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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.

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 730

[Docket No. 050202023–5023–01]

RIN 0694–AD40

Editorial Corrections to the Export Administration Regulations

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends the Export Administration Regulations to update a fax number and to update the list of information collections. The Paperwork Collection List identifies the control numbers assigned to information collection requirements under the Export Administration Regulations (EAR) by the Office of Management and Budget pursuant to the Paperwork Reduction Act. This action makes editorial corrections and updates and is not intended to have a substantive effect on the rights or obligations of the public.

DATES: This rule is effective March 22, 2005.

ADDRESSES: You may submit comments, identified by RIN 0694–AD40, by any of the following methods:

- E-mail: *scook@bis.doc.gov*. Include ''RIN 0694–AD40'' in the subject line of the message.
- Fax: (202) 482–3355.
- Mail or Hand Delivery/Courier: Sharron Cook, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, ATTN: RIN 0694–AD40.

FOR FURTHER INFORMATION CONTACT: Sharron Cook, Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, Telephone: (202) 482–2440.

SUPPLEMENTARY INFORMATION:

Background

This rule amends section 730.8 of the EAR by correcting the fax number of the Outreach & Exporter Services Division of the Bureau of Industry and Security to (202) 482–2927.

In addition, this rule updates the Paperwork Collections List to delete information collections that are no longer in effect and to add new information collections that have been approved.

Although the Export Administration Act expired on August 20, 2001, Executive Order 13222 of August 17, 2001 (66 FR 44025, August 22, 2001), extended by the Notice of August 6, 2004, 69 FR 48763 (August 10, 2004), continues the EAR in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. Paperwork Reduction Act: Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule does not affect or include any collections of information.

3. This rule does not contain policies with federalism implications as that term is defined under E.O. 13132.

4. The Department finds that there is good cause under 5 U.S.C. 553(b)(B) to waive the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking and the opportunity for public participation. This rule makes changes to part 730 of the EAR that are purely administrative and do not affect the rights or obligations of the public. The information in part 730 is general and not regulatory. The controlling regulatory language is the language of succeeding parts of the EAR and of any other law or regulation referred to or applicable. This rule makes editorial corrections to update the contact information of the offices in the Bureau of Industry and Security, and updates the Paperwork Collections List.

Because these revisions are not substantive changes to the EAR, it is unnecessary to provide notice and opportunity for public comment. In addition, because this is not a substantive rule, the delay in effective date pursuant to 5 U.S.C. 553(d)(3) is not applicable. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Please refer to the **ADDRESSES** section cited above for comment submission.

List of Subjects in 15 CFR Part 730

Administrative practice and procedure, Advisory committees, Exports, Reporting and, recordkeeping requirements, Strategic and critical materials.

■ Accordingly, part 730 of the Export Administration Regulations (15 CFR parts 730–799) is amended as follows:

PART 730—[AMENDED]

■ 1. The authority citation for 15 CFR part 730 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 2151 note, Pub. L. 108–175; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 11912, 41 FR 15825, 3 CFR, 1976 Comp., p. 114; E.O. 12002, 42 FR 35623, 3 CFR, 1977 Comp., p.133; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12214, 45 FR 29783, 3 CFR, 1980 Comp., p. 256; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 179; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 12938, 59 FR

59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 12981, 60 FR 62981, 3 CFR, 1995 Comp., p. 419; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp. p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p.208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; E.O. 13338, 69 FR 26751, May 13, 2004; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004); Notice of November 4, 2004, 69 FR 64637 (November 8, 2004).

■ 2. Revise paragraph (c) in § 730.8 to read as follows:

§ 730.8 How to proceed and where to get help.

* * * * *

(c) *Where to get help.* Throughout the EAR you will find information on offices you can contact for various purposes and types of information. General information including assistance in understanding the EAR, information on how to obtain forms, electronic services, publications, and information on training programs offered by BIS, is available from the Office of Export Services at the following locations:

Outreach & Exporter Services Division, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Room H1009D, Washington, DC 20230, Tel: (202) 482–4811, Fax: (202) 482–2927; and

Western Regional Office, U.S. Department of Commerce, 3300 Irvine Avenue, Suite 345, Newport Beach, California 92660, Tel: (949) 660–0144, Fax: (949) 660–9347; and

U.S. Export Assistance Center, Bureau of Industry and Security, 152 N. Third Street, Suite 550, San Jose, California 95112–5591, Tel: (408) 998–7402, Fax: (408) 998–7470.

■ 3. Revise the chart in Supplement No. 1 to Part 730 to read as follows:

Supplement No. 1 to Part 730—Information Collection Requirements Under the Paperwork Reduction Act: OMB Control Numbers

* * * * *

Collection number	Title	Reference in the EAR
0694–0004	Foreign Availability Procedures and Criteria	part 768.
0694–0009	Approval of Triangular Transactions Involving Commodities Covered by a U.S. Import Certificate.	§ 748.10(e).
0694–0012	Report of Requests for Restrictive Trade Practice or Boycott—Single or Multiple Transactions.	part 760 and § 762.2(b).
0694–0013	Computers and Related Equipment EAR Supplement 2 to Part 748.	part 774.
0694–0016	Delivery Verification Certificate	§§ 748.13 and 762.2(b).
0694–0017	International Import Certificate	§ 748.10
0694–0021	Statement by Ultimate Consignee and Purchaser	§§ 748.11 and 762.2(b).
0694–0023	Written Assurance Requirement of License Exception TSR (Technology and Software Under Restriction).	§§ 740.3(d) and 740.4(c).
0694–0025	Short Supply Regulations—Unprocessed Western Red Cedar.	§§ 754.4 and 762.2(b).
0694–0026	Short Supply Regulations—Petroleum Products	§ 754.3.
0694–0027	Short Supply Regulations Petroleum (Crude Oil)	§ 754.2.
0694–0029	License Exception TMP: Special Requirements	§ 740.9(a)(2)(viii)(B).
0694–0033	License Exception, Humanitarian Donations	§§ 740.12(b)(7), 762.2(b), Supp. No. 2 to part 740.
0694–0047	Technology Letter of Explanation	Supplement No. 2 to part 748, paragraph (o)(2).
0694–0058	Procedure for Voluntary Self-Disclosure of Violations	§§ 762.2(b) and 764.5.
0694–0073	Export Controls of High Performance Computers	§ 742.12, Supplement No. 3 to part 742, and § 762.2(b).
0694–0086	Report of Sample Shipments of Chemical Weapon Precursors.	Supplement No. 1 to part 774.
0694–0088	Simplified Network Application Processing+ System (SNAP+) and the Multipurpose Export License Application.	parts 746, 748, and 752; § 762.2(b).
0694–0089	Special Comprehensive License Procedure	part 752 and § 762.2(b).
0694–0093	Import Certificates And End-User Certificates	§§ 748.9, 748.10, 762.5(d), 762.6 764.2(g)(2).
0694–0096	Five Year Records Retention Period	part 760, § 762.6(a).
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0694–0102	Registration of U.S. Agricultural Commodities For Exemption From Short Supply Limitations on Export", and "Petitions For The Imposition of Monitoring Or Controls On Recyclable Metallic matrials; Public Hearings.	§§ 754.6 and 754.7.
0694–0104	Review, Reporting, and Notification of Commercial Encryption Items.	§§ 740.9(c), 740.13(e), 740.17 and 742.15(b).
0694–0106	Reporting and Recordkeeping Requirements under the Wassenaar Arrangement.	§ 743.1.
0694–0107	National Defense Authorization Act (NDAA)	§§ 740.7, 742.12.
0694–0117	Chemical Weapons Convention Provisions of the Export Administration Regulations (Schedule 1 Advance Notifications and Reports and Schedule 3 End-use Certificates).	Part 745.
0694–0122	Licensing Responsibilities and Enforcement	Part 758, and § 748.4.
0694–0123	Prior Notification of Exports under License Exception AGR.	§ 740.18.
0694–0125	BIS Seminar Evaluation	N/A
0694–0126	Export License Services—Transfer of License Ownership, Requests for a Duplicate License.	§ 750.9.

Collection number	Title	Reference in the EAR
0694–0129	Export and Reexport Controls For Iraq	§ 732.3, 738, 744.18, 746.3(b)(1), 747, 750, 758, 762, 772, 774.
0607–0152	Shipper's Export Declaration (SED)/Automated Export System (AES) Program FORMS: 7525–V AES.	§§ 740.1(d) 740.3(a)(3), 752.7(b), §§ 752.15(a). §§ 754.2(h) and 754.4(c), 758.1, §§ 758.2, and 758.3 of the EAR.

Dated: March 14, 2005.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 05–5548 Filed 3–21–05; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 738, 740, 742, 764, and 774

[Docket No. 040422128–5024–02]

RIN 0694—AD14

Revision of Export and Reexport Restrictions on Libya

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: In this rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to implement further changes to export and reexport controls with respect to Libya. The majority of changes are based on comments submitted to BIS as requested in an earlier interim rule. This rule also corrects an inadvertent error in that interim rule.

DATES: This rule is effective March 22, 2005.

ADDRESSES: Although comments are not formally requested, comments on this rule may be sent to Sheila Quarterman, Office of Exporter Services, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044, fax: (202) 482–3355, or e-mail: *squarter@bis.doc.gov.*

FOR FURTHER INFORMATION CONTACT: Joan Roberts, Director, Foreign Policy Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044; Telephone: (202) 482–4252, or E-mail: *jroberts@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

On April 29, 2004, the Bureau of Industry and Security (BIS) published an interim rule with request for comments in the **Federal Register** (69 FR 23626). That rule amended the Export Administration Regulations (EAR) to implement the President's April 23, 2004 decision to modify the United States' sanctions against Libya, in response to Libya's continuing efforts to dismantle its weapons of mass destruction and missile programs, and its renunciation of terrorism. On April 23, 2004, the President announced the termination of the application of the Iran and Libya Sanctions Act (ILSA) with respect to Libya. On April 29, 2004, the Department of the Treasury, Office of Foreign Assets Control (OFAC), modified its sanctions imposed on U.S. firms and individuals under the authority of the International Emergency Economic Powers Act (IEEPA) to allow the resumption of most commercial activities, financial transactions, and investments between the United States and Libya. Consequently, OFAC issued a General License (31 CFR 550.575) which transferred licensing jurisdiction for the export and reexport of items subject to the EAR back to the Department of Commerce.

The BIS April 29, 2004 interim rule set forth the new license requirements and licensing policy for exports and reexports to Libya under BIS's licensing responsibility. That rule also implemented the transfer to BIS from OFAC of the licensing jurisdiction for exports to Libya of most items subject to the EAR.

Changes From April 29 Interim Rule

Based on public comments received in response to the April 29, 2004 interim rule, BIS is establishing a review policy and licensing procedure for activities involving items subject to the EAR that may have been illegally exported or reexported to Libya before the comprehensive embargo on Libya ended (''installed base'' items). BIS is also modifying the licensing policy for some commercial charges classified under Export Control Classification Number (ECCN) 1C992.

In addition to changes made in response to public comments, BIS is making a number of changes, including revision of License Exception Aircraft and Vessels (AVS) to permit vessels to make temporary sojourns to Libya without a license. BIS is also modifying the language in License Exception Temporary Imports, Exports and Reexports (TMP) to ensure clarity regarding certain software. Additionally, BIS is modifying the licensing policy for the export or reexport of U.S.-origin civil aircraft and helicopters subject to the EAR to Libya to case-by-case review. In this rule, BIS also is clarifying that portable electric power generators, controlled under ECCN 2A994, and related software and technology, controlled under ECCNs 2D994 and 2E994, require a license for export or reexport to Libya for anti-terrorism reasons. Further, BIS is modifying ECCN 8A992 to clarify that it addresses vessels in addition to submersible items. Finally, BIS is correcting an inadvertent error in the April 29 interim rule, which omitted an ''X'' in the NP:2 column for Libya on the Commerce Country Chart, Supplement 1 to Part 738 of the EAR.

Comments

BIS received four comments on the April 29 interim rule, as summarized below.

1. *Anti-Terrorism Controls.* Two respondents requested that BIS remove unilateral anti-terrorism (AT) controls imposed on Libya. Respondents offered the following points in support of their request:

a. The United States has repeatedly stated that the Libyan Government has taken, and continues to take, extraordinary and concrete steps to renounce terrorism and all its means. The retention of AT controls is inconsistent with the United States' new Libya policy.

b. AT-controlled items do not contribute to the proliferation of weapons of mass destruction.

c. Unilateral controls are ineffective because similar items are commonly available from other countries which permit their export to Libya.

d. Delays caused by licensing requirements disadvantage U.S. industry.

2. *Installed base.* Two respondents also requested that BIS provide relief from General Prohibition Ten of Part 736 of the EAR enabling exporters to make use of, repair, maintain, service or upgrade U.S.-origin controlled items that may have been exported or

reexported to Libya in violation of the EAR during the comprehensive U.S. embargo (''installed base'' items). In support of this request, they noted:

a. Many of the installed base items are either no longer controlled or of little strategic value.

b. Retaining a prohibition on U.S. based companies' interaction with low level installed base items is inconsistent with the United States' current Libya policy because the United States has repeatedly stated that the Libyan Government has taken, and continues to take, extraordinary and concrete steps to renounce terrorism and all its means.

c. The current prohibition, which restricts U.S. companies from working on the installed base items in Libya, puts U.S. companies at a competitive disadvantage in Libya because other countries do not place similar restrictions on their companies operating in Libya.

d. BIS issued a waiver for East Germany (55 FR 26652, June 29, 1990) under a similar set of circumstances.

3. *Encryption Software.* One respondent requested that the general policy of denial for software controlled under ECCN 5D002 for national security (NS), encryption (EI), and AT reasons be altered to one of case-by-case review, particularly for transactions in which the software is a small portion of a larger transaction.

4. *Commercial Charges.* Two respondents requested that BIS lift the general policy of denial for oil well perforators, a type of commercial charge controlled under ECCN 1C992.a. In support of this request, they noted:

a. A general policy of denial is too broad. The implementation of a policy of case-by-case review to ensure that the perforators are destined to legitimate oil operations, and a requirement for companies exporting U.S-origin perforators to have a security plan in place, would maintain rigorous controls while allowing legitimate business to proceed.

b. Unilateral restrictions on oil well perforators are ineffective because similar items are widely available from a large number of countries that do not restrict their sale to Libya.

c. Foreign-made charges may perform the task of well perforation adequately but they are often not as safe as U.S. perforators. U.S.-based oil drillers prefer to use U.S.-made perforators because of this safety concern, but they may be forced to use less safe alternatives given the policy of denial delineated in the April 29th BIS Rule.

d. As a result of their design, oil well perforators are not useful as weapons or as a source of explosives for use in weapons. In addition, the respondents note that less expensive sources for both weapons and explosive materials are plentiful outside the United States.

e. Retaining a general policy of denial on perforators is inconsistent with the United States' Libya policy. The United States has repeatedly stated that the Libyan Government has taken and continues to take extraordinary and concrete steps to renounce terrorism and all its means.

BIS Response to Public Comments

AT Controls

Although Libya has made progress in altering its behavior, BIS, in consultation with the Department of State, has determined that Libya has not yet met all the conditions for its removal from the State Department's List of State Sponsors of Terrorism. Many AT-controlled items could be used in the proliferation of weapons of mass destruction, or in terrorist acts. Although there may be foreign sources for items similar to those subject to AT controls, the continued maintenance of U.S. sanctions limits their availability to Libya. In addition, the continuation of the controls serve foreign policy interests that override the impact of foreign availability and licensing delays. Consequently, the United States will continue to impose AT controls on Libya as deemed appropriate.

Installed Base

Section 764.2(e) of the EAR prohibits ordering, buying, removing, concealing, storing, using, selling, loaning, disposing of, transferring, financing, forwarding, or otherwise servicing, in whole or in part, any items that may have been originally illegally exported or reexported to Libya by third parties (''installed base'' items). This prohibition is restated in General Prohibition No. 10 in Section 736.2(b) of the EAR. Nonetheless, BIS recognizes the need to support U.S. companies' participation in Libya's newly opened markets while working to prevent the unlawful diversion of U.S.-origin commodities and facilitating the prosecution of persons involved in such diversion. BIS has determined that granting a general amnesty for activities involving installed base items would be detrimental to future BIS export control polices. BIS further notes that the precedent of 55 FR 26652 (*i.e.*, the East German amnesty) is not fully applicable because the U.S. Government continues to maintain greater restrictions on exports to Libya today than it did on East Germany in 1990.

To facilitate U.S. companies' participation in the Libyan markets while protecting U.S. national security interests, and consistent with the provisions set forth in section 764.5(f) of the EAR, and the precedent of 55 FR 26652 (*i.e.*, the East German amnesty), BIS has added Section 764.7 of the EAR. This new section addresses the application of section 764.2(e), as restated in General Prohibition Ten at section 736.2(b), to activities involving installed base items in Libya. These activities are divided into two categories: those that require a report to BIS, but not a license, in order to overcome the prohibition stated in section 764.2(e), and those that require a license in order to overcome the prohibition. Activities involving the following installed base items will generally only require a report to BIS: items that are subject to the EAR but are not on the Commerce Control List (CCL); items on the CCL that are now authorized for export and reexport to Libya under a License Exception; and items on the CCL that are controlled only for NS and AT or AT reasons only and are not on the Wassenaar Arrangement's Sensitive List or Very Sensitive List. Activities involving all other installed base items listed on the CCL will require a BIS license to overcome the prohibition.

Software Controlled Under ECCN 5D002

BIS has determined that a general policy of denial best represents the concerns of the United States regarding Libyan access to 5D002 software. This policy allows the U.S. Government the flexibility to approve those transactions that it believes will further U.S. foreign policy goals in Libya, while denying those that do not.

Explosive Charges Controlled Under 1C992 (Perforators)

BIS has determined that controls on commercial charges classified under ECCN 1C992 are an important tool in limiting Libya's ability to obtain items that could be used to support terrorist activities or contribute significantly to Libya's military potential. However, BIS also recognizes that similar items may be available from other countries and that these items are important to ensure that oil development and production occurs in a safe manner. Rather than maintaining a general policy of denial, BIS has concluded that it is appropriate to take into account not only the end-use and end-user, but also the ability of the exporter and consignee to ensure the safety of the charges during transport to and within Libya, and while in storage

in Libya. Therefore, BIS has amended section 742.20(b) to permit a case-by-case review of exports of perforators.

Other Changes

This rule revises the EAR to permit the temporary export of vessels departing U.S. waters and the reexport of vessels subject to the EAR on temporary sojourn to Libya, as set forth in section 740.15(d) of the EAR (License Exception AVS). Most vessels are classified on the Commerce Control List under ECCN 8A992. Prior to the publication of this rule, all vessels subject to the EAR bound for Libya required a license from BIS.

In addition, this rule amends License Exception TMP in section 740.9, paragraph (a)(2)(i), to clarify that software controlled under ECCN 5D992 may be exported to any destination that permits use of License Exception TMP. The language in License Exception TMP did not specifically address 5D992, but it did reference other types of software, making the availability of the License Exception TMP for 5D992 software unclear. This revision removes this ambiguity.

This rule revises the licensing policy for applications to export or reexport aircraft and helicopters to Libya, as set forth in section 742.20(b). The U.S. Government will now review applications for export or reexport of civil aircraft or helicopters on a case-by-case basis rather than under a general policy of denial.

In section 742.20 and Supplement No. 2 to part 742 of the EAR, this rule clarifies that portable electric power generators, controlled under ECCN 2A994, and related software and technology, controlled under ECCNs 2D994 and 2E994, require a license for export or reexport to Libya for anti-terrrorism reasons. Applications to export or reexport these items to non-military end-users or for non-military end-uses in Libya will be reviewed on a case-by-case basis. This rule also amends ECCNs 2A994, 2D994 and 2E994 to refer exporters to section 742.20 of the EAR for additional information on anti-terrorism controls on Libya.

This rule amends part 774 of the EAR by adding the word ''Vessels'' to the heading of ECCN 8A992 and to ECCN 8A992.f. The previous language in the heading of 8A992.f was imprecise and could lead applicants to misunderstand what items were controlled by ECCN 8A992.

Finally, this rule corrects an inadvertent error in the April 29 rule, which omitted the placement of an ''X'' in the NP:2 column for Libya on the Commerce Country Chart, Supplement 1 to part 738 of the EAR. Placing an ''X'' in the NP:2 column for Libya on the Commerce Country Chart is appropriate because Libya remains in Country Group D:2 in Supplement 1 to part 740 (License Exceptions) of the EAR.

Although the Export Administration Act of 1979 (EAA), as amended, expired on August 20, 2001, Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., p. 783 (2002)) as extended by the Notice of August 6, 2004 (69 FR 48763, August 10, 2004), continues the EAR in effect under the International Emergency Economic Powers Act. BIS amends the EAR in this rule under the provisions of the EAA as continued in effect under IEEPA and Executive Order 13222.

Rulemaking Requirements

1. This rule has been determined to be significant for the purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by the OMB under control numbers 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748, and 0694–0058, ''Procedure for Voluntary Self-Disclosure of Violations of the Export Administration Regulations,'' which carries a burden hour estimate of 10 hours. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to David Rostker, Office of Management and Budget (OMB), by e-mail to *David_Rostker@omb.eop.gov*, or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. This rule does not contain policies with Federalism implications, as that term is defined under Executive Order 13132.

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

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments on this rule may be sent to Sheila Quarterman, Office of Exporter Services, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044, fax: (202) 482–3355, or e-mail: *squarter@bis.doc.gov*.

List of Subjects

15 CFR Part 738

Exports.

15 CFR Parts 740, 742 and 774

Exports, Foreign trade.

15 CFR Part 764

Administrative practice and procedure, Exports, Foreign trade, Law enforcement, Penalties.

■ Accordingly, parts 738, 740, 742, 764, and 774 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

PART 738—[AMENDED]

■ 1. The authority citation for 15 CFR part 738 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004).

Supplement 1 to Part 738—[Amended]

■ 2. Supplement 1 to part 738 entry for Libya is amended by adding an ''X'' under the NP:2 column.

PART 740—[AMENDED]

■ 3. The authority citation for 15 CFR part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec. 901–911, Pub. L. 106–387; E.O. 13026, 61 FR 58767, 3 CFR,

1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004).

§ 740.9 [Amended]

■ 4. Section 740.9 is amended by removing the last sentence of paragraph (a)(2)(i) introductory text and adding in its place the following two sentences: ''Exports of items controlled under ECCN 5D992 are permitted pursuant to this section. For other exports under this License Exception of laptops, handheld devices and other computers and equipment loaded with encryption commodities or software, including items controlled for NS and EI reasons, refer to note 2 to Category 5, Part 2 of Supplement No. 1 to Part 774.''

§ 740.10 [Amended]

■ 5. Section 740.10 is amended

■ (a) By adding the parenthetical sentence ''(For exports or reexports to the installed base in Libya see § 764.7 of the EAR).'' after the phrase ''or made in a foreign country incorporating authorized U.S.-origin parts.'' in paragraph (a)(2)(ii); and

■ (b) By adding the sentence ''See § 764.7 of the EAR for exports or reexports to the installed base in Libya.'' to the end of paragraph (b)(3)(ii)(D).

■ 6. Section 740.15 is amended by adding new paragraph (d) to read as follows:

§ 740.15 Aircraft and vessels (AVS).

* * * * *

(d) *Vessels on temporary sojourn.* (1) *Foreign flagged vessels.* A foreign flagged vessel in the United States may depart from the United States under its own power for any destination, provided that:

(i) No sale or transfer of operational control of the vessel to nationals of a destination in Country Group E:1 (*see* Supplement No.1 to this part) has occurred while in the United States;

(ii) The vessel is not departing for the purpose of sale or transfer of operational control to nationals of a destination in Country Group E:1 (*see* Supplement No. 1 to this part); and

(iii) The vessel does not carry from the United States any item for which a license is required and has not been granted by the U.S. Government.

(2) *U.S. flagged vessels.* A U.S. flagged vessel may depart from the United States under its own power for any destination, provided that:

(i) The vessel does not depart for the purpose of sale, lease, or transfer of operational control of the vessel, or its equipment, parts, accessories, or components, to a foreign country or any national thereof;

(ii) The vessel's U.S. flag will not be changed while abroad;

(iii) The vessel will not be used in any foreign military activity while abroad;

(iv) The vessel will not carry from the United States any item for which a license is required and has not been granted by the U.S. Government;

(v) Spares for the vessel are not located in a destination in Country Group E:1 (*see* Supplement No. 1 to this part);

(vi) Technology is not transferred to a national of a destination in Country Group E:1 (see Supplement No. 1 to this part), except the minimum necessary in-transit maintenance to perform servicing required to depart and enter a port safely; and

(vii) The vessel does not bear the livery, colors, or logos of a national of a destination in Country Group E:1 (*see* Supplement No. 1 to this part).

