.01C(I)(2)(a) through (i) above, and 103.01*B*(I)(2) below, must total at least[:] $100,000,000 in the aggregate for the last three fiscal years [together] with a minimum of $25,000,000 in each of the most recent two *fiscal* years.

(2) Additional Adjustment *(C)(D)* Available for Foreign Currency Devaluation. Non-operating adjustments when associated with translation adjustments representing a significant devaluation of a country's currency (*e.g.*, the currency of a company's country of domicile devalues by more than 10 percent against the U.S. dollar within a six-month period). Adjustments may not include those associated with normal currency gains or losses.

(3) Reconciliation to U.S. GAAP of the third year back would only be required if the Exchange determines that reconciliation is necessary to demonstrate that the aggregate $100,000,000 threshold is satisfied.

OR

(II) Valuation/Revenue Test

Companies listing under this standard may satisfy either (a) the Valuation/Revenue with Cash Flow Test or (b) the Pure Valuation/Revenue Test.

(a) Valuation/Revenue with Cash Flow Test—[A Company with]

(1) [not less than] *at least* $500,000,000 *in global* market capitalization, [and]

(2) *at least* $100,000,000 *in* revenues during the most recent 12-month period, [must] *and*

(3) [demonstrate from the operating activity section of its cash flow statement that its operating cash flow excluding changes in operating assets and liabilities is] at least $100,000,000 [in the] aggregate *cash flows* for the last three fiscal years where each of the two most recent years is reported at a minimum of $25,000,000, [as] adjusted *in accordance with* (C)(D) [for] Section 102.01C(I)(2)(a) and (b).

A Company must demonstrate cash flow based on the operating activity section of its cash flow statement. Cash flow represents net income adjusted to (a) reconcile such amounts to cash provided by operating activities, and (b) exclude changes in operating assets and liabilities. With respect to reconciling amounts pursuant to this Paragraph, all such amounts are limited to the amount included in the company's income statement.

In the case of companies listing in connection with an IPO, the company's underwriter (or, in the case of a spin-off, the parent company's investment banker or other financial advisor) must provide a written representation that demonstrates the company's ability to meet the $500,000,000 global market capitalization requirement based upon the completion of the offering (or distribution).

Reconciliation to U.S. GAAP of the third *fiscal* year back would only be required if the Exchange determines that reconciliation is necessary to demonstrate that the [aggregate] $100,000,000 *aggregate cash flow* threshold is satisfied.

(b) Pure Valuation/Revenue Test—

(1) *at least $750,000,000 in global market capitalization, and*

(2) *at least $75,000,000 in revenues during the most recent fiscal year.*

In the case of companies listing in connection with an IPO, the company's underwriter (or, in the case of a spin-off, the parent company's investment banker or other financial advisor) must provide a written representation that demonstrates the company's ability to meet the $750,000,000 global market capitalization requirement upon completion of the offering (or distribution). For all other companies, market capitalization valuation will be determined over a six-month average.

[OR

(III) For companies with not less than $1 billion in total worldwide market capitalization and with not less than $100 million revenues in the recent fiscal year, there are no additional financial requirements. For such companies listing in connection with an IPO, the market capitalization valuation must be demonstrated by a written representation from the underwriter (or, in the case of a spin-off, by a written representation from the parent company's investment banker, other financial advisor or transfer agent) of the total market capitalization of the company upon completion of the offering (or distribution). For all other such companies, the market capitalization valuation will be determined over a six-month average.]

OR

(III) Affiliated Company Test

(1) *at least $500,000,000 in global market capitalization;*

(2) *at least 12 months of operating history (although a company is not required to have been a separate corporate entity for such period); and*

(3) *the company's parent or affiliated company is a listed company in good standing (as evidenced by written representation from the company or its financial advisor excluding that portion of the balance sheet attributable to the new entity); and*

(4) *the company's parent or affiliated company retains control of the entity or is under common control with the entity.*

In the case of companies listing in connection with an IPO, the company's underwriter (or, in the case of a spin-off, the parent company's investment banker or other financial advisor) must provide a written representation that demonstrates the company's ability to meet the $500,000,000 global market capitalization requirement based upon the completion of the offering (or distribution).

''Control'' for purposes of the Affiliated Company Test will mean

having the ability to exercise significant influence over the operating and financial policies of the listing company, and will be presumed to exist where the parent or affiliated company holds 20% or more of the listing company's voting stock directly or indirectly. Other indicia that may be taken into account when determining whether control exists include board representation, participation in policy making processes, material intercompany transactions, interchange of managerial personnel, and technological dependency. The Affiliated Company Test is taken from and intended to be consistent with generally accepted accounting principles regarding use of the equity method of accounting for an investment in common stock.

(C) Only adjustments arising from events specifically so indicated in the company's SEC filing(s) as to both categorization and amount can and must be made. Any such adjustments apply only in the year in which the event occurred except with regard to the use of proceeds or acquisitions and dispositions. Any company for which the Exchange relies on adjustments in granting clearance must include all relevant adjusted financial data in its listing application as specified in Section 702.04, and disclose the use of adjustments by including a statement in a press release (i) that additional information is available upon which the NYSE relied to list the company and is included in the listing application and (ii) that such information is available to the public upon request. *This press release must be issued concurrently with any listing announcement issued by the company or, if a listing announcement is not issued, within 30 days from the date the company lists on the NYSE.*

(D) Interested parties should apply the list of adjustments in accordance with any relevant accounting literature, such as that published by the Financial Accounting Standards Board (''FASB), the Accounting Principles Board (''APB''), the Emerging Issues Task Force (''EITF''), the American Institute of Certified Public Accountants (''AICPA''), and the SEC. Any literature is intended to guide issuers and investors regarding the affected adjustment listed. If successor interpretations (or guidelines) are published with respect to any particular adjustment, the most recent relevant interpretations (or guidelines) should be consulted.

[(IV) Affiliated Company Standard

(1) Market capitalization of $500 million or greater (as evidenced by written representation from the underwriter, company, or its investment advisor);

(2) Minimum of 12 months of operations (although it is not required to have been a separate corporate entity for such period);

(3) Parent or affiliated company is a listed company in good standing (as evidenced by written representation from the company or its financial advisor excluding that portion of the balance sheet attributable to the new entity); and

(4) Parent/affiliated company retains control* of the entity or is under common control* with the entity.

* ''Control'' for these purposes will mean the ability to exercise significant influence over operating and financial policies, and will be presumed to exist when the parent involved holds directly or indirectly 20% or more of the entity's voting stock. Other indicia that may be taken into account for this purpose include board representation, participation in policymaking processes, material intercompany transactions, interchange of managerial personnel, and technological dependency. This test is taken from and intended to be consistent with generally accepted accounting principles regarding use of the equity method of accounting for an investment in common stock.]

* * * * *

802.00 Continued Listing

* * * * *

802.01 Continued Listing Criteria

The Exchange would normally give consideration to *the prompt initiation of suspension* and delisting *procedures with respect to* a security *of* either a domestic or non-U.S. issuer when:

802.01A. Distribution Criteria for Capital or Common Stock—

- Number of total stockholders *(A)* is less than—400

OR

- Number of total stockholders *(A)* is less than—1,200 and
- Average monthly trading volume is less than—100,000 shares (for most recent 12 months)

OR

- Number of publicly-held shares ([A]*B)* is less than—600,000([B]*C*)

(A) The number of beneficial holders of stock held in the name of Exchange member organizations will be considered in addition to holders of record.

([A]*B*) Shares held by directors, officers, or their immediate families and other concentrated holdings of 10% or more are excluded in calculating the number of publicly-held shares.

([B]*C*) If the unit of trading is less than 100 shares, the requirement relating to the number of shares publicly held shall be reduced proportionately.

802.01B Numerical Criteria for Capital or Common Stock

[If] *A*[a] company *that* falls below [any of the following] *the* criteria *applicable to the standard under which it originally listed will be considered to be below compliance* [, it is subject to the procedures outlined in Paras. 802.02 and 802.03:].

Notwithstanding items (I) to (IV) below, the Exchange will promptly initiate suspension and delisting procedures with respect to a company if that company is determined to have average global market capitalization over a consecutive 30 trading-day period of less than $25,000,000, regardless of the original standard under which it listed. A company is not eligible to follow the procedures outlined in Sections 802.02 and 802.03 with respect to this criteria.

(I) A company that qualified to list under the Earnings Test set out in Section 102.01C(I) or in Section 103.01B(I) will be considered to be below compliance standards if [(i) A]average global market capitalization over a consecutive 30 trading-day period is less than [$50,000,000] *$75,000,000* and*, at the same time,* total stockholders' equity is less than [$50,000,000] *$75,000,000* [(C); or

(ii) Average global market capitalization over a consecutive 30 trading-day period is less than $15,000,000; or]

(II) A company that qualified to list under the Valuation/Revenue with Cash Flow Test set out in Section 102.01C(II)(a) or Section 103.01B(II)(a) will be considered to be below compliance standards if:

(i) Average global market capitalization over a consecutive 30 trading-day period is less than $250,000,000 and, at the same time, total revenues are less than $20,000,000 over the last 12 months (unless the company qualifies as an original listing under one of the other original listing standards); or

(ii) Average global market capitalization over a consecutive 30 trading-day period is less than $75,000,000.

[(iii) For companies that qualified for original listing under the ''global market capitalization'' standard:]

(III) A company that qualified to list under the Pure Valuation/Revenue Test set out in Section 102.01C(II)(b) or Section 103.01B(II)(b) will be considered to be below compliance standards if:

(i) [A]average global market capitalization over a consecutive 30 trading-day period is less than [$500,000,000] *$375,000,000* and*, at the same time,* total revenues are less than [$20,000,000] *$15,000,000* over the last 12 months (unless the [resultant entity] *company* qualifies as an original listing under one of the other original listing standards) [(D)]; or

(ii) average global market capitalization over a consecutive 30 trading-day period is less than $100,000,000.

(IV) A company that qualified to list under the Affiliated Company Test set out in Section 102.01C(III) or Section 103.01B(III) will be considered to be below compliance standards if:

(i) the listed company's parent/affiliated company ceases to control the listed company, or the listed company's parent/affiliated company itself falls below the continued listing standards applicable to the parent/affiliated company, and:

(ii) average global market capitalization over a consecutive 30 trading-day period is less than $75,000,000 and, at the same time, total stockholders' equity is less than $75,000,000.

When applying the market capitalization test in any of the above [three] *four* standards, the Exchange will generally look to the total common stock outstanding (excluding treasury shares) as well as any common stock that would be issued upon conversion of another outstanding equity security. The Exchange deems these securities to be reflected in market value to such an extent that the security is a ''substantial equivalent'' of common stock. In this regard, the Exchange will only consider securities (1) publicly traded (or quoted), or (2) convertible into a publicly traded (or quoted) security. For partnerships, the Exchange will analyze the creation of the current capital structure to determine whether it is appropriate to include other publicly traded securities in the calculation.

[Affiliated Companies—Will not be subject to the $50,000,000 average global market capitalization and stockholders' equity test unless the parent/affiliated company no longer controls the entity or such parent/affiliated company itself falls below the continued listing standards described in this section.]

The Exchange will promptly initiate suspension and delisting procedures with respect to Funds, REITs and Limited Partnerships [—will be subject to immediate suspension and delisting procedures] if the average market capitalization *of the entity* over 30 consecutive trading days is below [$15,000,000] $*25,000,000* [or (2)]. *In addition, the Exchange will promptly initiate suspension and delisting procedures with respect to* [in the case of] a Fund[,] it ceases to maintain its closed-end status.[, and in the case of a] *The Exchange will promptly initiate suspension and delisting procedures with respect to a* REIT[,] it fails to maintain its REIT status (unless the resultant entity qualifies for an original listing as a corporation).

The Exchange will notify the Fund, REIT or limited partnership if the average market capitalization falls below [$25,000,000] *$35,000,000* and *will* advise the Fund, REIT or limited partnership of the delisting standard. Funds, REITs and limited partnerships are not [subject] *eligible* to *follow* the procedures outlined in Sections 802.02 and 802.03.

The Exchange will promptly initiate suspension and delisting procedures with respect to Bonds[—] *if:*

(i) [(•T]*t*he aggregate market value or principal amount of publicly-held bonds is less than $1,000,000*, or*

(ii) [(•T]*t*he issuer is not able to meet its obligations on the listed debt securities.

Bonds are not eligible to follow the procedures outlined in Sections 802.02 and 802.03.

The Exchange will promptly initiate suspension and delisting procedures with respect to Preferred Stock, Guaranteed Railroad Stock and Similar Issues[—] *if:*

(i) [•]*the* [A]*a*ggregate market value of publicly-held shares is less than $2,000,000*, or*

(ii) [•]*the number of* [P]*p*ublicly-held shares is less than 100,000.

These types of securities are not eligible to follow the procedures outlined in Paras. 802.02 and 802.03.

[(C) To be considered in conformity with continued listing standards pursuant to Paras. 802.02 and 802.03, a company that is determined to be below this continued listing criterion must do one of the following:

(i) Reestablish both its market capitalization and its stockholders' equity to the $50,000,000 level, or

(ii) Achieve average global market capitalization over a consecutive 30 trading-day period of at least $100,000,000, or

(iii) Achieve average global market capitalization over a consecutive 30 trading-day period of $60,000,000, with either (x) stockholders' equity of at least $40,000,000, or (y) an increase in stockholders' equity of at least $40,000,000 since the company was notified by the Exchange that it was below continued listing standards.

(D) A company that is determined to be below this continued listing criterion must reestablish both its market capitalization and its revenues to be considered in conformity with continued listing standards pursuant to paras. 802.02 and 802.03.]

802.01C Price Criteria *for Capital or Common Stock*[—]

A Company will be considered to be below compliance standards if the [A]*a*verage closing price of a security is less than $1.00 over a consecutive 30-trading-day period [(E)]. [(E)] Once notified, the company must bring its share price and average share price back above $1.00 by six months following receipt of the notification. [If this is the only criteria that makes the company below the Exchange's continued listing standards, the procedures outlined in Paras. 802.02 and 802.03 do not apply.] *A company is not eligible to follow the procedures outlined in Paras. 802.02 and 802.03 with respect to this criteria.*

* * * * *

802.00 Continued Listing

802.02 Evaluation and Follow-Up Procedures for Domestic Companies

The following procedures shall be applied by the Exchange to domestic companies [which] *that* are identified as being below the Exchange's continued listing criteria. Notwithstanding the above, when the Exchange deems it necessary for the protection of investors, trading in any security can be suspended immediately, and application made to the SEC to delist the security.

Once the Exchange identifies, through internal reviews or notice (a press release, news story, company communication, etc.), a company as being below the continued listing criteria set forth in Section 802.01(and not able to otherwise qualify under an original listing standard), the Exchange will notify the company by letter of its status within 10 business days. This letter will also provide the company with an opportunity to provide the Exchange with a plan (the ''Plan'') advising the Exchange of definitive action the company has taken, or is taking, that would bring it into conformity with continued listing standards within 18 months of receipt of the letter.

Within 10 business days after receipt of the letter, the company must contact the Exchange to confirm receipt of notification, discuss any possible financial data of which the Exchange may be unaware, and indicate whether or not it plans to present a Plan; otherwise, suspension and delisting procedures will commence. If the company submits a Plan, it must identify specific quarterly milestones against which the Exchange will evaluate the company's progress.

The company has 45 days from the receipt of the letter to submit its Plan to the Exchange for review; otherwise, suspension and delisting procedures will commence. If the company is determined to be below the criteria listed in Section 802.01B[(i) or 802.01B(iii)], the Plan it presents must demonstrate how it will *return to compliance with the applicable continued listing standard by the end of the Plan period* [reestablish both its market capitalization and stockholders' equity (or revenues, as applicable, to the levels specified in such clauses].

In any event, all companies submitting a Plan must include quarterly financial projections, details related to any strategic initiatives the company plans to complete, and market performance support. Exchange staff will evaluate the Plan, including any additional documentation that supports the Plan, and make a determination as to whether the company has made a reasonable demonstration in the Plan of an ability to come into conformity with the relevant standard(s) within 18 months. The Exchange will make such determination within 45 days of receipt of the proposed Plan, and will promptly notify the company of its determination in writing.

The company also has 45 days from receipt of the letter to issue a press release disclosing the fact that it has fallen below the continued listing standards of the Exchange. If the company fails to issue this press release during the allotted 45 days, the Exchange will issue the requisite press release.

If the Exchange does not accept the Plan, the Exchange will promptly initiate suspension and delisting procedures and issue a press release disclosing the forthcoming suspension and application to the SEC [for] *to* delist[ing of] the company's securities.

If the Exchange accepts the Plan, the Exchange will review the company on a quarterly basis for compliance with the Plan. If the company fails to meet the material aspects of the Plan or any of the quarterly milestones, the Exchange will review the circumstances and variance, and determine whether such variance warrants commencement of suspension and delisting procedures. Should the Exchange determine to proceed with suspension and delisting procedures, it may do so regardless of the company's continued listing status at that time. The Exchange will deem the Plan period over prior to the end of the 18 months if a company is able to demonstrate returning to compliance with the applicable continued listing standards, or achieving the ability to qualify under an original listing standard, for a period of two consecutive quarters. [This early Plan termination will not be available to a company based on satisfying the alternative criteria specified in clauses (ii) or (iii) of footnote C to Para. 802.01B.] In any event, if the company does not meet continued listing standards [(including the criteria specified in footnote C to Section 802.01B, if applicable)] at the end of the 18-month period, the Exchange promptly will initiate suspension and delisting procedures.

If the company, within twelve months of the end of the Plan period [(including any early termination of the Plan period under the procedures described above)], is again determined to be below continued listing standards, the Exchange will examine the relationship between the two incidents of falling below continued listing standards and re-evaluate the company's method of financial recovery from the first incident. It will then take appropriate action, which, depending upon the circumstances, may include truncating the procedures described above or immediately initiating suspension and delisting procedures.

802.03 Continued Listing

Evaluation and Follow-up Procedures for Non-U.S. Companies

The following procedures shall be applied by the Exchange to non-U.S. companies [who] *that* are identified as being below the Exchange's continued listing criteria. Notwithstanding the above, when the Exchange deems it necessary for the protection of the investors, trading in any security can be suspended immediately, and application made to the SEC to delist the security. Once the Exchange identifies, through internal reviews or notice (a press release, news story, company communication, etc.), a company as being below the continued listing criteria set forth in Section 802.01(and not able to otherwise qualify under an original listing standard), the Exchange will notify the company by letter of its status within 10 business days. This letter will also provide the company with an opportunity to provide the Exchange with a plan (the ''Plan'') advising the Exchange of definitive action the company has taken, or is taking, that would bring it into conformity with the standards within 18 month of receipt of the letter. Within 30 business days after receipt of the letter, the company must contact the Exchange to confirm receipt of notification, discuss any possible financial data of which the Exchange may be unaware, and indicate whether or not it plans to present a Plan; otherwise, suspension and delisting procedures will commence. If the company submits a Plan, it must identify specific semi-annual milestones against which the Exchange will evaluate the company's progress.