(3) *Criteria for temporary sojourn of vessels.* The following criteria must be met if a voyage is to be considered a temporary sojourn under this paragraph (d). To be considered a temporary sojourn, the voyage must not be for the purpose of sale or transfer of operational control. A transfer of operational control occurs unless the exporter or reexporter retains each of the following indicia of control:

(i) *Hiring of crew.* Right to hire and fire the crew.

(ii) *Dispatch of vessel.* Right to dispatch the vessel.

(iii) *Selection of routes.* Right to determine the vessel's routes (except for contractual commitments entered into by the exporter for specifically designated routes).

(iv) *Place of maintenance.* Right to perform or obtain the principal maintenance on the vessel, which principal maintenance is conducted outside a destination in Country Group E:1 (*see* Supplement No. 1 to this part), under the control of a party who is not a national of any of these countries. (The minimum necessary in-transit maintenance may be performed in any country).

(4) *Reexports.* Vessels subject to the EAR may be reexported under this section on temporary sojourn, provided that:

(i) The vessel does not depart for the purpose of sale, lease, or transfer of operational control of the vessel, or its equipment, parts, accessories, or components, to a foreign country or any national thereof;

(ii) The vessel's flag will not be changed while abroad;

(iii) The vessel will not be used in any foreign military activity while abroad;

(iv) The vessel will not carry any item for which a license is required and has not been granted by the U.S. Government;

(v) Spares for the vessel are not located in a destination in Country Group E:1 (*see* Supplement No. 1 to this part);

(vi) Technology is not transferred to a national of a destination in Country Group E:1 (*see* Supplement No. 1 to this part), except the minimum necessary in-transit maintenance to perform servicing required to depart and enter a port safely; and

(vii) The vessel does not bear the livery, colors, or logos of a national of a destination in Country Group E:1 (*see* Supplement No. 1 to this part).

(5) No vessels may be exported or reexported under this License Exception to a country in Country Group E:1, except Libya.

PART 742—[AMENDED]

■ 7. The authority citation for 15 CFR part 742 is revised to read as follows:

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

■ 8. Section 742.20 is amended:

■ (a) By revising paragraphs (a)(1) and (a)(3)(ii);

■ (b) By removing paragraph (b)(1)(iv) and (b)(1)(ix) and redesignating paragraphs (b)(1)(v) through (b)(1)(xi) as paragraphs (b)(1)(iv) through (b)(1)(ix);

■ (c) By redesignating paragraphs (b)(2) through (b)(4) as paragraphs (b)(3) through (b)(5) and adding a new paragraph (b)(2); and

■ (d) By revising newly designated paragraph (b)(4) to read as follows:

§ 742.20 Anti-terrorism: Libya.

(a) *License requirements.* (1) If AT Column 1 of the Country Chart (Supplement No. 1 to part 738 of the EAR) is indicated in the appropriate ECCN, or the License Requirements Section of an ECCN on the Commerce Control List (Supplement No. 1 to part 774 of the EAR) indicates that such an ECCN is otherwise controlled to Libya for AT reasons without reference to a particular column on the Country Chart,

BIS requires a license for export and reexport to Libya for antiterrorism purposes. Portable electric power generators and related software and technology (ECCNs 2A994, 2D994 and 2E994) are controlled for export to Libya for anti-terrorism reasons.

(2) * * *

(3) * * *

(ii) Items listed in paragraphs (c)(1) through (c)(5) of Supplement No. 2 to part 742 destined to other end-users in Libya, as well as items to all end-users listed in (c)(6) through (c)(8), (c)(10) through (c)(19), and (c)(22) through (c)(44) of Supplement No. 2 to part 742, are controlled to Libya under section 6(a) of the EAA.

(b) * * *

(1) * * *

(2)(i) Applications to export or reexport aircraft, helicopters, engines, or related spare parts and components will be reviewed on a case-by-case basis. Applications for military end-use or end-users in Libya will generally be denied. Notwithstanding the general policy of denial for MT controlled items to Libya, those MT items used for safety of flight in civil aircraft or helicopters will be reviewed on a case-by-case basis.

(ii) Applications to export or reexport oil well perforators and devices controlled under ECCN 1C992 will be reviewed on a case-by-case basis.

(3) * * *

(4) Notwithstanding the provisions of paragraphs (b)(1), (b)(2), and (b)(3) of this section, applications for Libya will be considered on a case-by-case basis if:

(i) The U.S. content of foreign-produced commodities is 20% or less by value; or

(ii) The commodities are medical items.

Note to paragraph (b) of this section: Applicants who wish any of the factors described in paragraph (b) of this section to be considered in reviewing their license applications must submit adequate documentation demonstrating the value of the U.S. content or the specifications and medical use of the equipment.

* * * * *

■ 9. Supplement No. 2 to Part 742 is amended by revising paragraphs (b)(3)(ii), (c)(6)(v) and (c)(43)(v), and by adding paragraph (c)(15)(iii) to read as follows:

Supplement No. 2 to Part 742—Anti-Terrorism Controls: Iran, Libya, North Korea, Syria and Sudan Contract Sanctity Dates and Related Policies

* * * * *

(b) * * *

(3) * * *

(ii) The following items to all end-users: for Iran, items in paragraphs (c)(6) through (c)(44) of this Supplement; for North Korea, items in paragraph (c)(6) through (c)(45) of this Supplement; for Sudan, items in paragraphs (c)(6) through (c)(14), and (c)(16) through (c)(44) of this Supplement; for Libya, items in paragraphs (c)(6) through (c)(8), (c)(10) through (c)(19), and (c)(22) through (c)(44) of this Supplement; and for Syria, items in paragraphs (c)(6) through (c)(8), (c)(10) through (c)(14), (c)(16) through (c)(19), and (c)(22) through (c)(44) of this Supplement.

(c) * * *

(6) * * *

(v) Aircraft, helicopters, engines, and related spare parts and components will be reviewed on a case-by-case basis. Applications for military end-uses or end-users in Libya will generally be denied.

* * * * *

(15) * * *

(iii) *Libya.* Applications for all military end-users or for military end-uses in Libya of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Libya of such equipment will be considered on a case-by-case basis.

* * * * *

(43) * * *

(v) *Libya.* Applications for all military end-uses or military end-users in Libya of such equipment will generally be denied. Applications for non-military end-users and non-military end-uses in Libya will be considered on a case-by-case basis. Applications to export or reexport oil well perforators and devices controlled under ECCN 1C992 will be reviewed on a case-by-case basis.

* * * * *

PART 764—[AMENDED]

■ 10. The authority citation for 15 CFR part 764 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004).

■ 11. Section 764.4 is amended by adding new paragraph (d) to read as follows:

§ 764.4 Reporting of violations.

* * * * *

(d) *Formerly embargoed destinations.* Reporting requirements for activities within the scope of § 764.2(e) that involve items subject to the EAR which may have been illegally exported or reexported to Libya prior to the lifting of the comprehensive embargo on Libya are found in § 764.7 of the EAR.

■ 12. Part 764 is amended by adding new § 764.7 to read as follows:

§ 764.7 Activities involving items that may have been illegally exported or reexported to Libya.

(a) *Introduction.* As set forth in § 764.2(e) of this part, and restated in General Prohibition Ten at § 736.2(b)(10) of the EAR, no person (including a non-U.S. Third Party) may order, buy, remove, conceal, store, use, sell, loan, dispose of, transfer, finance, forward, or otherwise service, in whole or in part, any item subject to the EAR with knowledge that a violation has occurred, or will occur, in connection with the item. This section addresses the application of § 764.2(e) of this part to activities involving items subject to the EAR that may have been illegally exported or reexported to Libya before the comprehensive embargo on Libya ended (April 29, 2004) (''installed base'' items).

(b) *Libya.* (1) *Activities involving installed base items in Libya for which no license is required.* Subject to the reporting requirement set forth in paragraph (b)(1)(ii) of this section, activities within the scope of § 764.2(e) of this part involving installed base items described in paragraph (b)(1)(i) of this section that are located in Libya and that were exported or reexported before April 29, 2004 do not require a license from BIS.

(i) *Scope.* An installed base item is within the scope of paragraph (b)(1) of this section if:

(A) It is not on the Commerce Control List in Supplement No.1 to Part 774 of the EAR;

(B) It is on the Commerce Control List, but is authorized for export or reexport pursuant to a License Exception to Libya; or

(C) It is on the Commerce Control List and controlled only for AT reasons or for NS and AT reasons only, and is not listed on the Wassenaar Arrangement's Sensitive List (Annex 1) or Very Sensitive List (Annex 2) posted on the Wassenaar Arrangement's Web site (*www.wassenaar.org*) at the Control Lists web page.

Note 1 to paragraph (b)(1)(i): An item being exported or reexported to Libya may require a license based on the classification of the item to be exported or reexported regardless of whether the item will be used in connection with an installed base item. See paragraph (b)(4) of this section.

Note 2 to paragraph (b)(1)(i): Not all items listed on the Wassenaar Arrangement's Annex 1, Sensitive List, and Annex 2, Very Sensitive List, fall under the export licensing jurisdiction of the Department of Commerce. Please refer to the Commerce Control List for additional jurisdictional information related to those items. Also, if you do not have access to the internet to review the Wassenaar Arrangement's Sensitive List and Very Sensitive List, please contact the Office of Exporter Services, Division of Exporter Counseling for assistance at telephone number (202) 482–4811.

(ii) *Reporting requirement.* Any person engaging in activity described in paragraph (b)(1) of this section must submit to BIS's Office of Export Enforcement (OEE) a report including all known material facts with respect to how the installed base item arrived in Libya. The report must be submitted to OEE at the address identified in § 764.4(a) of the EAR within ninety (90) days of the first activity relating to the installed base item in Libya. A report may address more than one activity and/or more than one installed base item. An additional report must be submitted if any new material information regarding the export or reexport to Libya of the installed base item is discovered.

(2) *Licensing procedure for activities involving installed base items in Libya.* (i) *License requirement.* Any person seeking to undertake activities within the scope of § 764.2(e) of the EAR with respect to any installed base item located in Libya and not described in paragraph (b)(1)(i) of this section must obtain a license from BIS prior to engaging in any such activities. License applications should be submitted on standard form BIS 748-P or the electronic equivalent, and should fully describe the relevant activity within the scope of § 764.2(e) of this part which is the basis of the application. License applications should include all known material facts as to how the installed base item originally was exported or reexported to Libya. This section also applies if you know that an item to be exported or reexported to a third party will be used on an installed base item not described in paragraph (b)(1)(i) of this section.

(ii) *Licensing policy.* BIS will review license applications submitted pursuant to paragraph (b)(2)(i) of this section on a case-by-case basis. Favorable consideration will be given for those applications related to civil end-uses in Libya. Applications related to military, police, intelligence, or other sensitive end-uses in Libya will be subject to a general policy of denial.

(3) *Exclusion.* The provisions of this section are not applicable to any activities within the scope of § 764.2(e) of the EAR undertaken with respect to an installed base item in Libya by a person who was party to the original illegal export or reexport of the related installed base item to Libya. Such persons should voluntarily self-disclose violations pursuant to the procedures set forth in § 764.5 of this part, which in some cases may allow activities related to unlawfully exported or reexported items to be undertaken based on permission from BIS.

(4) *Relationship to other Libya license requirements.* Notwithstanding this section, a license may be required pursuant to another provision of the EAR (*e.g.*, § 742.20 of the EAR) to engage in activity involving Libya. If a license is required pursuant to another section of the EAR, and the transaction also involves activity within the scope of § 764.2(e) of this part related to an installed base item in Libya, this information should be specified on the license application. Such applications must also include all known information as to how the installed base item originally arrived in Libya. If granted, the license for the proposed transaction will also authorize the related activity within the scope of § 764.2(e) of this part.

PART 774—[AMENDED]

■ 13. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004).

■ 14. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Systems, Equipment and Components, Export Control Classification Number (ECCN) 2A994 is amended by revising the License Requirements Section and the Related Controls Paragraph in the List of Items Controlled section to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

2A994 Portable Electric Generators and Specially Designed Parts

License Requirements

Reason for Control: AT

Control(s)

AT applies to entire entry. A license is required for items controlled by this entry to Cuba, Iran, Libya, and North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine licensing requirements for this entry. See part 746 of the EAR for additional information on Cuba and Iran. See § 742.20 for additional information on Libya. See § 742.19 of the EAR for additional information on North Korea.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: See also 2D994 and 2E994

Related Definitions: * * *

Items: * * *

■ 15. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Systems, Equipment and Components, Export Control Classification Number (ECCN) 2D994 is amended by revising the License Requirements section to read as follows:

2D994 ''Software'' Specially Designed for the ''Development'' or ''Production'' of Portable Electric Generators Controlled by 2A994

License Requirements

Reason for Control: AT

Control(s)

AT applies to entire entry. A license is required for items controlled by this entry to Cuba, Iran, Libya, and North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine licensing requirements for this entry. See part 746 of the EAR for additional information on Cuba and Iran. See § 742.20 for additional information on Libya. See § 742.19 of the EAR for additional information on North Korea.

* * * * *

■ 16. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Systems, Equipment and Components, Export Control Classification Number (ECCN) 2E994 is amended by revising the License Requirements section to read as follows:

2E994 ''Technology'' for the ''Use'' of Portable Electric Generators Controlled by 2A994

License Requirements

Reason for Control: AT

Control(s)

AT applies to entire entry. A license is required for items controlled by this entry to Cuba, Iran, Libya, and North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine licensing requirements for this entry. See part 746 of the EAR for additional information on Cuba and Iran. See § 742.20 for additional information on Libya. See § 742.19 of the EAR for additional information on North Korea.

* * * * *

■ 17. In Supplement No. 1 to part 774 (the Commerce Control List), Category 8—Marine, Export Control Classification Number (ECCN) 8A992 is amended by revising the heading, and the Paragraph (f) of the Items section in the List of Items Controlled section to read as follows:

8A992 Vessels, Marine Systems or Equipment, Not Controlled by 8A001, 8A002 or 8A018, and Specially Designed Parts Therefor

* * * * *

List of Items Controlled

Unit: * * *
Related Controls: * * *
Related Definitions: * * *
Items: * * *

* * * * *

(f) Vessels, n.e.s., including inflatable boats, and specially designed components therefor, n.e.s.

* * * * *

Dated: March 16, 2005.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 05–5537 Filed 3–21–05; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 381

[Docket No. RM05–8–000]

Annual Update of Filing Fees

March 16, 2005.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; annual update of Commission filing fees.

SUMMARY: In accordance with 18 CFR 381.104, the Commission issues this update of its filing fees. This notice provides the yearly update using data in the Commission's Management, Administrative, and Payroll System to calculate the new fees. The purpose of updating is to adjust the fees on the basis of the Commission's costs for Fiscal Year 2004.

DATES: *Effective Date:* April 21, 2005.

FOR FURTHER INFORMATION CONTACT: Elizabeth Misiewicz, Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street, NE., Room 4R–04, Washington, DC 20426, 202–502–6240.

SUPPLEMENTARY INFORMATION:

Document Availability: In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington DC 20426.

From FERC's Web site on the Internet, this information is available in the eLibrary (formerly FERRIS). The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field and follow other directions on the search page.

User assistance is available for eLibrary and other aspects of FERC's Web site during normal business hours. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Overview: The Federal Energy Regulatory Commission (Commission) is issuing this notice to update filing fees that the Commission assesses for specific services and benefits provided to identifiable beneficiaries. Pursuant to 18 CFR 381.104, the Commission is establishing updated fees on the basis of the Commission's Fiscal Year 2004 costs. The adjusted fees announced in this notice are effective April 21, 2005. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this final rule is not a major rule within the meaning of section 251 of Subtitle E of Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 804(2). The Commission is submitting this final rule to both houses of the United States Congress and to the Comptroller General of the United States.

The new fee schedule is as follows:

Fees Applicable to the Natural Gas Policy Act	
1. Petitions for rate approval pursuant to 18 CFR 284.123(b)(2). (18 CFR 381.403)	$9,660
Fees Applicable to General Activities	
1. Petition for issuance of a declaratory order (except under part I of the Federal Power Act). (18 CFR 381.302(a))	19,410
2. Review of a Department of Energy remedial order:	
Amount in Controversy	
$0–9,999. (18 CFR 381.303(b))	100
$10,000–29,999. (18 CFR 381.303(b))	600
$30,000 or more. (18 CFR 381.303(a))	28,330
3. Review of a Department of Energy denial of adjustment:	
Amount in Controversy	
$0–9,999. (18 CFR 381.304(b))	100
$10,000–29,999. (18 CFR 381.304(b))	600
$30,000 or more. (18 CFR 381.304(a))	14,850
4. Written legal interpretations by the Office of General Counsel. (18 CFR 381.305(a))	5,560
Fees Applicable to Natural Gas Pipelines	
1. Pipeline certificate applications pursuant to 18 CFR 284.224. (18 CFR 381.207(b))	*1,000
Fees Applicable to Cogenerators and Small Power Producers	
1. Certification of qualifying status as a small power production facility. (18 CFR 381.505(a))	16,690
2. Certification of qualifying status as a cogeneration facility. (18 CFR 381.505(a))	18,890
3. Applications for exempt wholesale generator status. (18 CFR 381.801)	890

* This fee has not been changed.

List of Subjects in 18 CFR Part 381

Electric power plants, Electric utilities, Natural gas, Reporting and recordkeeping requirements.

Thomas R. Herlihy,

Executive Director.

■ In consideration of the foregoing, the Commission amends part 381, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

PART 381—FEES

■ 1. The authority citation for part 381 continues to read as follows:

Authority: 15 U.S.C. 717–717w; 16 U.S.C. 791–828c, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

§ 381.302 [Amended]

■ 2. In 381.302, paragraph (a) is amended by removing ''$19,090'' and inserting ''$19,410'' in its place.

§ 381.303 [Amended]

■ 3. In 381.303, paragraph (a) is amended by removing ''$27,860'' and inserting ''$28,330'' in its place.

§ 381.304 [Amended]

■ 4. In 381.304, paragraph (a) is amended by removing ''$14,610'' and inserting ''$14,850'' in its place.

§ 381.305 [Amended]

■ 5. In 381.305, paragraph (a) is amended by removing ''$5,470'' and inserting ''$5,560'' in its place.

§ 381.403 [Amended]

■ 6. Section 381.403 is amended by removing ''$9,500'' and inserting ''$9,660'' in its place.

§ 381.505 [Amended]

■ 7. In 381.505, paragraph (a) is amended by removing ''$16,410'' and inserting ''$16,690'' in its place and by removing ''$18,580'' and inserting ''$18,890'' in its place.

§ 381.801 [Amended]

■ 8. Section 381.801 is amended by removing ''$840'' and inserting ''$890'' in its place.

[FR Doc. 05–5576 Filed 3–21–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9193]

RIN 1545–BB65

Section 704(c), Installment Obligations and Contributed Contracts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under sections 704(c) and 737 relating to the tax treatment of installment obligations and property acquired pursuant to a contract. The regulations affect partners and partnerships and provide guidance necessary to comply with the law.

DATES: *Effective Date:* These regulations are effective November 23, 2003.

Applicability Date: For dates of applicability, see §§ 1.704–3(f), 1.704–4(g) and 1.737–5.

FOR FURTHER INFORMATION CONTACT: Christopher L. Trump, (202) 622–3070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1 under sections 704 and 737. On November 24, 2003, a notice of proposed rulemaking (REG–160330–02) relating to the tax treatment of installment obligations and property acquired pursuant to a contract under sections 704(c) and 737 was published in the **Federal Register** (68 FR 65864). A notice of correction was published in the **Federal Register** (69 FR 5797) on February 6, 2004. No comments were received from the public in response to the notice of proposed rulemaking. No public hearing was requested, and accordingly, no hearing was held. This Treasury decision adopts the language of the proposed regulations without change.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the proposed regulations preceding these regulations were 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 Christopher L. Trump of the Office of the Associate Chief Counsel (Passthroughs & Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to Regulations

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

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.704–3 is amended as follows:

■ 1. The paragraph heading for (a)(8) is revised.

■ 2. The text of paragraph (a)(8) is redesignated as paragraph (a)(8)(i).

■ 3. A paragraph heading for newly designated paragraph (a)(8)(i) is added.

■ 4. The first sentence of newly designated paragraph (a)(8)(i) is amended by removing the language ''in which no gain or loss is recognized''.

■ 5. Paragraphs (a)(8)(ii) and (a)(8)(iii) are added.

■ 6. Paragraph (f) is amended by:

■ a. Revising the paragraph heading.

■ b. Amending the first sentence of paragraph (f) by removing the language ''of paragraph (a)(11)'' and adding ''of paragraphs (a)(8)(ii), (a)(8)(iii) and (a)(11)'' in its place.

■ c. Adding two sentences at the end of paragraph (f).

■ The revisions and additions read as follows:

§ 1.704–3 Contributed property.

(a) * * *

(8) *Special rules*—(i) *Disposition in a nonrecognition transaction.* * * *

(ii) *Disposition in an installment sale.* If a partnership disposes of section 704(c) property in an installment sale as defined in section 453(b), the installment obligation received by the partnership is treated as the section 704(c) property with the same amount

of built-in gain as the section 704(c) property disposed of by the partnership (with appropriate adjustments for any gain recognized on the installment sale). The allocation method for the installment obligation must be consistent with the allocation method chosen for the original property.

(iii) *Contributed contracts.* If a partner contributes to a partnership a contract that is section 704(c) property, and the partnership subsequently acquires property pursuant to that contract in a transaction in which less than all of the gain or loss is recognized, then the acquired property is treated as the section 704(c) property with the same amount of built-in gain or loss as the contract (with appropriate adjustments for any gain or loss recognized on the acquisition). For this purpose, the term contract includes, but is not limited to, options, forward contracts, and futures contracts. The allocation method for the acquired property must be consistent with the allocation method chosen for the contributed contract.

* * * * *

(f) *Effective dates.* * * * Paragraph (a)(8)(ii) applies to installment obligations received by a partnership in exchange for section 704(c) property on or after November 24, 2003. Paragraph (a)(8)(iii) applies to property acquired on or after November 24, 2003, by a partnership pursuant to a contract that is section 704(c) property.

■ **Par. 3.** Section 1.704–4 is amended as follows:

■ 1. The paragraph heading for (d)(1) is revised.

■ 2. The text of paragraph (d)(1) is redesignated as paragraph (d)(1)(i).

■ 3. A paragraph heading for newly designated paragraph (d)(1)(i) is added.

■ 4. Paragraphs (d)(1)(ii) and (d)(1)(iii) are added.

■ 5. Revising paragraph (g).

The revisions and additions read as follows:

§ 1.704–4 Distribution of contributed property.

* * * * *

(d) *Special rules*—(1) *Nonrecognition transactions, installment obligations and contributed contracts*—(i) *Nonrecognition transactions.* * * *

(ii) *Installment obligations.* An installment obligation received by the partnership in an installment sale (as defined in section 453(b)) of section 704(c) property is treated as the section 704(c) property for purposes of section 704(c)(1)(B) and this section to the extent that the installment obligation received is treated as section 704(c) property under § 1.704–3(a)(8). See § 1.737–2(d)(3) for a similar rule in the context of section 737.

(iii) *Contributed contracts.* Property acquired by the partnership pursuant to a contract that is section 704(c) property is treated as the section 704(c) property for purposes of section 704(c)(1)(B) and this section, to the extent that the acquired property is treated as section 704(c) property under § 1.704–3(a)(8). See § 1.737–2(d)(3) for a similar rule in the context of section 737.

* * * * *

(g) *Effective dates.* This section applies to distributions by a partnership to a partner on or after January 9, 1995, except that paragraphs (d)(1)(ii) and (iii) apply to distributions by a partnership to a partner on or after November 24, 2003.

■ **Par. 4.** Section 1.737–2 is amended as follows:

■ 1. The paragraph heading for (d)(3) is revised.

■ 2. The text of paragraph (d)(3) is redesignated (d)(3)(i).

■ 3. A paragraph heading for newly designated (d)(3)(i) is added.

■ 4. Paragraphs (d)(3)(ii) and (d)(3)(iii) are added.

§ 1.737–2 Exceptions and special rules.

* * * * *

(d) * * *

(3) *Nonrecognition transactions, installment sales and contributed contracts*—(i) *Nonrecognition transactions.* * * *

(ii) *Installment sales.* An installment obligation received by the partnership in an installment sale (as defined in section 453(b)) of section 704(c) property is treated as the contributed property with regard to the contributing partner for purposes of section 737 to the extent that the installment obligation received is treated as section 704(c) property under § 1.704–3(a)(8). See § 1.704–4(d)(1) for a similar rule in the context of section 704(c)(1)(B).

(iii) *Contributed contracts.* Property acquired by a partnership pursuant to a contract that is section 704(c) property is treated as the contributed property with regard to the contributing partner for purposes of section 737 to the extent that the acquired property is treated as section 704(c) property under § 1.704–3(a)(8). See § 1.704–4(d)(1) for a similar rule in the context of section 704(c)(1)(B).

* * * * *

■ **Par. 5.** Section 1.737–5 is revised to read as follows:

§ 1.737–5 Effective dates.

Sections 1.737–1, 1.737–2, 1.737–3, and 1.737–4 apply to distributions by a partnership to a partner on or after January 9, 1995, except that § 1.737–2(d)(3)(ii) and (iii) apply to distributions by a partnership to a partner on or after November 24, 2003.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: March 15, 2005.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 05–5527 Filed 3–21–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9192]

RIN 1545–BC38; RIN 1545–BC74; RIN 1545–BC95

Guidance Under Section 1502; Application of Section 108 to Members of a Consolidated Group

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations, temporary regulations, and removal of temporary regulations.

SUMMARY: This document contains final regulations under section 1502 of the Internal Revenue Code that govern the application of section 108 when a member of a consolidated group realizes discharge of indebtedness income. These final regulations affect corporations filing consolidated returns.

DATES: *Effective Date:* These regulations are effective March 21, 2005.

Applicability Dates: For dates of applicability, see § 1.1502–11(c)(7), § 1.1502–13(g)(3)(i)(A) and (ii)(C), § 1.1502–19(h)(2)(ii), § 1.1502–21(h)(6), § 1.1502–28(d), and § 1.1502–32(h)(7).

FOR FURTHER INFORMATION CONTACT: Concerning § 1.1502–11 of the final regulations, Candace B. Ewell at (202) 622–7530 (not a toll-free number), concerning all other sections of the final regulations, Amber R. Cook at (202) 622–7530 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

This document contains amendments to 26 CFR part 1 under section 1502 of the Internal Revenue Code (Code). On September 4, 2003, temporary regulations (TD 9089) (the first temporary regulations) relating to the

application of section 108 to members of a consolidated group were published in the **Federal Register** (68 FR 52487). A notice of proposed rulemaking (REG–132760–03) cross-referencing the first temporary regulations was published in the **Federal Register** for the same day (68 FR 52542). The first temporary regulations added § 1.1502–28T, which provides guidance regarding the determination of the attributes that are available for reduction when a member of a consolidated group realizes discharge of indebtedness income that is excluded from gross income (excluded COD income) and the method for reducing those attributes. Section 1.1502–28T reflects a consolidated approach that is intended to reduce all attributes that are available to the debtor member.

Because the first temporary regulations may not have provided for the reduction of all the attributes that are available to the debtor member, on December 11, 2003, the IRS and Treasury Department published in the **Federal Register** (68 FR 69024) temporary regulations (TD 9098) (the second temporary regulations) under section 1502 amending § 1.1502–28T. A notice of proposed rulemaking (REG–153319–03) cross-referencing the second temporary regulations was published in the **Federal Register** for the same day (68 FR 69062). The second temporary regulations clarify that certain attributes that arise (or are treated as arising) in a separate return year are subject to reduction when no SRLY limitation applies to the use of such attributes.

On March 15, 2004, the IRS and Treasury Department published in the **Federal Register** (69 FR 12069) temporary regulations (TD 9117) (the third temporary regulations) under section 1502 amending §§ 1.1502–13 and 1.1502–28T. A notice of proposed rulemaking (REG–167265–03) (the 2004 proposed regulations) cross-referencing the third temporary regulations was published in the **Federal Register** for the same day (69 FR 12091). The third temporary regulations address certain technical issues relating to the application of excluded COD income to reduce attributes under sections 108 and 1017 and § 1.1502–28T.

The 2004 proposed regulations, in addition to cross-referencing the third temporary regulations, proposed amendments to §§ 1.1502–28T and 1.1502–11 to provide a methodology for computing consolidated taxable income and for effecting attribute reduction when there is a disposition of the stock of a member in a year during which any member realizes excluded COD income.

No public hearing was requested or held for any of the regulations described above. Written and electronic comments responding to the notices of proposed rulemaking were received. After consideration of all the comments, the proposed regulations are adopted as revised by this Treasury decision, and the affected provisions in the corresponding temporary regulations are removed. The more significant revisions are discussed below.

A. Apportionment of Net Operating Losses

In addition to adding § 1.1502–28T, the first temporary regulations added several provisions to § 1.1502–21T. Sections 1.1502–21 and 1.1502–21T include rules relating to the amount of consolidated net operating losses apportioned to a subsidiary when a subsidiary departs from the group. The provisions added to § 1.1502–21T require a recomputation of the percentage of a consolidated net operating loss attributable to a member when a portion of the loss is carried back to a separate return year or is reduced in respect of excluded COD income, or when a member departs. Questions have arisen regarding the timing of the recomputation of the percentage of a consolidated net operating loss attributable to a member in cases in which a portion of a consolidated net operating loss is carried back to a separate return year or a portion is reduced in respect of excluded COD income. Therefore, these final regulations clarify the timing of the recomputation in these cases.

B. Timing of Asset Basis Reduction

Section 108(b)(4)(A) requires the reduction of the tax attributes listed in section 108(b)(2), including basis in property, in respect of excluded COD income after the determination of the tax imposed for the taxable year of the discharge. Section 1017(a) provides that when any portion of excluded COD income is to be applied to reduce basis, then such portion is applied to reduce the basis of any property held by the taxpayer at the beginning of the taxable year following the taxable year in which the discharge occurs. As a result of the reference in section 1017(a) to the property held by the taxpayer at the beginning of the taxable year following the taxable year in which the discharge occurs, questions have arisen regarding the appropriate time to reduce the basis of property of the taxpayer.

The IRS and Treasury Department believe that the reference in section 1017 to the property held by the taxpayer at the beginning of the taxable year following the taxable year in which the discharge occurs merely identifies those properties the basis of which are subject to reduction. It does not prescribe that basis of property should not be reduced until the beginning of the taxable year following the taxable year in which the discharge occurs. Accordingly, these regulations clarify that basis of property is subject to reduction pursuant to the rules of sections 108 and 1017 and § 1.1502–28 after the determination of tax for the year during which the member realizes excluded COD income (and any prior years) and coincident with the reduction of other attributes pursuant to section 108 and § 1.1502–28. However, only the basis of property held as of the beginning of the taxable year following the taxable year during which the excluded COD income is realized is available for reduction.

C. Application of Look-Through Rule

The first temporary regulations include a look-through rule that applies if the attribute of the debtor member reduced is the basis of stock of another member of the group. In these cases, corresponding reductions must be made to the attributes attributable to the lower-tier member. To effect those corresponding reductions, the lower-tier member is treated as realizing excluded COD income in the amount of the stock basis reduction. Questions have arisen regarding whether the look-through rule applies when there is a reduction in the basis of stock of a corporation that is a member of the group on the last day of the debtor's taxable year during which the excluded COD income is realized, but is not a member of the group on the first day of the debtor's following taxable year. For example, suppose P1 owns all of the stock of S1 and S1 owns all of the stock of S2. P1, S1, and S2 file a consolidated return. In Year 1, P1 realizes excluded COD income. On the last day of Year 1, P1 sells 50 percent of the stock of S1 to P2. P1 reduces its basis in the 50 percent of the S1 stock that it owns on the first day of Year 2 in respect of its excluded COD income. Commentators have questioned whether the look-through rule applies to reduce S1's attributes.

The IRS and Treasury Department believe that because S1 and S2 were members of the same group on the last day of the debtor's taxable year during which the excluded COD income was realized, it is appropriate to apply the single entity principles reflected in the look-through rule. The IRS and Treasury Department have also considered whether the look-through rule applies when there is a reduction in the basis

of stock of a corporation that is not a member of the group on the last day of the debtor's taxable year during which the excluded COD income is realized (by reason of the application of the next day rule of § 1.1502–76), but is a member of the group on the first day of the debtor's following taxable year. In these cases too, the IRS and Treasury Department believe that it is appropriate to apply the single entity principles reflected in the look-through rule. Therefore, these regulations provide that, if the basis of stock of a corporation (the lower-tier member) that is owned by another corporation (the higher-tier member) is reduced and both of such corporations are members of the same consolidated group on the last day of the higher-tier member's taxable year that includes the date on which the excluded COD income is realized or the first day of the higher-tier member's taxable year that follows the taxable year that includes the date on which the excluded COD income is realized, the look-through rule will apply to reduce the attributes of the lower-tier member.

D. Attributes Available for Reduction on Departure of Debtor Member

Questions have arisen regarding the identification of the attributes available for reduction in cases in which the member that realizes the excluded COD income leaves the group (for example, by reason of a stock acquisition) or the assets of the member are acquired by a corporation that is not a member of the group in a transaction to which section 381(a) applies on or prior to the last day of the consolidated return year during which the excluded COD income is realized. At least one commentator has questioned whether the attributes of other members of the group from which the debtor member departs are available for reduction in these cases. These final regulations confirm that, in such cases, the tax attributes that remain after the determination of the tax imposed on the group that belong to members of the group are available for reduction.

E. Intragroup Reorganizations and Group Structure Changes

Questions have also arisen regarding the application of the attribute reduction rules when a taxpayer that is a member of a consolidated group realizes excluded COD income during the same consolidated return year during which it transfers assets in a transaction to which section 381(a) applies to a corporation that is a member of the group immediately after the transaction. Section 1.108–7 provides that if a taxpayer realizes excluded COD income either during or after a taxable year in which the taxpayer is the distributor or transferor of assets in a transaction described in section 381(a), any tax attributes to which the acquiring corporation succeeds, including the basis of property acquired by the acquiring corporation in the transaction, must reflect the reductions required by section 108(b). If a member of the group transfers assets in a transaction to which section 381(a) applies to a corporation that is a member of the group immediately after the transaction and, as a result, the taxable year of the transferor member ends prior to the end of the consolidated return year, the basis of the transferred property following the transfer may generate depreciation deductions that are allowed in computing the group's consolidated taxable income for the entire consolidated return year that includes the date of the discharge. Requiring the basis of the transferred property to reflect a reduction in respect of the excluded COD income immediately after the transfer could arguably violate the directive of section 108(b)(4)(A) that attributes (including basis) be reduced only after the determination of tax for the taxable year of the discharge. However, if attributes were reduced after the determination of the group's tax for the taxable year of the discharge, it may be difficult to determine which attributes of the combined entity are attributable to the debtor member and available for reduction. For example, if after the transaction to which section 381(a) applies the acquiring corporation purchases property, it may be difficult to determine whether that property is property of the debtor the basis of which is available for reduction or property of the acquiring corporation the basis of which may not be available for reduction. Similar issues may arise with respect to other attributes of the transferor.

To address this issue, these final regulations provide that, if the taxable year of a member during which such member realizes excluded COD income ends prior to the last day of the consolidated return year and, on the first day of the taxable year of such member that follows the taxable year during which such member realizes excluded COD income, such member has a successor member, the successor member is treated as if it had realized the excluded COD income. Accordingly, all attributes of the successor member listed in section 108(b)(2) (including attributes that were attributable to the successor member prior to the date such member became a successor member) are subject to reduction prior to the attributes attributable to other members of the group. For this purpose, a successor member means a person to which the member that realizes excluded COD income transfers its assets in a transaction to which section 381(a) applies if such transferee is a member of the group immediately after the transaction. This rule avoids the difficulty of tracing attributes and property of the debtor member once the debtor member has been acquired by another member and recognizes that the direction of a transaction to which section 381(a) applies in a group may not be meaningful. These regulations provide a similar rule for cases in which a member of the group acquires the assets of another member in a transaction to which section 381(a) applies that is also a group structure change.

F. Application of Next Day Rule

Under § 1.1502–76, a consolidated return must include the common parent's items of income, gain, deduction, loss, and credit for the entire consolidated return year, and each subsidiary's items for the portion of the year for which it is a member. A corporation that leaves a consolidated group during the tax year must generally file a short period separate return (or join in the consolidated return of another group) for the portion of the year not included in the consolidated return. If a corporation ceases to be a member during a consolidated return year, it ceases to be a member at the end of the day on which its status as a member changes, and its tax year ends at the end of that day. Under the next day rule, however, any transaction that occurs on the day the member ceases to be affiliated with the group that is properly allocable to the portion of the subsidiary's day after the event terminating affiliation must be treated as occurring at the beginning of the following day. Commentators have questioned whether the next day rule can be applied when the debt of a subsidiary is discharged in exchange for stock of the subsidiary and, as a result of the issuance of the subsidiary's stock to the creditor, the subsidiary ceases to be a member of the group. As a result of the application of that rule, the excluded COD income would be treated as realized at the beginning of the day following the day the subsidiary ceases to be a member of the group, rather than on the day it ceases to be a member of the group.

The IRS and Treasury Department believe that because the excluded COD income accrued in the group, it is not

appropriate to apply the next day rule in these cases. Therefore, these regulations provide that the next day rule cannot be applied to treat excluded COD income as realized at the beginning of the day following the day on which it is realized.

G. Timing of Investment Adjustments

Under § 1.1502–32, excluded COD income of a subsidiary results in a positive basis adjustment to the extent it is applied to reduce attributes and the reduction of the subsidiary's attributes (other than credits) in respect of excluded COD income will generally result in a negative basis adjustment. Commentators have requested clarification regarding when these basis adjustments are effective in cases in which a subsidiary ceases to be a member of the group on or prior to the end of the consolidated return year during which a member realizes excluded COD income. Therefore, these regulations clarify that, in those cases, basis adjustments resulting from the realization of excluded COD income and from the reduction of attributes in respect thereof are made immediately after the determination of tax for the group for the consolidated return year during which the excluded COD income is realized (and any prior years) and are effective immediately before the beginning of the day following the day the member departs from the group. Therefore, if the departing member becomes a member of another group (the new group), the adjustments to the basis of the departing member's stock in respect of the excluded COD income will not cause stock basis adjustments in the new group.

H. Elimination of Circular Stock Basis on Disposition of Member Stock

The 2004 proposed regulations provide a methodology for computing consolidated taxable income and for effecting attribute reduction when there is a disposition of member stock during the same taxable year in which any member realizes excluded COD income. The methodology is intended to prevent the reduction of tax attributes from affecting the basis of the member stock that is sold, which would affect the tax liability of the group for the taxable year of the discharge. Accordingly, the methodology limits the actual reduction of tax attributes to the amount of tax attributes available for reduction following the tentative computation of taxable income (or loss).

Commentators have noted, however, that pursuant to section 108(b)(4)(A), attributes are reduced only after the determination of tax for the taxable year of the discharge. Computing the limitation on attribute reduction based on the tax attributes remaining after a tentative computation of taxable income (or loss) does not account for the use of credits in the computation of the group's tax liability for the taxable year of the discharge. Therefore, in response to these comments, the final regulations provide for the computation of the limitation on attribute reduction after the computation of the tax imposed by chapter 1 of the Code, rather than after the computation of taxable income (or loss).

I. Transactions Designed to Avoid the Application of the Attribute Reduction Rules

The preamble to the first temporary regulations stated that the IRS and Treasury Department are considering adopting rules under section 1502 (and possibly other Code sections) to address the effect of transitory transactions and other transactions designed to avoid the application of the rules concerning attribute reduction. The IRS and Treasury Department continue to believe that general principles (including step transaction doctrine) could be applied to disregard certain transactions that have the effect of changing the result of the application of the attribute reduction rules. Therefore, the IRS and Treasury Department have decided not to adopt any additional rules at this time.

J. Elective Retroactive Application of Final Regulation

The portion of these regulations finalizing the rules contained in § 1.1502–28T apply to discharges of indebtedness that occur after March 21, 2005. Groups, however, may apply those rules in whole, but not in part, to discharges of indebtedness that occur on or before March 21, 2005, and after August 29, 2003.

These regulations also permit further retroactive application of a rule included in the third temporary regulations that prevents the potential duplication of ordinary income recapture under section 1245 that could be caused by reason of the application of both section 1245 and either section 1017(b)(3)(D) (which permits subsidiary stock to be treated as depreciable property to the extent that the subsidiary consents to a corresponding reduction in the basis of its depreciable property) or the look-through rule. This section 1245 rule provides that a reduction of the basis of subsidiary stock is treated as a deduction allowed for depreciation only to the extent that the amount by which the basis of the subsidiary stock is reduced exceeds the total amount of the attributes attributable to such subsidiary that are reduced pursuant to the subsidiary's consent under section 1017(b)(3)(D) or as a result of the application of the look-through rule. The third temporary regulations made this special rule effective for discharges of indebtedness that occur after August 29, 2003, the effective date of the look-through rule. The IRS and Treasury Department are aware that the problem addressed by this special rule could have occurred in cases of discharges of indebtedness that occurred before August 29, 2003, if section 1017(b)(3)(D) was applied. Accordingly, these final regulations provide that groups may apply this special rule to discharges of indebtedness that occur on or before August 29, 2003, in cases in which section 1017(b)(3)(D) was applied.

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. Further, it is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations will primarily affect affiliated groups of corporations that have elected to file a consolidated return, which tend to be larger businesses. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the notices of proposed rulemaking preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Amber R. Cook of the Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

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

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by removing the entries for §§ 1.1502–13T, 1.1502–19T, and 1.1502–28T and adding the following entry in numerical order to read, in part, as follows:

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

Section 1.1502–28 also issued under 26 U.S.C. 1502. * * *

■ **Par. 2.** Section 1.1502–11 is amended as follows:

■ 1. Paragraph (b)(1) is revised.

■ 2. Paragraph (c) is redesignated as paragraph (d).

■ 3. New paragraph (c) is added.

The revision and addition read as follows:

§ 1.1502–11 Consolidated taxable income.

* * * * *

(b) *Elimination of circular stock basis adjustments when there is no excluded COD income*—(1) *In general.* If one member (P) disposes of the stock of another member (S), this paragraph (b) limits the use of S's deductions and losses in the year of disposition and the carryback of items to prior years. The purpose of the limitation is to prevent P's income or gain from the disposition of S's stock from increasing the absorption of S's deductions and losses, because the increased absorption would reduce P's basis (or increase its excess loss account) in S's stock under § 1.1502–32 and, in turn, increase P's income or gain. See paragraph (b)(3) of this section for the application of these principles to P's deduction or loss from the disposition of S's stock, and paragraph (b)(4) of this section for the application of these principles to multiple stock dispositions. This paragraph (b) applies only when no member realizes discharge of indebtedness income that is excluded from gross income under section 108(a) (excluded COD income) during the taxable year of the disposition. See paragraph (c) of this section for rules that apply when a member realizes excluded COD income during the taxable year of the disposition. See § 1.1502–19(c) for the definition of disposition.

* * * * *

(c) *Elimination of circular stock basis adjustments when there is excluded COD income*—(1) *In general.* If one member (P) disposes of the stock of another member (S) in a year during which any member realizes excluded COD income, this paragraph (c) limits the use of S's deductions and losses in the year of disposition and the carryback of items to prior years, the amount of the attributes of certain members that can be reduced in respect of excluded COD income of certain other members, and the attributes that can be used to offset an excess loss account taken into account by reason of the application of § 1.1502–19(c)(1)(iii)(B). In addition to the purpose set forth in paragraph (b)(1) of this section, the purpose of these limitations is to prevent the reduction of tax attributes in respect of excluded COD income from affecting P's income, gain, or loss on the disposition of S stock (including a disposition of S stock that results from the application of § 1.1502–19(c)(1)(iii)(B)) and, in turn, affecting the attributes available for reduction pursuant to sections 108 and 1017 and § 1.1502–28. See § 1.1502–19(c) for the definition of disposition.

(2) *Computation of tax liability, reduction of attributes, and computation of limits on absorption and reduction of attributes.* If a member realizes excluded COD income in the taxable year during which P disposes of S stock, the steps used to compute tax liability, to effect the reduction of attributes, and to compute the limitations on the absorption and reduction of attributes are as follows. These steps also apply to determine whether and to what extent an excess loss account must be taken into account as a result of the application of § 1.1502–19(b)(1) and (c)(1)(iii)(B).

(i) *Limitation on deductions and losses to offset income or gain.* First, the determination of the extent to which S's deductions and losses for the tax year of the disposition (and its deductions and losses carried over from prior years) may offset income and gain is made pursuant to paragraphs (b)(2) and (3) of this section.

(ii) *Tentative adjustment of stock basis.* Second, § 1.1502–32 is tentatively applied to adjust the basis of the S stock to reflect the amount of S's income and gain included, and unlimited deductions and losses that are absorbed, in the tentative computation of taxable income or loss for the year of the disposition (and any prior years) that is made pursuant to paragraph (b)(2) of this section, but not to reflect the realization of excluded COD income and the reduction of attributes in respect thereof.

(iii) *Tentative computation of stock gain or loss.* Third, in the case of a disposition of S stock that does not result from the application of § 1.1502–19(c)(1)(iii)(B), P's income, gain, or loss from the disposition of S stock is computed. For this purpose, the result of the computation pursuant to paragraph (c)(2)(ii) of this section is treated as the basis of such stock.

(iv) *Tentative computation of tax imposed.* Fourth, the tax imposed by chapter 1 of the Internal Revenue Code for the year of disposition (and any prior years) is tentatively computed. For this purpose, in the case of a disposition of S stock that does not result from the application of § 1.1502–19(c)(1)(iii)(B), the tentative computation of tax imposed takes into account P's income, gain, or loss from the disposition of S stock computed pursuant to paragraph (c)(2)(iii) of this section. The tentative computation of tax imposed is made without regard to whether all or a portion of an excess loss account in a share of S stock is required to be taken into account pursuant to § 1.1502–19(b)(1) and (c)(1)(iii)(B).

(v) *Tentative reduction of attributes.* Fifth, the rules of sections 108 and 1017 and § 1.1502–28 are tentatively applied to reduce the attributes remaining after the tentative computation of tax imposed pursuant to paragraph (c)(2)(iv) of this section.

(vi) *Actual adjustment of stock basis.* Sixth, § 1.1502–32 is applied to reflect the amount of S's income and gain included, and unlimited deductions and losses that are absorbed, in the tentative computation of tax imposed for the year of the disposition (and any prior years) made pursuant to paragraph (c)(2)(iv) of this section, and the excluded COD income applied to reduce attributes and the attributes tentatively reduced in respect of the excluded COD income pursuant to paragraph (c)(2)(v) of this section.

(vii) *Actual computation of stock gain or loss.* Seventh, the group's actual gain or loss on the disposition of S stock (including a disposition that results from the application of § 1.1502–19(c)(1)(iii)(B)) is computed. The result of the computation pursuant to paragraph (c)(2)(vi) of this section is treated as the basis of such stock.

(viii) *Actual computation of tax imposed.* Eighth, the tax imposed by chapter 1 of the Internal Revenue Code for the year of the disposition (and any prior years) is computed. The actual tax imposed on the group for the year of the disposition is computed by applying the limitation computed pursuant to paragraph (c)(2)(i) of this section, and by including the gain or loss recognized on the disposition of S stock computed pursuant to paragraph (c)(2)(vii) of this section. However, attributes that were tentatively used in the computation of tax imposed pursuant to paragraph (c)(2)(iv) of this section and attributes that were tentatively reduced pursuant to paragraph (c)(2)(v) of this section

cannot offset any excess loss account taken into account as a result of the application of § 1.1502–19(b)(1) and (c)(1)(iii)(B).

(ix) *Actual reduction of attributes.* Ninth, the rules of sections 108 and 1017 and § 1.1502–28 are actually applied to reduce the attributes remaining after the actual computation of tax imposed pursuant to paragraph (c)(2)(viii) of this section.