The company has 90 days from the receipt of the letter to submit its Plan to the Exchange for review; otherwise, suspension and delisting procedures will commence. If the company is determined to be below the criteria listed in Section 802.01B [(i) or 802.01B(iii)], the Plan it presents must demonstrate how it will *return to compliance with the applicable continued listing standard by the end of the Plan period* [reestablish both its market capitalization and stockholders' equity (or revenues, as applicable, to the levels specified in such clauses].

In any event, all companies submitting a Plan must include quarterly financial projections, details related to any strategic initiatives the company plans to complete, and market performance support. Exchange staff will evaluate the Plan, including any additional documentation that supports the Plan, and make a determination as to whether the company has made a reasonable demonstration in the Plan of an ability to come into conformity with the relevant standard(s) within 18 months. The Exchange will make such determination within 45 days of receipt of the proposed Plan, and will promptly notify the company of its determination in writing.

The company also has 90 days from receipt of the letter to issue press release disclosing the fact that it has fallen below the continued listing standards of the Exchange. If the company fails to issue this press release during the allotted 90 days, the Exchange will issue the requisite press release.

If the Exchange does not accept the Plan, the Exchange will promptly initiate suspension and delisting procedures and issue a press release disclosing the forthcoming suspension and application to the *SEC to* delist[ing of] the company's securities.

If the Exchange accepts the Plan, the Exchange will review the company on a semi-annual basis for compliance with the Plan. If the company fails to meet the material aspects of the Plan or any of the semi-annual milestones, the Exchange will review the circumstances and variance, and determine whether such variance warrants commencement of suspension and delisting procedures. Should the Exchange determine to proceed with suspension and delisting procedures, it may do so regardless of the company's continued listing status at that time. The Exchange will deem the Plan period over prior to the end of the 18 months if a company is able to demonstrate returning to compliance with the applicable continued listing standards, or achieving the ability to qualify under an original listing standard, for a period of two consecutive quarters. [This early Plan termination will not be available to a company based on satisfying the alternative criteria specified in clauses (ii) or (iii) of footnote C to Para. 802.01B.] In any event, *the Exchange will promptly initiate suspension and delisting procedures with respect to* [if the] *a* company *that* does not meet *the* continued listing standards [(including the criteria specified in footnote C to Para. 802.01B, if applicable)] at the end of the 18-month period[, the Exchange promptly will initiate suspension and delisting procedures.]

If the company, within twelve months of the end of the Plan period [(including any early termination of the Plan period under the procedures described above)], is again determined to be below continued listing standards, the Exchange will examine the relationship between the two incidents of falling below continued listing standards and re-evaluate the company's method of financial recovery from the first incident. It will then take appropriate action, which, depending upon the circumstances, may include truncating the procedures described above or immediately initiating suspension and delisting procedures.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing amendments to certain of its minimum numerical standards for the listing and continued listing of equity securities on the NYSE. On January 29, 2004, the Commission approved these proposed amendments sought by the NYSE on a pilot program basis (the ''Pilot Program'').[12] The Pilot Program provided a transition period for companies that were below compliance under the previous continued listing standards at the time the Pilot Program was approved, granting them an opportunity to present an additional business plan advising the Exchange of definitive action the company has taken, or is taking, that would bring the company into conformity with the Pilot Program requirements within 12 months of the end of their previous plan. No transition period was provided, however, for companies that were in compliance with the previous standards but not in compliance with the Pilot Program standards at the time the Pilot Program was approved.

Due to the fact that the Exchange requested the Commission approve the Pilot Program on an accelerated basis, there was no opportunity for listed companies to review and comment on the Pilot Program requirements prior to the date compliance was required. The NYSE notes that a number of the listed companies that did not comply with the Pilot Program standards as of the date of approval expressed significant dismay at the automatic application of the new continued listing standards.[13] In order to address these concerns, the Exchange suspended the portions of the Pilot Program relating to the continued listing standards of Section 802.01B of the NYSE's Listed Company Manual.[14] In File No. SR–NYSE–2004–15, the Exchange noted its intention to publish the requirements of the Pilot Program relating to Section 802.01B for public comment on a non-accelerated timeframe.[15] File No. SR–NYSE–2004–15 did not, however, amend the Pilot Program with respect to Sections 102.01C and 103.01B of the NYSE's Listed Company Manual concerning original minimum listing standards or the Pilot Program's non-substantive change to the language of Section 802.01C.[16]

In this filing, File No. SR–NYSE–2004–20, the Exchange now seeks permanent approval for the Pilot Program currently in effect with respect to the Exchange's original minimum listing standards and approval of the continued minimum listing standards as initially proposed in File No. SR–NYSE–2003–43. File No. SR–NYSE–2004–20, as amended, by Amendment No. 1 was published in the **Federal Register** on July 2, 2004.[17] The Exchange also seeks approval for continued minimum listing standards, with changes to that proposed in File No. SR–NYSE–2003–43 that are responsive to public comments submitted to the Commission. The Exchange represents that it maintains an ongoing dialog with knowledgeable practitioners at investment banks, broker-dealers, and venture capital firms, and adjusts its listing standards periodically to ensure that the standards recognize and reflect current market conditions and to allow the Exchange to continue to attract quality companies. The Exchange represents, furthermore, that such changes are proposed only after detailed analysis by Exchange staff of how the proposed standards would affect the NYSE list. The NYSE asserts that the proposed amendments will strengthen certain aspects of the minimum original and continued listing standards, while modestly easing the pre-Pilot Program ''Market-Cap/Revenue Test'' to enable the NYSE to list somewhat younger companies that still meet substantial quantitative thresholds over their operating history. According to the NYSE, Exchange staff monitored the modest number of companies over the last two years that would have met the ''Market-Cap/Revenue Test'' as the Exchange proposes to modify it and found that those companies have performed to a standard that would be appropriate for inclusion on the NYSE list. The Exchange represents that its standard in this respect remains far higher than any other U.S. marketplace.

[12] *See* Securities Exchange Act Release No. 49154 (January 29, 2004), 69 FR 5633 (February 5, 2004) (approving File No. SR–NYSE–2003–43).

[13] *See* letters from Kenneth A. Hoogstra, von Briesen & Roper, s.c., to Jonathan G. Katz, Secretary, Commission, dated February 25, 2004, and W. Randy Eaddy, Kilpatrick Stockton LLP, to Jonathan G. Katz, Secretary, Commission, dated March 11, 2004, (commenting on File No. SR–NYSE–2003–43).

[14] *See* Securities Exchange Act Release No. 49443 (March 18, 2004), 69 FR 13929 (March 24, 2004) (File No. SR–NYSE–2004–15).

[15] *See id.*

[16] *See id.*

[17] *See* supra note 4.

Prior to the Pilot Program, Section 102.01C of the Listed Company Manual provided that a company must meet one of four specified financial standards in order to qualify to have its equity securities listed. The Exchange is proposing permanent approval of amendments to three of these four standards that have been in effect under the Pilot Program.[18] The Exchange is also proposing permanent approval of amendments to Section 103.01B(III), which provides a corresponding numerical standard applicable to international companies and have also been in effect under the Pilot Program.

Prior to the Pilot Program, Section 102.01C(I) required that a company demonstrate pre-tax earnings of $6.5 million in aggregate for the last three fiscal years, with either a minimum of: (a) $2.5 million in earnings in the most recent fiscal year and $2 million in each of the preceding two years; or (b) $4.5 million in earnings in the most recent fiscal year, with positive earnings in each of the preceding two years. Pursuant to the Pilot Program, the ''Earnings Test'' requires that companies demonstrate pre-tax earnings of $10 million in aggregate for the last three fiscal years. It also requires that the company demonstrate positive results in all three of the years tested with a minimum of $2.0 million in earnings in each of the preceding two years. The Exchange believes that these changes strengthen the ''Earnings Test'' standard and also simplify it by eliminating the current two-tiered structure.

Prior to the Pilot Program, Section 102.01C(II) of the Listed Company Manual required that a company demonstrate market capitalization of at least $500 million and revenues of at least $100 million over the most recent 12-month period. Provided that these thresholds were met, a company with operating cash flows of at least $25 million in aggregate for the last three fiscal years and positive amounts in each of the three fiscal years would have qualified for listing. Section 102.01C(III) required that an issuer demonstrate (a) market capitalization of at least $1 billion and (b) revenues of at least $100 million in the most recent fiscal year. Because both of these tests are valuation and revenue-based, the Exchange now seeks permanent approval to consolidate them into one test with two alternative subsections. One of the sections of the current Pilot Program, the ''Valuation/Revenue Test,'' incorporates the pre-Pilot Program requirements of Section 102.01C(II) as the ''Valuation/Revenue with Cash Flow Test'' with no change to the previous thresholds. The other section incorporates the pre-Pilot Program requirements of Section 102.01C(III) as the ''Pure Valuation/Revenue Test.'' In addition, the Exchange is proposing to permanently approve the amendments to the thresholds of Section 102.01C(III) that require that companies demonstrate (a) market capitalization of at least $750 million and (b) revenues of at least $75 million during the most recent fiscal year. As noted above, the Exchange represents that its staff has monitored the modest number of companies over the last two years that would have met the Pilot Program's ''Pure Valuation/Revenue Test'' and found that those companies performed to a standard that is appropriate for inclusion on the NYSE list.

The Exchange is also proposing permanent approval of corresponding restructuring changes to Section 103.01B of the Listed Company Manual, which sets out minimum numerical standards for non-U.S. issuers. The Exchange is also proposing permanent approval of changes to the numeric thresholds of Section 103.01B(III) in accordance with changes to Section 102.01C(III).

In addition, the Exchange seeks permanent approval of its suspended Pilot Program restructuring and amending the numerical continued listing standards. Section 802.01B of the Listed Company Manual currently applies to companies that fall below any of the following criteria: (i) Average global market capitalization over a consecutive 30 trading-day period is less than $50 million and total stockholders' equity is less than $50 million; or (ii) average global market capitalization over a consecutive 30-trading-day period is less than $15 million; or (iii) for companies that qualified for original listing under the ''global market capitalization'' standard, (a) average global market capitalization over a consecutive 30 trading-day period is less than $500 million and total revenues are less than $20 million over the last 12 months (unless the resultant entity qualifies as an original listing under one of the other original listing standards), or (b) average global market capitalization over a consecutive 30 trading-day period is less than $100 million.

The Exchange proposes to amend these thresholds and to specifically relate the continued listing standards of Section 802.01B of the Listed Company Manual to the original listing standards of Section 102.01C used to qualify a company for listing. In addition, the Exchange proposes to add a minimum continued listing standard applicable to all companies regardless of original listing standard. This standard would require that all companies maintain average global market capitalization over a consecutive 30 trading-day period of at least $25,000,000 or be subject to suspension and delisting (the ''Minimum Continued Listing Standard'').[19]

Companies that list under the Pilot Program ''Earnings Test'' or its predecessor test will be considered to be below compliance if average global market capitalization over a consecutive 30 trading-day period is less than $75,000,000 and, at the same time, total stockholders' equity is less than $75,000,000. This level has been increased in the proposal to reflect marketplace expectations of those companies deemed suitable for continued listing. The current alternate threshold for the Earnings Test that resulted in a company being below compliance if average global market capitalization over a consecutive 30 trading-day period is less than $15,000,000 is proposed to be eliminated as a result of the proposed $25,000,000 Minimum Continued Listing Standard.

Issuers that list under the Pilot Program's ''Valuation/Revenue with Cash Flow Test'' or its predecessor test would be considered to be below compliance standards if: (a) Average global market capitalization over a consecutive 30 trading-day period is less than $250 million and, at the same time, total revenues are less than $20 million over the last 12 months (unless the company qualifies as an original listing under one of the other original listing standards);[20] or (b) average global market capitalization over a consecutive 30 trading-day period is less than $75 million.

Issuers that list under the Pilot Program's ''Pure Valuation/Revenue Test'' or its predecessor test would be

[18] The ''Earnings Test,'' the ''Valuation/Revenue Test'' (incorporating in one section the pre-Pilot Program Valuation/Revenue with Cash Flow Test and in another section the Pure Valuation/Revenue Test), or the ''Affiliated Company Test.'' *See supra* note 11 (approving File No. SR–NYSE–2003–43).

[19] This requirement is in substance identical to the proposal in File No. SR–NYSE–2003–43, but it restates the standard in a manner the Exchange believes is more readily understandable. In a substantive change from the current provisions and from the proposals as published for public comment, companies that fall below this minimum threshold would not be afforded the opportunity to submit a plan and ''cure'' their noncompliance over a plan period. In addition, companies that list under the Affiliated Company Test would be subject to the proposed $25,000,000 threshold, regardless of the status of their parent company.

[20] These levels are lower than the existing ''global market capitalization'' standard.

considered to be below compliance standards if: (a) Average global market capitalization over a consecutive 30 trading-day period is less than $375 million and, at the same time, total revenues are less than $15 million over the last 12 months (unless the company qualifies as an original listing under one of the other original listing standards); or (b) average global market capitalization over a consecutive 30 trading-day period is less than $100 million.

The Exchange also proposes to clarify that, in circumstances where a listed company's parent or affiliated company no longer controls the listed company or such listed company's parent or affiliated company falls below the continued listing standards applicable to the parent or affiliated company, the continued listing standards applicable to the Pilot Program's ''Earnings Test'' would apply to companies that originally listed under the Affiliated Company Standard. Amendments are also proposed to make clear that companies that list under the Affiliated Company Standard are subject to the Minimum Continued Listing Standard, regardless of the status of the listed company's parent. In addition, the Exchange proposes to increase the continued listing criteria for closed-end funds, REITs, and limited partnerships from $15 million to $25 million with a corresponding increase to the notification threshold from $25 million to $35 million.

Companies that fall below the foregoing minimum standards could be permitted a period of time to return to compliance, in accordance with the procedures specified in Sections 802.02 and 802.03 of the Listed Company Manual. As a general matter, companies must reestablish the level of market capitalization (and, if applicable, shareholder's equity) specified in the continued listing standard below which the company fell. However, with respect to the current requirements of Section 802.01B(I) that a company reestablish both its market capitalization and its stockholders' equity to the $50 million level, footnote (C) to Section 802.01B provides several alternatives. Currently, the footnote specifies that, to return to conformity, a company must do one of the following: (a) Reestablish both its market capitalization and its stockholders' equity to the $50 million level; (b) achieve average global market capitalization over a consecutive 30-trading-day period of at least $100 million; or (c) achieve average global market capitalization over a consecutive 30-trading-day period of $60 million, with either (x) stockholders' equity of at least $40 million, or (y) an increase in stockholders' equity of at least $40 million, since the company was notified by the Exchange that it was below continued listing standards. Likewise, with respect to the current requirements of Section 802.01B(iii) relating to companies that listed under the current global market capitalization standard, footnote (D) states that companies must reestablish both market capitalization and revenues in conformity with continued listing standards.

In a change from the proposals as originally published for comment, the Exchange proposes to eliminate footnotes (C) and (D) to Section 802.01B of the Listed Company Manual, and, instead proposes to amend Sections 802.02 and 802.03 to provide that a listed company's plan to regain compliance need only demonstrate how the company will cease to trigger the applicable Section 802.01B continued listing standard at the end of the allowable recovery period. For example, a company that listed under the proposed Earnings Test would be required to submit a plan that demonstrates how the company will exceed either the $75,000,000 market capitalization or shareholders' equity threshold, rather than be required to exceed both thresholds to regain compliance. It has been the Exchange's experience over the last five years that the sustained restoration of one component of the continued listing standard thresholds is evidence of a company's recovery. Due to the fact that a company would not be deemed below compliance unless it fell below both thresholds at the same time, the Exchange believes that the proposed amendment provides companies with a more rational basis for returning to compliance. This proposed change eliminates the potential for certain anomalies in situations where, for example, a company's stockholders' equity may never have been above the minimum and a decrease in market capitalization below the required threshold triggers non-compliance. Since it is the fact that market capitalization also dropped below the required threshold that results in a deficiency despite no change to stockholders' equity, the Exchange proposes to only require that the company recover market capitalization in order to regain compliance.

The Exchange represents that it has considered how to transition the above-described changes to the continued listing standards and intends to provide a period of 30 trading days from the date of any Commission approval of the proposed amendments until such amendments would become effective.

Sections 802.02 and 802.03 of the Listed Company Manual provide that, with respect to a company which is determined to be below continued listing standards a second time within 12 months of successful recovery from previous non-compliance, the Exchange will examine the relationship between the two incidents of falling below continued listing standards and re-evaluate the company's method of financial recovery from the first incident. The Exchange may then take appropriate action, which, depending upon the circumstances, may include truncating the normal procedures for reestablishing conformity with the continued listing standards or immediately initiating suspension and delisting procedures. For those companies that are within such a 12-month period and that would be deemed to be below continued listing standards as a direct result of the approval of the amendments proposed in this filing, the Exchange would not intend to truncate or immediately initiate suspension and delisting solely on the basis of the proposed increase to the current continued listing standards. The Exchange would take into consideration all of the facts and circumstances relating to the company in determining whether to allow such company an opportunity to submit a second plan.

With respect to an issuer currently below the continued listing standards now in force, the Exchange intends to allow it to complete its applicable follow-up procedures and plan for return to compliance as provided in Sections 802.02 and 802.03 of the Listed Company Manual. If, at the end thereof, the issuer is compliant with the continued listing standards about which it was originally notified, but below the increased requirements set forth above, the Exchange would grant it an opportunity to present an additional business plan advising the Exchange of definitive action the issuer has taken, or is taking, that would bring it into conformity with the increased requirements within a further 12 months. In addition, if an issuer were to complete its currently applicable follow-up procedures and plan and were not compliant at that time with the continued listing standards about which it was originally notified, but is above the increased requirements set forth above, the Exchange would consider that issuer to be in conformity with the continued listing standards.

For an issuer that is in compliance with the continued listing standards

now in force, but that might be below the continued listing standards proposed herein, the proposed 30-day measurement period prior to effectiveness would allow the Exchange sufficient time to provide early warnings to any issuer that would potentially be below compliance at the end of that period. If, at the end of the 30-trading-day measurement period, an issuer is below the increased requirements set forth above, the Exchange would formally notify the issuer of such non-compliance and provide it with an opportunity to present a business plan within 45 days of that notification advising the Exchange of definitive action the issuer would take to bring it into conformity with the increased requirements within an 18-month period.

Finally, the Exchange is proposing minor technical and conforming changes to Sections 102.02C, 103.01B, 802.01A, 802.01B, and 802.01C of the Listed Company Manual.

2. Statutory Basis

The Exchange believes that the proposed rule change satisfies the requirement under Section 6(b)(5) of the Act [21] that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NYSE does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The NYSE did not solicit or receive written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2004–20 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–NYSE–2004–20. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. 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–NYSE–2004–20 and should be submitted on or before April 6, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

J. Lynn Taylor,

Assistant Secretary.

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[21] 15 U.S.C. 78f(b)(5).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51350; File No. SR-OCC–2004–19]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving a Proposed Rule Change Relating to Clearing Member Trade Assignment Processing

March 9, 2005.