(A) *S or a lower-tier corporation realizes excluded COD income.* If S or a lower-tier corporation of S realizes excluded COD income, the aggregate amount of excluded COD income that is applied to reduce attributes attributable to members other than S and any lower-tier corporation of S pursuant to this paragraph (c)(2)(ix) shall not exceed the aggregate amount of excluded COD income that was tentatively applied to reduce attributes attributable to members other than S and any lower-tier corporation of S pursuant to paragraph (c)(2)(v) of this section. The amount of the actual reduction of attributes attributable to S and any lower-tier corporation of S that may be reduced in respect of the excluded COD income of S or a lower-tier corporation of S shall not be so limited.

(B) *A member other than S or a lower-tier corporation realizes excluded COD income.* If a member other than S or a lower-tier corporation of S realizes excluded COD income, the aggregate amount of excluded COD income that is applied to reduce attributes (other than credits) attributable to S and any lower-tier corporation of S pursuant to this paragraph (c)(2)(ix) shall not exceed the aggregate amount of excluded COD income that was tentatively applied to reduce attributes (other than credits) attributable to S and any lower-tier corporation of S pursuant to paragraph (c)(2)(v) of this section. The amount of the actual reduction of attributes attributable to any member other than S and any lower-tier corporation of S that may be reduced in respect of the excluded COD income of S or a lower-tier corporation of S shall not be so limited.

(3) *Special rules.* (i) If the reduction of attributes attributable to a member is prevented as a result of a limitation described in paragraph (c)(2)(ix)(B) of this section, the excluded COD income that would have otherwise been applied to reduce such attributes is applied to reduce the remaining attributes of the same type that are available for reduction under § 1.1502–28(a)(4), on a pro rata basis, prior to reducing attributes of a different type. The reduction of such remaining attributes, however, is subject to any applicable limitation described in paragraph (c)(2)(ix)(B) of this section.

(ii) To the extent S's deductions and losses in the year of disposition (or those of a lower-tier corporation of S) cannot offset income or gain because of the limitation under paragraph (b) of this section or this paragraph (c) and are not reduced pursuant to sections 108 and 1017 and § 1.1502–28, such items are carried to other years under the applicable provisions of the Internal Revenue Code and regulations as if they were the only items incurred by S (or a lower-tier corporation of S) in the year of disposition. For example, to the extent S incurs an operating loss in the year of disposition that is limited and is not reduced pursuant to section 108 and § 1.1502–28, the loss is treated as a separate net operating loss attributable to S arising in that year.

(4) *Definition of lower-tier corporation.* A corporation is a lower-tier corporation of S if all of its items of income, gain, deduction, and loss (including the absorption of deduction or loss and the reduction of attributes other than credits) would be fully reflected in P's basis in S's stock under § 1.1502–32.

(5) *Examples.* For purposes of the examples in this paragraph (c), unless otherwise stated, the tax year of all persons is the calendar year, all persons use the accrual method of accounting, the facts set forth the only corporate activity, all transactions are between unrelated persons, tax liabilities are disregarded, and no election under section 108(b)(5) is made. The principles of this paragraph (c) are illustrated by the following examples:

Example 1. Departing member realizes excluded COD income. (i) *Facts.* P owns all of S's stock with a $90 basis. For Year 1, P has ordinary income of $30, and S has an $80 ordinary loss and $100 of excluded COD income from the discharge of non-intercompany indebtedness. P sells the S stock for $20 at the close of Year 1. As of the beginning of Year 2, S has Asset A with a basis of $0 and a fair market value of $20.

(ii) *Analysis.* The steps used to compute the tax imposed on the group, to effect the reduction of attributes, and to compute the limitations on the use and reduction of attributes are as follows:

(A) *Computation of limitation on deductions and losses to offset income or gain.* To determine the amount of the limitation under paragraph (c)(2)(i) of this section on S's loss and the effect of the absorption of S's loss on P's basis in S's stock under § 1.1502–32(b), P's gain or loss from the disposition of S's stock is not taken into account. The group is tentatively treated as having a consolidated net operating loss of $50 (P's $30 of income minus S's $80 loss). Thus, $30 of S's loss is unlimited and $50 of S's loss is limited under paragraph (c)(2)(i) of this section. Under the principles of § 1.1502–21(b)(2)(iv), all of the consolidated net operating loss is attributable to S.

(B) *Tentative adjustment of stock basis.* Then, pursuant to paragraph (c)(2)(ii) of this section, § 1.1502–32 is tentatively applied to adjust the basis of S stock. For this purpose, however, adjustments attributable to the excluded COD income and the reduction of attributes in respect thereof are not taken into account. Under § 1.1502–32(b), the absorption of $30 of S's loss decreases P's basis in S's stock by $30 to $60.

(C) *Tentative computation of stock gain or loss.* Then, P's income, gain, or loss from the sale of S stock is computed pursuant to paragraph (c)(2)(iii) of this section using the basis computed in the previous step. Thus, P is treated as recognizing a $40 loss from the sale of S stock.

(D) *Tentative computation of tax imposed.* Pursuant to paragraph (c)(2)(iv) of this section, the tax imposed for the year of disposition is then tentatively computed, taking into account P's $40 loss on the sale of the S stock computed pursuant to paragraph (c)(2)(iii) of this section. The group has a $50 consolidated net operating loss for Year 1 that, under the principles of § 1.1502–21(b)(2)(iv), is wholly attributable to S and a consolidated capital loss of $40 that, under the principles of § 1.1502–21(b)(2)(iv), is wholly attributable to P.

(E) *Tentative reduction of attributes.* Next, pursuant to paragraph (c)(2)(v) of this section, the rules of sections 108 and 1017 and § 1.1502–28 are tentatively applied to reduce attributes remaining after the tentative computation of the tax imposed. Pursuant to § 1.1502–28(a)(2), the tax attributes attributable to S would first be reduced to take into account its $100 of excluded COD income. Accordingly, the consolidated net operating loss for Year 1 would be reduced by $50, the portion of that consolidated net operating loss attributable to S under the principles of § 1.1502–21(b)(2)(iv), to $0. Then, pursuant to § 1.1502–28(a)(4), S's remaining $50 of excluded COD income would reduce the consolidated capital loss attributable to P of $40 by $40 to $0. The remaining $10 of excluded COD income would have no effect.

(F) *Actual adjustment of stock basis.* Pursuant to paragraph (c)(2)(vi) of this section, § 1.1502–32 is applied to reflect the amount of S's income and gain included, and unlimited deductions and losses that are absorbed, in the tentative computation of the tax imposed for the year of the disposition and the excluded COD income tentatively applied to reduce attributes and the attributes reduced in respect of the excluded COD income pursuant to the previous step. Under § 1.1502–32(b), the absorption of $30 of S's loss, the application of $90 of S's excluded COD income to reduce attributes of P and S, and the reduction of the $50 loss attributable to S in respect of the excluded COD income results in a positive adjustment of $10 to P's basis in the S stock. P's basis in the S stock, therefore, is $100.

(G) *Actual computation of stock gain or loss.* Pursuant to paragraph (c)(2)(vii) of this section, P's actual gain or loss on the sale of the S stock is computed using the basis

computed in the previous step. Accordingly, P recognizes an $80 loss on the disposition of the S stock.

(H) *Actual computation of tax imposed.* Pursuant to paragraph (c)(2)(viii) of this section, the tax imposed is computed by taking into account P's $80 loss from the sale of S stock. Before the application of § 1.1502–28, therefore, the group has a consolidated net operating loss of $50 that is wholly attributable to S under the principles of § 1.1502–21(b)(2)(iv), and a consolidated capital loss of $80 that is wholly attributable to P under the principles of § 1.1502–21(b)(2)(iv).

(I) *Actual reduction of attributes.* Pursuant to paragraph (c)(2)(ix) of this section, sections 108 and 1017 and § 1.1502–28 are then actually applied to reduce attributes remaining after the actual computation of the tax imposed. Pursuant to § 1.1502–28(a)(2), the tax attributes attributable to S must first be reduced to take into account its $100 of excluded COD income. Accordingly, the consolidated net operating loss for Year 1 is reduced by $50, the portion of that consolidated net operating loss attributable to S under the principles of § 1.1502–21(b)(2)(iv), to $0. Then, pursuant to § 1.1502–28(a)(4), S's remaining $50 of excluded COD income reduces consolidated tax attributes. In particular, without regard to the limitation imposed by paragraph (c)(2)(ix)(A) of this section, the $80 consolidated capital loss, which under the principles of § 1.1502–21(b)(2)(iv) is attributable to P, would be reduced by $50 from $80 to $30. However, the limitation imposed by paragraph (c)(2)(ix)(A) of this section prevents the reduction of the consolidated capital loss attributable to P by more than $40. Therefore, the consolidated capital loss attributable to P is reduced by only $40 in respect of S's excluded COD income. The remaining $10 of excluded COD income has no effect.

Example 2. Member other than departing member realizes excluded COD income. (i) *Facts.* P owns all of S1's and S2's stock. P's basis in S2's stock is $600. For Year 1, P has ordinary income of $30, S1 has a $100 ordinary loss and $100 of excluded COD income from the discharge of non-intercompany indebtedness, and S2 has $200 of ordinary loss. P sells the S2 stock for $600 at the close of Year 1. As of the beginning of Year 2, S1 has Asset A with a basis of $0 and a fair market value of $10.

(ii) *Analysis.* The steps used to compute the tax imposed on the group, to effect the reduction of attributes, and to compute the limitations on the use and reduction of attributes are as follows:

(A) *Computation of limitation on deductions and losses to offset income or gain.* To determine the amount of the limitation under paragraph (c)(2)(i) of this section on S2's loss and the effect of the absorption of S2's loss on P's basis in S2's stock under § 1.1502–32(b), P's gain or loss from the sale of S2's stock is not taken into account. The group is tentatively treated as having a consolidated net operating loss of $270 (P's $30 of income minus S1's $100 loss and S2's $200 loss). Consequently, $20 of S2's loss from Year 1 is unlimited and $180 of S2's loss from Year 1 is limited under paragraph (c)(2)(i) of this section. Under the principles of § 1.1502–21(b)(2)(iv), $90 of the consolidated net operating loss is attributable to S1 and $180 of the consolidated net operating loss is attributable to S2.

(B) *Tentative adjustment of stock basis.* Then, pursuant to paragraph (c)(2)(ii) of this section, § 1.1502–32 is tentatively applied to adjust the basis of S2's stock. For this purpose, however, adjustments to the basis of S2's stock attributable to the reduction of attributes in respect of S1's excluded COD income are not taken into account. Under § 1.1502–32(b), the absorption of $20 of S2's loss decreases P's basis in S2's stock by $20 to $580.

(C) *Tentative computation of stock gain or loss.* Then, P's income, gain, or loss from the disposition of S2 stock is computed pursuant to paragraph (c)(2)(iii) of this section using the basis computed in the previous step. Thus, P is treated as recognizing a $20 gain from the sale of the S2 stock.

(D) *Tentative computation of tax imposed.* Pursuant to paragraph (c)(2)(iv) of this section, the tax imposed for the year of disposition is then tentatively computed, taking into account P's $20 gain from the sale of S2 stock computed pursuant to paragraph (c)(2)(iii) of this section. Although S2's limited loss cannot be used to offset P's $20 gain from the sale of S2's stock under the rules of this section, S1's loss will offset that gain. Therefore, the group is tentatively treated as having a consolidated net operating loss of $250, $70 of which is attributable to S1 and $180 of which is attributable to S2 under the principles of § 1.1502–21(b)(2)(iv).

(E) *Tentative reduction of attributes.* Next, pursuant to paragraph (c)(2)(v) of this section, the rules of sections 108 and 1017 and § 1.1502–28 are tentatively applied to reduce attributes remaining after the tentative computation of the tax imposed. Pursuant to § 1.1502–28(a)(2), the tax attributes attributable to S1 would first be reduced to take into account its $100 of excluded COD income. Accordingly, the consolidated net operating loss for Year 1 would be reduced by $70, the portion of that consolidated net operating loss attributable to S1 under the principles of § 1.1502–21(b)(2)(iv), to $0. Then, pursuant to § 1.1502–28(a)(4), S1's remaining $30 of excluded COD income would reduce the consolidated net operating loss for Year 1 attributable to S2 of $180 by $30 to $150.

(F) *Actual adjustment of stock basis.* Pursuant to paragraph (c)(2)(vi) of this section, § 1.1502–32 is applied to reflect the amount of S2's income and gain included, and unlimited deductions and losses that are absorbed, in the tentative computation of the tax imposed for the year of the disposition and the excluded COD income tentatively applied to reduce attributes and the attributes reduced in respect of the excluded COD income pursuant to the previous step. Under § 1.1502–32(b), the absorption of $20 of S2's loss to offset a portion of P's income and the application of $30 of S1's excluded COD income to reduce attributes attributable to S2 results in a negative adjustment of $50 to P's basis in the S2 stock. P's basis in the S2 stock, therefore, is $550.

(G) *Actual computation of stock gain or loss.* Pursuant to paragraph (c)(2)(vii) of this section, P's actual gain or loss on the sale of the S2 stock is computed using the basis computed in the previous step. Therefore, P recognizes a $50 gain on the disposition of the S2 stock.

(H) *Actual computation of tax imposed.* Pursuant to paragraph (c)(2)(viii) of this section, the tax imposed is computed by taking into account P's $50 gain from the disposition of the S2 stock. Before the application of § 1.1502–28, therefore, the group has a consolidated net operating loss of $220, $40 of which is attributable to S1 and $180 of which is attributable to S2 under the principles of § 1.1502–21(b)(2)(iv).

(I) *Actual reduction of attributes.* Pursuant to paragraph (c)(2)(ix) of this section, sections 108 and 1017 and § 1.1502–28 are then actually applied to reduce attributes remaining after the actual computation of the tax imposed. Pursuant to § 1.1502–28(a)(2), the tax attributes attributable to S1 must first be reduced to take into account its $100 of excluded COD income. Accordingly, the consolidated net operating loss for Year 1 is reduced by $40, the portion of that consolidated net operating loss attributable to S1 under the principles of § 1.1502–21(b)(2)(iv), to $0. Then, pursuant to § 1.1502–28(a)(4), without regard to the limitation imposed by paragraph (c)(2)(ix)(B) of this section, S1's remaining $60 of excluded COD income would reduce S2's net operating loss of $180 to $120. However, the limitation imposed by paragraph (c)(2)(ix)(B) of this section prevents the reduction of S2's loss by more than $30. Therefore, S2's loss of $180 is reduced by $30 to $150 in respect of S1's excluded COD income. The remaining $30 of excluded COD income has no effect.

Example 3. Lower-tier corporation of departing member realizes excluded COD income. (i) *Facts.* P owns all of S1's stock, S2's stock, and S3's stock. S1 owns all of S4's stock. P's basis in S1's stock is $50 and S1's basis in S4's stock is $50. For Year 1, P has $50 of ordinary loss, S1 has $100 of ordinary loss, S2 has $150 of ordinary loss, S3 has $50 of ordinary loss, and S4 has $50 of ordinary loss and $80 of excluded COD income from the discharge of non-intercompany indebtedness. P sells the S1 stock for $100 at the close of Year 1. As of the beginning of Year 2, S4 has Asset A with a fair market value of $10. After the computation of tax imposed for Year 1 and before the application of sections 108 and 1017 and § 1.1502–28, Asset A has a basis of $0.

(ii) *Analysis.* The steps used to compute the tax imposed on the group, to effect the reduction of attributes, and to compute the limitations on the use and reduction of attributes are as follows:

(A) *Computation of limitation on deductions and losses to offset income or gain.* To determine the amount of the limitation under paragraph (c)(2)(i) of this section on S1's and S4's losses and the effect of the absorption of S1's and S4's losses on P's basis in S1's stock under § 1.1502–32(b), P's gain or loss from the sale of S1's stock is not taken into account. The group is tentatively treated as having a consolidated net operating loss of $400. Consequently,

$100 of S1's loss and $50 of S4's loss is limited under paragraph (c)(2)(i) of this section.

(B) *Tentative adjustment of stock basis.* Then, pursuant to paragraph (c)(2)(ii) of this section, § 1.1502–32 is tentatively applied to adjust the basis of S1's stock. For this purpose, adjustments to the basis of S1's stock attributable to S4's realization of excluded COD income and the reduction of attributes in respect of such excluded COD income are not taken into account. There is no adjustment under § 1.1502–32 to the basis of the S1 stock. Therefore, P's basis in the S1 stock for this purpose is $50.

(C) *Tentative computation of stock gain or loss.* Then, P's income, gain, or loss from the sale of S1 stock is computed pursuant to paragraph (c)(2)(iii) of this section using the basis computed in the previous step. Thus, P is treated as recognizing a $50 gain from the sale of the S1 stock.

(D) *Tentative computation of tax imposed.* Pursuant to paragraph (c)(2)(iv) of this section, the tax imposed for the year of disposition is then tentatively computed, taking into account P's $50 gain from the sale of the S1 stock computed pursuant to paragraph (c)(2)(iii) of this section. Although S1's and S4's limited losses cannot be used to offset P's $50 gain from the sale of S1's stock under the rules of this section, $10 of P's loss, $30 of S2's loss, and $10 of S3's loss will offset that gain. Therefore, the group is tentatively treated as having a consolidated net operating loss of $350, $40 of which is attributable to P, $100 of which is attributable to S1, $120 of which is attributable to S2, $40 of which is attributable to S3, and $50 of which is attributable to S4 under the principles of § 1.1502–21(b)(2)(iv).

(E) *Tentative reduction of attributes.* Next, pursuant to paragraph (c)(2)(v) of this section, the rules of sections 108 and 1017 and § 1.1502–28 are tentatively applied to reduce attributes remaining after the tentative computation of the tax imposed. Pursuant to § 1.1502–28(a)(2), the tax attributes attributable to S4 would first be reduced to take into account its $80 of excluded COD. Accordingly, the consolidated net operating loss for Year 1 would be reduced by $50, the portion of the consolidated net operating loss attributable to S4 under the principles of § 1.1502–21(b)(2)(iv), to $300. Then, pursuant to § 1.1502–28(a)(4), S4's remaining $30 of excluded COD income would reduce the consolidated net operating loss for Year 1 that is attributable to other members. Therefore, the consolidated net operating loss for Year 1 would be reduced by $30. Of that amount, $4 is attributable to P, $10 is attributable to S1, $12 is attributable to S2, and $4 is attributable to S3.

(F) *Actual adjustment of stock basis.* Pursuant to paragraph (c)(2)(vi) of this section, § 1.1502–32 is applied to reflect the amount of S1's and S4's income and gain included, and unlimited deductions and losses that are absorbed, in the tentative computation of tax imposed for the year of the disposition and the excluded COD income tentatively applied to reduce attributes and the attributes reduced in respect of the excluded COD income pursuant to the previous step. Under § 1.1502–32(b), the application of $80 of S4's excluded COD income to reduce attributes, and the reduction of S4's loss in the amount of $50 and S1's loss in the amount of $10 in respect of the excluded COD income results in a positive adjustment of $20 to P's basis in the S1 stock. Accordingly, P's basis in S1 stock is $70.

(G) *Actual computation of stock gain or loss.* Pursuant to paragraph (c)(2)(vii) of this section, P's actual gain or loss on the sale of the S1 stock is computed using the basis computed in the previous step. Accordingly, P recognizes a $30 gain on the disposition of the S1 stock.

(H) *Actual computation of tax imposed.* Pursuant to paragraph (c)(2)(viii) of this section, the tax imposed is computed by taking into account P's $30 gain from the sale of S1 stock. Before the application of § 1.1502–28, therefore, the group has a consolidated net operating loss of $370, $44 of which is attributable to P, $100 of which is attributable to S1, $132 of which is attributable to S2, $44 of which is attributable to S3, and $50 of which is attributable to S4.

(I) *Actual reduction of attributes.* Pursuant to paragraph (c)(2)(ix) of this section, sections 108 and 1017 and § 1.1502–28 are then actually applied to reduce attributes remaining after the actual computation of the tax imposed. Pursuant to § 1.1502–28(a)(2), the tax attributes attributable to S4 must first be reduced to take into account its $80 of excluded COD income. Accordingly, the consolidated net operating loss for Year 1 is reduced by $50, the portion of that consolidated net operating loss attributable to S4 under the principles of § 1.1502–21(b)(2)(iv), to $320. Then, pursuant to § 1.1502–28(a)(4), without regard to the limitation imposed by paragraph (c)(2)(ix)(A) of this section, S4's remaining $30 of excluded COD income would reduce the consolidated net operating loss for Year 1 by $30 ($4.12 of the consolidated net operating loss attributable to P, $9.38 of the consolidated net operating loss attributable to S1, $12.38 of the consolidated net operating loss attributable to S2, and $4.12 of the consolidated net operating loss attributable to S3) to $290. However, the limitation imposed by paragraph (c)(2)(ix)(A) of this section prevents the reduction of the consolidated net operating loss attributable to P, S2, and S3 by more than $4, $12, and $4 respectively. The $.62 of excluded COD income that would have otherwise reduced the consolidated net operating loss attributable to P, S2, and S3 is applied to reduce the consolidated net operating loss attributable to S1. Therefore, S1 carries forward $90 of loss.

Example 4. Excess loss account taken into account. (i) *Facts.* P is the common parent of a consolidated group. On Day 1 of Year 2, P acquired all of the stock of S1. As of the beginning of Year 2, S1 had a $30 net operating loss carryover from Year 1, a separate return limitation year. A limitation under § 1.1502–21(c) applies to the use of that loss by the P group. For Years 1 and 2, the P group had no consolidated taxable income or loss. On Day 1 of Year 3, S1 acquired all of the stock of S2 for $10. In Year 3, P had ordinary income of $10, S1 had ordinary income of $25, and S2 had an ordinary loss of $50. In addition, in Year 3, S2 realized $20 of excluded COD income from the discharge of non-intercompany indebtedness. After the discharge of this indebtedness, S2 had no liabilities. As of the beginning of Year 4, S2 had Asset A with a fair market value of $10. After the computation of tax imposed for Year 3 and before the application of sections 108 and 1017 and § 1.1502–28, Asset A has a basis of $0. S2 had no taxable income (or loss) for Year 1 and Year 2.

(ii) *Analysis.* The steps used to compute the tax imposed on the group, to effect the reduction of attributes, and to compute the limitations on the use and reduction of attributes are as follows:

(A) *Computation of limitation on deductions and losses to offset income or gain, tentative basis adjustments, tentative computation of stock gain or loss.* Because it is not initially apparent that there has been a disposition of stock, paragraph (c)(2)(i) of this section does not limit the use of deductions to offset income or gain, no adjustments to the basis are required pursuant to paragraph (c)(2)(ii) of this section, and no stock gain or loss is computed pursuant to paragraph (c)(2)(iii) of this section or taken into account in the tentative computation of tax imposed pursuant to paragraph (c)(2)(iv) of this section.

(B) *Tentative computation of tax imposed.* Pursuant to paragraph (c)(2)(iv) of this section, the tax imposed for Year 3 is tentatively computed. For Year 3, the P group has a consolidated taxable loss of $15, all of which is attributable to S2 under the principles of § 1.1502–21(b)(2)(iv).

(C) *Tentative reduction of attributes.* Next, pursuant to paragraph (c)(2)(v) of this section, the rules of sections 108 and 1017 and § 1.1502–28 are tentatively applied to reduce attributes remaining after the tentative computation of tax imposed. Pursuant to § 1.1502–28(a)(2), the tax attributes attributable to S2 would first be reduced to take into account its $20 of excluded COD income. Accordingly, the consolidated net operating loss for Year 3 is reduced by $15, the portion of that consolidated net operating loss attributable to S2 under the principles of § 1.1502–21(b)(2)(iv), to $0. The remaining $5 of excluded COD income is not applied to reduce attributes as there are no remaining attributes that are subject to reduction.

(D) *Actual adjustment of stock basis.* Pursuant to paragraph (c)(2)(vi) of this section, § 1.1502–32 is applied to reflect the amount of S2's income and gain included, and unlimited deductions and losses that are absorbed, in the tentative computation of tax imposed for the year of the disposition and the excluded COD income tentatively applied to reduce attributes and the attributes reduced in respect of the excluded COD income pursuant to the previous step. Under § 1.1502–32, the absorption of $35 of S2's loss, the application of $15 in respect of S2's excluded COD income to reduce attributes, and the reduction of $15 in respect of the loss attributable to S2 reduced in respect of the excluded COD income results in a negative

adjustment of $35 to the basis of the S2 stock. Therefore, S1 has an excess loss account of $25 in the S2 stock.

(E) *Actual computation of stock gain or loss.* Pursuant to paragraph (c)(2)(vii) of this section, S1's actual gain or loss, if any, on the S2 stock is computed. Because S2 realized $5 of excluded COD income that was not applied to reduce attributes, pursuant to § 1.1502–19(b)(1) and (c)(1)(iii)(B), S1 is required to take into account $5 of its excess loss account in the S2 stock.

(F) *Actual computation of tax imposed.* Pursuant to paragraph (c)(2)(viii) of this section, the tax imposed is computed by taking into account the $5 of the excess loss account in the S2 stock required to be taken into account. See § 1.1502–28(b)(6) (requiring an excess loss account that is required to be taken into account as a result of the application of § 1.1502–19(c)(1)(iii)(B) to be included in the group's tax return for the year that includes the date of the debt discharge). However, pursuant to paragraph (c)(2)(viii) of this section, such amount may not be offset by any of the consolidated net operating loss attributable to S2. It may, however, subject to applicable limitations, be offset by the separate net operating loss of S1 from Year 1.

(G) *Actual reduction of attributes.* Pursuant to paragraph (c)(2)(ix) of this section, sections 108 and 1017 and § 1.1502–28 are then actually applied to reduce attributes remaining after the actual computation of the tax imposed. Attributes will be actually reduced in the same way that they were tentatively reduced.

(6) *Additional rules for multiple dispositions.* [Reserved]

(7) *Effective date.* This paragraph (c) applies to dispositions of subsidiary stock that occur after March 22, 2005. Taxpayers may apply § 1.1502–11(c) of REG–167265–03 (2004–15 IRB 730) (see § 601.601(d)(2) of this chapter) in whole, but not in part, to any disposition of subsidiary stock that occurs on or before March 22, 2005, if a member of the group realized excluded COD income after August 29, 2003, in the taxable year that includes the date of the disposition of such subsidiary stock.

* * * * *

■ **Par. 3.** Section 1.1502–13 is amended as follows:

■ 1. Three sentences are added at the end of paragraph (g)(3)(i)(A).

■ 2. Paragraph (g)(3)(ii)(B) is revised.

■ 3. Paragraph (g)(3)(ii)(C) is added.

The revision and additions read as follows:

§ 1.1502–13 Intercompany transactions.

* * * * *

(g) * * *

(3) * * *

(i) * * *

(A) * * * For purposes of the preceding sentence, a reduction of the basis of an intercompany obligation pursuant to sections 108 and 1017 and 1.1502–28 is not a comparable transaction. Notwithstanding paragraph (l) of this section, the preceding sentence applies to transactions or events occurring during a taxable year the original return for which is due (without regard to extensions) after March 21, 2005. For transactions or events occurring during a taxable year the original return for which is due (without regard to extensions) on or before March 21, 2005, and after March 12, 2004, see § 1.1502–13T(g)(3)(ii)(B)(*3*) as contained in 26 CFR part 1 revised as of April 1, 2004.

* * * * *

(ii) * * *

(B) *Timing and attributes.* For purposes of applying the matching rule and the acceleration rule—

(*1*) Paragraph (c)(6)(ii) of this section (limitation on treatment of intercompany income or gain as excluded from gross income) does not apply to prevent any intercompany income or gain from being excluded from gross income;

(*2*) Paragraph (c)(6)(i) of this section (treatment of intercompany items if corresponding items are excluded or nondeductible) will not apply to exclude any amount of income or gain attributable to a reduction of the basis of an intercompany obligation pursuant to sections 108 and 1017 and § 1.1502–28; and

(*3*) Any gain or loss from an intercompany obligation is not subject to section 108(a), section 354 or section 1091.

(C) *Effective date.* Notwithstanding paragraph (l) of this section, paragraph (g)(3)(ii)(B) of this section applies to transactions or events occurring during a taxable year the original return for which is due (without regard to extensions) after March 12, 2004. For transactions or events occurring during a taxable year the original return for which is due (without regard to extensions) on or before March 12, 2004, see § 1.1502–13(g)(3)(ii)(B) as contained in 26 CFR part 1 revised as of April 1, 2003.

* * * * *

§ 1.1502–13T [Removed]

■ **Par. 4.** Section 1.1502–13T is removed.

■ **Par. 5.** Section 1.1502–19 is amended as follows:

■ 1. Paragraph (b)(1) is revised.

■ 2. Paragraph (h)(2)(ii) is revised.

The revisions read as follows:

§ 1.1502–19 Excess loss accounts.

* * * * *

(b) * * *

(1) *Operating rules*—(i) *General rule.* Except as provided in paragraph (b)(1)(ii) of this section, if P is treated under this section as disposing of a share of S's stock, P takes into account its excess loss account in the share as income or gain from the disposition.

(ii) *Special limitation on amount taken into account.* Notwithstanding paragraph (b)(1)(i) of this section, if P is treated as disposing of a share of S's stock as a result of the application of paragraph (c)(1)(iii)(B) of this section, the aggregate amount of its excess loss account in the shares of S's stock that P takes into account as income or gain from the disposition shall not exceed the amount of S's indebtedness that is discharged that is neither included in gross income nor treated as tax-exempt income under § 1.1502–32(b)(3)(ii)(C)(*1*). If more than one share of S's stock has an excess loss account, such excess loss accounts shall be taken into account pursuant to the preceding sentence, to the extent possible, in a manner that equalizes the excess loss accounts in S's shares that have an excess loss account.

(iii) *Treatment of disposition.* Except as provided in paragraph (b)(4) of this section, the disposition is treated as a sale or exchange for purposes of determining the character of the income or gain.

* * * * *

(h) * * *

(2) * * *

(ii) *Application of special limitation.* If P was treated as disposing of stock of S because S was treated as worthless as a result of the application of paragraph (c)(1)(iii)(B) of this section after August 29, 2003, the amount of P's income, gain, deduction, or loss, and the stock basis reflected in that amount, are determined or redetermined with regard to paragraph (b)(1)(ii) of this section. If P was treated as disposing of stock of S because S was treated as worthless as a result of the application of paragraph (c)(1)(iii)(B) of this section on or before August 29, 2003, the group may determine or redetermine the amount of P's income, gain, deduction, or loss, and the stock basis reflected in that amount with regard to paragraph (b)(1)(ii) of this section.

* * * * *

§ 1.1502–19T [Removed]

■ **Par. 6.** Section 1.1502–19T is removed.

■ **Par. 7.** In § 1.1502–21, paragraphs (b)(1), (b)(2)(ii)(A), (b)(2)(iv), (c)(2)(vii), and (h)(6) are revised to read as follows:

§ 1.1502–21 Net operating losses.

* * * * *

(b) * * *

(1) *Carryovers and carrybacks generally.* The net operating loss

carryovers and carrybacks to a taxable year are determined under the principles of section 172 and this section. Thus, losses permitted to be absorbed in a consolidated return year generally are absorbed in the order of the taxable years in which they arose, and losses carried from taxable years ending on the same date, and which are available to offset consolidated taxable income for the year, generally are absorbed on a pro rata basis. In addition, the amount of any CNOL absorbed by the group in any year is apportioned among members based on the percentage of the CNOL attributable to each member as of the beginning of the year. The percentage of the CNOL attributable to a member is determined pursuant to paragraph (b)(2)(iv)(B) of this section. Additional rules provided under the Internal Revenue Code or regulations also apply. See, *e.g.,* section 382(l)(2)(B) (if losses are carried from the same taxable year, losses subject to limitation under section 382 are absorbed before losses that are not subject to limitation under section 382). See paragraph (c)(1)(iii) of this section, *Example 2,* for an illustration of pro rata absorption of losses subject to a SRLY limitation. See § 1.1502–21T(b)(3)(v) regarding the treatment of any loss that is treated as expired under § 1.1502–35T(f)(1).

(2) * * *

(ii) *Special rules*—(A) *Year of departure from group.* If a corporation ceases to be a member during a consolidated return year, net operating loss carryovers attributable to the corporation are first carried to the consolidated return year, and then are subject to reduction under section 108 and § 1.1502–28 in respect of discharge of indebtedness income that is realized by a member of the group and that is excluded from gross income under section 108(a). Only the amount so attributable that is not absorbed by the group in that year or reduced under section 108 and § 1.1502–28 is carried to the corporation's first separate return year. For rules concerning a member departing a subgroup, see paragraph (c)(2)(vii) of this section.

* * * * *

(iv) *Operating rules*—(A) *Amount of CNOL attributable to a member.* The amount of a CNOL that is attributable to a member shall equal the product of the CNOL and the percentage of the CNOL attributable to such member.

(B) *Percentage of CNOL attributable to a member—(1) In general.* Except as provided in paragraph (b)(2)(iv)(B)(*2*) of this section, the percentage of the CNOL attributable to a member shall equal the separate net operating loss of the member for the year of the loss divided by the sum of the separate net operating losses for that year of all members having such losses. For this purpose, the separate net operating loss of a member is determined by computing the CNOL by reference to only the member's items of income, gain, deduction, and loss, including the member's losses and deductions actually absorbed by the group in the taxable year (whether or not absorbed by the member).

(2) *Special rules*—(i) *Carryback to a separate return year.* If a portion of the CNOL attributable to a member for a taxable year is carried back to a separate return year, the percentage of the CNOL attributable to each member as of immediately after such portion of the CNOL is carried back shall be recomputed pursuant to paragraph (b)(2)(iv)(B)(*2*)(*iv*) of this section.

(*ii*) *Excluded discharge of indebtedness income.* If during a taxable year a member realizes discharge of indebtedness income that is excluded from gross income under section 108(a) and such amount reduces any portion of the CNOL attributable to any member pursuant to section 108 and § 1.1502–28, the percentage of the CNOL attributable to each member as of immediately after the reduction of attributes pursuant to sections 108 and 1017 and § 1.1502–28 shall be recomputed pursuant to paragraph (b)(2)(iv)(B)(*2*)(*iv*) of this section.

(*iii*) *Departing member.* If during a taxable year a member that had a separate net operating loss for the year of the CNOL ceases to be a member, the percentage of the CNOL attributable to each member as of the first day of the following consolidated return year shall be recomputed pursuant to paragraph (b)(2)(iv)(B)(*2*)(*iv*) of this section.

(*iv*) *Recomputed percentage.* The recomputed percentage of the CNOL attributable to each member shall equal the unabsorbed CNOL attributable to the member at the time of the recomputation divided by the sum of the unabsorbed CNOL attributable to all of the members at the time of the recomputation. For purposes of the preceding sentence, a CNOL that is reduced pursuant to section 108 and § 1.1502–28 or that is otherwise permanently disallowed or eliminated shall be treated as absorbed.

* * * * *

(c) * * *

(2) * * *

(vii) *Corporations that leave a SRLY subgroup.* If a loss member ceases to be affiliated with a SRLY subgroup, the amount of the member's remaining SRLY loss from a specific year is determined pursuant to the principles of paragraphs (b)(2)(ii)(A) and (b)(2)(iv) of this section.

* * * * *

(h) * * *

(6) *Certain prior periods.* Paragraphs (b)(1), (b)(2)(ii)(A), (b)(2)(iv), and (c)(2)(vii) of this section shall apply to taxable years the original return for which the due date (without regard to extensions) is after March 21, 2005. Paragraph (b)(2)(ii)(A) of this section and § 1.1502–21T(b)(1), (b)(2)(iv), and (c)(2)(vii) as contained in 26 CFR part 1 revised as of April 1, 2004, shall apply to taxable years the original return for which the due date (without regard to extensions) is on or before March 21, 2005, and after August 29, 2003. For taxable years the original return for which the due date (without regard to extensions) is on or before August 29, 2003, see paragraphs (b)(1), (b)(2)(ii)(A), (b)(2)(iv), and (c)(2)(vii) of this section and § 1.1502–21T(b)(1) as contained in 26 CFR part 1 revised as of April 1, 2003.

* * * * *

■ **Par. 8.** Section 1.1502–21T is amended as follows:

■ 1. Paragraphs (a) through (b)(2)(v) are revised.

■ 2. Paragraphs (c)(1) through (h)(7) are revised.

The revisions read as follows:

§ 1.1502–21T Net operating losses (temporary).

(a) through (b)(2)(v) [Reserved]. For further guidance, see § 1.1502–21(a) through (b)(2)(v).

* * * * *

(c)(1) through (h)(7) [Reserved]. For further guidance, see § 1.1502–21(c)(1) through (h)(7).

* * * * *

■ **Par. 9.** Section 1.1502–28 is added to read as follows:

§ 1.1502–28 Consolidated section 108.

(a) *In general.* This section sets forth rules for the application of section 108(a) and the reduction of tax attributes pursuant to section 108(b) when a member of the group realizes discharge of indebtedness income that is excluded from gross income under section 108(a) (excluded COD income).

(1) *Application of section 108(a).* Section 108(a)(1)(A) and (B) is applied separately to each member that realizes excluded COD income. Therefore, the limitation of section 108(a)(3) on the amount of discharge of indebtedness income that is treated as excluded COD income is determined based on the assets (including stock and securities of

other members) and liabilities (including liabilities to other members) of only the member that realizes excluded COD income.

(2) *Reduction of tax attributes attributable to the debtor*—(i) *In general.* With respect to a member that realizes excluded COD income in a taxable year, the tax attributes attributable to that member (and its direct and indirect subsidiaries to the extent required by section 1017(b)(3)(D) and paragraph (a)(3) of this section), including basis of assets and losses and credits arising in separate return limitation years, shall be reduced as provided in sections 108 and 1017 and this section. Basis of subsidiary stock, however, shall not be reduced below zero pursuant to paragraph (a)(2) of this section (including when subsidiary stock is treated as depreciable property under section 1017(b)(3)(D) when there is an election under section 108(b)(5)).

(ii) *Consolidated tax attributes attributable to a member.* For purposes of this section, the amount of a consolidated tax attribute (*e.g.,* a consolidated net operating loss) that is attributable to a member shall be determined pursuant to the principles of § 1.1502–21(b)(2)(iv). In addition, if the member is a member of a separate return limitation year subgroup, the amount of a tax attribute that arose in a separate return limitation year that is attributable to that member shall also be determined pursuant to the principles of § 1.1502–21(b)(2)(iv).

(3) *Look-through rules*—(i) *Priority of section 1017(b)(3)(D).* If a member treats stock of a subsidiary as depreciable property pursuant to section 1017(b)(3)(D), the basis of the depreciable property of such subsidiary shall be reduced pursuant to section 1017(b)(3)(D) prior to the application of paragraph (a)(3)(ii) of this section.

(ii) *Application of additional look-through rule.* If the basis of stock of a corporation (the lower-tier member) that is owned by another corporation (the higher-tier member) is reduced pursuant to sections 108 and 1017 and paragraph (a)(2) of this section (but not as a result of treating subsidiary stock as depreciable property pursuant to section 1017(b)(3)(D)), and both of such corporations are members of the same consolidated group on the last day of the higher-tier member's taxable year that includes the date on which the excluded COD income is realized or the first day of the higher-tier member's taxable year that follows the taxable year that includes the date on which the excluded COD income is realized, solely for purposes of sections 108 and 1017 and this section other than paragraphs (a)(4) and (b)(1) of this section, the lower-tier member shall be treated as realizing excluded COD income on the last day of the taxable year of the higher-tier member that includes the date on which the higher-tier member realized the excluded COD income. The amount of such excluded COD income shall be the amount of such basis reduction. Accordingly, the tax attributes attributable to such lower-tier member shall be reduced as provided in sections 108 and 1017 and this section. To the extent that the excluded COD income realized by the lower-tier member pursuant to this paragraph (a)(3) does not reduce a tax attribute attributable to the lower-tier member, such excluded COD income shall not be applied to reduce tax attributes attributable to any member under paragraph (a)(4) of this section and shall not cause an excess loss account to be taken into account under § 1.1502–19(b)(1) and (c)(1)(iii)(B).

(4) *Reduction of certain tax attributes attributable to other members.* To the extent that, pursuant to paragraph (a)(2) of this section, the excluded COD income is not applied to reduce the tax attributes attributable to the member that realizes the excluded COD income, after the application of paragraph (a)(3) of this section, such amount shall be applied to reduce the remaining consolidated tax attributes of the group, other than consolidated tax attributes to which a SRLY limitation applies, as provided in section 108 and this section. Such amount also shall be applied to reduce the tax attributes attributable to members that arose (or are treated as arising) in a separate return limitation year to the extent that the member that realizes excluded COD income is a member of the separate return limitation year subgroup with respect to such attribute if a SRLY limitation applies to the use of such attribute. In addition, such amount shall be applied to reduce the tax attributes attributable to members that arose in a separate return year or that arose (or are treated as arising) in a separate return limitation year if no SRLY limitation applies to the use of such attribute. The reduction of each tax attribute pursuant to the three preceding sentences shall be made in the order prescribed in section 108(b)(2) and pursuant to the principles of § 1.1502–21(b)(1). Except as otherwise provided in this paragraph (a)(4), a tax attribute that arose in a separate return year or that arose (or is treated as arising) in a separate return limitation year is not subject to reduction pursuant to this paragraph (a)(4). Basis in assets is not subject to reduction pursuant to this paragraph (a)(4). Finally, to the extent that the realization of excluded COD income by a member pursuant to paragraph (a)(3) does not reduce a tax attribute attributable to such lower-tier member, such excess shall not be applied to reduce tax attributes attributable to any member pursuant to this paragraph (a)(4).

(b) *Special rules*—(1) *Multiple debtor members*—(i) *Reduction of tax attributes attributable to debtor members prior to reduction of consolidated tax attributes.* If in a single taxable year multiple members realize excluded COD income, paragraphs (a)(2) and (3) of this section shall apply with respect to the excluded COD income of each such member before the application of paragraph (a)(4) of this section.

(ii) *Reduction of higher-tier debtor's tax attributes.* If in a single taxable year multiple members realize excluded COD income and one such member is a higher-tier member of another such member, paragraphs (a)(2) and (3) of this section shall be applied with respect to the excluded COD income of the higher-tier member before such paragraphs are applied to the excluded COD income of the other such member. In applying the rules of paragraph (a)(2) and (3) of this section with respect to the excluded COD income of the higher-tier member, the liabilities that give rise to the excluded COD income of the other such member shall not be treated as discharged for purposes of computing the limitation on basis reduction under section 1017(b)(2). A member (the first member) is a higher-tier member of another member (the second member) if the first member is the common parent or investment adjustments under § 1.1502–32 with respect to the stock of the second member would affect investment adjustments with respect to the stock of the first member.

(iii) *Reduction of additional tax attributes.* If more than one member realizes excluded COD income that has not been applied to reduce a tax attribute attributable to such member (the remaining COD amount) and the remaining tax attributes available for reduction under paragraph (a)(4) of this section are less than the aggregate of the remaining COD amounts, after the application of paragraph (a)(2) of this section, each such member's remaining COD amount shall be applied on a pro rata basis (based on the relative remaining COD amounts), pursuant to paragraph (a)(4) of this section, to reduce such remaining available tax attributes.

(iv) *Ownership of lower-tier member by multiple higher-tier members.* If stock

of a corporation is held by more than one higher-tier member of the group and more than one such higher-tier member reduces its basis in such stock, then under paragraph (a)(3) of this section the excluded COD income resulting from the stock basis reductions shall be applied on a pro rata basis (based on the amount of excluded COD income caused by each basis reduction) to reduce the attributes of the corporation.

(v) *Ownership of lower-tier member by multiple higher-tier members in multiple groups.* If a corporation is a member of one group (the first group) on the last day of the first group's higher-tier member's taxable year that includes the date on which that higher-tier member realizes excluded COD income and is a member of another group (the second group) on the following day and the first group's higher-tier member and the second group's higher-tier member both reduce their basis in the stock of such corporation pursuant to sections 108 and 1017 and this section, paragraph (a)(3) of this section shall first be applied in respect of the excluded COD income that results from the reduction of the basis of the corporation's stock owned by the first group's higher-tier member and then shall be applied in respect of the excluded COD income that results from the reduction of the basis of the corporation's stock owned by the second group's higher-tier member.

(2) *Election under section 108(b)(5)*—(i) *Availability of election.* The group may make the election described in section 108(b)(5) for any member that realizes excluded COD income. The election is made separately for each member. Therefore, an election may be made for one member that realizes excluded COD income (either actually or pursuant to paragraph (a)(3) of this section) while another election, or no election, may be made for another member that realizes excluded COD income (either actually or pursuant to paragraph (a)(3) of this section). See § 1.108–4 for rules relating to the procedure for making an election under section 108(b)(5).

(ii) *Treatment of shares with an excess loss account.* For purposes of applying section 108(b)(5)(B), the basis of stock of a subsidiary that has an excess loss account shall be treated as zero.

(3) *Application of section 1017*—(i) *Timing of basis reduction.* Basis of property shall be subject to reduction pursuant to the rules of sections 108 and 1017 and this section after the determination of the tax imposed by chapter 1 of the Internal Revenue Code for the taxable year during which the member realizes excluded COD income and any prior years and coincident with the reduction of other attributes pursuant to section 108 and this section. However, only the basis of property held as of the beginning of the taxable year following the taxable year during which the excluded COD income is realized is subject to reduction pursuant to sections 108 and 1017 and this section.

(ii) *Limitation of section 1017(b)(2).* The limitation of section 1017(b)(2) on the reduction in basis of property shall be applied by reference to the aggregate of the basis of the property held by the member that realizes excluded COD income, not the aggregate of the basis of the property held by all of the members of the group, and the liabilities of such member, not the aggregate liabilities of all of the members of the group.

(iii) *Treatment of shares with an excess loss account.* For purposes of applying section 1017(b)(2) and § 1.1017–1, the basis of stock of a subsidiary that has an excess loss account shall be treated as zero.

(4) *Application of section 1245.* Notwithstanding section 1017(d)(1)(B), a reduction of the basis of subsidiary stock is treated as a deduction allowed for depreciation only to the extent that the amount by which the basis of the subsidiary stock is reduced exceeds the total amount of the attributes attributable to such subsidiary that are reduced pursuant to the subsidiary's consent under section 1017(b)(3)(D) or as a result of the application of paragraph (a)(3)(ii) of this section.

(5) *Reduction of basis of intercompany obligations and former intercompany obligations*—(i) *Intercompany obligations that cease to be intercompany obligations.* If excluded COD income is realized in a consolidated return year in which an intercompany obligation becomes an obligation that is not an intercompany obligation because the debtor or the creditor becomes a nonmember or because the assets of the creditor are acquired by a nonmember in a transaction to which section 381(a) applies, the basis of such intercompany obligation is not available for reduction in respect of such excluded COD income pursuant to sections 108 and 1017 and this section. However, in such cases, the basis of the debt treated as new debt issued under § 1.1502–13(g)(3) is available for reduction in respect of such excluded COD income pursuant to sections 108 and 1017 and this section.

(ii) *Intercompany obligations.* The reduction of the basis of an intercompany obligation pursuant to sections 108 and 1017 and this section shall not result in the satisfaction and reissuance of the obligation under § 1.1502–13(g). Therefore, any income or gain (or reduction of loss or deduction) attributable to a reduction of the basis of an intercompany obligation will be taken into account when § 1.1502–13(g)(3) applies to such obligation. Furthermore, § 1.1502–13(c)(6)(i) (regarding the treatment of intercompany items if corresponding items are excluded or nondeductible) will not apply to exclude any amount of income or gain attributable to a reduction of the basis of an intercompany obligation pursuant to sections 108 and 1017 and this section. See § 1.1502–13(g)(3)(i)(A) and (ii)(B)(*2*).

(6) *Taking into account excess loss account*—(i) *Determination of inclusion.* The determination of whether any portion of an excess loss account in a share of stock of a subsidiary that realizes excluded COD income is required to be taken into account as a result of the application of § 1.1502–19(c)(1)(iii)(B) is made after the determination of the tax imposed by chapter 1 of the Internal Revenue Code for the year during which the member realizes excluded COD income (without regard to whether any portion of an excess loss account in a share of stock of the subsidiary is required to be taken into account) and any prior years, after the reduction of tax attributes pursuant to sections 108 and 1017 and this section, and after the adjustment of the basis of the share of stock of the subsidiary pursuant to § 1.1502–32 to reflect the amount of the subsidiary's deductions and losses that are absorbed in the computation of taxable income (or loss) for the year of the disposition and any prior years, and the excluded COD income applied to reduce attributes and the attributes reduced in respect thereof. See § 1.1502–11(c) for special rules related to the computation of tax that apply when an excess loss account is required to be taken into account.