On November 1, 2004, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR-OCC–2004–19) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934.[1] Notice of the proposal was published in the **Federal Register** on February 7, 2005.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change will add new clearing member trade assignment (''CMTA'') processing requirements to OCC's By-Laws and Rules. Specifically, OCC will modify Article I (''Definitions'') of its By-Laws and Rules 401 and 403 to require clearing members that are parties to a CMTA arrangement involving CMTA customers to register with OCC certain customer identifiers that the clearing members use to process the CMTA transactions. The new rules will provide that an exchange transaction executed on behalf of a CMTA customer that is to be transferred by CMTA processing for clearance and settlement will be identified by a special indicator called a Customer CMTA Indicator in the matching trade information submitted with respect to that transaction.[3] For each transaction marked with the

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 51120 (Feb. 1, 2005), 70 FR 6486.

[3] The same indicator will be used by all options exchanges. OCC made various system changes to process this indicator and other information to be supplied with respect to CMTA customers' transactions. Matching trade information submitted by the options exchanges will need to include this information that requires changes to the exchanges' systems.

Customer CMTA Indicator, the matching trade information will also contain a ''CMTA Customer Identifier,'' which provides identification information about the CMTA customer on whose behalf a transaction was executed, and an ''IB Identifier,'' which provides identification information about the introducing broker that executed or arranged for the execution of such transaction.[4]

If a transaction is marked with the CMTA Indicator, OCC's systems will verify against a database of registered identifiers that the CMTA Customer Identifier and the IB Identifier supplied as a part of the trade information match registered identifiers for purposes of the CMTA arrangement between the carrying clearing member and executing clearing member. This verification step will be in addition to the other verifications performed by OCC's systems for CMTA processing. If a transaction is marked with a Customer CMTA Indicator but either the CMTA Customer Identifier or the IB Identifier is incomplete, inaccurate, or missing, OCC's systems will treat the transaction as a failed CMTA and will cause the transaction to be cleared in the executing clearing member's designated or default account in accordance with OCC Rule 403.

Under the terms of a model agreement, which was developed by a working group of clearing members, options exchanges, and OCC, the firms will identify each CMTA covered customer. Each clearing member will then assign identifiers to their CMTA customers and introducing brokers. One clearing member will then register the assigned identifiers with OCC. OCC's systems will require the other clearing member to approve the identifiers before they are submitted to OCC for registration. Identifiers will be effectively registered when they are accepted by OCC's systems, subject to OCC's right to reject an already registered identifier.[5] OCC will retain the right to specify criteria applicable to the characters used to form identifiers for systemic reasons.

II. Discussion

Section 17A(b)(3)(F) of the Act[6] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission finds that the proposed rule change is consistent with OCC's obligations under Section 17A(b)(3)(F) because including identifying information about the CMTA customer and introducing broker to a transaction will make CMTA processing more transparent and should increase the regulatory and legal certainties with respect thereto. Specifically, the amendment to CTMA processing should better enable OCC members to make sure that transactions are properly sent to their accounts for clearing.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[7] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–2004–19) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–1143 Filed 3–15–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51352; File No. SR–Phlx–2005–03]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to System Changes to the Exchange's Automated Options Market (AUTOM) System

March 9, 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 January 10, 2005, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On March 9, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain Exchange rules relating to system changes to the Philadelphia Stock Exchange Automated Options Market (''AUTOM'') System.[4] The text of the proposed rule change is included below. Italics indicate new text; brackets indicate deletions.

Rule 1080. Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO–X)

(a)–(b) No change.

(c) AUTO–X.

* * * * *

(i)–(iii) No change.

(iv) Except as otherwise provided in this Rule, in the following circumstances, an order otherwise eligible for automatic execution will instead be manually handled by the specialist:

(A) The Exchange's disseminated market is crossed (*i.e.*, 2[−1/8].*10* bid, 2 offer), or crosses the disseminated market of another options exchange;

(B) The AUTOM System is not open for trading when the order is received (which is known as a pre-market order);

(C) The disseminated market is produced during an opening or other rotation;

(D) When the specialist posts a bid or offer that is better than the specialist's own bid or offer (except with respect to orders eligible for ''Book Sweep'' as described in Rule 1080(c)(iii) above, and ''Book Match'' as described in Rule 1080(g)(ii) below);

(E) If the Exchange's bid or offer is not the NBBO;

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[4] If the ''introducing broker'' is also the ''executing clearing member,'' a separate IB Identifier will still be required.

[5] Carrying and executing clearing members will be responsible to update their respective registrations of CMTA Customer Identifiers and IB Identifiers including registering any changes or deletions with respect thereto.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78q–1.

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Form 19b-4 dated March 8, 2005 (''Amendment No. 1''). In Amendment No. 1, the Exchange clarified the proposed new functionality of the AUTOM System. Amendment No. 1 replaced the original filing in its entirety.

[4] AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution features, AUTO–X, Book Sweep and Book Match. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist limit order book on the Exchange trading floor. *See* Exchange Rule 1080.

(F) When the price of a limit order is not in the appropriate minimum trading increment pursuant to Rule 1034; *and*

(G[) When the bid price is zero respecting sell orders; and

(H]) Respecting non-Streaming Quote Options, when the number of contracts automatically executed within a 15 second period in an option (subject to a Pilot program through April 30, 2005) exceeds the specified disengagement size, a 30 second period ensues during which subsequent orders are handled manually. If the Exchange's disseminated size exceeds the specified disengagement size and an eligible order is delivered for a number of contracts that is greater than the specified disengagement size, such an order will be automatically executed up to the disseminated size, followed by an AUTO–X disengagement period of 30 seconds. If the specialist revises the quotation in such an option prior to the expiration of such 30-second period, eligible orders in such an option shall again be executed automatically.

The Exchange's systems are designed and programmed to identify the conditions that cause inbound orders to be ineligible for automatic execution. Once it is established that inbound orders are ineligible for automatic execution, Exchange staff has the ability to determine which of the above conditions occurred.

(v) In situations in which the Exchange receives a market order that is not eligible for automatic execution because of any of the conditions described in Rule 1080(c)(iv), such market order, if not already executed manually by the specialist, will nonetheless be executed automatically when: (A) a limit order resting on the limit order book or a quotation that was not priced at the NBBO at the time such market order was received, becomes priced at the NBBO; or (B) an inbound limit order or quotation priced at or better than the NBBO is received before the specialist has manually executed such market order. In each case, the AUTOM System will automatically execute the market order against such resting limit order or quotation, or against such inbound limit order or quotation, at or better than the NBBO price.

(vi) When the Exchange's disseminated quotation is not the NBBO (and, pursuant to Rule 1080(c)(iv)(E), inbound orders otherwise eligible for automatic execution are instead handled manually by the specialist):

(A) (1) Marketable public customer limit orders will be exposed to the trading crowd and to participants in Phlx XL for a period of three seconds following receipt. At the end of the three-second exposure period: (a) If the Exchange's disseminated price is not the NBBO, any unexecuted contracts remaining in such an order will be automatically sent as a P/A Order through the Intermarket Option Linkage to any other exchange whose disseminated price is the NBBO, subject to the provisions contained in Rules 1083–1087; or (b) if the Exchange's disseminated price is the NBBO, any unexecuted contracts remaining in such an order will be automatically executed up to the Exchange's disseminated size. Any remaining contracts will be sent as P/A Order(s) to the exchange(s) displaying the NBBO.

(2) For each option in which a specialist is assigned, such specialist shall submit to the Exchange prior written instructions for the routing of any P/A orders the specialist may send through AUTOM to the Intermarket Option Linkage in accordance with Rules 1083–1087. The Exchange's AUTOM System will route P/A Orders on the basis of these written instructions.

(B) Marketable limit orders for the proprietary account(s) of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest, will be automatically cancelled, and a message indicating the cancellation will be automatically sent to the sender of the order.

(d)–(h) No change.

(i) [RESERVED] *Zero-bid option series. The AUTOM System will convert market orders to sell a particular option series that are received when the bid price in such option series is zero, to limit orders to sell with a limit price of $.05. Such orders will be automatically placed on the limit order book in price-time priority.*

(j)–(k) No change.

Commentary: No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to establish rules to reflect system changes to AUTOM that are intended to increase the number of orders that are handled and executed automatically on the Exchange.

Automatic Sending of P/A Orders

The Exchange proposes to adopt new rules for the automated handling of inbound limit orders when the Exchange's disseminated price is not the National Best Bid or Offer (''NBBO''). Currently, Exchange Rule 1080(g)(ii)(B) states that inbound marketable orders will be automatically executed against a limit order on the book or specialist, Remote Streaming Quote Trader (''RSQT'') [5] and/or Streaming Quote Trader (''SQT'') [6] electronic quotes at the disseminated price where: (1) The Exchange's disseminated size includes limit orders on the book and/or electronic quotes at the disseminated price; and (2) the disseminated price is the NBBO. This feature is called Book Match. Book Match will not automatically execute inbound orders against limit orders resting on the limit order book under the circumstances listed in Exchange Rule 1080(c)(iv). Specifically, Exchange Rule 1080(c)(iv)(E) provides that orders otherwise eligible for automatic execution are handled manually by the specialist when the Exchange's bid or offer is not the NBBO. The specialist is currently responsible for handling an order manually when it would otherwise be eligible for automatic execution and, with respect to customer limit orders received when the Exchange's best bid or offer is not the NBBO, may send via the Intermarket Option Linkage (''Linkage''), a Principal Acting as Agent (''P/A'') Order [7]

[5] An RSQT is an Exchange Registered Options Trader (''ROT'') that is a member or member organization of the Exchange with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options in which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. An RSQT may only trade in a market making capacity in classes of options in which he is assigned. *See* Exchange Rule 1014(b)(ii)(B).

[6] An SQT is an ROT who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such SQT is assigned. *See* Exchange Rule 1014(b)(ii)(A).

[7] A P/A Order is an order for the principal account of a specialist (or equivalent entity on

pursuant to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (''Linkage Plan'') [8] to the options exchange disseminating the NBBO.

Proposed Exchange Rule 1080(c)(vi)(A)(1) would address the manner in which the AUTOM System handles inbound marketable public customer limit orders when the Exchange's disseminated price is not the NBBO. Specifically, proposed Exchange Rule 1080(c)(vi)(A)(1)(a) would provide that, when the Exchange's disseminated quotation is not the NBBO (and, pursuant to Exchange Rule 1080(c)(iv)(E), inbound orders otherwise eligible for automatic execution are instead handled manually by the specialist), marketable public customer limit orders would be exposed to the trading crowd and to participants in Phlx XL for a period of three seconds following receipt. At the end of the three-second exposure period, if the Exchange's disseminated price is not the NBBO, any unexecuted contracts remaining in such an order would be automatically sent as a P/A Order through the Linkage to any other exchange whose disseminated price is the NBBO, subject to the provisions contained in Exchange Rules 1083–1087, which generally govern the handling of orders sent and received via the Linkage.

Proposed Exchange Rule 1080(c)(vi)(A)(1)(b) would address the situation where, at the end of the three-second period, the Exchange's disseminated price is the NBBO. In such a circumstance, any unexecuted contracts remaining in the marketable public customer limit order would be automatically executed [9] up to the Exchange's disseminated size. Any remaining contracts would be sent as P/A Order(s) to the exchange(s) displaying the NBBO. If the marketable public customer limit order is canceled during the three-second period, no P/A Order would be sent, nor would the marketable public customer limit order be executed. The Exchange believes that the three-second exposure period should provide Exchange specialists and ROTs sufficient opportunity to execute such orders at a price that is at or better than the NBBO during the three-second period following receipt of the marketable public customer limit order. The Exchange further believes that this change to the AUTOM System should result in more automated handling of inbound marketable public customer limit orders, and should help achieve the best execution of customer orders on the Exchange and through the Linkage.

The specialist is required to act with due diligence with regard to the interests of orders entrusted to him/her and fulfill other duties of an agent, including, but not limited to, ensuring that such orders, regardless of their size or source, receive proper representation and timely execution in accordance with the terms of the orders and the rules of the Exchange. To enable the specialist to carry out his/her agency responsibilities with respect to P/A Orders submitted through the Linkage, the Exchange, pursuant to proposed Exchange Rule 1080(c)(vi)(A)(2), would require that a specialist submit prior written instructions to the Exchange regarding the routing of any P/A Orders that the specialist would send through the Linkage. The AUTOM System would route P/A Orders on behalf of the specialist according to these instructions three seconds after receipt of the marketable public customer limit order if such order is not executed or is partially executed during the three-second period and the Exchange's disseminated price at the end of the three-second period is not the NBBO. In the case of a partial execution during the three-second period, the P/A Order that is routed to the market disseminating the NBBO would be for the size that is equal to the number of contracts remaining in the order. Each execution received from an away exchange would result in the automatic generation of a trade execution on the Exchange between the original marketable public customer limit order and the specialist.

The Exchange believes that the specialist's instructions should ensure that such specialist is ultimately responsible for decisions regarding the routing of P/A Orders and exercises appropriate discretion over such orders. While the AUTOM System may carry out the mechanics of routing such orders, the specialist assigned in the particular issue that is the subject of a P/A Order would be responsible for providing the Exchange with instructions on how and where to route a P/A Order. The Exchange believes that the proposed rule requiring the specialist to provide routing instructions to the Exchange should ensure that P/A Orders will be handled in accordance with the Linkage Plan.

Broker-Dealer Orders

Marketable limit orders for the proprietary account(s) of a broker-dealer (or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest) received when the Exchange's disseminated quotation is not the NBBO would be automatically cancelled by the AUTOM System. A message indicating the cancellation would be automatically sent to the sender of the order.

The purpose of this proposal is to avoid trading through a better away market when the Exchange's disseminated price is not the NBBO. Unlike marketable public customer limit orders, which enable the specialist to generate and forward a P/A Order to the exchange disseminating the NBBO through the Linkage, an order for the proprietary account of a broker-dealer (or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest) does not enable the specialist to generate a P Order on behalf of the broker-dealer. The cancellation of such an order when the Exchange's disseminated price is not the NBBO, and the message to the sender of such an order that the order has been cancelled, should enable the sender to decide to route a new order to the exchange disseminating the NBBO.

Market Orders to Sell When the Exchange's Bid Price is Zero

Exchange Rule 1080(c)(iv)(G) currently provides that sell orders received in a particular series in which the disseminated bid price is zero [10] are handled manually by the specialist. The proposal would delete Exchange Rule 1080(c)(iv)(G) and adopt new Exchange Rule 1080(i) concerning the automated handling of market orders to sell when the bid price is zero. Under the proposal, the AUTOM system would automatically convert market orders to sell when the bid price is zero to limit orders to sell with a limit price of $.05. Such market orders to sell, as well as

another Participant Exchange that is authorized to represent Public Customer orders), reflecting the terms of a related unexecuted Public Customer order for which the specialist is acting as agent. *See* Exchange Rule 1083(k)(i).

[8] *See* Securities Exchange Act Release Nos. 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001) (Amendment to Linkage Plan to Conform to the Requirements of Securities Exchange Act Rule 11Ac1–7; 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000) (Notice of Phlx Joining the Linkage Plan); and 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) (Approval of the Linkage Plan).

[9] The Exchange notes that another options exchange handles inbound customer orders received when the exchange is not disseminating the NBBO in a similar fashion, including the situation in which that exchange's disseminated price is the NBBO at the end of the three-second period. *See* Boston Options Exchange Rules, Chapter V, Section 16(b)(iii)(2)(b) and (c).

[10] A bid price of zero typically occurs in situations where there is no intrinsic value in the series quoted (*i.e.*, where an option series is out-of-the-money by a relatively large amount and such series is close to expiration).

limit orders to sell, would be placed on the limit order book in price-time priority. The purpose of this provision is to establish the time priority of market orders to sell when the bid price in the particular series is zero (and thus no execution could occur). In the event that the bid price in the particular series becomes $.05 or greater, thus establishing a bid price that makes the booked limit orders to sell marketable, such orders to sell at the $.05 limit price or better would be executed in the order in which they were received (*i.e.*, price-time priority). The Exchange believes that this proposed rule should reduce the manual handling of such orders and automate the processing of market orders to sell when the Exchange's bid price is zero.

Market Orders Received That Are Not Eligible for Automatic Execution

Proposed Exchange Rule 1080(c)(v) would address the situation in which the Exchange receives a market order that is not eligible for automatic execution because of any of the conditions described in Exchange Rule 1080(c)(iv). The proposed rule would provide that such market order, if not already executed manually by the specialist, would nonetheless be executed automatically in two situations.

In one situation, such a market order, if not already executed manually by the specialist, would be automatically executed against a limit order resting on the limit order book or a quotation that was not priced at the NBBO at the time such market order was received, if the resting limit order or quotation becomes priced at the NBBO. Alternatively, the AUTOM System would automatically execute a market order that is being handled manually by the specialist when an inbound limit order or quotation priced at or better than the NBBO is received before the specialist has manually executed such market order.

The Exchange believes that this proposed change to the AUTOM System would eliminate the need for the specialist to match the market order manually against quotes or limit orders if an execution is possible at the NBBO while the specialist is handling the market order. The Exchange believes that proposed Exchange Rule 1080(c)(v) should result in more timely executions, and enhance the specialist's ability to provide the best execution on behalf of market orders entrusted to him/her, by automating the process currently carried out by the specialist.

Rule Change To Reflect Decimalization

As a housekeeping matter, the Exchange proposes to amend Exchange Rule 1080(c)(iv)(A) to reflect decimal pricing in the parenthetical example of a crossed market.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [11] in general, and furthers the objectives of Section 6(b)(5) of the Act [12] in particular, in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest, by implementing changes to the AUTOM System that result in a greater number of orders that are handled and executed automatically.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

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–Phlx–2005–03 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-Phlx-2005–03. 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 Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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–Phlx–2005–03 and should be submitted on or before April 6, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–1131 Filed 3–15–05; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Voluntary Intermodal Sealift Agreement

AGENCY: Maritime Administration, DOT.

[13] 17 CFR 200.30–3(a)(12).

ACTION: Notice of Voluntary Intermodal Sealift Agreement (VISA).

SUMMARY: The Maritime Administration (MARAD) announces the extension of the Voluntary Intermodal Sealift Agreement (VISA) until September 30, 2005, pursuant to provision of the Defense Production Act of 1950, as amended. The purpose of the VISA is to make intermodal shipping services/systems, including ships, ships' space, intermodal equipment and related management services, available to the Department of Defense as required to support the emergency deployment and sustainment of U.S. military forces. This is to be accomplished through cooperation among the maritime industry, the Department of Transportation and the Department of Defense.

FOR FURTHER INFORMATION CONTACT: Taylor E. Jones II, Director, Office of Sealift Support, Room 7304, Maritime Administration, 400 Seventh Street SW., Washington, DC 20590, (202) 366–3423, Fax (202) 366–3128.