(ii) *Timing of inclusion.* To the extent an excess loss account in a share of stock of a subsidiary that realizes excluded COD income is required to be taken into account as a result of the application of § 1.1502–19(c)(1)(iii)(B), such amount shall be included on the group's tax return for the taxable year that includes the date on which the subsidiary realizes such excluded COD income.

(7) *Dispositions of stock.* See § 1.1502–11(c) for limitations on the reduction of tax attributes when a member disposes of stock of another member (including dispositions that result from the application of § 1.1502–

19(c)(1)(iii)(B)) during a taxable year in which any member realizes excluded COD income.

(8) *Departure of member.* If the taxable year of a member (the departing member) during which such member realizes excluded COD income ends on or prior to the last day of the consolidated return year and, on the first day of the taxable year of such member that follows the taxable year during which such member realizes excluded COD income, such member is not a member of the group and does not have a successor member (within the meaning of paragraph (b)(10) of this section), all tax attributes listed in section 108(b)(2) that remain after the determination of the tax imposed that belong to members of the group (including the departing member and subsidiaries of the departing member) shall be subject to reduction as provided in section 108 and the regulations promulgated thereunder (including § 1.108–7(c), if applicable) and this section.

(9) *Intragroup reorganization*—(i) *In general.* If the taxable year of a member during which such member realizes excluded COD income ends prior to the last day of the consolidated return year and, on the first day that follows the taxable year of such member during which such member realizes excluded COD income, such member has a successor member, for purposes of applying the rules of sections 108 and 1017 and this section, notwithstanding § 1.108–7, the successor member shall be treated as the member that realized the excluded COD income. Thus, all attributes attributable to the successor member listed in section 108(b)(2) (including attributes that were attributable to the successor member prior to the date such member became a successor member) are available for reduction under paragraph (a)(2) of this section.

(ii) *Group structure change.* If a member that realizes excluded COD income acquires the assets of the common parent of the consolidated group in a transaction to which section 381(a) applies and succeeds such common parent under the principles of § 1.1502–75(d)(2) as the common parent of the consolidated group, the member's attributes that remain after the determination of tax for the group for the consolidated return year during which the excluded COD income is realized (and any prior years) (including attributes that were attributable to the former common parent prior to the date of the transaction to which section 381(a) applies) shall be available for reduction under paragraph (a)(2) of this section.

(10) *Definition of successor member.* A successor member means a person to which the member that realizes excluded COD income (or a successor member) transfers its assets in a transaction to which section 381(a) applies if such transferee is a member of the group immediately after the transaction.

(11) *Non-application of next day rule.* For purposes of applying the rules of sections 108 and 1017 and this section, the next day rule of § 1.1502–76(b)(1)(ii)(B) shall not apply to treat a member's excluded COD income as realized at the beginning of the day following the day on which such member's status as a member changes.

(c) *Examples.* The principles of paragraphs (a) and (b) of this section are illustrated by the following examples. Unless otherwise indicated, no election under section 108(b)(5) has been made and the taxable year of all consolidated groups is the calendar year. The examples are as follows:

Example 1. (i) *Facts.* P is the common parent of a consolidated group that includes subsidiary S1. P owns 80 percent of the stock of S1. In Year 1, the P group sustained a $250 consolidated net operating loss. Under the principles of § 1.1502–21(b)(2)(iv), of that amount, $125 was attributable to P and $125 was attributable to S1. On Day 1 of Year 2, P acquired 100 percent of the stock of S2, and S2 joined the P group. As of the beginning of Year 2, S2 had a $50 net operating loss carryover from Year 1, a separate return limitation year. In Year 2, the P group sustained a $200 consolidated net operating loss. Under the principles of § 1.1502–21(b)(2)(iv), of that amount, $90 was attributable to P, $70 was attributable to S1, and $40 was attributable to S2. In Year 3, S2 realized $200 of excluded COD income from the discharge of non-intercompany indebtedness. In that same year, the P group sustained a $50 consolidated net operating loss, of which $40 was attributable to S1 and $10 was attributable to S2 under the principles of § 1.1502–21(b)(2)(iv). As of the beginning of Year 4, S2 had Asset A with a fair market value of $10. After the computation of tax imposed for Year 3 and before the application of sections 108 and 1017 and this section, Asset A had a basis of $40 and S2 had no liabilities.

(ii) *Analysis*—(A) *Reduction of tax attributes attributable to debtor.* Pursuant to paragraph (a)(2) of this section, the tax attributes attributable to S2 must first be reduced to take into account its excluded COD income in the amount of $200.

(*1*) *Reduction of net operating losses.* Pursuant to section 108(b)(2)(A) and paragraph (a) of this section, the net operating loss and the net operating loss carryovers attributable to S2 under the principles of § 1.1502–21(b)(2)(iv) are reduced in the order prescribed by section 108(b)(4)(B). Accordingly, the consolidated net operating loss for Year 3 is reduced by $10, the portion of the consolidated net operating loss attributable to S2, to $40. Then, again pursuant to section 108(b)(4)(B), S2's net operating loss carryover of $50 from its separate return limitation year is reduced to $0. Finally, the consolidated net operating loss carryover from Year 2 is reduced by $40, the portion of that consolidated net operating loss carryover attributable to S2, to $160.

(*2*) *Reduction of basis.* Following the reduction of the net operating loss and the net operating loss carryovers attributable to S2, S2 reduces its basis in its assets pursuant to section 1017 and § 1.1017–1. Accordingly, S2 reduces its basis in Asset A by $40, from $40 to $0.

(B) *Reduction of remaining consolidated tax attributes.* The remaining $60 of excluded COD income then reduces consolidated tax attributes pursuant to paragraph (a)(4) of this section. In particular, the remaining $40 consolidated net operating loss for Year 3 is reduced to $0. Then, the consolidated net operating loss carryover from Year 1 is reduced by $20 from $250 to $230. Pursuant to paragraph (a)(4) of this section, a pro rata amount of the consolidated net operating loss carryover from Year 1 that is attributable to each of P and S1 is treated as reduced. Therefore, $10 of the consolidated net operating loss carryover from Year 1 that is attributable to each of P and S1 is treated as reduced.

Example 2. (i) *Facts.* P is the common parent of a consolidated group that includes subsidiaries S1 and S2. P owns 100 percent of the stock of S1 and S1 owns 100 percent of the stock of S2. None of P, S1, or S2 has a separate return limitation year. In Year 1, the P group sustained a $50 consolidated net operating loss. Under the principles of § 1.1502–21(b)(2)(iv), of that amount, $10 was attributable to P, $20 was attributable to S1, and $20 was attributable to S2. In Year 2, the P group sustained a $70 consolidated net operating loss. Under the principles of § 1.1502–21(b)(2)(iv), of that amount, $30 was attributable to P, $30 was attributable to S1, and $10 was attributable to S2. In Year 3, S1 realized $170 of excluded COD income from the discharge of non-intercompany indebtedness. In that same year, the P group sustained a $50 consolidated net operating loss, of which $10 was attributable to S1 and $40 was attributable to S2 under the principles of § 1.1502–21(b)(2)(iv). As of the beginning of Year 4, S1's sole asset was the stock of S2, and S2 had Asset A with a $10 value. After the computation of tax imposed for Year 3 and before the application of sections 108 and 1017 and this section, S1 had an $80 basis in the S2 stock, Asset A had a basis of $0, and neither S1 nor S2 had any liabilities.

(ii) *Analysis*—(A) *Reduction of tax attributes attributable to debtor.* Pursuant to paragraph (a)(2) of this section, the tax attributes attributable to S1 must first be reduced to take into account its excluded COD income in the amount of $170.

(*1*) *Reduction of net operating losses.* Pursuant to section 108(b)(2)(A) and paragraph (a) of this section, the net operating loss and the net operating loss carryovers attributable to S1 under the

principles of § 1.1502–21(b)(2)(iv) are reduced in the order prescribed by section 108(b)(4)(B). Accordingly, the consolidated net operating loss for Year 3 is reduced by $10, the portion of the consolidated net operating loss for Year 3 attributable to S1, to $40. Then, the consolidated net operating loss carryover from Year 1 is reduced by $20, the portion of that consolidated net operating loss carryover attributable to S1, to $30, and the consolidated net operating loss carryover from Year 2 is reduced by $30, the portion of that consolidated net operating loss carryover attributable to S1, to $40.

(*2*) *Reduction of basis.* Following the reduction of the net operating loss and the net operating loss carryovers attributable to S1, S1 reduces its basis in its assets pursuant to section 1017 and § 1.1017–1. Accordingly, S1 reduces its basis in the stock of S2 by $80, from $80 to $0.

(*3*) *Tiering down of stock basis reduction.* Pursuant to paragraph (a)(3) of this section, for purposes of sections 108 and 1017 and this section, S2 is treated as realizing $80 of excluded COD income. Pursuant to section 108(b)(2)(A) and paragraph (a) of this section, therefore, the net operating loss and net operating loss carryovers attributable to S2 under the principles of § 1.1502–21(b)(2)(iv) are reduced in the order prescribed by section 108(b)(4)(B). Accordingly, the consolidated net operating loss for Year 3 is reduced by an additional $40, the portion of the consolidated net operating loss for Year 3 attributable to S2, to $0. Then, the consolidated net operating loss carryover from Year 1 is reduced by $20, the portion of that consolidated net operating loss carryover attributable to S2, to $10. Then, the consolidated net operating loss carryover from Year 2 is reduced by $10, the portion of that consolidated net operating loss carryover attributable to S2, to $30. S2's remaining $10 of excluded COD income does not reduce consolidated tax attributes attributable to P or S1 under paragraph (a)(4) of this section.

(B) *Reduction of remaining consolidated tax attributes.* Finally, pursuant to paragraph (a)(4) of this section, S1's remaining $30 of excluded COD income reduces the remaining consolidated tax attributes. In particular, the remaining $10 consolidated net operating loss carryover from Year 1 is reduced by $10 to $0, and the remaining $30 consolidated net operating loss carryover from Year 2 is reduced by $20 to $10.

Example 3. (i) *Facts.* P is the common parent of a consolidated group that includes subsidiaries S1, S2, and S3. P owns 100 percent of the stock of S1, S1 owns 100 percent of the stock of S2, and S2 owns 100 percent of the stock of S3. None of P, S1, S2, or S3 had a separate return limitation year prior to Year 1. In Year 1, the P group sustained a $150 consolidated net operating loss. Under the principles of § 1.1502–21(b)(2)(iv), of that amount, $50 was attributable to S2, and $100 was attributable to S3. In Year 2, the P group sustained a $50 consolidated net operating loss. Under the principles of § 1.1502–21(b)(2)(iv), of that amount, $40 was attributable to S1 and $10 was attributable to S2. In Year 3, S1 realized $170 of excluded COD income from the discharge of non-intercompany indebtedness. In that same year, the P group sustained a $50 consolidated net operating loss, of which $10 was attributable to S1, $20 was attributable to S2, and $20 was attributable to S3 under the principles of § 1.1502–21(b)(2)(iv). At the beginning of Year 4, S1's only asset was the stock of S2, and S2's only asset was the stock of S3 with a value of $10. After the computation of tax imposed for Year 3 and before the application of sections 108 and 1017 and this section, S1's stock of S2 had a basis of $120 and S2's stock of S3 had a basis of $180. In addition, none of S1, S2, and S3 had any liabilities.

(ii) *Analysis*—(A) *Reduction of tax attributes attributable to debtor.* Pursuant to paragraph (a)(2) of this section, the tax attributes attributable to S1 must first be reduced to take into account its excluded COD income in the amount of $170.

(*1*) *Reduction of net operating losses.* Pursuant to section 108(b)(2)(A) and paragraph (a) of this section, the net operating loss and the net operating loss carryovers attributable to S1 under the principles of § 1.1502–21(b)(2)(iv) are reduced in the order prescribed by section 108(b)(4)(B). Accordingly, the consolidated net operating loss for Year 3 is reduced by $10, the portion of the consolidated net operating loss attributable to S1, to $40. Then, the consolidated net operating loss carryover from Year 2 is reduced by $40, the portion of that consolidated net operating loss carryover attributable to S1, to $10.

(*2*) *Reduction of basis.* Following the reduction of the net operating loss and the net operating loss carryovers attributable to S1, S1 reduces its basis in its assets pursuant to section 1017 and § 1.1017–1. Accordingly, S1 reduces its basis in the stock of S2 by $120, from $120 to $0.

(B) *Tiering down of stock basis reduction to S2.* Pursuant to paragraph (a)(3) of this section, for purposes of sections 108 and 1017 and this section, S2 is treated as realizing $120 of excluded COD income. Pursuant to section 108(b)(2)(A) and paragraph (a) of this section, therefore, the net operating loss and net operating loss carryovers attributable to S2 under the principles of § 1.1502–21(b)(2)(iv) are reduced in the order prescribed by section 108(b)(4)(B). Accordingly, the consolidated net operating loss for Year 3 is further reduced by $20, the portion of the consolidated net operating loss attributable to S2, to $20. Then, the consolidated net operating loss carryover from Year 1 is reduced by $50, the portion of that consolidated net operating loss carryover attributable to S2, to $100. Then, the consolidated net operating loss carryover from Year 2 is further reduced by $10, the portion of that consolidated net operating loss carryover attributable to S2, to $0. Following the reduction of the net operating loss and the net operating loss carryovers attributable to S2, S2 reduces its basis in its assets pursuant to section 1017 and § 1.1017–1. Accordingly, S2 reduces its basis in its S3 stock by $40 to $140.

(C) *Tiering down of stock basis reduction to S3.* Pursuant to paragraph (a)(3) of this section, for purposes of sections 108 and 1017 and this section, S3 is treated as realizing $40 of excluded COD income. Pursuant to section 108(b)(2)(A) and paragraph (a) of this section, therefore, the net operating loss and the net operating loss carryovers attributable to S3 under the principles of § 1.1502–21(b)(2)(iv) are reduced in the order prescribed by section 108(b)(4)(B). Accordingly, the consolidated net operating loss for Year 3 is further reduced by $20, the portion of the consolidated net operating loss attributable to S3, to $0. Then, the consolidated net operating loss carryover from Year 1 is reduced by $20, the lesser of the portion of that consolidated net operating loss carryover attributable to S3 and the remaining excluded COD income, to $80.

Example 4. (i) *Facts.* P is the common parent of a consolidated group that includes subsidiaries S1, S2, and S3. P owns 100 percent of the stock of each of S1 and S2. Each of S1 and S2 owns stock of S3 that represents 50 percent of the value of the stock of S3. None of P, S1, S2, or S3 had a separate return limitation year prior to Year 1. In Year 1, the P group sustained a $160 consolidated net operating loss. Under the principles of § 1.1502–21(b)(2)(iv), of that amount, $10 was attributable to P, $50 was attributable to S2, and $100 was attributable to S3. In Year 2, the P group sustained a $110 consolidated net operating loss. Under the principles of § 1.1502–21(b)(2)(iv), of that amount, $40 was attributable to S1 and $70 was attributable to S2. In Year 3, S1 realized $200 of excluded COD income from the discharge of non-intercompany indebtedness, and S2 realized $270 of excluded COD income from the discharge of non-intercompany indebtedness. In that same year, the P group sustained a $50 consolidated net operating loss, of which $10 was attributable to S1, $20 was attributable to S2, and $20 was attributable to S3 under the principles of § 1.1502–21(b)(2)(iv). At the beginning of Year 4, S3 had one asset with a value of $10. After the computation of tax imposed for Year 3 and before the application of sections 108 and 1017 and this section, S1's basis in its S3 stock was $60, S2's basis in its S3 stock was $120, and S3's asset had a basis of $200. In addition, none of S1, S2, and S3 had any liabilities.

(ii) *Analysis*—(A) *Reduction of tax attributes attributable to debtors.* Pursuant to paragraph (b)(1)(i) of this section, the tax attributes attributable to each of S1 and S2 are reduced pursuant to paragraph (a)(2) of this section. Then, pursuant to paragraph (a)(3) of this section, the tax attributes attributable to S3 are reduced so as to reflect a reduction of S1's and S2's basis in the stock of S3. Then, paragraph (a)(4) is applied to reduce additional tax attributes.

(1) *Reduction of net operating losses generally.* Pursuant to section 108(b)(2)(A) and paragraph (a) of this section, the net operating losses and the net operating loss carryovers attributable to S1 and S2 under the principles of § 1.1502–21(b)(2)(iv) are reduced in the order prescribed by section 108(b)(4)(B).

(2) *Reduction of net operating losses attributable to S1.* The consolidated net operating loss for Year 3 is reduced by $10,

the portion of the consolidated net operating loss attributable to S1, to $40. Then, the consolidated net operating loss carryover from Year 2 is reduced by $40, the portion of that consolidated net operating loss carryover attributable to S1, to $70.

(3) *Reduction of net operating losses attributable to S2.* The consolidated net operating loss for Year 3 is also reduced by $20, the portion of the consolidated net operating loss attributable to S2, to $20. Then, the consolidated net operating loss carryover from Year 1 is reduced by $50, the portion of that consolidated net operating loss carryover attributable to S2, to $110. Then, the consolidated net operating loss carryover from Year 2 is reduced by $70, the portion of that consolidated net operating loss carryover attributable to S2, to $0.

(4) *Reduction of basis.* Following the reduction of the net operating losses and the net operating loss carryovers attributable to S1 and S2, S1 and S2 must reduce their basis in their assets pursuant to section 1017 and § 1.1017–1. Accordingly, S1 reduces its basis in the stock of S3 by $60, from $60 to $0, and S2 reduces its basis in the stock of S3 by $120, from $120 to $0.

(B) *Tiering down of basis reduction.* Pursuant to paragraph (a)(3) of this section, for purposes of sections 108 and 1017 and this section, S3 is treated as realizing $180 of excluded COD income. Pursuant to section 108(b)(2)(A) and paragraph (a) of this section, therefore, the net operating loss and the net operating loss carryovers attributable to S3 under the principles of § 1.1502–21(b)(2)(iv) are reduced in the order prescribed by section 108(b)(4)(B). Accordingly, the consolidated net operating loss for Year 3 is further reduced by $20, the portion of the consolidated net operating loss attributable to S3, to $0. Then, the consolidated net operating loss carryover from Year 1 is reduced by $100, the portion of that consolidated net operating loss carryover attributable to S3, to $10. Following the reduction of the net operating loss and the net operating loss carryover attributable to S3, S3 reduces its basis in its asset pursuant to section 1017 and § 1.1017–1. Accordingly, S3 reduces its basis in its asset by $60, from $200 to $140.

(C) *Reduction of remaining consolidated tax attributes.* Finally, pursuant to paragraph (a)(4) of this section, the remaining $90 of S1's excluded COD income and the remaining $10 of S2's excluded COD income reduce the remaining consolidated tax attributes. In particular, the remaining $10 consolidated net operating loss carryover from Year 1 is reduced by $10 to $0. Because that amount is less than the aggregate amount of remaining excluded COD income, such income is applied on a pro rata basis to reduce the remaining consolidated tax attributes. Accordingly, $9 of S1's remaining excluded COD income and $1 of S2's remaining excluded COD income is applied to reduce the remaining consolidated net operating loss carryover from Year 1. Consequently, of S1's excluded COD income of $200, only $119 is applied to reduce tax attributes, and, of S2's excluded COD income of $270, only $261 is applied to reduce tax attributes.

Example 5. (i) *Facts.* P is the common parent of a consolidated group that includes subsidiaries S1, S2, and S3. P owns 100 percent of the stock of S1 and S2, and S1 owns 100 percent of the stock of S3. None of P, S1, S2, or S3 has a separate return limitation year prior to Year 1. In Year 1, the P group sustained a $90 consolidated net operating loss. Under the principles of § 1.1502–21(b)(2)(iv), of that amount, $10 was attributable to P, $15 was attributable to S1, $20 was attributable to S2, and $45 was attributable to S3. On January 1 of Year 2, P realized $140 of excluded COD income from the discharge of non-intercompany indebtedness. On December 31 of Year 2, S1 issued stock representing 50 percent of the vote and value of its outstanding stock to a person that was not a member of the group. As a result of the issuance of stock, S1 and S3 ceased to be members of the P group. For the consolidated return year of Year 2, the P group sustained a $60 consolidated net operating loss, of which $5 was attributable to S1, $40 was attributable to S2, and $15 was attributable to S3 under the principles of § 1.1502–21(b)(2)(iv). As of the beginning of Year 3, P's only assets were the stock of S1 and S2, S1's sole asset was the stock of S3, S2 had Asset A with a value of $10, and S3 had Asset B with a value of $10. After the computation of tax imposed for Year 2 and before the application of sections 108 and 1017 and this section, P had a $80 basis in the S1 stock and a $50 basis in the S2 stock, S1 had a $80 basis in the S3 stock, and Asset A and B each had a basis of $10. In addition, none of P, S1, S2, and S3 had any liabilities.

(ii) *Analysis.* Pursuant to paragraph (a)(2) of this section, the tax attributes attributable to P must first be reduced to take into account its excluded COD income in the amount of $140.

(A) *Reduction of net operating losses.* Pursuant to section 108(b)(2)(A) and paragraph (a) of this section, the net operating loss and the net operating loss carryover attributable to P under the principles of § 1.1502–21(b)(2)(iv) are reduced in the order prescribed by section 108(b)(4)(B). Accordingly, the consolidated net operating loss carryover from Year 1 is reduced by $10, the portion of that consolidated net operating loss carryover attributable to P, to $80.

(B) *Reduction of basis.* Following the reduction of the net operating loss and the net operating loss carryover attributable to P, P reduces its basis in its assets pursuant to section 1017 and § 1.1017–1. Accordingly, P reduces its basis in the stock of S1 by $80, from $80 to $0, and its basis in the stock of S2 by $50, from $50 to $0.

(C) *Tiering down of stock basis reduction to S1.* Pursuant to paragraph (a)(3) of this section, for purposes of sections 108 and 1017 and this section, S1 is treated as realizing $80 of excluded COD income, despite the fact that it ceases to be a member of the group at the end of the day on December 31 of Year 2. Pursuant to section 108(b)(2)(A) and paragraph (a) of this section, therefore, the net operating loss and net operating loss carryovers attributable to S1 under the principles of § 1.1502–21(b)(2)(iv) are reduced in the order prescribed by section 108(b)(4)(B). Accordingly, the consolidated net operating loss for Year 2 is reduced by $5, the portion of the consolidated net operating loss for Year 2 attributable to S1, to $55. Then, the consolidated net operating loss carryover from Year 1 is reduced by an additional $15, the portion of that consolidated net operating loss carryover attributable to S1, to $65. Following the reduction of the net operating loss and the net operating loss carryover attributable to S1, S1 reduces its basis in its assets pursuant to section 1017 and § 1.1017–1. Accordingly, S1 reduces its basis in the stock of S3 by $60, from $80 to $20.

(D) *Tiering down of stock basis reduction to S2.* Pursuant to paragraph (a)(3) of this section, for purposes of sections 108 and 1017 and this section, S2 is treated as realizing $50 of excluded COD income. Pursuant to section 108(b)(2)(A) and paragraph (a) of this section, therefore, the net operating loss and net operating loss carryovers attributable to S2 under the principles of § 1.1502–21(b)(2)(iv) are reduced in the order prescribed by section 108(b)(4)(B). Accordingly, the consolidated net operating loss for Year 2 is reduced by an additional $40, the portion of the consolidated net operating loss for Year 2 attributable to S2, to $15. Then, the consolidated net operating loss carryover from Year 1 is reduced by an additional $10, a portion of the consolidated net operating loss carryover attributable to S2, to $55.

(E) *Tiering down of stock basis reduction to S3.* Pursuant to paragraph (a)(3) of this section, for purposes of sections 108 and 1017 and this section, S3 is treated as realizing $60 of excluded COD income (by reason of S1's reduction in its basis of its S3 stock). Pursuant to section 108(b)(2)(A) and paragraph (a) of this section, therefore, the net operating loss and net operating loss carryovers attributable to S3 under the principles of § 1.1502–21(b)(2)(iv) are reduced in the order prescribed by section 108(b)(4)(B). Accordingly, the consolidated net operating loss for Year 2 is reduced by an additional $15, the portion of the consolidated net operating loss for Year 2 attributable to S3, to $0. Then, the consolidated net operating loss carryover from Year 1 is reduced by an additional $45, the portion of that consolidated net operating loss carryover attributable to S3, to $10.

Example 6. (i) *Facts.* P1 is the common parent of a consolidated group that includes subsidiaries S1, S2, and S3. P1 owns 100 percent of the stock of S1 and S2. S1 owns 100 percent of the stock of S3. None of P1, S1, S2, or S3 has a separate return limitation year prior to Year 1. In Year 1, the P1 group sustained a $120 consolidated net operating loss. Under the principles of § 1.1502–21(b)(2)(iv), of that amount, $40 was attributable to P1, $35 was attributable to S1, $30 was attributable to S2, and $15 was attributable to S3. On January 1 of Year 2, S3 realized $65 of excluded COD income from the discharge of non-intercompany indebtedness. On June 30 of Year 2, S3 issued stock representing 80 percent of the vote and value of its outstanding stock to P2, the common parent of another group. As a result of the issuance of stock, S3 ceased to

be a member of the P1 group and became a member of the P2 group. For the consolidated return year of Year 2, the P1 group sustained a $50 consolidated net operating loss, of which $5 was attributable to S1, $40 was attributable to S2, and $5 was attributable to S3 under the principles of § 1.1502–21(b)(2)(iv). As of the beginning of its taxable year beginning on July 1 of Year 2, S3's sole asset was Asset A with a $10 value. After the computation of tax imposed for Year 2 on the P1 group and before the application of sections 108 and 1017 and this section and the computation of tax imposed for Year 2 on the P2 group, Asset A had a basis of $0. In addition, S3 had no liabilities. On January 1 of Year 3, P1 sold all of its stock of S1.

(ii) *Analysis*—(A) *Reduction of tax attributes attributable to debtor.* Pursuant to paragraph (a)(2) of this section, the tax attributes attributable to S3 must first be reduced to take into account its excluded COD income in the amount of $65. Pursuant to section 108(b)(2)(A) and paragraph (a) of this section, the net operating loss and the net operating loss carryover attributable to S3 under the principles of § 1.1502–21(b)(2)(iv) are reduced in the order prescribed by section 108(b)(4)(B). Accordingly, the consolidated net operating loss for Year 2 is reduced by $5, the portion of the consolidated net operating loss for Year 2 attributable to S3, to $45. Then, the consolidated net operating loss carryover from Year 1 is reduced by $15, the portion of that consolidated net operating loss carryover attributable to S3, to $105.

(B) *Reduction of remaining consolidated tax attributes.* Pursuant to paragraphs (a)(4) and (b)(8) of this section, S3's remaining $45 of excluded COD income reduces the remaining consolidated tax attributes in the P1 group. In particular, the remaining $45 consolidated net operating loss for Year 2 is reduced by an additional $45 to $0.

(C) *Basis Adjustments.* For purposes of computing P1's gain or loss on the sale of the S1 stock in Year 3, P1's basis in its S1 stock will reflect a net positive adjustment of $40, which is the excess of the amount of S3's excluded COD income that is applied to reduce attributes ($65) over the reduction of S1's and S3's attributes in respect of such excluded COD income ($25).

Example 7. (i) *Facts.* P is the common parent of a consolidated group that includes subsidiaries S1 and S2. P owns 100 percent of the stock of S1, and S1 owns 100 percent of the stock of S2. None of P, S1, or S2 has a separate return limitation year prior to Year 1. In Year 1, the P group sustained a $50 consolidated net operating loss. Under the principles of § 1.1502–21(b)(2)(iv), of that amount, $10 was attributable to P, $20 was attributable to S1, and $20 was attributable to S2. On January 1 of Year 2, S1 realized $55 of excluded COD income from the discharge of non-intercompany indebtedness. On June 30 of Year 2, P transferred all of its assets to S1 in a transaction to which section 381(a) applied. As a result of that transaction, pursuant to § 1.1502–75(d)(2)(ii), S1 succeeded P as the common parent of the group. Pursuant to § 1.1502–75(d)(2)(iii), S1's taxable year closed on the date of the acquisition. However, P's taxable year did not close. On the consolidated return for Year 2, the group sustained a $50 consolidated net operating loss. Under the principles of § 1.1502–21(b)(2)(iv), of that amount, $10 was attributable to S1 for its taxable year that ended on June 30, $15 was attributable to S1 as the successor of P, and $25 was attributable to S2.

(ii) *Analysis.* Pursuant to paragraph (a)(2) of this section, the tax attributes attributable to S1 must first be reduced to take into account its excluded COD income in the amount of $55. For this purpose, S1's attributes that remain after the determination of tax for the group for Year 2 are subject to reduction. Pursuant to section 108(b)(2)(A) and paragraph (a) of this section, the net operating loss and the net operating loss carryover attributable to S1 under the principles of § 1.1502–21(b)(2)(iv) are reduced. Accordingly, the consolidated net operating loss for Year 2 is reduced by $25, the portion of the consolidated net operating loss for Year 2 attributable to S1, to $25. Then, the consolidated net operating loss carryover from Year 1 is reduced by $30, the portion of that consolidated net operating loss carryover attributable to S1 (which includes the portion attributable to P), to $20.

(d) *Effective dates.* This section applies to discharges of indebtedness that occur after March 21, 2005. Groups, however, may apply this section in whole, but not in part, to discharges of indebtedness that occur on or before March 21, 2005, and after August 29, 2003. For discharges of indebtedness occurring on or before March 21, 2005, and after August 29, 2003, with respect to which a group chooses not to apply this section, see § 1.1502–28T as contained in 26 CFR part 1 revised as of April 1, 2004. Furthermore, groups may apply paragraph (b)(4) of this section to discharges of indebtedness that occur on or before August 29, 2003, in cases in which section 1017(b)(3)(D) was applied.

§ 1.1502–28T [Removed]

■ **Par. 10.** Section 1.1502–28T is removed.

■ **Par. 11.** Section 1.1502–32 is amended as follows:

■ 1. Paragraph (b)(1)(ii) is redesignated as paragraph (b)(1)(iii).

■ 2. New paragraph (b)(1)(ii) is added.

■ 3. Paragraphs (b)(3)(ii)(C)(*1*) and (b)(3)(iii)(A) are revised.

■ 4. Paragraph (b)(5)(ii), *Example 4,* paragraphs (a), (b), and (c) are revised.

■ 5. Paragraph (h)(7) is revised.

The addition and revisions read as follows:

§ 1.1502–32 Investment adjustments.

* * * * *

(b) * * *

(1) * * *

(ii) *Special rule for discharge of indebtedness income.* Adjustments under this section resulting from the realization of discharge of indebtedness income of a member that is excluded from gross income under section 108(a) (excluded COD income) and from the reduction of attributes in respect thereof pursuant to sections 108 and 1017 and § 1.1502–28 (including reductions in the basis of property) when a member (the departing member) ceases to be a member of the group on or prior to the last day of the consolidated return year that includes the date the excluded COD income is realized are made immediately after the determination of tax for the group for the taxable year during which the excluded COD income is realized (and any prior years) and are effective immediately before the beginning of the taxable year of the departing member following the taxable year during which the excluded COD income is realized. Such adjustments when a corporation (the new member) is not a member of the group on the last day of the consolidated return year that includes the date the excluded COD income is realized but is a member of the group at the beginning of the following consolidated return year are also made immediately after the determination of tax for the group for the taxable year during which the excluded COD income is realized (and any prior years) and are effective immediately before the beginning of the taxable year of the new member following the taxable year during which the excluded COD income is realized. If the new member was a member of another group immediately before it became a member of the group, such adjustments are treated as occurring immediately after it ceases to be a member of the prior group.

* * * * *

(3) * * *

(ii) * * *

(C) * * *

(1) *In general.* Excluded COD income is treated as tax-exempt income only to the extent the discharge is applied to reduce tax attributes attributable to any member of the group under section 108, section 1017 or § 1.1502–28. However, if S is treated as realizing excluded COD income pursuant to § 1.1502–28(a)(3), S shall not be treated as realizing excluded COD income for purposes of the preceding sentence.

* * * * *

(iii) * * *

(A) *In general.* S's noncapital, nondeductible expenses are its deductions and losses that are taken into account but permanently disallowed or eliminated under applicable law in determining its

taxable income or loss, and that decrease, directly or indirectly, the basis of its assets (or an equivalent amount). For example, S's Federal taxes described in section 275 and loss not recognized under section 311(a) are noncapital, nondeductible expenses. Similarly, if a loss carryover (*e.g.*, under section 172 or 1212) attributable to S expires or is reduced under section 108(b) and § 1.1502–28, it becomes a noncapital, nondeductible expense at the close of the last tax year to which it may be carried. However, when a tax attribute attributable to S is reduced as required pursuant to § 1.1502–28(a)(3), the reduction of the tax attribute is not treated as a noncapital, nondeductible expense of S. Finally, if S sells and repurchases a security subject to section 1091, the disallowed loss is not a noncapital, nondeductible expense because the corresponding basis adjustments under section 1091(d) prevent the disallowance from being permanent.

* * * * *

(5) * * *

(ii) * * *

Example 4. Discharge of indebtedness. (a) Facts. P forms S on January 1 of Year 1 and S borrows $200. During Year 1, S's assets decline in value and the P group has a $100 consolidated net operating loss. Of that amount, $10 is attributable to P and $90 is attributable to S under the principles of § 1.1502–21(b)(2)(iv). None of the loss is absorbed by the group in Year 1, and S is discharged from $100 of indebtedness at the close of Year 1. P has a $0 basis in the S stock. P and S have no attributes other than the consolidated net operating loss. Under section 108(a), S's $100 of discharge of indebtedness income is excluded from gross income because of insolvency. Under section 108(b) and § 1.1502–28, the consolidated net operating loss is reduced to $0.

(b) *Analysis.* Under paragraph (b)(3)(iii)(A) of this section, the reduction of $90 of the consolidated net operating loss attributable to S is treated as a noncapital, nondeductible expense in Year 1 because that loss is permanently disallowed by section 108(b) and § 1.1502–28. Under paragraph (b)(3)(ii)(C)(*1*) of this section, all $100 of S's discharge of indebtedness income is treated as tax-exempt income in Year 1 because the discharge results in a $100 reduction to the consolidated net operating loss. Consequently, the loss and the cancellation of the indebtedness result in a net positive $10 adjustment to P's basis in its S stock.

(c) *Insufficient attributes.* The facts are the same as in paragraph (a) of this Example 4, except that S is discharged from $120 of indebtedness at the close of Year 1. Under section 108(a), S's $120 of discharge of indebtedness income is excluded from gross income because of insolvency. Under section 108(b) and § 1.1502–28, the consolidated net operating loss is reduced by $100 to $0 after the determination of tax for Year 1. Under paragraph (b)(3)(iii)(A) of this section, the reduction of $90 of the consolidated net operating loss attributable to S is treated as a noncapital, nondeductible expense. Under paragraph (b)(3)(ii)(C)(*1*) of this section, only $100 of the discharge is treated as tax-exempt income because only that amount is applied to reduce tax attributes. The remaining $20 of discharge of indebtedness income excluded from gross income under section 108(a) has no effect on P's basis in S's stock.

* * * * *

(h) * * *

(7) *Rules related to discharge of indebtedness income excluded from gross income.* Paragraphs (b)(1)(ii), (b)(3)(ii)(C)(*1*), (b)(3)(iii)(A), and (b)(5)(ii), *Example 4,* paragraphs (a), (b), and (c) of this section apply with respect to determinations of the basis of the stock of a subsidiary in consolidated return years the original return for which is due (without regard to extensions) after March 21, 2005. However, groups may apply those provisions with respect to determinations of the basis of the stock of a subsidiary in consolidated return years the original return for which is due (without regard to extensions) on or before March 21, 2005, and after August 29, 2003.

For determinations of the basis of the stock of a subsidiary in consolidated return years the original return for which is due (without regard to extensions) on or before March 21, 2005, and after August 29, 2003, with respect to which a group chooses not to apply paragraphs (b)(1)(ii), (b)(3)(ii)(C)(*1*), (b)(3)(iii)(A), and (b)(5)(ii), *Example 4,* paragraphs (a), (b), and (c) of this section, see § 1.1502–32T(b)(3)(ii)(C)(*1*), (b)(3)(iii)(A), and (b)(5)(ii), *Example 4,* paragraphs (a), (b), and (c) as contained in 26 CFR part 1 revised as of April 1, 2004.

■ **Par. 12.** Section 1.1502–32T is amended as follows:

■ 1. Paragraph (a)(3) is added and paragraphs (b) through (b)(3)(iii)(B) are revised.

■ 2. Paragraphs (b)(5)(i) through (h)(5)(ii) are revised.

■ 3. Paragraph (h)(7) is revised.

The revisions read as follows:

§ 1.1502–32T Investment adjustments (temporary).

* * * * *

(a)(3) through (b)(3)(iii)(B) [Reserved]. For further guidance, see § 1.1502–32(a)(3) through (b)(3)(iii)(B).

* * * * *

(b)(5)(i) through (h)(5)(ii) [Reserved]. For further guidance, see § 1.1502–32(b)(5)(i) through (h)(5)(ii).

* * * * *

(h)(7) [Reserved]. For further guidance, see § 1.1502–32(h)(7).

■ **Par. 13.** In § 1.1502–76, paragraph (b)(1)(ii)(B)(*3*) is revised to read as follows:

§ 1.1502–76 Taxable year of members of group.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(B) * * *

(*3*) Whether the allocation is inconsistent with other requirements under the Internal Revenue Code and regulations promulgated thereunder (*e.g.*, if a section 338(g) election is made in connection with a group's acquisition of S, the deemed asset sale must take place before S becomes a member and S's gain or loss with respect to its assets must be taken into account by S as a nonmember (but see § 1.338–1(d)), or if S realizes discharge of indebtedness income that is excluded from gross income under section 108(a) on the day it becomes a nonmember, the discharge of indebtedness income must be treated as realized by S as a member (see § 1.1502–28(b)(11))); and

* * * * *

■ **Par. 14.** In § 1.1502–80, the second sentence of paragraph (c) is revised to read as follows:

§ 1.1502–80 Applicability of other provisions of law.

* * * * *

(c) * * * See §§ 1.1502–11(d) and 1.1502–35T for additional rules relating to stock loss. * * *

* * * * *

■ **Par. 15.** In § 1.1502–80T, the third sentence of paragraph (c) is revised to read as follows:

§ 1.1502–80T Applicability of other provisions of law (temporary).

* * * * *

(c) * * * See §§ 1.1502–11(d) and 1.1502–35T for additional rules relating to stock loss. * * *

* * * * *

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: March 10, 2005.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 05–5528 Filed 3–21–05; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 98–120; FCC 05–27]

Carriage of Digital Television Broadcast Signals

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: In this document, the Commission considers several petitions for reconsideration of its First Report and Order (FCC 01–22) and various comments submitted in response to the Further Notice of Proposed Rulemaking (FCC 01–22) in this proceeding, but limited to two issues raised therein: Whether cable operators are required to carry both the digital and analog signals of a station during the transition when television stations are still broadcasting analog signals (also referred to as the ''dual carriage'' issue); and how to construe the ''primary video'' carriage limitation under Sections 614(b)(3)(A) (for commercial stations) and 615(g)(1) (for noncommercial stations) under the Communications Act of 1934, as amended, if a broadcaster chooses to broadcast multiple digital television streams (also referred to as the ''multicast carriage'' issue). In this document, the Commission grants in part and denies in part the petitions for reconsideration. The Commission affirms its tentative conclusion in the First Report and Order not to impose a dual carriage requirement. With regard to the digital multicast carriage issue, the Commission affirms its earlier conclusion in the First Report and Order and declines to require cable operators to carry any more than one programming stream of a digital television station. Although the Commission found that the operative statutory language at issue is ambiguous on the subject of multicast must carry, it also found, based on the current record, that such a requirement is not necessary to further the purposes of the must carry statute, as defined by the Supreme Court.

DATES: Effective March 22, 2005.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Ben Bartolome, *Ben.Bartolome@fcc.gov*, or Eloise Gore, *Eloise.Gore@fcc.gov*, of the Media Bureau, Policy Division, (202) 418–2120. For additional information concerning the Paperwork Reduction Act of 1995 analysis, please contact Cathy Williams, Federal Communications Commission, 445 12th St, SW., Room 1–C823, Washington, DC, 20554, or via the Internet to *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Second Report and Order and First Order on Reconsideration, FCC 05–27, adopted February 10, 2005, and released on February 23, 2005. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC, 20554. These documents will also be available via ECFS *(http://www.fcc.gov/cgb/ecfs/)*. (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Initial Paperwork Reduction Act of 1995 Analysis

This Second Report and Order and First Order on Reconsideration has been analyzed with respect to the Paperwork Reduction Act of 1995 (''PRA''), Public Law 104–13, 109 Stat 163 (1995), and does not contain proposed new and/or modified information collection requirements.

Synopsis of the Second Report and Order and First Order on Reconsideration

I. Introduction

1. In this Second Report and Order and First Order on Reconsideration, we consider several petitions for reconsideration of the Commission's *First Report and Order,* 66 FR 16533, Mar. 26, 2001, and the various comments submitted in response to the *Further Notice of Proposed Rulemaking (FNPRM),* 63 FR 42330, Aug. 7, 1998, in this proceeding. The actions taken in this order are limited to two significant issues, the resolution of which are essential to the Commission's ongoing efforts to complete the transition from analog to digital television. In the interest of providing certainty on these significant issues at this time, we are deferring resolution of the other issues raised on reconsideration and in the *FNPRM* to a future order. The two issues resolved in this order are: (1) whether cable operators are required to carry both the digital and analog signals of a station during the transition when television stations are still broadcasting analog signals (also generally referred to as the ''dual carriage'' issue); and (2) how to construe the ''primary video'' carriage limitation under Sections 614(b)(3)(A) (for commercial stations) and 615(g)(1) (for noncommercial stations) under the Act if a broadcaster chooses to broadcast multiple digital television streams (this issue is generally referred to as the mandatory multicast carriage issue); *see* 47 U.S.C. 534(b)(3)(A), 535(g)(1).

2. With respect to the dual carriage issue, we determined in the *First Report and Order* that the statute neither mandates nor precludes the mandatory simultaneous carriage of both a television station's digital and analog signals. Furthermore, we tentatively concluded that, based on the available record evidence, a dual carriage requirement would likely violate the cable operator's First Amendment rights. In order to evaluate the issue more fully, we adopted the *FNPRM* to solicit comment on the constitutionality of imposing a dual carriage requirement. Several members of the broadcast industry seek reconsideration of the Commission's statutory interpretation on this issue, and urge us to conclude that the Act mandates dual carriage. For the reasons provided in this order, we are denying the petitions on this issue and affirm our tentative decision not to impose a dual carriage requirement.

3. With respect to the mandatory multicast carriage issue, the Commission, in the *First Report and Order,* interpreted the statutory term ''primary video'' to mean only a single programming stream. As a result, if a digital broadcaster elects to divide its digital spectrum into several separate, independent, and unrelated programming streams, the Commission found that only one of these streams is considered primary and entitled to mandatory carriage. Several members of the broadcast industry seek reconsideration of our statutory interpretation. For the reasons provided below, we are also denying the petitions on this issue and thereby affirm our decision in the *First Report and Order.*

II. Background

4. Sections 614 and 615 of the Act govern mandatory carriage for cable operators. Our task in this ongoing proceeding is to determine how to

implement and apply the statute to digital signals during the transition as well as after the transition is completed. Our approach is guided by Title VI of the Act, which states, in part, that ''cable communications provide and are encouraged to provide the widest possible diversity of information sources and services to the public.'' In addition, we are directed to ''promote competition in cable communications and minimize unnecessary regulation that would impose an undue economic burden on cable systems.''

5. The law governing retransmission consent generally prohibits cable operators and other multichannel video programming distributors, such as satellite carriers, from retransmitting the signal of a commercial television station, unless the station whose signal is being transmitted consents or chooses mandatory carriage; *see* 47 U.S.C. 325(b)(1)(A) and (B). Generally, every three years, commercial television stations must elect to either grant retransmission consent or pursue their mandatory carriage rights; *see* 47 CFR 76.64(f).

6. Under Section 614 of the Act, and the implementing rules adopted by the Commission, a commercial television broadcast station is entitled to request mandatory carriage, if it does not elect retransmission consent, on cable systems located within the station's market. A station's market for this purpose is its ''designated market area,'' or DMA, as defined by Nielsen Media Research (A DMA is a geographic market designation that defines each television market exclusive of others based on measured viewing patterns). Systems with more than 12 usable activated channels must carry local commercial television stations ''up to one-third of the aggregate number of usable activated channels of such system[s]''; *see* 47 U.S.C. 534(b)(1)(B). Beyond this requirement, the carriage of additional television stations is at the discretion of the cable operator. In addition, Section 615 of the Act requires cable systems to carry local noncommercial educational television stations (''NCE'' stations) according to a different formula, and based upon a cable system's number of usable activated channels. Carriage of NCE stations are in addition to the one-third cap that applies to full power commercial stations. Low power television stations, including Class A stations, may request carriage if they meet six statutory criteria; *see* 47 U.S.C. 534(c)(1) and (h)(2); 47 CFR 76.55(d). A cable operator, however, cannot carry a low power television station in lieu of a full power television station; *see* 47 U.S.C. 534(b)(1)(A) and (h)(2); 47 CFR 76.56(b)(1) and (b)(4)(i). Among these criteria are that the low power TV station meets all of the Commission's requirements that are applicable to full power TV stations with respect to certain types of programming, such as children's and political programming, and ''the Commission determines that the provision of such programming by such station would address local news and informational needs which are not being adequately served by full power television broadcast stations because of the geographic distance of such full power stations from the low power station's community of license''; *see* 47 U.S.C. 534(h)(2)(B).

III. Carriage of Digital Broadcast Signals

A. Stations Broadcasting in Analog and Digital

7. A fundamental issue addressed in the *First Report and Order* and in the *FNPRM* is whether cable operators are required to carry both the analog and digital signals of a station during the transition when television stations are broadcasting analog and digital signals; *see* 16 FCC Rcd at 2603–09, 2649–52. We said therein that if the Commission requires carriage of both analog and digital signals (*i.e.,* ''dual carriage''), cable operators could be required to carry double the number of television signals, many of which contain duplicative content, while having to drop or forego carriage of varied cable programming services where channel capacity is limited; *see* 16 FCC Rcd at 2603–09, 2649–52.

8. In the *First Report and Order,* we examined our authority to impose a dual carriage requirement and determined, after extensive review of Sections 614 and 615 of the Act and the accompanying legislative history, that ''the statute neither mandates nor precludes the mandatory simultaneous carriage of both a television station's digital and analog signals;'' *see* 16 FCC Rcd at 2600. It is precisely the ambiguity of the statute that has driven contentious policy debate on this issue. In order to weigh the constitutional questions inherent in a statutory construction that would permit dual carriage, we determined that it was appropriate and necessary to more fully develop the record in this regard. It was our tentative conclusion, however, that a dual carriage requirement would burden cable operators' First Amendment rights substantially more than necessary to further the government's substantial interests; *see* 16 FCC Rcd at 2600. We issued a *FNPRM* addressing several critical questions concerning the constitutionality of dual carriage, including: (1) Whether a cable operator will have the channel capacity to carry the digital television signal of a station, in addition to the analog signal of that same station, without displacing other cable programming or services; (2) whether market forces, through retransmission consent, will provide cable subscribers access to digital television signals; and (3) how the resolution of the carriage issues would impact the digital transition process; *see* 16 FCC Rcd at 2600, 2647–54. Before considering the additional record and finally determining the dual carriage question, we first address the petitions for reconsideration of our preliminary decision on the statutory issue in the *First Report and Order.*

1. Statutory Analysis

9. Several members of the broadcast industry seek reconsideration of the Commission's statutory interpretation on this issue, and urge us to conclude that the Act mandates dual carriage. Commercial Broadcasters specifically argue that Section 614(a) of the Act makes no distinction between qualifying analog and digital signals, so therefore all local television station signals must be carried. They point out that Section 614(h)(1)(A) of the A defines the term ''local commercial television station,'' does not expressly exclude DTV signals from carriage during the time that the companion analog signal would be carried. They state that ''Section 614 applies to the signals of any full power commercial television station licensed and operating on a channel regularly assigned to its community by the Commission, not otherwise excluded by the terms of Section 614.'' Furthermore, they assert that the new DTV signals of full power television broadcast stations at issue here were, at the time of the 1992 Cable Act, anticipated to be ''licensed and operating on a channel regularly assigned to its community by the Commission.'' They surmise that if Congress intended to exclude these DTV signals from carriage requirements during the transitional period, it would have so indicated in Section 614. In their view, ''[b]ecause the statutory mandate to carry broadcasters' DTV signals is clear, the Commission lacks discretion to water down or modify the express requirement that cable operators carry DTV signals.''