SUPPLEMENTARY INFORMATION: Section 708 of the Defense Production Act of 1950, as amended, (50 U.S.C. App. 2158), as implemented by regulations of the Federal Emergency Management Agency (44 CFR Part 332), ''Voluntary agreements for preparedness programs and expansion of production capacity and supply'', authorizes the President, upon a finding that conditions exist which may pose a direct threat to the national defense or its preparedness programs, ''* * * to consult with representatives of industry, business, financing, agriculture, labor and other interests * * *'' in order to provide the making of such voluntary agreements. It further authorizes the President to delegate that authority to individuals who are appointed by and with the advice and consent of the Senate, upon the condition that such individuals obtain the prior approval of the Attorney General after the Attorney General's consultation with the Federal Trade Commission. Section 501 of Executive Order 12919, as amended, delegated this authority of the President to the Secretary of Transportation (Secretary), among others. By DOT Order 1900.9, the Secretary delegated to the Maritime Administrator the authority under which the VISA is sponsored. Through advance arrangements in joint planning, it is intended that participants in VISA will provide capacity to support a significant portion of surge and sustainment requirements in the deployment of U.S. military forces during war or other national emergency.

The text of the VISA was first published in the **Federal Register** on February 13, 1997, to be effective for a two-year term until February 13, 1999. The VISA document has been extended and subsequently published in the **Federal Register** every two years. The last extension was published on February 25, 2003. The text of the VISA herein is identical to the text previously published in the **Federal Register**.

The text published herein will now be implemented. Copies will be made available to the public upon request.

Text of the Voluntary Intermodal Sealift Agreement:

Voluntary Intermodal Sealift Agreement (VISA)

9 December 1996

Table of Contents

Abbreviations

Definitions

Preface

I. Purpose
II. Authorities
  A. MARAD
  B. USTRANSCOM
III. General
  A. Concept
  B. Responsibilities
  C. Termination of Charter, Leases and Other Contractual Arrangements
  D. Modification/Amendment of This Agreement
  E. Administrative Expenses
  F. Record Keeping
  G. MARAD Reporting Requirements
IV. Joint Planning Advisory Group
V. Activation of VISA Contingency Provisions
  A. General
  B. Notification of Activation
  C. Voluntary Capacity
  D. Stage I
  E. Stage II
  F. Stage III
  G. Partial Activation
VI. Terms and Conditions
  A. Participation
  B. Agreement of Participant
  C. Effective Date and Duration of Participation
  D. Participant Termination of VISA
  E. Rules and Regulations
  F. Carrier Coordination Agreements
  G. Enrollment of Capacity (Ships and Equipment)
  H. War Risk Insurance
  I. Antitrust Defense
  J. Breach of Contract Defense
  K. Vessel Sharing Agreements
VII. Application and Agreement

Figure 1—VISA Activation Process Diagram

Abbreviations

''AMC''—Air Mobility Command
''CCA''—Carrier Coordination Agreements
''CDS''—Construction Differential Subsidy
''CFR''—Code of Federal Regulations
''CONOPS''—Concept of Operations
''DoD''—Department of Defense
''DOJ''—Department of Justice
''DOT''—Department of Transportation
''DPA''—Defense Production Act
''EUSC''—Effective United States Control
''FAR''—Federal Acquisition Regulations
''FEMA''—Federal Emergency Management Agency
''FTC''—Federal Trade Commission
''JCS''—Joint Chiefs of Staff
''JPAG''—Joint Planning Advisory Group
''MARAD''—Maritime Administration, DOT
''MSP''—Maritime Security Program
''MSC''—Military Sealift Command
''MTMC''—Military Transportation Management Command
''NCA''—National Command Authorities
''NDRF''—National Defense Reserve Fleet maintained by MARAD
''ODS''—Operating Differential Subsidy
''RRF''—Ready Reserve Force component of the NDRF
''SecDef''—Secretary of Defense
''SecTrans''—Secretary of Transportation
''USCINCTRANS''—Commander in Chief, United States Transportation Command
''USTRANSCOM''—United States Transportation Command (including its sealift transportation component, Military Sealift Command)
''VISA''—Voluntary Intermodal Sealift Agreement
''VSA''—Vessel Sharing Agreement

Definitions—For purposes of this agreement, the following definitions apply:

Administrator—Maritime Administrator.

Agreement—Agreement (proper noun) refers to the Voluntary Intermodal Sealift Agreement (VISA).

Attorney General—Attorney General of the United States.

Broker—A person who arranges for transportation of cargo for a fee.

Carrier Coordination Agreement (CCA)—An agreement between two or more Participants or between Participant and non-Participant carriers to coordinate their services in a Contingency, including agreements to: (i) Charter vessels or portions of the cargo-carrying capacity of vessels; (ii) share cargo handling equipment, chassis, containers and ancillary transportation equipment; (iii) share

wharves, warehouse, marshaling yards and other marine terminal facilities; and (iv) coordinate the movement of vessels.

Chairman—FTC—Chairman of the Federal Trade Commission (FTC).

Charter—Any agreement or commitment by which the possession or services of a vessel are secured for a period of time, or for one or more voyages, whether or not a demise of the vessel.

Commercial—Transportation service provided for profit by privately owned (not government owned) vessels to a private or government shipper. The type of service may be either common carrier or contract carriage.

Contingency—Includes, but is not limited to a ''contingency operation'' as defined at 10 App. U.S.C. 101(a)(13), and a JCS-directed, NCA-approved action undertaken with military forces in response to: (i) Natural disasters; (ii) terrorists or subversive activities; or (iii) required military operations, whether or not there is a declaration of war or national emergency.

Contingency contracts—DoD contracts in which Participants implement advance commitments of capacity and services to be provided in the event of a Contingency.

Contract carrier—A for-hire carrier who does not hold out regular service to the general public, but instead contracts, for agreed compensation, with a particular shipper for the carriage of cargo in all or a particular part of a ship for a specified period of time or on a specified voyage or voyages.

Controlling interest—More than a 50-percent interest by stock ownership.

Director—FEMA—Director of Federal Emergency Management Agency (FEMA).

Effective U.S. Control (EUSC)—U.S. citizen-owned ships which are registered in certain open registry countries and which the United States can rely upon for defense in national security emergencies. The term has no legal or other formal significance. U.S. citizen-owned ships registered in Liberia, Panama, Honduras, the Bahamas and the Republic of the Marshall Islands are considered under effective U.S. control. EUSC registries are recognized by the Maritime Administration after consultation with the Department of Defense. (MARAD OPLAN 001A, 17 July 1990)

Enrollment Contract—The document, executed and signed by MSC, and the individual carrier enrolling that carrier into VISA Stage III.

Foreign flag vessel—A vessel registered or documented under the law of a country other than the United States of America.

Intermodal equipment—Containers (including specialized equipment), chassis, trailers, tractors, cranes and other materiel handling equipment, as well as other ancillary items.

Liner—Type of service offered on a definite, advertised schedule and giving relatively frequent sailings at regular intervals between specific ports or ranges.

Liner throughput capacity—The system/intermodal capacity available and committed, used or unused, depending on the system cycle time necessary to move the designated capacity through to destination. Liner throughput capacity shall be calculated as: static capacity (outbound from CONUS) X voyage frequency X.5.

Management services—Management expertise and experience, intermodal terminal management, information resources, and control and tracking systems.

Ocean Common carrier—An entity holding itself out to the general public to provide transportation by water of passengers or cargo for compensation; which assumes responsibility for transportation from port or point of receipt to port or point of destination; and which operates and utilizes a vessel operating on the high seas for all or part of that transportation. (As defined in 46 App. U.S.C. 1702, 801, and 842 regarding international, interstate, and intercoastal commerce respectively.)

Operator—An ocean common carrier or contract carrier that owns or controls or manages vessels by which ocean transportation is provided.

Organic sealift—Ships considered to be under government control or long-term charter—Fast Sealift Ships, Ready Reserve Force and commercial ships under long-term charter to DoD.

Participant—A signatory party to VISA, and otherwise as defined within Section VI of this document.

Person—Includes individuals and corporations, partnerships, and associations existing under or authorized by the laws of the United States or any state, territory, district, or possession thereof, or of a foreign country.

SecTrans—Secretary of Transportation.

Service contract—A contract between a shipper (or a shipper's association) and an ocean common carrier (or conference) in which the shipper makes a commitment to provide a certain minimum quantity of cargo or freight revenue over a fixed time period, and the ocean common carrier or conference commits to a certain rate or rate schedule, as well as a defined service level (such as assured space, transit time, port rotation, or similar service features), as defined in the Shipping Act of 1984. The contract may also specify provisions in the event of nonperformance on the part of either party.

Standby period—The interval between the effective date of a Participant's acceptance into the Agreement and the activation of any stage, and the periods between deactivation of all stages and any later activation of any stage.

U.S. Flag Vessel—A vessel registered or documented under the laws of the United States of America.

USTRANSCOM—The United States Transportation Command and its component commands (AMC, MSC and MTMC).

Vessel Sharing Agreement (VSA) Capacity—Space chartered to a Participant for carriage of cargo, under its commercial contracts, service contracts or in common carriage, aboard vessels shared with another carrier or carriers pursuant to a commercial vessel sharing agreement under which the carriers may compete with each other for the carriage of cargo. In U.S. foreign trades the agreement is filed with the Federal Maritime Commission (FMC) in conformity with the Shipping Act of 1984 and implementing regulations.

Volunteers—Any vessel owner/operator who is an ocean carrier and who offers to make capacity, resources or systems available to support contingency requirements.

Preface

The Administrator, pursuant to the authority contained in Section 708 of the Defense Production Act of 1950, as amended (50 App. U.S.C. 2158)(Section 708)(DPA), in cooperation with the Department of Defense (DoD), has developed this Agreement [hereafter called the Voluntary Intermodal Sealift Agreement (VISA)] to provide DoD the commercial sealift and intermodal shipping services/systems necessary to meet national defense Contingency requirements.

USTRANSCOM procures commercial shipping capacity to meet requirements for ships and intermodal shipping services/systems through arrangements with common carriers, with contract carriers and by charter. DoD (through USTRANSCOM) and Department of Transportation (DOT) (through MARAD) maintain and operate a fleet of ships owned by or under charter to the Federal Government to meet the logistic needs of the military services which cannot be met by existing commercial service. Ships of the Ready Reserve Force (RRF) are selectively activated for

peacetime military tests and exercises, and to satisfy military operational requirements which cannot be met by commercial shipping in time of war, national emergency, or military Contingency. Foreign-flag shipping is used in accordance with applicable laws, regulations and policies.

The objective of VISA is to provide DoD a coordinated, seamless transition from peacetime to wartime for the acquisition of commercial sealift and intermodal capability to augment DoD's organic sealift capabilities. This Agreement establishes the terms, conditions and general procedures by which persons or parties may become VISA Participants. Through advance joint planning among USTRANSCOM, MARAD and the Participants, Participants may provide predetermined capacity in designated stages to support DoD Contingency requirements.

VISA is designed to create close working relationships among MARAD, USTRANSCOM and Participants through which Contingency needs and the needs of the civil economy can be met by cooperative action. During Contingencies, Participants are afforded maximum flexibility to adjust commercial operations by Carrier Coordination Agreements (CCA), in accordance with applicable law.

Participants will be afforded the first opportunity to meet DoD peacetime and Contingency sealift requirements within applicable law and regulations, to the extent that operational requirements are met. In the event VISA Participants are unable to fully meet Contingency requirements, the shipping capacity made available under VISA may be supplemented by ships/capacity from non-Participants in accordance with applicable law and by ships requisitioned under Section 902 of the Merchant Marine Act, 1936 (as amended) (46 App. U.S.C. 1242). In addition, containers and chassis made available under VISA may be supplemented by services and equipment acquired by USTRANSCOM or accessed by the Administrator through the provisions of 46 CFR Part 340.

The Secretary of Defense (SecDef) has approved VISA as a sealift readiness program for the purpose of Section 909 of the Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1248).

Voluntary Intermodal Sealift Agreement

I. Purpose

A. The Administrator has made a determination, in accordance with Section 708(c)(1) of the Defense Production Act (DPA) of 1950, that conditions exist which may pose a direct threat to the national defense of the United States or its preparedness programs and, under the provisions of Section 708, has certified to the Attorney General that a standby agreement for utilization of intermodal shipping services/systems is necessary for the national defense. The Attorney General, in consultation with the Chairman of the Federal Trade Commission, has issued a finding that dry cargo shipping capacity to meet national defense requirements cannot be provided by the industry through a voluntary agreement having less anticompetitive effects or without a voluntary agreement.

B. The purpose of VISA is to provide a responsive transition from peace to Contingency operations through pre-coordinated agreements for sealift capacity to support DoD Contingency requirements. VISA establishes procedures for the commitment of intermodal shipping services/systems to satisfy such requirements. VISA will change from standby to active status upon activation by appropriate authority of any of the Stages, as described in Section V.

C. It is intended that VISA promote and facilitate DoD's use of existing commercial transportation resources and integrated intermodal transportation systems, in a manner which minimizes disruption to commercial operations, whenever possible.

D. Participants' capacity which may be committed pursuant to this Agreement may include all intermodal shipping services/systems and all ship types, including container, partial container, container/bulk, container/roll-on/roll-off, roll-on/roll-off (of all varieties), breakbulk ships, tug and barge combinations, and barge carrier (LASH, SeaBee).

II. Authorities

A. MARAD

1. Sections 101 and 708 of the DPA, as amended (50 App. U.S.C. 2158); Executive Order 12919, 59 FR 29525, June 7, 1994; Executive Order 12148, 3 CFR 1979 Comp., p. 412, as amended; 44 CFR Part 332; DOT Order 1900.8; 46 CFR Part 340.

2. Section 501 of Executive Order 12919, as amended, delegated the authority of the President under Section 708 to SecTrans, among others. By DOT Order 1900.8, SecTrans delegated to the Administrator the authority under which VISA is sponsored.

B. USTRANSCOM

1. Section 113 and Chapter 6 of Title 10 of the United States Code.

2. DoD Directive 5158.4 designating USCINCTRANS to provide air, land, and sea transportation for the DoD.

III. General

A. Concept

1. VISA provides for the staged, time-phased availability of Participants' shipping services/systems to meet NCA-directed DoD Contingency requirements in the most demanding defense oriented sealift emergencies and for less demanding defense oriented situations through prenegotiated Contingency contracts between the government and Participants (see Figure 1). Such arrangements will be jointly planned with MARAD, USTRANSCOM, and Participants in peacetime to allow effective, and efficient and best valued use of commercial sealift capacity, provide DoD assured Contingency access, and minimize commercial disruption, whenever possible.

a. Stages I and II provide for prenegotiated contracts between the DoD and Participants to provide sealift capacity against all projected DoD Contingency requirements. These agreements will be executed in accordance with approved DoD contracting methodologies.

b. Stage III will provide for additional capacity to the DoD when Stages I and II commitments or volunteered capacity are insufficient to meet Contingency requirements, and adequate shipping services from non-Participants are not available through established DoD contracting practices or U.S. Government treaty agreements.

2. Activation will be in accordance with procedures outlined in Section V of this Agreement.

3. Following is the prioritized order for utilization of commercial sealift capacity to meet DoD peacetime and Contingency requirements:

a. U.S. Flag vessel capacity operated by a Participant and U.S. Flag Vessel Sharing Agreement (VSA) capacity of a Participant.

b. U.S. Flag vessel capacity operated by a non-Participant.

c. Combination U.S./foreign flag vessel capacity operated by a Participant and combination U.S./foreign flag VSA capacity of a Participant.

d. Combination U.S./foreign flag vessel capacity operated by a non-Participant.

e. U.S. owned or operated foreign flag vessel capacity and VSA capacity of a Participant.

f. U.S. owned or operated foreign flag vessel capacity and VSA capacity of a non-Participant.

g. Foreign-owned or operated foreign flag vessel capacity of a non-Participant.

4. Under Section VI.F. of this Agreement, Participants may implement CCAs to fulfill their contractual commitments to meet VISA requirements.

B. Responsibilities

1. The SecDef, through USTRANSCOM, shall:

a. Define time-phased requirements for Contingency sealift capacity and resources required in Stages I, II and III to augment DoD sealift resources.

b. Keep MARAD and Participants apprised of Contingency sealift capacity required and resources committed to Stages I and II.

c. Obtain Contingency sealift capacity through the implementation of specific prenegotiated DoD Contingency contracts with Participants.

d. Notify the Administrator upon activation of any stage of VISA.

e. Co-chair (with MARAD) the Joint Planning Advisory Group (JPAG).

f. Establish procedures, in accordance with applicable law and regulation, providing Participants with necessary determinations for use of foreign flag vessels to replace an equivalent U.S. Flag capacity to transport a Participant's normal peacetime DoD cargo, when Participant's U.S. Flag assets are removed from regular service to meet VISA Contingency requirements.

g. Provide a reasonable time to permit an orderly return of a Participant's vessel(s) to its regular schedule and termination of its foreign flag capacity arrangements as determined through coordination between DoD and the Participants.

h. Review and endorse Participants' requests to MARAD for use of foreign flag replacement capacity for non-DoD government cargo, when U.S. Flag capacity is required to meet Contingency requirements.

2. The SecTrans, through MARAD, shall:

a. Review the amount of sealift resources committed in DoD contracts to Stages I and II and notify USTRANSCOM if a particular level of VISA commitment will have serious adverse impact on the commercial sealift industry's ability to provide essential services. MARAD's analysis shall be based on the consideration that all VISA Stage I and II capacity committed will be activated. This notification will occur on an annual basis upon USCINCTRANS' acceptance of VISA commitments from the Participants. If so advised by MARAD, USTRANSCOM will adjust the size of the stages or provide MARAD with justification for maintaining the size of those stages. USTRANSCOM and MARAD will coordinate to ensure that the amount of sealift assets committed to Stages I and II will not have an adverse, national economic impact.

b. Coordinate with DOJ for the expedited approval of CCAs.

c. Upon request by USCINCTRANS and approval by SecDef to activate Stage III, allocate sealift capacity and intermodal assets to meet DoD Contingency requirements. DoD shall have priority consideration in any allocation situation.

d. Establish procedures, pursuant to Section 653(d) of the Maritime Security Act (MSA), for determinations regarding the equivalency and duration of the use of foreign flag vessels to replace U.S. Flag vessel capacity to transport the cargo of a Participant which has entered into an operating agreement under Section 652 of the MSA and whose U.S. Flag vessel capacity has been removed from regular service to meet VISA contingency requirements. Such foreign flag vessels shall be eligible to transport cargo subject to the Cargo Preference Act of 1904 (10 U.S.C. 2631), P.R. 17 (46 App. U.S.C. 1241–1), and P.L. 664 (46 App. U.S.C. 1241(b)). However, any procedures regarding the use of such foreign flag vessels to transport cargo subject to the Cargo Preference Act of 1904 must have the concurrence of USTRANSCOM before it becomes effective.

e. Co-chair (with USTRANSCOM) the JPAG.

f. Seek necessary Jones Act waivers as required. To the extent feasible, participants with Jones Act vessels or vessel capacity will use CCAs or other arrangements to protect their ability to maintain services for their commercial customers and to fulfill their commercial peacetime commitments with U.S. Flag vessels. In situations where the activation of this Agreement deprives a Participant of all or a portion of its Jones Act vessels or vessel capacity and, at the same time, creates a general shortage of Jones Act vessel(s) or vessel capacity on the market, the Administrator may request that the Secretary of the Treasury grant a temporary waiver of the provisions of the Jones Act to permit a Participant to charter or otherwise utilize non-Jones Act vessel(s) or vessel capacity, with priority consideration recommended for U.S. crewed vessel(s) or vessel capacity. The vessel(s) or vessel capacity for which such waivers are requested will be approximately equal to the Jones Act vessel(s) or vessel capacity chartered or under contract to the DoD, and any waiver that may be granted will be effective for the period that the Jones Act vessel(s) or vessel capacity is on charter or under contract to the DoD plus a reasonable time for termination of the replacement charters as determined by the Administrator.

C. Termination of Charters, Leases and Other Contractual Arrangements

1. USTRANSCOM will notify the Administrator as soon as possible of the prospective termination of charters, leases, management service contracts or other contractual arrangements made by the DoD under this Agreement.

2. In the event of general requisitioning of ships under 46 App. U.S.C. 1242, the Administrator shall consider commitments made with the DoD under this Agreement.

D. Modification/Amendment of This Agreement

1. The Attorney General may modify this Agreement, in writing, after consultation with the Chairman-FTC, SecTrans, through his representative MARAD, and SecDef, through his representative USCINCTRANS. Although Participants may withdraw from this Agreement pursuant to Section VI.D, they remain subject to VISA as amended or modified until such withdrawal.

2. The Administrator, USCINCTRANS and Participants may modify this Agreement at any time by mutual agreement, but only in writing with the approval of the Attorney General and the Chairman-FTC.

3. Participants may propose amendments to this Agreement at any time.

E. Administrative Expenses

Administrative and out-of-pocket expenses incurred by a participant shall be borne solely by the participant.

F. Record Keeping

1. MARAD has primary responsibility for maintaining carrier VISA application records in connection with this Agreement. Records will be maintained in accordance with MARAD Regulations. Once a carrier is selected as a VISA Participant, a copy of the VISA application form will be forwarded to USTRANSCOM.

2. In accordance with 44 CFR 332.2(c), MARAD is responsible for the making and record maintenance of a full and verbatim transcript of each JPAG meeting. MARAD shall send this transcript, and any voluntary agreement resulting from the meeting, to the

Attorney General, the Chairman-FTC, the Director-FEMA, any other party or repository required by law and to Participants upon their request.

3. USTRANSCOM shall be the official custodian of records related to the contracts to be used under this Agreement, to include specific information on enrollment of a Participant's capacity in VISA.

4. In accordance with 44 CFR 332.3(d), a Participant shall maintain for five (5) years all minutes of meetings, transcripts, records, documents and other data, including any communications with other Participants or with any other member of the industry or their representatives, related to the administration, including planning related to and implementation of Stage activations of this Agreement. Each Participant agrees to make such records available to the Administrator, USCINCTRANS, the Attorney General, and the Chairman-FTC for inspection and copying at reasonable times and upon reasonable notice. Any record maintained by MARAD or USTRANSCOM pursuant to paragraphs 1, 2, or 3 of this subsection shall be available for public inspection and copying unless exempted on the grounds specified in 5 U.S.C 552(b) or identified as privileged and confidential information in accordance with Section 708(e).

G. MARAD Reporting Requirements

MARAD shall report to the Director-FEMA, as required, on the status and use of this agreement.

IV. Joint Planning Advisory Group

A. The JPAG provides USTRANSCOM, MARAD and VISA Participants a planning forum to:

1. Analyze DoD Contingency sealift/intermodal service and resource requirements.

2. Identify commercial sealift capacity that may be used to meet DoD requirements, related to Contingencies and, as requested by USTRANSCOM, exercises and special movements.

3. Develop and recommend Concepts of Operations (CONOPS) to meet DoD-approved Contingency requirements and, as requested by USTRANSCOM, exercises and special movements.

B. The JPAG will be co-chaired by MARAD and USTRANSCOM, and will convene as jointly determined by the co-chairs.

C. The JPAG will consist of designated representatives from MARAD, USTRANSCOM, each Participant, and maritime labor. Other attendees may be invited at the discretion of the co-chairs as necessary to meet JPAG requirements. Representatives will provide technical advice and support to ensure maximum coordination, efficiency and effectiveness in the use of Participants' resources. All Participants will be invited to all open JPAG meetings. For selected JPAG meetings, attendance may be limited to designated Participants to meet specific operational requirements.

1. The co-chairs may establish working groups within JPAG. Participants may be assigned to working groups as necessary to develop specific CONOPS.

2. Each working group will be co-chaired by representatives designated by MARAD and USTRANSCOM.

D. The JPAG will not be used for contract negotiations and/or contract discussions between carriers and the DoD; such negotiations and/or discussions will be in accordance with applicable DoD contracting policies and procedures.

E. The JPAG co-chairs shall:

1. Notify the Attorney General, the Chairman-FTC, Participants and the maritime labor representative of the time, place and nature of each JPAG meeting.

2. Provide for publication in the **Federal Register** of a notice of the time, place and nature of each JPAG meeting. If the meeting is open, a **Federal Register** notice will be published reasonably in advance of the meeting. If a meeting is closed, a **Federal Register** notice will be published within ten (10) days after the meeting and will include the reasons for closing the meeting.

3. Establish the agenda for each JPAG meeting and be responsible for adherence to the agenda.

4. Provide for a full and complete transcript or other record of each meeting and provide one copy each of transcript or other record to the Attorney General, the Chairman-FTC, and to Participants, upon request.

F. Security Measures—The co-chairs will develop and coordinate appropriate security measures so that Contingency planning information can be shared with Participants to enable them to plan their commitments.

V. Activation of VISA Contingency Provisions

A. General

VISA may be activated at the request of USCINCTRANS, with approval of SecDef, as needed to support Contingency operations. Activating voluntary commitments of capacity to support such operations will be in accordance with prenegotiated Contingency contracts between DoD and Participants.

B. Notification of Activation

1. USCINCTRANS will notify the Administrator of the activation of Stages I, II, and III.

2. The Administrator shall notify the Attorney General and the Chairman-FTC when it has been determined by DoD that activation of any Stage of VISA is necessary to meet DoD Contingency requirements.

C. Voluntary Capacity

1. Throughout the activation of any Stages of this Agreement, DoD may utilize voluntary commitment of sealift capacity or systems.

2. Requests for volunteer capacity will be extended simultaneously to both Participants and other carriers. First priority for utilization will be given to Participants who have signed Stage I and/or II contracts and are capable of meeting the operational requirements. Participants providing voluntary capacity may request USTRANSCOM to activate their prenegotiated Contingency contracts; to the maximum extent possible, USTRANSCOM, where appropriate, shall support such requests. Volunteered capacity will be credited against Participants' staged commitments, in the event such stages are subsequently activated.

3. In the event Participants are unable to fully meet Contingency requirements, or do not voluntarily offer to provide the required capacity, the shipping capacity made available under VISA may be supplemented by ships/capacity from non-Participants.

4. When voluntary capacity does not meet DoD Contingency requirements, DoD will activate the VISA stages as necessary.

D. Stage I

1. Stage I will be activated in whole or in part by USCINCTRANS, with approval of SecDef, when voluntary capacity commitments are insufficient to meet DoD Contingency requirements. USCINCTRANS will notify the Administrator upon activation.

2. USTRANSCOM will implement Stage I Contingency contracts as needed to meet operational requirements.

E. Stage II

1. Stage II will be activated, in whole or in part, when Contingency requirements exceed the capability of Stage I and/or voluntarily committed resources.

2. Stage II will be activated by USCINCTRANS, with approval of SecDef, following the same procedures discussed in paragraph D above.

F. Stage III

1. Stage III will be activated, in whole or in part, when Contingency requirements exceed the capability of Stages I and II, and other shipping services are not available. This stage involves DoD use of capacity and vessels operated by Participants which will be furnished to DoD when required in accordance with this Agreement. The capacity and vessels are allocated by MARAD on behalf of SecTrans to USCINCTRANS.

2. Stage III will be activated by USCINCTRANS upon approval by SecDef. Upon activation, DoD SecDef will request SecTrans to allocate sealift capacity based on DoD requirements, in accordance with Title 1 of DPA, to meet the Contingency requirement. All Participants' capacity committed to VISA is subject to use during Stage III.

3. Upon allocation of sealift assets by SecTrans, through its designated representative MARAD, USTRANSCOM will negotiate and execute Contingency contracts with Participants, using pre-approved rate methodologies as established jointly by SecTrans and SecDef in fulfillment of Section 653 of the Maritime Security Act of 1996. Until execution of such contract, the Participant agrees that the assets remain subject to the provisions of Section 902 of the Merchant Marine Act of 1936, Title 46 App. U.S.C. 1242.

4. Simultaneously with activation of Stage III, the DoD Sealift Readiness Program (SRP) will be activated for those carriers still under obligation to that program.

G. Partial Activation

As used in this Section V, activation ''in part'' of any Stage under this Agreement shall mean one of the following:

1. Activation of only a portion of the committed capacity of some, but not all, of the Participants in any Stage that is activated; or

2. Activation of the entire committed capacity of some, but not all, of the Participants in any Stage that is activated; or

3. Activation of only a portion of the entire committed capacity of all of the Participants in any Stage that is activated.

VI. Terms and Conditions

A. Participation

1. Any U.S. Flag vessel operator organized under the laws of a State of the United States, or the District of Columbia, may become a ''Participant'' in this Agreement by submitting an executed copy of the form referenced in Section VII, and by entering into a VISA Enrollment Contract with DoD which establishes a legal obligation to perform and which specifies payment or payment methodology for all services rendered.

2. The term ''Participant'' includes the entity described in VI.A.1 above, and all United States subsidiaries and affiliates of the entity which own, operate, charter or lease ships and intermodal equipment in the regular course of their business and in which the entity holds a controlling interest.

3. Upon request of the entity executing the form referenced in Section VII, the term ''Participant'' may include the controlled non-domestic subsidiaries and affiliates of such entity signing this Agreement, provided that the Administrator, in coordination with USCINCTRANS, grants specific approval for their inclusion.

4. Any entity receiving payments under the Maritime Security Program (MSP), pursuant to the Maritime Security Act of 1996 (MSA) (Pub. L. 104–239), shall become a ''Participant'' with respect to all vessels enrolled in MSP at all times until the date the MSP operating agreement would have terminated according to its original terms. The MSP operator shall be enrolled in VISA as a Stage III Participant, at a minimum. Such participation will satisfy the requirement for an MSP participant to be enrolled in an emergency preparedness program approved by SecDef as provided in Section 653 of the MSA.

5. A Participant shall be subject only to the provisions of this Agreement and not to the provisions of the SRP.

6. MARAD shall publish periodically in the **Federal Register** a list of Participants.

B. Agreement of Participant

1. Each Participant agrees to provide commercial sealift and/or intermodal shipping services/systems in accordance with DoD Contingency contracts. USTRANSCOM will review and approve each Participant's commitment to ensure it meets DoD Contingency requirements. A Participant's capacity commitment to Stages I and II will be one of the considerations in determining the level of DoD peacetime contracts awarded with the exception of Jones Act capacity (as discussed in paragraph 4 below).

2. DoD may also enter into Contingency contracts, not linked to peacetime contract commitments, with Participants, as required to meet Stage I and II requirements.

3. Commitment of Participants' resources to VISA is as follows:

a. Stage III: A carrier desiring to participate in DoD peacetime contracts/traffic must commit no less than 50% of its total U.S. Flag capacity into Stage III. Carriers receiving DOT payments under the MSP, or carriers subject to Section 909 of Merchant Marine Act of 1936, as amended, that are not enrolled in the SRP will have vessels receiving such assistance enrolled in Stage III. Participants' capacity under charter to DoD will be considered ''organic'' to DoD, and does not count towards the Participant's Contingency commitment during the period of the charter. Participants utilized under Stage III activation will be compensated based upon a DoD pre-approved rate methodology.

b. Stages I and II: DoD will annually develop and publish minimum commitment requirements for Stages I and II. Normally, the awarding of a long-term (*i.e.*, one year or longer) DoD contract, exclusive of charters, will include the annual predesignated minimum commitment to Stages I and/or II. Participants desiring to bid on DoD peacetime contracts will be required to provide commitment levels to meet DoD-established Stage I and/or II minimums on an annual basis. Participants may gain additional consideration for peacetime contract cargo allocation awards by committing capacity to Stages I and II beyond the specified minimums. If the Participant is awarded a contract reflecting such a commitment, that commitment shall become the actual amount of a Participant's U.S. Flag capacity commitment to Stages I and II. A Participant's Stage III U.S. Flag capacity commitment shall represent its total minimum VISA commitment. That Participant's Stage I and II capacity commitments as well as any volunteer capacity contribution by Participant are portions of Participant's total VISA commitment. Participants activated during Stages I and II will be compensated in accordance with prenegotiated Contingency contracts.

4. Participants exclusively operating vessels engaged in domestic trades will be required to commit 50% of that capacity to Stage III. Such Participants will not be required to commit capacity to Stages I and II as a consideration of domestic peacetime traffic and/or contract award. However, such Participants may voluntarily agree to commit capacity to Stages I and/or II.

5. The Participant owning, operating, or controlling an activated ship or ship capacity will provide intermodal equipment and management services

needed to utilize the ship and equipment at not less than the Participant's normal efficiency, in accordance with the prenegotiated Contingency contracts implementing this Agreement.

C. Effective Date and Duration of Participation

1. Participation in this Agreement is effective upon execution by MARAD of the submitted form referenced in Section VII, and approval by USTRANSCOM by execution of an Enrollment Contract, for Stage III, at a minimum.

2. VISA participation remains in effect until the Participant terminates the Agreement in accordance with paragraph D below, or termination of the Agreement in accordance with 44 CFR Sec. 332.4. Notwithstanding termination of VISA or participation in VISA, obligations pursuant to executed DoD peacetime contracts shall remain in effect for the term of such contracts and are subject to all terms and conditions thereof.

D. Participant Termination of VISA

1. Except as provided in paragraph 2 below, a Participant may terminate its participation in VISA upon written notice to the Administrator. Such termination shall become effective 30 days after written notice is received, unless obligations incurred under VISA by virtue of activation of any Contingency contract cannot be fulfilled prior to the termination date, in which case the Participant shall be required to complete the performance of such obligations. Voluntary termination by a carrier of its VISA participation shall not act to terminate or otherwise mitigate any separate contractual commitment entered into with DoD.

2. A Participant having an MSP operating agreement with SecTrans shall not withdraw from this Agreement at any time during the original term of the MSP operating agreement.

3. A Participant's withdrawal, or termination of this Agreement, will not deprive a Participant of an antitrust defense otherwise available to it in accordance with DPA Section 708 for the fulfillment of obligations incurred prior to withdrawal or termination.

4. A Participant otherwise subject to the DoD SRP that voluntarily withdraws from this Agreement will become subject again to the DoD SRP.

E. Rules and Regulations

Each Participant acknowledges and agrees to abide by all provisions of DPA Section 708, and regulations related thereto which are promulgated by the Secretary, the Attorney General, and the Chairman-FTC. Standards and procedures pertaining to voluntary agreements have been promulgated in 44 CFR Part 332. 46 CFR Part 340 establishes procedures for assigning the priority for use and the allocation of shipping services, containers and chassis. The JPAG will inform Participants of new and amended rules and regulations as they are issued in accordance with law and administrative due process. Although Participants may withdraw from VISA, they remain subject to all authorized rules and regulations while in Participant status.

F. Carrier Coordination Agreements (CCA)

1. When any Stage of VISA is activated or when DoD has requested volunteer capacity pursuant to Section V.B. of VISA, Participants may implement approved CCAs to meet the needs of the DoD and to minimize the disruption of their services to the civil economy.

2. A CCA for which the parties seek the benefit of Section 708(j) of the DPA shall be identified as such and shall be submitted to the Administrator for approval and certification in accordance with Section 708(f)(1)(A) of the DPA. Upon approval and certification, the Administrator shall transmit the Agreement to the Attorney General for a finding in accordance with Section 708(f)(1)(B) of the DPA. Parties to approved CCAs may avail themselves of the antitrust defenses set forth in Section 708(j) of the DPA. Nothing in VISA precludes Participants from engaging in lawful conduct (including carrier coordination activities) that lies outside the scope of an approved Carrier Coordination Agreement; but antitrust defenses will not be available pursuant to Section 708(j) of the DPA for such conduct.

3. Participants may seek approval for CCAs at any time.

G. Enrollment of Capacity (Ships and Equipment)

1. A list identifying the ships/capacity and intermodal equipment committed by a Participant to each Stage of VISA will be prepared by the Participant and submitted to USTRANSCOM within seven days after a carrier has become a Participant. USTRANSCOM will maintain a record of all such commitments. Participants will notify USTRANSCOM of any changes not later than seven days prior to the change.

2. USTRANSCOM will provide a copy of each Participant's VISA commitment data and all changes to MARAD.

3. Information which a Participant identifies as privileged or business confidential/proprietary data shall be withheld from public disclosure in accordance with Section 708(h)(3) and Section 705(e) of the DPA, 5 App. U.S.C. 552(b), and 44 CFR Part 332.

4. Enrolled ships are required to comply with 46 CFR Part 307, Establishment of Mandatory Position Reporting System for Vessels.

H. War Risk Insurance

1. Where commercial war risk insurance is not available on reasonable terms and conditions, DOT shall provide non-premium government war risk insurance, subject to the provisions of Section 1205 of the Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1285(a)).

2. Pursuant to 46 CFR 308.1(c), the Administrator (or DOT) will find each ship enrolled or utilized under this agreement eligible for U.S. Government war risk insurance.

I. Antitrust Defense

1. Under the provisions of DPA Section 708, each carrier shall have available as a defense to any civil or criminal action brought under the antitrust laws (or any similar law of any State) with respect to any action taken to develop or carry out this Agreement, that such act was taken in the course of developing or carrying out this Agreement and that the Participant complied with the provisions of DPA Section 708 and any regulation thereunder, and acted in accordance with the terms of this Agreement.

2. This defense shall not be available to the Participant for any action occurring after termination of this Agreement. This defense shall not be available upon the modification of this Agreement with respect to any subsequent action that is beyond the scope of the modified text of this Agreement, except that no such modification shall be accomplished in a way that will deprive the Participant of antitrust defense for the fulfillment of obligations incurred.

3. This defense shall be available only if and to the extent that the Participant asserting it demonstrates that the action, which includes a discussion or agreement, was within the scope of this Agreement.

4. The person asserting the defense bears the burden of proof.

5. The defense shall not be available if the person against whom it is asserted shows that the action was taken for the purpose of violating the antitrust laws.

6. As appropriate, the Administrator, on behalf of SecTrans, and DoD will

support agreements filed by Participants with the Federal Maritime Commission that are related to the standby or Contingency implementation of VISA.

J. Breach of Contract Defense

Under the provisions of DPA Section 708, in any action in any Federal or State court for breach of contract, there shall be available as a defense that the alleged breach of contract was caused predominantly by action taken by a Participant during an emergency (including action taken in imminent anticipation of an emergency) to carry out this Agreement. Such defense shall not release the party asserting it from any obligation under applicable law to mitigate damages to the greatest extent possible.

K. Vessel Sharing Agreements (VSA)

1. VISA allows Participants the use of a VSA to utilize non-Participant U.S. Flag or foreign-owned and operated foreign flag vessel capacity as a substitute for VISA Contingency capability provided:

a. The foreign flag capacity is utilized in accordance with cargo preference laws and regulations.

b. The use of a VSA, either currently in use or a new proposal, as a substitution to meet DoD Contingency requirements is agreed upon by USTRANSCOM and MARAD.

c. The Participant carrier demonstrates adequate control over the offered VSA capacity during the period of utilization.

d. Service requirements are satisfied.

e. Participant is responsible to DoD for the carriage or services contracted for. Though VSA capacity may be utilized to fulfill a Contingency commitment, a Participant's U.S. Flag VSA capacity in another Participant's vessel shall not act in a manner to increase a Participant's capacity commitment to VISA.

2. Participants will apprise MARAD and USTRANSCOM in advance of any change in a VSA of which it is a member, if such changes reduce the availability of Participant capacity provided for in any approved and accepted Contingency Concept of Operations.

3. Participants will not act as a broker for DoD cargo unless requested by USTRANSCOM.

VII. Application and Agreement

The Administrator, in coordination with USCINCTRANS has adopted the form on page 31 (''Application to Participate in the Voluntary Intermodal Sealift Agreement'') on which intermodal ship operators may apply to become a Participant in this Agreement. The form incorporates, by reference, the terms of this Agreement.

United States of America, Department of Transportation, Maritime Administration.

Application To Participate in the Voluntary Intermodal Sealift Agreement

The applicant identified below hereby applies to participate in the Maritime Administration's agreement entitled ''Voluntary Intermodal Sealift Agreement.'' The text of said Agreement is published in _____ **Federal Register** _____, _____, 19____. This Agreement is authorized under Section 708 of the Defense Production Act of 1950, as amended (50 App. U.S.C. 2158). Regulations governing this Agreement appear at 44 CFR Part 332 and are reflected at 49 CFR Subtitle A.

The applicant, if selected, hereby acknowledges and agrees to the incorporation by reference into this Application and Agreement of the entire text of the Voluntary Intermodal Sealift Agreement published in _____ **Federal Register** _____, _____, 19____, as though said text were physically recited herein.

The Applicant, as a Participant, agrees to comply with the provisions of Section 708 of the Defense Production Act of 1950, as amended, the regulations of 44 CFR Part 332 and as reflected at 49 CFR Subtitle A, and the terms of the Voluntary Intermodal Sealift Agreement. Further, the applicant, if selected as a Participant, hereby agrees to contractually commit to make specifically enrolled vessels or capacity, intermodal equipment and management of intermodal transportation systems available for use by the Department of Defense and to other Participants as discussed in this Agreement and the subsequent Department of Defense Voluntary Intermodal Sealift Agreement Enrollment Contract for the purpose of meeting national defense requirement.

Attest:

_____

(Corporate Secretary)

(CORPORATE SEAL)

Effective Date:

_____

(Secretary)

(SEAL)

_____

(Applicant-Corporate Name)

_____

(Signature)

_____

(Position Title)

United States of America, Department of Transportation, Maritime Administration.

By:

_____

Maritime Administrator

By Order of the Maritime Administrator.

Dated: March 11, 2005.

Joel C. Richard,

Secretary, Maritime Administration.

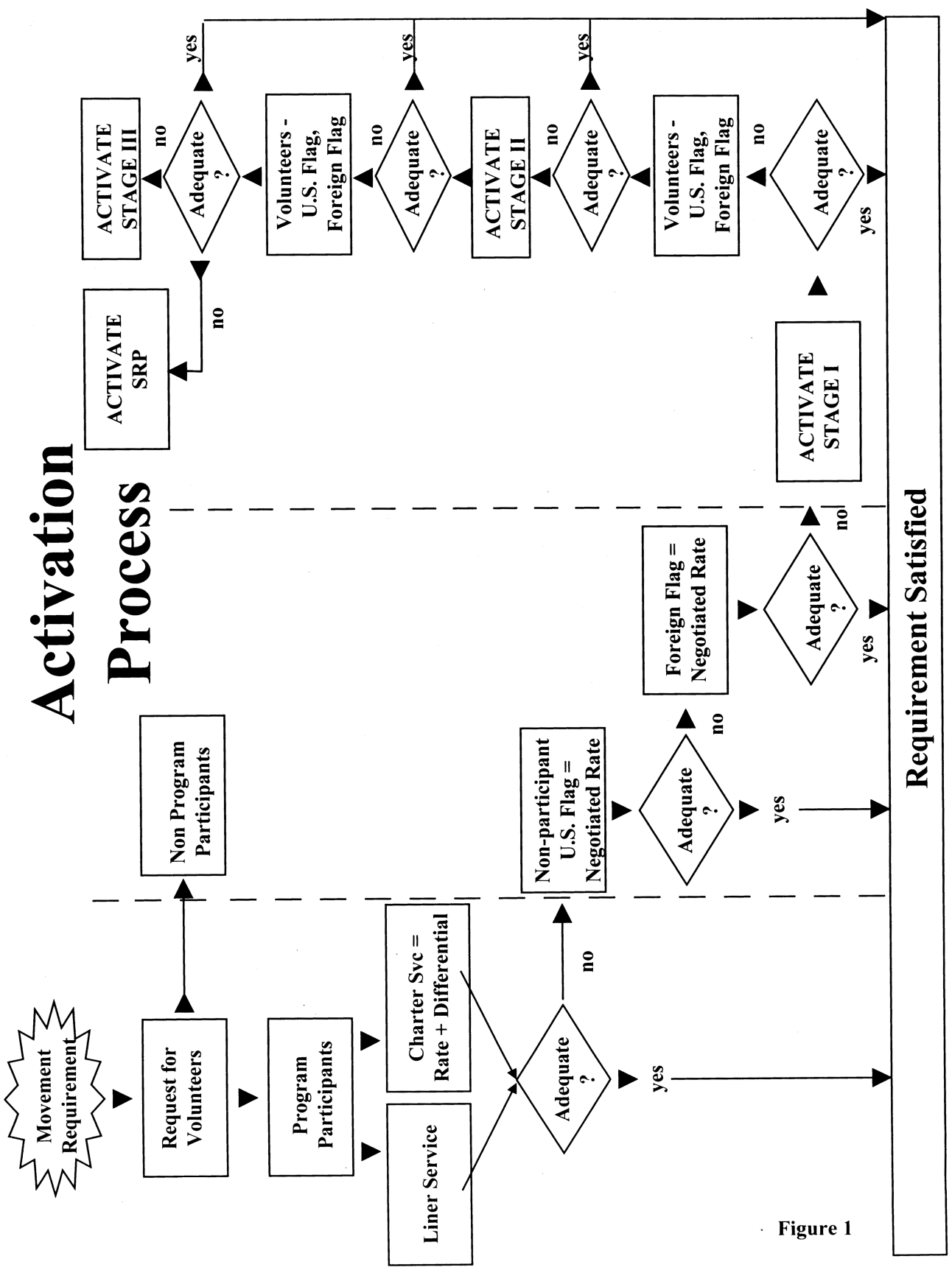
Activation Process
Movement Requirement
Request for Volunteers
Program Participants
Liner Service
Charter Svc = Rate + Differential
Adequate ?
no
yes
Non Program Participants
Non-participant U.S. Flag = Negotiated Rate
Adequate ?
no
yes
Foreign Flag = Negotiated Rate
Adequate ?
no
yes
ACTIVATE STAGE I
Volunteers - U.S. Flag, Foreign Flag
Adequate ?
no
yes
ACTIVATE STAGE II
Adequate ?
no
yes
Volunteers - U.S. Flag, Foreign Flag
Adequate ?
no
yes
ACTIVATE STAGE III
Adequate ?
no
yes
ACTIVATE SRP
Requirement Satisfied

Figure 1

[FR Doc. 05–5186 Filed 3–15–05; 8:45 am]
BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket: RSPA–98–4957]

Request for Public Comments and Office of Management and Budget (OMB) Approval of an Existing Information Collection (2137–0049)

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA) Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: A person owning or operating a pipeline facility is required to maintain records, make reports, and provide information to the Secretary of Transportation at the Secretary's request. The Secretary, through PHMSA, uses this information to decide whether the owner or operator is complying with the Pipeline Safety Law (49 U.S.C.). This notice is published (pursuant to the Paperwork Reduction Act of 1995) to measure the need for paperwork collection from gas pipeline operators, to find ways to minimize the burden on these operators, to find ways to enhance the quality of information collected, and to verify the accuracy of PHMSA's estimate of the burden (measured in work hours) on private entities. This notice also seeks approval from OMB to renew the existing approval of this paperwork collection.

DATES: Comments on this notice must be received by May 16, 2005 to be assured of consideration.

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

- Mail: Dockets Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., 20590–0001. Anyone wanting confirmation of mailed comments must include a self-addressed stamped postcard.
- Hand delivery or courier: Room PL–401, 400 Seventh Street, SW., Washington, DC. The Dockets Facility is open from 10 am to 5 pm, Monday through Friday, except Federal holidays.
- Web site: Go to *http://dms.dot.gov*, click on ''Comments/Submissions'' and follow instructions at the site.

All written comments should identify the docket number and notice number stated in the heading of this notice.

Docket access. For copies of this notice or other material in the docket, you may contact the Dockets Facility by phone (202–366–9329) or visit the facility at the above street address. For Web access to the dockets to read and download filed material, go to *http://dms.dot.gov/search.* Then type in the last four digits of the docket number shown in the heading of this notice, and click on ''Search.''

Anyone can search the electronic form of all comments filed in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the April 11, 2000 issue of the **Federal Register** (65 FR 19477) or go to *http://dms.dot.gov.*

Interested persons are invited to send comments regarding the burden estimated or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

FOR FURTHER INFORMATION CONTACT: Florence Hamn, Office of Pipeline Safety, PHMSA, DOT, 400 Seventh Street, SW., Washington, DC 20590 (202) 366–3015 or by e-mail at *Florence.Hamn@dot.gov.*

SUPPLEMENTARY INFORMATION: The Pipeline Safety Law (49 U.S.C. Chapter 601) grants the Secretary of Transportation the authority to prescribe minimum safety standards for pipeline transportation and for pipeline facilities. To enable the Secretary to decide whether a person owning or operating a pipeline facility is complying with this chapter and standards prescribed or orders issued under this chapter, the person is required to (i) maintain records, make reports, and provide information the Secretary requires; and (ii) make the records, reports, and information available when the Secretary requests. These records help ascertain compliance and provide information for incident investigation. PHMSA is requesting comments from gas pipeline operators regarding the burden associated with providing recordkeeping requirements. The feedback from this request will assist PHMSA in assessing how it collects this information and also ensure that gas pipelines are operated in a safe manner.

As used in this notice, 'information collection' and 'paperwork collection' are synonymous, and include all work related to preparing and disseminating information related to this recordkeeping requirement including completing paperwork, gathering information and conducting telephone calls.

Type of Information Collection Request: Renewal of Existing Collection.

Title of Information Collection: Recordkeeping for Gas Pipeline Operators.

OMB Approval Number: 2137–0049.

Frequency: Annually, and as needed.

Use: This collection is used by PHMSA to ensure its statutory mandates for gas pipeline safety.

Estimated Number of Respondents: 22,300.

Respondents: Gas pipeline operators.

Total Annual Hours Requested: 940,991.

Issued in Washington, DC, on March 7, 2005.

Theodore L. Willke,

Deputy Associate Administrator for Pipeline Safety.

[FR Doc. 05–5190 Filed 3–15–05; 8:45 am]
BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket: RSPA–01–8663]

Request for Public Comments and Office of Management and Budget (OMB) Approval of an Existing Information Collection (2137–0047)

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice seeks public comment on the need for PHMSA to collect paperwork information from hazardous liquid pipeline operators. The mission of PHMSA is to ensure the safe, reliable, and environmentally sound operation of the nation's approximately 154,000 miles of hazardous liquid pipelines. The requested paperwork will ensure that PHMSA can identify any trends in hazardous liquid pipeline safety and share it with the stakeholders for effective inspection programs, minimizing incidents. This notice is published (pursuant to the Paperwork Reduction Act of 1995) to measure the

need for the paperwork collection from the hazardous liquid pipeline operators, to find ways to minimize the burden on operators, to find ways to enhance the quality of the collected information, and to verify the accuracy of PHMSA's estimate of the burden (measured in work hours) on private entities. This notice also seeks to renew the existing approval from OMB for this paperwork collection.

DATES: Comments on this notice must be received by May 16, 2005 to be assured of consideration.

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

- Mail: Dockets Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., 20590–0001. Anyone wanting confirmation of mailed comments must include a self-addressed stamped postcard.
- Hand delivery or courier: Room PL–401, 400 Seventh Street, SW., Washington, DC. The Dockets Facility is open from 10 am to 5 pm, Monday through Friday, except Federal holidays.
- Web site: Go to *http://dms.dot.gov*, click on ''Comments/Submissions'' and follow instructions at the site.

All written comments should identify the docket number and notice number stated in the heading of this notice.

Docket access. For copies of this notice or other material in the docket, you may contact the Dockets Facility by phone (202–366–9329) or visit the facility at the above street address. For Web access to the dockets to read and download filed material, go to *http://dms.dot.gov/search*. Then type in the last four digits of the docket number shown in the heading of this notice, and click on ''Search.''

Anyone can search the electronic form of all comments filed in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the April 11, 2000 issue of the **Federal Register** (65 FR 19477) or go to <*http://dms.dot.gov*>.

Interested persons are invited to send comments regarding the burden estimated or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

FOR FURTHER INFORMATION CONTACT: Roger Little, Office of Pipeline Safety, PHMSA, DOT, 400 Seventh Street, SW., Washington, DC 20590 (202) 366–4569 or by e-mail at *Roger.Little@ops.dot.gov*

SUPPLEMENTARY INFORMATION: Pursuant to the Pipeline Safety Law (49 U.S.C. Chapter 601), PHMSA shares responsibility for inspecting and overseeing the nation's pipelines with State pipeline safety offices. Regulations for enforcing this legislation are found in 49 CFR Part 195, ''Transportation of Hazardous Liquids by Pipeline.'' These regulations include recordkeeping requirements for hazardous liquid pipeline operators to submit accident reports. Both Federal and State regulators depend on accident reports to manage inspection programs and to identify trends in hazardous liquid pipeline safety. The importance of accident data and data quality are repeatedly emphasized by Congress, the National Transportation Safety Board, and DOT's Office of Inspector General. The current OMB approval for accident reporting and recordkeeping requirements for hazardous liquid pipeline operators is scheduled to expire on April 30, 2005. PHMSA would like to continue to collect vital information on accidents on these hazardous liquid pipelines to fulfill its statutory mandates.

As used in this notice, 'information collection' and 'paperwork collection' are synonymous, and include all work related to preparing and disseminating information related to this recordkeeping requirement including completing paperwork, gathering information and conducting telephone calls.

Type of Information Collection Request: Renewal of Existing Collection.

Title of Information Collection: Certification and Agreement Forms for the Gas and Hazardous Liquid Pipeline Safety Program.

OMB Approval Number: 2137–0047.

Frequency: Annually, and as needed.

Use: This collection is used by PHMSA to ensure its statutory mandates for hazardous liquid pipeline safety.

Estimated Number of Respondents: 200.

Respondents: Hazardous liquid pipeline operators.

Total Annual Hours Requested: 51,011.

Issued in Washington, DC, on March 7, 2005.

Theodore L. Willke,

Deputy Associate Administrator for Pipeline Safety.

[FR Doc. 05–5191 Filed 3–15–05; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket: RSPA–00–7408]

Request for Public Comments and Office of Management and Budget (OMB) Approval of an Existing Information Collection (2137–0605)

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice seeks public comment on the need for PHMSA to collect paperwork information on pipeline integrity management in high consequence areas from hazardous liquid pipeline operators with less than 500 miles of pipelines. This information collection requires operators to provide direct integrity testing and evaluation of pipelines in high consequence areas. This notice is published (pursuant to the Paperwork Reduction Act of 1995) to measure the need for the paperwork collection, to find ways to minimize the burden on these operators that must respond, to find ways to enhance the quality of information collected, and to verify the accuracy of the PHMSA's estimate of the burden (measured in work hours) on private entities. This notice also seeks approval from OMB to renew the existing approval of this paperwork collection.

DATES: Comments on this notice must be received by May 16, 2005 to be assured of consideration.

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

- Mail: Dockets Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW, 20590–0001. Anyone wanting confirmation of mailed comments must include a self-addressed stamped postcard.
- Hand delivery or courier: Room PL–401, 400 Seventh Street, SW, Washington, DC. The Dockets Facility is open from 10 am to 5 pm, Monday through Friday, except Federal holidays.
- Web site: Go to *http://dms.dot.gov*, click on ''Comments/Submissions'' and follow instructions at the site.

All written comments should identify the docket number and notice number stated in the heading of this notice.

Docket access. For copies of this notice or other material in the docket, you may contact the Dockets Facility by phone (202–366–9329) or visit the facility at the above street address. For Web access to the dockets to read and download filed material, go to *http://dms.dot.gov/search.* Then type in the last four digits of the docket number shown in the heading of this notice, and click on ''Search.''

Anyone can search the electronic form of all comments filed in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the April 11, 2000 issue of the **Federal Register** (65 FR 19477) or go to <*http://dms.dot.gov*>.

Interested persons are invited to send comments regarding the burden estimated or any other aspect of this collection of information, including any of the following subjects: (1) The need for the proposed collection, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden, including the validity of the methodology and assumption used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technology collection techniques.

FOR FURTHER INFORMATION CONTACT: Florence Hamn, Office of Pipeline Safety, PHMSA, DOT, 400 Seventh Street, SW., Washington, DC 20590 (202) 366–3015 or by e-mail at *Florence.Hamn@dot.gov.*

SUPPLEMENTARY INFORMATION: PHMSA published the Final Rule titled ''Pipeline Safety: Pipeline Integrity management in High Consequence Areas (Hazardous Liquid Operators with less than 500 miles of Pipelines)'' on January 16, 2002, in response to a host of safety recommendations, statutory mandates (49 U.S.C. Chapter 601 and 49 CFR Part 195), and the results of accident analyses. This rule requires continual assessment and evaluation of pipeline integrity through inspection or testing, data integration and analysis, and follow-up remedial, preventive, and mitigative actions. The current OMB approval for information collection requirements for an estimated 132 hazardous liquid pipeline operators is scheduled to expire on April 30, 2005.

The existing estimate of the information collection burden is based on the assumption that (1) all operators have developed initial integrity management plan, however, based on the audits conducted by PHMSA, approximately 50 percent or about 66 operators would need to substantially revise the initial plan, and would require approximately 1,400 hours to revise their initial integrity management program; (2) an additional 330 hours are required to update these programs annually; and (3) an additional 500 hours per operator are required annually to integrate data into the operator's existing management information system. PHMSA would like to continue to collect vital information on integrity management programs in the high consequence areas to measure its program effectiveness and to fulfill its statutory mandates.

As used in this notice, 'information collection' and 'paperwork collection' are synonymous, and include all work related to preparing and disseminating information related to this recordkeeping requirement including completing paperwork, gathering information and conducting telephone calls.

Type of Information Collection Request: Renewal of Existing Collection.

Title of Information Collection: Pipeline Integrity Management in High Consequence Areas for Operators with less than 500 Miles of Pipelines.

OMB Approval Number: 2137–0605.

Frequency: Annually, and as needed.

Use: This collection is used by PHMSA to measure the program effectiveness and ensure its statutory mandates for hazardous liquid pipeline safety in the high consequence areas

Estimated Number of Respondents: 132.

Respondents: Hazardous liquid pipeline operators with less than 500 miles of pipelines.

Total Annual Hours Requested: 267,960.

Issued in Washington, DC, on March 7, 2005.

Theodore L. Willke,

Deputy Associate Administrator for Pipeline Safety.

[FR Doc. 05–5192 Filed 3–15–05; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket: RSPA–98–4957]

Request for Public Comments and Office of Management and Budget (OMB) Approval of an Existing Information Collection

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation.

ACTION: Notice

SUMMARY: This notice seeks public comment on the need for PHMSA to collect paperwork information from state agencies that maintain programs to regulate pipelines. The purpose of the paperwork is to ensure that these states are properly monitoring the operations of pipeline operators in their states, and to determine Federal grant amounts for these states. This notice is published (pursuant to the Paperwork Reduction Act of 1995) to measure the need for the paperwork collection from these state agencies, to find ways to minimize the burden on states that must respond, to find ways to enhance the quality of information collected, and to verify the accuracy of the PHMSA's estimate of the burden (measured in work hours) on the states. This notice also seeks approval from the Office of Management and Budget to renew the existing approval of this paperwork collection.

DATES: Comments on this notice must be received by May 16, 2005 to assure consideration.

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

- Mail: Dockets Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., 20590–0001. Anyone wanting confirmation of mailed comments must include a self-addressed stamped postcard.
- Hand delivery or courier: Room PL–401, 400 Seventh Street, SW., Washington, DC. The Dockets Facility is open from 10 am to 5 pm, Monday through Friday, except Federal holidays.
- Web site: Go to *http://dms.dot.gov*, click on ''Comments/Submissions'' and follow instructions at the site.

All written comments should identify the docket number and notice number stated in the heading of this notice.

Docket access. For copies of this notice or other material in the docket, you may contact the Dockets Facility by phone (202–366–9329) or visit the

facility at the above street address. For Web access to the dockets to read and download filed material, go to *http://dms.dot.gov/search.* Then type in the last four digits of the docket number shown in the heading of this notice, and click on ''Search.''

Anyone can search the electronic form of all comments filed in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the April 11, 2000 issue of the **Federal Register** (65 FR 19477) or go to <*http://dms.dot.gov*>.

Interested persons are invited to send comments regarding the burden estimated or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

FOR FURTHER INFORMATION CONTACT: Florence Hamn, Office of Pipeline Safety, PHMSA, DOT, 400 Seventh Street, SW., Washington, DC 20590 (202) 366–3105 or by e-mail at *Florence.Hamn@dot.gov*

SUPPLEMENTARY INFORMATION: Chapter 601, Title 49, United States Code (49 U.S.C. 60101 *et. seq.*) authorizes DOT to regulate pipeline transportation. While DOT is primarily responsible for developing, issuing, and enforcing minimum pipeline safety regulations, 49 U.S.C. 60101 *et. seq.*, provides for state assumption of all or part of the regulatory and enforcement responsibility for intrastate pipelines.

Section 60105 of 49 U.S.C. sets forth specific requirements a state must meet to qualify for certification status to assume regulatory and enforcement responsibility for intrastate pipelines, (*i.e.*, state adoption of minimum federal safety standards, state inspection of pipeline operators to determine compliance with the standards, and state provision for enforcement sanctions substantially the same as those authorized by 49 U.S.C. 60101 *et. seq.*) A participating state must annually submit a section 60105(a) Gas Pipeline Safety Program Certification and/or a Hazardous Liquid Pipeline Safety Program Certification to the Office of Pipeline Safety signifying compliance with the terms of the certification.

As used in this notice, ''information collection'' and ''paperwork collection'' are synonymous, and include all work related to preparing and disseminating information related to this recordkeeping requirement including completing paperwork, gathering information and conducting telephone calls.

Type of Information Collection Request: Renewal of Existing Collection.

Title of Information Collection: Certification and Agreement Forms for the Gas and Hazardous Liquid Pipeline Safety Program.

OMB Approval Number: 2137–0584.

Frequency: Annually.

Use: This collection is used by PHMSA to ensure that State agencies attesting they have regulatory jurisdiction over pipeline safety have adopted and are complying with minimum Federal safety standards. This information is used to calculate grants to States.

Estimated Number of Respondents: 67.

Respondents: State Agencies.

Total Annual Hours Requested: 3,820.

Issued in Washington, DC, on March 7, 2005.

Theodore L. Willke,

Deputy Associate Administrator for Pipeline Safety.

[FR Doc. 05–5193 Filed 3–15–05; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket RSPA–98–4957]

Submission for Office of Management and Budget Approval and Public Comment Request

AGENCY: Pipeline and Hazardous Materials Administration (PHMSA), Department of Transportation.

ACTION: Request for public comments and Office of Management and Budget (OMB) approval of an existing information collection.

SUMMARY: This notice seeks comments from the public regarding the need for PHMSA to collect paperwork information from liquefied natural gas operators to ensure that these operators are properly operating and maintaining their facilities. This notice is published (pursuant to the Paperwork Reduction Act of 1995) to measure the need for the proposed paperwork collection, to find ways to minimize the burden on operators, to find ways to enhance the quality of information collected, and to verify the accuracy of the agency's estimate of the burden (measured in work hours) on pipeline operators. This is a request to continue collection of information already approved under OMB # 2137–0048, which is scheduled to expire on April 30, 2005, and to renew that approval.

DATES: Comments on this notice must be received by May 16, 2005 to assure consideration.

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

- Mail: Dockets Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., 20590–0001. Anyone wanting confirmation of mailed comments must include a self-addressed stamped postcard.
- Hand delivery or courier: Room PL–401, 400 Seventh Street, SW., Washington, DC. The Dockets Facility is open from 10 a.m. to 5 p.m., Monday through Friday, except Federal holidays.
- Web site: Go to *http://dms.dot.gov*, click on ''Comments/Submissions'' and follow instructions at the site.

All written comments should identify the docket number and notice number stated in the heading of this notice.

Docket access. For copies of this notice or other material in the docket, you may contact the Dockets Facility by phone (202–366–9329) or visit the facility at the above street address. For Web access to the dockets to read and download filed material, go to *http://dms.dot.gov/search.* Then type in the last four digits of the docket number shown in the heading of this notice, and click on ''Search.''

Anyone can search the electronic form of all comments filed in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the April 11, 2000 issue of the **Federal Register** (65 FR 19477) or go to *http://dms.dot.gov.*

Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information

technology to minimize the information collection burden.

FOR FURTHER INFORMATION CONTACT: Florence Hamn, Office of Pipeline Safety, PHMSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–3015 or by e-mail at *Florence.Hamn@dot.gov*

SUPPLEMENTARY INFORMATION: 49 U.S.C. 60103 titled ''Standards for Liquefied Natural Gas Pipeline Facilities'' delegates the responsibility for ensuring safe operation of LNG facilities to the Secretary of Transportation. The regulations implementing this section of the statute are found in 49 CFR Part 193 ''Liquefied Natural Gas Facilities:

Federal Safety Standards.'' These regulations include recordkeeping requirements that allow Federal and State inspectors to ensure that these facilities are operated and maintained in a safe manner.

As used in this notice, the terms ''information collection'' and ''paperwork collection'' are synonymous, and include all work related to preparing and disseminating information related to this recordkeeping requirement including completing paperwork, gathering information and conducting telephone calls.

Type of Information Request: Renewal of an existing information collection.

Title of Information Collection: Recordkeeping for Liquefied Natural Gas (LNG) Facilities.

OMB Approval Number: 2137–0048.

Frequency: On occasion.

Use: This collection is used by PHMSA to ensure that LNG facilities are being operated in a safe manner.

Estimated Number of Respondents: 101.

Respondents: LNG facility operators.

Total Annual Hours Requested: 12,120 hours.

Issued in Washington, DC, on March 7, 2005.

Theodore L. Willke,

Deputy Associate Administrator for Pipeline Safety.

[FR Doc. 05–5194 Filed 3–15–05; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 9, 2005.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, 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 April 15, 2005 to be assured of consideration.

Financial Management Service (FMS)

OMB Number: 1510–0027.

Form Number: POD 1681.

Type of Review: Extension.

Title: Authorization for Payment of a Deceased Depositor's Postal Savings Certificate.

Description: This form is used when an application is submitted for payment of a deceased Postal Savings depositor's account. Information furnished on the form is used to determine if the applicant is entitled to the proceeds of the account.

Respondents: Individuals or households.

Estimated Number of Respondents: 100.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 25 hours.

Clearance Officer: Jiovannah L. Diggs, (202) 874–7662, Financial Management Service, Administrative Programs Division, Records and Information Management Program, 3700 East West Highway, Room 144, Hyattsville, MD 20782.

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. 05–5158 Filed 3–15–05; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 1040–SS, 1040–PR, and Anejo H–PR

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1040–SS, U.S. Self-Employment Tax Return; Form 1040–PR, Planilla Para La Declaracion De La Contribucion Federal Sobre El Trabajo Por Cuenta Propia-Puerto Rico; and Anejo H–PR, Contribuciones Sobre El Empleo De Empleados Domesticos.

DATES: Written comments should be received on or before May 16, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Form 1040–SS, U.S. Self-Employment Tax Return, Form 1040–PR, Planilla Para La Declaracion De La Contribucion Federal Sobre El Trabajo Por Cuenta Propia-Puerto Rico; and Anejo H–PR, Contribuciones Sobre El Empleo De Empleados Domesticos.

OMB Number: 1545–0090.

Form Number: Forms 1040–SS, 1040–PR, and Anejo H–PR.

Abstract: Form 1040–SS is used by self-employed individuals in the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands to report and pay self-employment tax and provide proper credit to the taxpayer's social security account. Form 1040–PR is a Spanish version of Form 1040–SS for use in Puerto Rico. Anejo H–PR is used to compute household employment taxes. Form 1040–SS and Form 1040–PR are also used by bona-fide residents of Puerto Rico to claim the additional child tax credit.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations and farms.

Estimated Number of Responses: 430,400.

Estimated Time Per Respondent: 5 hours, 34 minutes.

Estimated Total Annual Burden Hours: 2,762,588.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 9, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 05–5109 Filed 3–15–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–107644–98 (Final)]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, REG–107644–98 (Final), Dollar-Value LIFO Regulations; Inventory Price Index Computation Method.

DATES: Written comments should be received on or before May 16, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulation should be directed to R. Joseph Durbala at the Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, by phone at (202) 622–3634, or on the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Dollar-Value LIFO Regulations; Inventory Price Index Computation Method.

OMB Number: 1545–1767.

Regulation Project Number: REG–107644–98 (Final).

Abstract: Section 1.472–2 of the Income Tax Regulations requires a taxpayer to file an application to use the LIFO inventory method. Section 1.472–3(a) requires an electing taxpayer to attach a statement with its Federal income tax return for the year of election. This statement generally must be made on Form 970, Application To Use LIFO Inventory Method. Section 1.472–8(e)(5) of the existing regulations and section 1.472–8(e)(iv)(A) of the final regulations provide that a taxpayer may use the IPIC method only if its election appears on Form 970. In addition, § 1.472–8(e)(iii)(B)(*3*) of the final regulations requires a taxpayer that elects to use a representative appropriate month to indicate its election on Form 970.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 7, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 05–5112 Filed 3–15–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–5–92]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995,

Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–5–92, (TD 8537), Carryover of Passive Activity Losses and Credits and At-Risk Losses to Bankruptcy Estates of Individuals (§§ 1.1398–1 and 1.1398–2).

DATES: Written comments should be received on or before May 16, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, Room 6516, 1111 Constitution Ave., NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Carryover of Passive Activity Losses and Credits and At Risk Losses to Bankruptcy Estates for Individuals.

OMB Number: 1545–1375.

Regulation Project Number: IA–54–92.

Abstract: These regulations provide rules for the carryover of a debtor's passive activity loss and credit under section 469 and any ''at risk'' losses under section 465 to the bankruptcy estate. The regulations apply to cases under chapter 7 or chapter 11 of title 11 of the United States Code.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 600,000.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 600,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 11, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 05–5226 Filed 3–15–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–209106–89]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, REG–209106–89, Changes With Respect to Prizes and Awards and Employee Achievement Awards (§ 1.74–1(c)).

DATES: Written comments should be received on or before May 16, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulation should be directed to R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, Room 5242, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Changes With Respect to Prizes and Awards and Employee Achievement Awards.

OMB Number: 1545–1100.

Regulation Project Number: REG–209106–89 (formerly EE–84–89).

Abstract: This regulation requires recipients of prizes and awards to maintain records to determine whether a qualifying designation has been made in accordance with section 74(b)(3) of the Internal Revenue Code. The affected public are prize and award recipients who seek to exclude the cost of a qualifying prize or award.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 5,100.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 1,275.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital

or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 11, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 05–5227 Filed 3–15–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 8329 and 8330

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8329, Lender's Information Return for Mortgage Credit Certificates (MCCs) and Form 8330, Issuer's Quarterly Information Return for Mortgage Credit Certificates (MCCs).

DATES: Written comments should be received on or before May 16, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to R. Joseph Durbala, (202) 622–3945, Internal Revenue Service, Room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Form 8329, Lender's Information Return for Mortgage Credit Certificates (MCCs) and Form 8330, Issuer's Quarterly Information Return for Mortgage Credit Certificates (MCCs).

OMB Number: 1545–0922.

Form Number: Forms 8329 and 8330.

Abstract: Form 8329 is used by lending institutions and Form 8330 is used by State and local governments to provide the IRS with information on the issuance of mortgage credit certificates (MCCs) authorized under Internal Revenue Code section 25. IRS matches the information supplied by lenders and issuers to ensure that the credit is computed properly.

Current Actions: There are no changes being made to these forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and State, local or tribal governments.

Estimated Number of Responses: 10,000—Form 8329; 2,000—Form 8330.

Estimated Time Per Response: 5 hours, 53 minutes—Form 8329; 7 hours, 28 minutes—Form 8330.

Estimated Total Annual Burden Hours: 58,800—Form 8329; 14,920—Form 8330.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 11, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 05–5228 Filed 3–15–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[LR–115–72]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, LR–115–72 (TD 8043), Manufacturers Excise Taxes on Sporting Goods and Firearms and Other Administrative Provisions of Special Application To Manufacturers and Retailers Excise Taxes (§§ 48.4161, 48.6416, 48.6420, 48.6421, 48.6424, and 48.6427).

DATES: Written comments should be received on or before May 16, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to R. Joseph Durbala (202) 622–3634, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Manufacturers Excise Taxes on Sporting Goods and Firearms and Other Administrative Provisions of Special Application To Manufacturers and Retailers Excise Taxes.

OMB Number: 1545–0723.

Regulation Project Number: LR–115–72.

Abstract: Chapters 31 and 32 of the Internal Revenue Code impose excise taxes on the sale or use of certain articles. Code section 6416 allows a credit or refund of the tax to manufacturers in certain cases. Code sections 6420, 6421, and 6427 allow credits or refunds of the tax to certain users of the articles. This regulation contains reporting and recordkeeping requirements that enable the IRS and

taxpayers to verify that the proper amount of tax is reported or excluded.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals, business or other for-profit organizations, not-for-profit institutions, farms, and state, local, or tribal governments.

Estimated Number of Respondents: 1,500,000.

Estimated Time Per Respondent: 19 minutes.

Estimated Total Annual Burden Hours: 475,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 10, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 05–5229 Filed 3–15–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–209060–86]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of final regulation, REG–209060–86 (TD 8851), Return Requirement for United States Persons Acquiring or Disposing of an Interest in a Foreign Partnership, or Whose Proportional Interest in a Foreign Partnership Changes (§ 1.6046–A).

DATES: Written comments should be received on or before May 16, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Return Requirement for United States Persons Acquiring or Disposing of an Interest in a Foreign Partnership, or Whose Proportional Interest in a Foreign Partnership Changes.

OMB Number: 1545–1646.

Regulation Project Number: REG–209060–86.

Abstract: Section 6046A requires U.S. persons to provide certain information with respect to the acquisition or disposition of a 10-percent interest in, or a 10-percent change in ownership of, a foreign partnership. This regulation provides reporting rules to identify U.S. persons with significant interests in foreign partnerships to ensure the correct reporting of items with respect to these interests.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, Individuals or households and not-for-profit institutions.

The burden is reflected in the burden of Form 8865.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 9, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 05–5230 Filed 3–15–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 12311

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort

to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 12311, Notice Regarding Repayment of a Buyout Prior to Re-employment with the Federal Government.

DATES: Written comments should be received on or before May 16, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Notice Regarding Repayment of a Buyout Prior to Re-employment with the Federal Government.

OMB Number: 1545–1920.

Form Number: Form 12311.

Abstract: This form requests applicants to certify if they ever worked for the Federal Government and if they received a Buyout within the last 5 years. This is to ensure that applicants who meet the criteria are counseled that they are required to pay back the entire Buyout prior to entering on duty with the IRS.

Current Actions: There are no changes being made to these forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and Federal Government.

Estimated Number of Responses: 33,085.

Estimated Time Per Response: 5 minutes.

Estimated Total Annual Burden Hours: 2,757.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 10, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 05–5231 Filed 3–15–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8892

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8892, Payment of Gift/GST Tax and/or Application for Extension to File Form 709.

DATES: Written comments should be received on or before May 16, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, Room 65165, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Payment of Gift/GST Tax and/or Application for Extension to File Form 709.

OMB Number: 1545–1913.

Form Number: Form 8892.

Abstract: Form 8892 was created to serve a dual purpose. First, the form enables the taxpayers to request an extension of time to file Form 709 when they are not filing an individual income tax extension. Second, it serves as a payment voucher for taxpayers who are filing an individual income tax extension (by Form 4868) and will have a gift tax balance due on Form 709.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 10,000.

Estimated Time Per Respondent: 44 mins.

Estimated Total Annual Burden Hours: 7,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to

minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 10, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 05–5232 Filed 3–15–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Recruitment Notice for the Taxpayer Advocacy Panel; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice.

SUMMARY: This document corrects a notice that was published in the Federal Register on Thursday, March 3, 2005 (70 FR 10477), relating to the Department of Treasury and the Internal Revenue Service (IRS) invitation to individuals to help improve the nation's tax agency by applying to be members and alternates of the TAP.

FOR FURTHER INFORMATION CONTACT: Bernard Coston, (202) 622–5007 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Need for Correction

As published, this notice contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the notice, which was the subject of FR Doc. 05–4144, is corrected as follows:

On page 10478, column 1, first full paragraph, line 5, the language ''number, 1–866–912–1227 to complete'' is corrected to read ''number, 1–888–912–1227 to complete''.

Cynthia E. Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedures and Administration).

[FR Doc. 05–5209 Filed 3–11–05; 2:17 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel—Notice of Closed Meeting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of closed meeting of Art Advisory Panel.

SUMMARY: Closed meeting of the Art Advisory Panel will be held in Washington, DC.

DATES: The meeting will be held April 12 and 13, 2005.

ADDRESSES: The closed meeting of the Art Advisory Panel will be held on April 12 and 13, 2005, in Room 4600E beginning at 9:30 a.m., Franklin Court Building, 1099 14th Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Karen Carolan, C:AP:AS, 1099 14th Street, NW., Washington, DC 20005. Telephone (202) 435–5609 (not a toll free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App., that a closed meeting of the Art Advisory Panel will be held on April 12 and 13, 2004, in Room 4600E beginning at 9:30 a.m., Franklin Court Building, 1099 14th Street, NW., Washington, DC 20005.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in Federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of 26 U.S.C. 6103.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in section 552b(c)(3), (4), (6), and (7), and that the meeting will not be open to the public.

Karen S. Ammons,

Deputy Chief, Appeals.

[FR Doc. 05–5113 Filed 3–15–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The TAP will be discussing issues pertaining to lessoning the burden for individuals. Recommendations for IRS systemic changes will be developed.

DATES: The meeting will be held Monday, April 4, 2005.

FOR FURTHER INFORMATION CONTACT: Mary O'Brien at 1–888–912–1227, or 206 220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel will be held Monday, April 4, 2005, from 1 p.m. eastern time to 2 p.m. eastern time via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Mary O'Brien, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or you can contact us at *http://www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Mary O'Brien. Ms O'Brien can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: various IRS issues.

Dated: March 9, 2005.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 05–5111 Filed 3–15–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Multilingual Initiative (MLI) Issue Committee Will Be Conducted (Via Teleconference)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Multilingual Initiative (MLI) Issue Committee will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, April 12, 2005 from 2:30 p.m. to 3:30 p.m. ET.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227, or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10 (a) (2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Multilingual Initiative Issue Committee will be held Tuesday, April 12, 2005 from 2:30 p.m. to 3:30 p.m. ET via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include the following: Various IRS issues.

Dated: March 11, 2005.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 05–5225 Filed 3–15–05; 8:45 am]

BILLING CODE 4830–01–P

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Federal Register

Vol. 70, No. 50

Wednesday, March 16, 2005

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

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FEDERAL REGISTER PAGES AND DATE, MARCH

9843–10020 1
10021–10312 2
10313–10484 3
10485–10860 4
10861–11108 7
11109–11530 8
11531–11826 9
11827–12110 10
12111–12400 11
12401–12582 14
12585–12786 15
12787–12960 16

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7871 10483
7872 10857
7873 11531
7874 11533
Executive Orders:
11926 (Amended by EO 13373) .....
12957 (See Notice of March 10, 2005) 12581
12959 (See Notice of March 10, 2005) 12581
13059 (See Notice of March 10, 2005) 12581
13286 (See EO 13373) 12579
13288 (See Notice of March 2, 2005) 10859
13373 12579
Administrative Orders:
Memorandums:
Memorandum of February 18, 2005 11109
Notices:
Notice of March 2, 2005 10859
Notice of March 10, 2005 12581
Presidential Determinations:
No 2005–21 of February 15, 2005 10313

5 CFR

Ch. XIV 11535, 12583
2634 12111
2635 12111
Proposed Rules:
213 12812

7 CFR

301 ..... 10315, 10861, 11111
925 11112
955 11114
983 9843
987 11117
1131 9846
1160 11535
1924 10862
Proposed Rules:
56 9883
70 9883
319 11886
927 11155
1033 10337

8 CFR

Proposed Rules:
214 11585

9 CFR

94 12112
95 12112
Proposed Rules:
113 ..... 12813, 12814
381 12420

10 CFR

Proposed Rules:
50 10901

11 CFR

300 12787

12 CFR

208 11827
225 11827
509 10021
563e 10023
622 12583
Proposed Rules:
25 12148
228 12148
345 12148
210 10509
229 10509

14 CFR

23 ..... 11838, 11841
39 ..... 9848, 9851, 9853, 10030, 10032, 10034, 10035, 10485, 11536, 11844, 11846, 11848, 12113, 12115, 12117, 12119, 12120, 12124, 12125, 12401, 12402, 12404, 12406, 12408, 12410, 12790, 12791
71 ..... 10318, 10862, 11850, 11851, 11852, 11853, 11854, 11855, 11857, 12127, 12128, 12129, 12130, 12412, 12414
97 12131
1310 10037
Proposed Rules:
39 ..... 10337, 10339, 10342, 10344, 10513, 10517, 11165, 11166, 11168, 11170, 11172, 11585, 11588, 12421, 12612, 12614, 12616, 12618, 12815, 12816, 12819
71 ..... 10346, 10917, 11886, 12161, 12162, 12423, 12428, 12619
413 9885
415 9885
417 9885

15 CFR

700 10864
740 11858
744 ..... 10865, 11858
772 11858
774 11858
902 ..... 9856, 10174

16 CFR

801.....11502
802.....11502
803.....11502
Proposed Rules:
320.....12823

17 CFR

210.....11528
228.....11528
229.....11528
240.....11528
249.....11528
Proposed Rules:
150.....12621
239.....10521
240.....10521
274.....10521

19 CFR

10.....10868
12.....11539
24.....10868
162.....10868
163.....10868
178.....10868
191.....10868
360.....12133

20 CFR

404.....11863
1002.....12106
Proposed Rules:
418.....10558
655.....11592

21 CFR

101.....12414
510.....11120
862.....11865, 11867
Proposed Rules:
864.....11887
1310.....9889

25 CFR

15.....11804
Proposed Rules:
542.....11893

26 CFR

1 ...9869, 10037, 10319, 10488, 11121, 12439, 12793
301.....10885, 12140
602.....10319
Proposed Rules:
1 .....10062, 10349, 11903
31.....12164
301.....10572, 12166

27 CFR

Proposed Rules:
9.....11174, 11178

28 CFR

28.....10886
67.....12141
83.....12141

29 CFR

4000.....11540
4010.....11540
4022.....12585
4044.....12585
Proposed Rules:
2200.....10574
2204.....10574
2520.....12046
2550.....12046
2578.....12046
4000.....11592
4007.....11592
4044.....12429

30 CFR

206.....11869
917.....11121
Proposed Rules:
250.....12626
256.....12626

32 CFR

199.....12798

33 CFR

100.....10887, 10889
117.....12805
165 .....11546, 11549, 12416
166.....11551
Proposed Rules:
Ch. I.....11912
110.....9892
117.....9895, 10349
165.....11595, 11598

37 CFR

1.....10488
102.....10488
104.....10488
150.....10488
Proposed Rules:
270.....12631

40 CFR

52 .....11123, 11125, 11552, 11553, 11879, 11882, 12416, 12587
62 .....9872, 10490, 10891, 12591
81.....11553, 11882
122.....11560
180.....11563, 11572
228.....10041
260.....10776
261.....10776
262.....10776
263.....10776
264.....10776
265.....10776
271 .....10776, 12416, 12593
272.....11132
Proposed Rules:
51.....9897
52 .....11179, 11913, 12632
62 .....9901, 10581, 10918
78.....9897
97.....9897
152.....12276
158.....12276
194.....11913
228.....12632
271.....12435, 12634
372.....10919
721.....9902

41 CFR

302-17.....12598

42 CFR

401.....11420
405.....11420
Proposed Rules:
414.....10746

43 CFR

4.....11804

44 CFR

64.....12600
Proposed Rules:
67.....10582, 10583

45 CFR

1611.....10327
Proposed Rules:
1801.....12436

46 CFR

401.....12083
502.....10328
503.....10328
515.....10328
520.....10328
530.....10328
535.....10328
540.....10328
550.....10328
555.....10328
560.....10328

47 CFR

Ch. 1.....12601
54.....10057
64 .....9875, 10894, 12605
73 .....9876, 10895, 10896, 12807
Proposed Rules:
Ch. 1.....12828
22.....11916
64.....10930
73 .....10351, 10352, 12832, 12833, 12834
76.....11314

48 CFR

Ch. 1.....11736, 11764
2.....11737
6.....11739
8.....11737
13.....11740
16.....11737
19.....11740
25.....11742
28.....11763
30.....11743
31.....11763
36.....11737
42.....11763
44.....11761, 11762
52 .....11740, 11743, 11761, 11763
Ch. 3.....11583
Proposed Rules:
546.....12167
552.....12167

49 CFR

190.....11135
191.....11135
192.....10332, 11135
193.....11135
194.....11135
195.....10332, 11135
198.....11135
199.....11135
209.....11052
234.....11052
236.....11052
1540.....9877
Proposed Rules:
107.....11768
171.....11768
172.....11768
173.....11768
178.....11768
180.....11768
541.....10066
544.....12635
571.....11184, 11186
572.....11189

50 CFR

17.....10493, 11140
622.....9879
635.....10896, 12142
648.....11584, 12808
679 ...9856, 9880, 9881, 10174, 10507, 10508, 11884, 12143, 12808, 12809, 12810, 12811
680.....10174
Proposed Rules:
622 .....10931, 10933, 11600
635.....11190, 11922
648 .....10585, 12168, 12639

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MARCH 16, 2005

FARM CREDIT ADMINISTRATION

Farm credit system:
- Practice and procedure—
  - Civil money penalties; inflation adjustment; published 3-15-05

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:
- Various States; published 3-16-05

HOMELAND SECURITY DEPARTMENT

Coast Guard

Drawbridge operations:
- Texas; published 2-28-05

INTERIOR DEPARTMENT

Minerals Management Service

Outer Continental Shelf; oil, gas, and sulphur operations:
- Pressure Vessel Inspection Code; incorporation by reference; published 2-14-05

SECURITIES AND EXCHANGE COMMISSION

Electronic Data Gathering, Analysis, and Retrieval System (EDGAR):
- eXtensible Business Reporting Language Voluntary Financail Reporting Program; financial information data tagging; published 2-8-05

TRANSPORTATION DEPARTMENT

Airline service quality performance reports:
- Incidents involving animals during air transport; reports by carriers; published 2-14-05

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air carrier certification and operations:
- Incidents involving animals during air transport; reports by carriers; published 2-14-05

TRANSPORTATION DEPARTMENT

Federal Motor Carrier Safety Administration

Civil rights; Title VI procedures for financial assistance recipients; published 2-14-05

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:
- Charitable remainder trusts; ordering rule application; published 3-16-05

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Cotton classing, testing and standards:
- Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]

Olives grown in—
- California; comments due by 3-24-05; published 2-22-05 [FR 05-03234]

Potatoes (Irish) grown in—
- Idaho and Oregon; comments due by 3-25-05; published 1-24-05 [FR 05-01178]

AGRICULTURE DEPARTMENT

Foreign Agricultural Service

Sugar and sugar-containing products re-export programs; comments due by 3-22-05; published 1-21-05 [FR 05-01068]

AGRICULTURE DEPARTMENT

Forest Service

Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
- Fish and shellfish; subsistence taking; comments due by 3-25-05; published 1-6-05 [FR 05-00270]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Atlantic highly migratory species—
  - Atlantic commercial shark; comments due by 3-25-05; published 3-10-05 [FR 05-04743]
- Caribbean, Gulf, and South Atlantic fisheries—
  - Gulf of Mexico deep-water and shallow-water grouper; comments due by 3-21-05; published 2-17-05 [FR 05-03092]
- Northeastern United States fisheries—
  - Seafood dealer reporting and recordkeeping requirements; comments due by 3-21-05; published 3-4-05 [FR 05-04145]

Marine mammals:
- Southern Resident killer whales; threatened status listing; comments due by 3-22-05; published 12-22-04 [FR 04-27929]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

DEFENSE DEPARTMENT

Acquisition regulations:
- Pilot Mentor-Protege Program; Open for comments until further notice; published 12-15-04 [FR 04-27351]

EDUCATION DEPARTMENT

Grants and cooperative agreements; availability, etc.:
- Vocational and adult education—
  - Smaller Learning Communities Program; Open for comments until further notice; published 2-25-05 [FR E5-00767]

ENERGY DEPARTMENT

Meetings:
- Environmental Management Site-Specific Advisory Board—
  - Oak Ridge Reservation, TN; Open for comments until further notice; published 11-19-04 [FR 04-25693]

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Commercial and industrial equipment; energy efficiency program:
- Test procedures and efficiency standards—
  - Commercial packaged boilers; Open for comments until further notice; published 10-21-04 [FR 04-17730]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric rate and corporate regulation filings:
- Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

ENVIRONMENTAL PROTECTION AGENCY

Air programs:
- Stratospheric ozone protection—
  - Essential use allowances allocation; comments due by 3-25-05; published 2-23-05 [FR 05-03451]

Air quality implementation plans;
- Preparation, adoption, and submittal—
  - 8-hour ozone national ambient air quality standard; implementation; reconsideration and public hearing; comments due by 3-21-05; published 2-3-05 [FR 05-01997]

Air quality implementation plans; approval and promulgation; various States:
- California; comments due by 3-24-05; published 2-22-05 [FR 05-03185]

Environmental statements; availability, etc.:
- Coastal nonpoint pollution control program—
  - Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]

Hazardous waste program authorizations:
- Mississippi; comments due by 3-25-05; published 2-23-05 [FR 05-03363]

Water pollution control:
- National Pollutant Discharge Elimination System—
  - Concentrated animal feeding operations in New Mexico and Oklahoma; general permit for discharges; Open for comments until further notice; published 12-7-04 [FR 04-26817]
  - Cooling water intake structures at Phase III facilities; requirements; comments due by 3-24-05; published 11-24-04 [FR 04-24913]

Water pollution; effluent guidelines for point source categories:
- Meat and poultry products processing facilities; Open

for comments until further notice; published 9-8-04 [FR 04-12017]

FARM CREDIT ADMINISTRATION

Corporate governance; comments due by 3-21-05; published 1-19-05 [FR 05-00913]

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
Interconnection—
Incumbent local exchange carriers unbounding obligations; local competition provisions; wireline services offering advanced telecommunications capability; Open for comments until further notice; published 12-29-04 [FR 04-28531]

Radio stations; table of assignments:
North Carolina; comments due by 3-21-05; published 2-11-05 [FR 05-02704]
Various States; comments due by 3-21-05; published 2-11-05 [FR 05-02703]

GENERAL SERVICES ADMINISTRATION

Acquisition regulations:
Commercial item contracts, consequential damages waiver and post award audit provisions; comments due by 3-25-05; published 3-11-05 [FR 05-04766]

HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

Scholar accountability policy; comments due by 3-22-05; published 1-21-05 [FR 05-01045]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food additives:
Direct food additives—
Acacia (gum arabic); comments due by 3-21-05; published 2-17-05 [FR 05-03026]

Reports and guidance documents; availability, etc.:
Evaluating safety of antimicrobial new animal drugs with regard to their microbiological effects on bacteria of human health concern; Open for comments until further notice; published 10-27-03 [FR 03-27113]
Medical devices—
Dental noble metal alloys and base metal alloys; Class II special controls; Open for comments until further notice; published 8-23-04 [FR 04-19179]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Anchorage regulations:
Maryland; Open for comments until further notice; published 1-14-04 [FR 04-00749]

Drawbridge operations:
Washington; comments due by 3-22-05; published 1-21-05 [FR 05-01057]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Public and Indian housing:
Native American Housing Assistance and Self-Determination Negotiated Rulemaking Committee; intent to establish and request nominations; comments due by 3-24-05; published 2-22-05 [FR 05-03091]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
Fish and shellfish; subsistence taking; comments due by 3-25-05; published 1-6-05 [FR 05-00270]

Endangered and threatened species permit applications
Recovery plans—
Paiute cutthroat trout; Open for comments until further notice; published 9-10-04 [FR 04-20517]

NATIONAL CRIME PREVENTION AND PRIVACY COMPACT COUNCIL

Interstate Identification Index (III) System; compliant conduct and responsible use for noncriminal justice purposes; Compact Council procedures; comments due by 3-21-05; published 2-17-05 [FR 05-03045]

State criminal history record screening standards; comments due by 3-21-05; published 2-17-05 [FR 05-03041]

NUCLEAR REGULATORY COMMISSION

Environmental statements; availability, etc.:
Fort Wayne State Developmental Center; Open for comments until further notice; published 5-10-04 [FR 04-10516]

Fee schedules revision; 90% fee recovery (2005 FY); comments due by 3-24-05; published 2-22-05 [FR 05-03128]

SMALL BUSINESS ADMINISTRATION

Disaster loan areas:
Maine; Open for comments until further notice; published 2-17-04 [FR 04-03374]

OFFICE OF UNITED STATES TRADE REPRESENTATIVE

Trade Representative, Office of United States

Generalized System of Preferences:
2003 Annual Product Review, 2002 Annual Country Practices Review, and previously deferred product decisions; petitions disposition; Open for comments until further notice; published 7-6-04 [FR 04-15361]

TRANSPORTATION DEPARTMENT

Committees; establishment, renewal, termination, etc.:
Driver's Licenses and Personal Identification Cards Negotiated Rulemaking Advisory Committee; comments due by 3-25-05; published 2-23-05 [FR 05-03458]

Economic regulations:
Foreign direct air carriers; charter operations; comments due by 3-22-05; published 1-21-05 [FR 05-01107]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Advisory circulars; availability, etc.:
Repair Station Training Program; comments due by 3-22-05; published 1-21-05 [FR 05-01130]

Airworthiness directives:
Boeing; Open for comments until further notice; published 8-16-04 [FR 04-18641]
Dornier; comments due by 3-24-05; published 2-22-05 [FR 05-03286]
McDonnell Douglas; comments due by 3-25-05; published 1-24-05 [FR 05-01206]
Raytheon; comments due by 3-21-05; published 2-2-05 [FR 05-01925]
Special conditions—
Boeing; comments due by 3-25-05; published 2-8-05 [FR 05-02319]

Area navigation routes; comments due by 3-24-05; published 2-7-05 [FR 05-02221]

Class E airspace; comments due by 3-24-05; published 2-7-05 [FR 05-02226]

TRANSPORTATION DEPARTMENT

Research and Special Programs Administration

Pipeline safety:
Safety regulation; periodic updates; correction; comments due by 3-22-05; published 1-21-05 [FR 05-01062]

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:
S corporations; section 1374 effective dates; cross-reference; comments due by 3-22-05; published 12-22-04 [FR 04-28012]

TREASURY DEPARTMENT

Alcohol and Tobacco Tax and Trade Bureau

Alcohol; viticultural area designations:
High Valley; Lake County, CA; comments due by 3-25-05; published 1-24-05 [FR 05-01191]
Horse Heaven Hills; Klickitat, Yakima, and Benton Counties, WA; comments due by 3-25-05; published 1-24-05 [FR 05-01190]
Santa Lucia Highlands and Arroyo Seco; Monterey County, CA; comments due by 3-25-05; published 1-24-05 [FR 05-01192]

LIST OF PUBLIC LAWS

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S. 5/P.L. 109–2

Class Action Fairness Act of 2005 (Feb. 18, 2005; 119 Stat. 4)

Last List January 12, 2005

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