10. Cable operators and non-broadcast programmers, on the other hand, ask the Commission to deny petitioners' request for reconsideration of this issue. NCTA argues that, in the absence of a clear statutory directive for dual carriage, the

Commission must read the statute to err on the side of avoiding constitutional infirmities. Cable programmer A&E states that if Congress had intended for the Commission to greatly expand the cable industry's carriage burden during the DTV transition, it would have done so much more plainly and explicitly. A&E points out that subsequent congressional actions and relevant legislative histories in the Telecommunications Act of 1996, the Balanced Budget Act of 1997, and the Satellite Home Viewer Improvement Act of 1999, demonstrate that Congress did not intend to compel dual carriage through Section 614(b)(4)(B) of the Act.

11. The arguments that the parties have presented in support of a statutory reading to require dual carriage essentially are no different from those that have previously been submitted, considered, and rejected in the *First Report and Order; see* 16 FCC Rcd at 2603–09. We therefore affirm our earlier conclusion that the Act is ambiguous on the issue of dual carriage. The statute neither mandates nor precludes the mandatory simultaneous carriage of both a television station's digital and analog signals; *see* 16 FCC Rcd at 2600. Further, we do not believe that mandating dual carriage is necessary either to advance the governmental interests identified by Congress in enacting Sections 614 and 615 and upheld in *Turner II* or to effectuate the DTV transition. Since no evidence or arguments submitted on reconsideration gives us any reason to question our original judgment, we deny the petitions for reconsideration on this point.

2. Constitutional Analysis

12. As indicated above, the *First Report and Order* held that the Act was ambiguous as to the question of dual carriage and that further fact-finding was necessary to determine the appropriate statutory interpretation; *see* 16 FCC Rcd at 2648. We rely on several constitutional principles and cases, in particular the Supreme Court's decisions in *Turner I (Turner Broadcasting Systems, Inc.* v. *FCC,* 512 U.S. 622 (1994)) and *Turner II (Turner Broadcasting Systems, Inc.* v. *FCC,* 520 U.S. 180 (1997)) in addressing the constitutionality of mandatory dual carriage. The Supreme Court has recognized that mandatory carriage directly interferes with the free speech rights of cable operators and cable programmers. Nevertheless, the *Turner II* Court upheld the constitutionality of Sections 614 and 615 under an intermediate scrutiny analysis. A majority of the Court found that the mandatory carriage provisions of the Act furthered two governmental interests: (1) preserving the benefits of free, over-the-air local broadcast television for viewers; and (2) promoting the widespread dissemination of information from a multiplicity of sources. Significantly, the Court found that mandatory carriage was narrowly tailored because the burden imposed at that time was congruent to the benefits obtained. A plurality of the Court also concluded that Sections 614 and 615 furthered a third governmental interest—Justice Breyer, whose vote was necessary to sustain the requirement, however, did not believe that must carry was necessary to promote ''fair competition,'' as did the other justices in the majority.

13. In the *First Report and Order,* we recognized that any type of dual carriage rule must satisfy the *Turner* factors and pass the test provided in *United States* v. *O'Brien,* 391 U.S. 367, 377 (1968), for determining whether a content-neutral rule or regulation violates the Constitution; *see* 16 FCC Rcd at 2648. Under the *O'Brien* test, a content-neutral regulation would be upheld if: (1) it furthered an important or substantial governmental interest; (2) the government interest was unrelated to the suppression of free expression; and (3) the incidental restriction on First Amendment freedoms was no greater than is essential to the furtherance of that interest. In sum, under the *O'Brien* test, a regulation must not burden substantially more speech than is necessary to further the government's legitimate interests. We invited commenters that support a dual carriage requirement to submit evidence to show how mandatory dual carriage would satisfy the constitutional requirements of both *Turner* and *O'Brien.* After close examination of the information submitted, we find nothing in the record that would allow us to conclude that mandatory dual carriage is necessary to further the governmental interests identified in *Turner,* or other potential governmental interests put forward by commenters. In addition, even if it could be shown that dual carriage could further any of the governmental interests based on the current record, the burden that mandatory dual carriage places on cable operators' speech appears to be greater than is necessary to achieve the interests that must carry was meant to serve. Mandatory dual carriage would essentially double the carriage rights and substantially increase the burdens on free speech beyond those upheld in *Turner.* As noted, *Turner II* found the benefits and burdens of must carry to be congruent, such that must carry is narrowly tailored to preserve the multiplicity of broadcast stations for households that do not subscribe to cable.

14. *Preserving the benefits of free over-the-air television for viewers.* The first governmental interest identified in *Turner* to support mandatory carriage is the preservation of the benefits of free over-the-air television for non-subscribers. The broadcast industry argues that a slow DTV transition places preservation of over-the-air broadcasting at risk. Commercial Broadcasters assert that the entire premise of the digital transition is for digital signals to replace analog signals. They argue that if viewers are unable to receive digital signals, digital cannot replace analog, and broadcasters will be forced to sustain the operation of two facilities at considerable expense, without any additional revenue. Noncommercial Broadcasters assert that the costs of dual transmissions are overwhelming for smaller television stations.

15. NCTA contends that the broadcast industry sought a second channel of spectrum to provide digital programming, prior to which there was no apparent threat to the preservation of broadcast stations for over-the-air viewers, given that cable operators were required to carry virtually all existing analog stations. International Channel asserts that analog carriage, by itself, serves the government interest in preserving the benefits of free over-the-air television. A&E states that the only reason the Court upheld the analog carriage requirements is that Congress found cable carriage to be necessary to promote the continued availability of free television programming, ''especially for viewers who are unable to afford other means of receiving programming.''

16. Despite the broadcast parties' assertions, the record as a whole does not demonstrate that television stations would face undue hardship in the absence of dual carriage that would, in turn, threaten the ability of broadcasters to provide service to non-cable households. The critical governmental interest, reflected in the Act, was described by the Supreme Court as the preservation of over-the-air broadcasting. More specifically, the congressionally-adopted governmental interest identified in *Turner* was the protection of the interests of over-the-air television viewers—*i.e.*, viewers whose interests were not reflected in the carriage decisions of cable operators nor in the viewing options available to cable subscribers. Thus, the focus of the government interest in *Turner* is not the economic health of broadcasting per se,

but the benefits that broadcasting provides to consumers. In sum, the critical factor in interpreting the intent of the statute and in the constitutional analysis of it is that it is designed ''to provide over-the-air viewers who lack cable with a rich mix of over-the-air programming by guaranteeing the over-the-air stations that provide such programming with the extra dollars that an additional cable audience will generate'' and to assure the over-the-air public ''access to a multiplicity of information sources.'' With respect to mandatory dual carriage, all broadcast stations are required to build a digital facility and broadcast a digital signal. Thus, cable carriage is not needed to ensure that non-cable, over-the-air viewers have access to digital broadcast signals. Broadcasters advocating mandatory dual carriage have not demonstrated that non-cable households would benefit from more or better broadcast programming if stations have mandatory dual carriage. (We note that Congress has recently enacted a dual carriage requirement under very limited circumstances. The Satellite Home Viewer Extension Reauthorization Act (''SHVERA''), Public Law 108–447, sec. 210, 118 Stat. 2809, 3393 (2004), requires a phase-in of mandatory dual carriage only in Alaska and Hawaii by satellite carriers with more than five million subscribers. Congress may, of course, decide to impose a dual carriage requirement in situations in which it finds it necessary to further an important governmental interest. By imposing a dual carriage requirement in only two states, Congress implicitly determined that the benefits and burdens of dual carriage in Alaska and Hawaii with respect to satellite carriers are different from those in the contiguous United States.). Local analog broadcasters are already carried today—either pursuant to must carry or retransmission consent—on virtually every cable system in their market. We have no evidence that the absence of a dual carriage requirement will substantially diminish the availability or quality of broadcast signals available to non-cable subscribers. A small number of broadcasters that have demonstrated legitimate financial hardship if they were required to build their digital facilities have been granted extensions, but the hardship is not due to lack of cable carriage. The absence of a dual carriage requirement might in fact encourage broadcasters to produce a ''rich mix of over-the-air programming'' in order to convince cable operators to voluntarily carry their digital signal. Furthermore, the goal of the DTV transition is not to support the ongoing existence of two 6 MHz channels for each broadcast licensee, but rather to transition from one 6 MHz analog allocation to one 6 MHz digital allocation, with the anticipated return of one 6 MHz allocation.

17. *Promoting the widespread dissemination of information from a multiplicity of sources.* The second of the three interrelated governmental interests identified in *Turner* is ''promoting the widespread dissemination of information from a multiplicity of sources.'' Discovery argues that if the Commission were to mandate dual carriage, it would allow a single broadcaster to use up to 12 MHz of cable capacity. Discovery comments that the second 6 MHz channel requested by broadcasters could instead be used by a cable operator to provide as many as a dozen diverse non-broadcast programming services offered on a compressed digital basis. Cable industry commenters also argue that most broadcast stations are upconverting analog signals to a standard definition digital format, and that such duplicative broadcast programming does not contribute to program diversity. On the other hand, CEA argues that dual carriage assures broadcasters and programmers of carriage for digital programming, thus motivating them to produce original digital programming, that will, in turn, provide consumers with incentive to purchase digital receivers. On balance, we find that the current record fails to demonstrate that dual carriage is needed to further this governmental interest because program diversity is not promoted under a dual carriage requirement, given that it would not result in additional sources of programming and that digital programming largely simulcasts analog programming.

18. *Promoting fair competition in the market for television programming.* The third important governmental interest identified in *Turner* is promoting fair competition in the market for television programming. While a majority of the Court agreed that this is an important governmental interest, only four justices found that this interest was achieved by the must carry statutory requirements. Based on our previous conclusions—*i.e.*, that dual carriage is not needed to further the governmental interests found by a majority of the Court, it is unnecessary to consider this third interest in great detail. The anti-competitive concerns cited by Congress and the Supreme Court stemmed from the increasing vertical integration and penetration of the cable industry in 1992. Commercial Broadcasters claim that cable operators still act as gatekeepers as they serve nearly 70% of American households, and compete with local broadcast stations for advertising dollars. They contend that the enhanced services that DTV makes possible directly compete with cable services, resulting in greater disincentives for cable to afford digital broadcasters access to their audience. Cable operators and programmers counter that such concerns about competition for local advertising are misplaced.

19. Court TV urges the Commission to recognize the central premise of broadcasting—*i.e.*, that the medium has the inherent ability to reach viewers over-the-air independent of cable carriage. HBO adds that broadcasters use analog retransmission consent/must carry rights to secure cable channel capacity for their affiliated cable networks. The Filipino Channel argues that dual carriage, even for a limited period of time, would foreclose carriage options for many cable networks.

20. In many respects, competition in the MVPD market has increased since 1992, although the market for the delivery of video programming to households continues to be characterized by substantial barriers to entry. The record, however, does not evidence a connection between mandating dual carriage and remedying any allegations of cable operators' anti-competitive action against local broadcast stations. Because operators must carry local broadcaster's analog signal, there is no obvious need for cable operators to carry two signals for each local station, and it has not been proven necessary to guarantee such access for both analog and digital signals to ensure fair competition. We believe the burden is on the advocates of dual carriage to prove this competitive necessity and that speculative allegations in this regard are inadequate in light of the burden on cable operators and cable programmers competing for cable access.

21. *Advancing the Digital Transition.* Broadcast commenters state that a rapid transition from analog to digital broadcast signals is an important governmental interest that can justify burdening speech protected by the First Amendment. They contend that dual carriage is necessary to achieve a swift and successful DTV transition. NCTA counters that Congress never expressed that hastening the end of the transition is a governmental interest, and nor has the Supreme Court ''embraced any such interest'' in upholding must carry requirements. CEA, on the other hand,

states that some form of dual carriage is necessary for public acceptance of digital television technology because it will spur broadcasters to produce digital television programming, which, in turn, will convince consumers to purchase DTV receivers. Maranatha argues that consumers will not have the incentive to buy DTV receivers until they can actually receive digital broadcast programming through their local cable systems. AT&T and others in the cable industry counter that dual carriage provides no incentive for consumers to purchase digital television sets, particularly when broadcasters are creating little or no original content.

22. A swift digital television transition and the return of the analog spectrum for other uses are important governmental concerns. We find that the imposition of a dual carriage requirement, however, is not necessary to complete the transition. Many factors are necessary for the transition to be successful, such as consumer acceptance of a new type of television service and rapid digital receiver penetration. The top ten cable operators (representing more than 85% of cable subscribers nationwide) have committed to deploying high-definition services and are fulfilling that commitment. More recently, NCTA reports that the HDTV carriage data reflect that more and more cable households are receiving HDTV programming: (1) the number of local TV markets in which consumers can now receive a package of HDTV services from their cable operator has grown to 184 (out of 210), including all of the top 100 DMAs; (2) the number of local digital broadcast stations being carried voluntarily by cable systems increased to 504, up from 304 in December 2003; (3) of the 108 million U.S. TV households today, 92 million are now passed by a cable system that offers a package of HDTV programming; and (4) 18 cable networks now offer HD programming during some or all of their network schedules, in broad genres reflecting movies, sports, and general interest.

23. The voluntary carriage of network television stations by these operators, as well as carriage of high definition digital programming from non-broadcast sources like HBO, are more likely to spur the sale of digital television equipment (thereby, facilitating the transition) than the forced dual carriage of all television stations. We thus decline to impose dual carriage requirements that burden speech in the absence of record evidence showing dual carriage is necessary for a timely completion of the transition.

24. *Fifth Amendment Argument.* NCTA argues that dual carriage would constitute an uncompensated taking of private property in violation of the Fifth Amendment to the Constitution, especially where, as here, Congress has not clearly authorized such a requirement. NAB responds, in part, that the mere fact that a dual carriage rule might exact some financial toll from cable operators would not render mandatory dual carriage a taking. Given that we have declined to impose dual carriage on other grounds, we need not address the cable industry's Fifth Amendment argument.

25. *Conclusion.* We have analyzed the governmental interests identified in *Turner,* additional governmental interests proposed by the broadcast industry, and policy concerns. We find that there has not been an adequate showing that dual carriage is necessary to achieve any valid governmental interest. Therefore, in the absence of a clear statutory requirement for dual carriage, we decline to impose this burden on cable operators.

B. Primary Video/Multicast Carriage

26. In the *First Report and Order*, the Commission examined how to apply the ''primary video'' carriage limitation if a broadcaster chooses to broadcast multiple standard definition digital television streams, or a mixture of high definition and standard definition digital television streams; *see* 16 FCC Rcd at 2620–22. Section 614(b)(3)(A) of the Act states:

> A cable operator shall carry in its entirety, on the cable system of that operator, the *primary video*, accompanying audio, and line 21 closed caption transmission of each of the local commercial television stations carried on the cable system and, to the extent technically feasible, program-related material carried in the vertical blanking interval or on subcarriers. Retransmission of other material in the vertical blanking [interval] or other nonprogram-related material (including teletext and other subscription and advertiser-supported information services) shall be at the discretion of the cable operator. Where appropriate and feasible, operators may delete signal enhancements, such as ghost-canceling, from the broadcast signal and employ such enhancements at the system headend or headends; *see* 47 U.S.C. 534(b)(3).

Largely parallel provisions are contained in Section 615(g)(1) for noncommercial stations; *see* 47 U.S.C. 535(g)(1).

27. In the *First Report and Order*, the Commission recognized that ''the terms 'primary video' as used in Sections 614(b)(3) and 615(g)(1) are susceptible to different interpretations,'' and that ''[t]he legislative history does not definitively resolve the ambiguity regarding the intended application of the term 'primary video' as used in [the multicasting] context;'' *see* 16 FCC Rcd at 2620–21. The Commission thus analyzed the term within its statutory context, considered the legislative history, and examined the technological developments at the time the must carry provisions were enacted; *see* 16 FCC Rcd at 2620–22. As a result of dictionary definitions and legislative history indicating that ''must carry provisions were not intended to cover all uses of a signal,'' the Commission stated that ''[b]ased on the record currently before us, we conclude that 'primary video' means a single programming stream and other program-related content;'' *see* 16 FCC Rcd at 2620–22. As a result, the Commission held that if a digital broadcaster elects to divide its digital spectrum into several separate, independent, and unrelated programming streams, only one of these streams is considered primary and entitled to mandatory carriage; *see* 16 FCC Rcd at 2620–22. Under this determination, the broadcaster elects which programming stream is its primary video, and the cable operator is required to provide mandatory carriage only of that designated stream; *see* 16 FCC Rcd at 2620–22.

28. Several commercial and noncommercial broadcasters seek reconsideration of our interpretation of the term ''primary video.'' They contend that we wrongly concluded that when a digital signal becomes eligible for mandatory carriage, cable operators are only required to carry a single video stream. In the view of some broadcast petitioners, ''primary video'' means all video that is included in a broadcaster's digital signal. Other broadcast petitioners suggest that since all video contained in analog broadcast signals has been available free to over-the-air viewers, the ''primary video'' of a digital signal should be deemed to include video programming that is available ''free of charge.'' Disney specifically asks us to adopt a definition of ''primary video'' that requires ''full carriage of the entire 19.4 Mbps bit stream of a local broadcaster's digital signal, except for those ancillary and supplementary services expressly excluded by statute.'' Disney asserts that such a standard will impose no greater burden on cable operators than that created by the existing analog must carry requirements, or by carriage of an HDTV signal.

29. More specifically, the broadcast petitioners argue that the Commission's definition of ''primary video'' is not supported by the statutory language and the accompanying legislative history.

Noncommercial Broadcasters state that because of the unavailability of a plain meaning interpretation, the Commission must look to the Act as a whole to determine what Congress meant by a broadcaster's ''primary video.'' They submit that, because of the ambiguity of the statute, the most reasonable interpretation of the term ''primary video'' includes ''the package of video and audio digital services transmitted by the broadcaster free and over the air to viewers.'' Similarly, Commercial Broadcasters argue that the word ''primary'' is a generic adjective that may be used with singular or plural noun forms, as in the phrases ''primary elements'' and ''primary colors.'' They state that the Commission should not have applied a literal definition, but rather interpreted for the new digital context what was intended by the term for the analog situation.

30. NCTA, Time Warner, and other parties ask us to deny the petitions. They contend that a plain reading of the statute clearly indicates a limited carriage obligation, and that, even if there are other interpretations of the provision, the Commission's interpretation is a reasonable one, because it gives meaning to the word ''primary'' and is consistent with the common usage and meaning of the term. Additionally, NCTA contends that the Commission's interpretation is consistent with the underlying policy objectives of the Act and Congress's clear intention to limit carriage obligations in light of First Amendment concerns. NCTA argues that carriage of multiple video programming streams would multiply the burden on cable operators as well as the unfairness to cable program networks without serving any of the purposes of the must carry provisions of the statute, thereby raising First Amendment infirmities. NCTA states that the Commission is compelled to avoid such a construction of the Act even if it were to find the term ''primary video'' to be at all ambiguous. According to Professor Tribe's filing on behalf of the NCTA, ''forcing cable operators to carry multiple video streams of digital broadcasters would abridge the editorial freedom of cable operators, harm cable programmers, and invade the right of audiences to choose what they want to view—all without promoting any of the governmental interests contemplated by Congress in enacting the must-carry rules, or any of the interests approved by the Supreme Court in Turner I and Turner II.'' Professor Tribe also argues that mandatory carriage of multiple streams of video programming would result in a permanent, physical occupation of a substantial amount of a cable operator's capacity, raising ''substantial issues under the Fifth Amendment's Takings Clause and under the separation of powers.''

31. After consideration of all the arguments and evidence presented on this issue, we affirm our earlier decision, and decline, based on the current record before us, to require cable operators to carry any more than one programming stream of a digital television station that multicasts. On reconsideration, we acknowledge, however, that the language of the Act may be less definitive than portions of our earlier decision suggested. This conclusion is, in fact, more consistent with our observations in the *First Report and Order* ''that the terms 'primary video' as used in sections 614(b)(3) and 615(g)(1) are susceptible to different interpretations,'' and that ''[t]he legislative history does not definitively resolve the ambiguity regarding the intended application of the term 'primary video' as used in this context;'' *see* 16 FCC Rcd at 2620–21. As explained below, however, we continue to hold that the best construction of the must-carry provisions, based on the current record before us, is that cable operators need not carry more than one programming stream.

32. We recognize that Sections 614(b)(3) and 615(g)(1) do not directly translate to digital technology generally, much less to associated multicasting capabilities specifically, and thus do not appear to compel a particular result for multicasting must-carry. In the *First Report and Order*, we noted that ''the incorporation of the primary video construct into the Act in 1992 was reasonably contemporaneous with the gradual change in common understanding of the new television service * * * to DTV (digital television) with the ability to broadcast high definition television, SDTV (standard definition television) with multicasting possibilities, as well as the broadcast of non-video services;'' *see* 16 FCC Rcd at 2621. On reconsideration, we agree with the broadcasters that Sections 614(b)(3) and 615(g)(1) appear to have been written with analog technology in mind, given references to ''line 21,'' ''vertical blanking interval,'' and ''subcarriers,'' which are not applicable in digital technology. Thus, we conclude that Congress—although aware of digital technology when it drafted the must-carry requirement—did not expressly compel a particular result with respect to the application of ''primary video'' to digital television generally, and multicasting specifically; *see* 16 FCC Rcd at 2621–2622, H.R. Rep. No. 104–204(I), 104th Cong., 1st Sess. 220 (1995) (We reject, however, the argument of Disney and other broadcast petitioners that the Commission's definition of ''primary video'' for purposes of Section 614(b)(3)(A) of the Act is somehow inconsistent with Section 614(b)(3)(B), which provides that ''[t]he cable operator shall carry the entirety of the program schedule of any television station carried on the cable system unless carriage of specific programming is prohibited, and other programming authorized to be substituted, under section 76.67 or subpart F of part 76 of title 47, Code of Federal Regulations (as in effect on January 1, 1991) or any successor regulations thereto,'' 47 U.S.C. 534(b)(3)(B). The legislative history of Section 614(b)(3)(B) does not indicate any connection to the carriage of multiple video programming streams of a single broadcaster. According to the House Report accompanying the 1992 Cable Act, ''[s]ubsection (b)(3)(B) prohibits 'cherry picking' of programs from television stations by requiring cable systems to carry the entirety of the program schedule of television stations they carry. * * *'' H.R. Rep. No. 102–628, at 93 (1992). In other words, the point of Section 614(b)(3)(B) is ''to prevent[] cable operators from using portions of the signals of different broadcasters to create composite channels in an effort to increase the audience for cable programming.'' *Id.* at 58. That provision, therefore, requires cable operators to carry the entire program lineup that is assembled by a broadcaster on a particular channel that is entitled to carriage pursuant to Section 614(b)(3)(A). We agree with Time Warner Cable that it has nothing to do with carriage of multiple channels or program lineups. Section 614(b)(3)(B) simply requires that when a cable operator carries an eligible primary video programming stream, it must carry that stream in its entirety and may not provide a composite, cherry-picked programming stream. If Section 614(b)(3)(B) meant what broadcasters say it means, then Section 614(b)(3)(A) would be a nullity. We also disagree with some broadcasters' argument that, as a policy matter, the Commission's interpretation of ''primary video'' creates potential ''administrative problems.'' Disney, for example, asserts that a digital broadcast signal may be configured in a variety of ways throughout the day, requiring the broadcaster, at multiple times throughout the day, to have to ascertain whether the programming elements being televised are independent or

related, program-related, or otherwise. They surmise that there will thus be constant disputes as to whether particular multicast signals are program-related (and thus required to be carried) or unrelated (therefore not required to be carried). Although a mandatory multicast carriage policy could eliminate the need to determine what is or is not program related, we do not find that a compelling reason to read the term ''primary video'' as requiring cable operators to carry more than one programming stream. We will define in a subsequent Report and Order in this docket the parameters of what is program-related in the digital context, which we believe will assist in alleviating the type of dispute that some broadcasters predict.).

33. Recognizing that the statutory language is ambiguous, however, of course does *not* mean that we are now *compelled* to interpret the statute differently than the Commission previously did. Rather, given that ''Congress has not directly addressed the precise question at issue''—*i.e.*, ''the statute is silent or ambiguous with respect to the specific issue,'' the question for us is to derive a ''reasonable interpretation'' of the meaning of ''primary video;'' *see Chevron USA Inc.* v. *Natural Resources Defense Council*, 467 U.S. 837, 843, 844 (1984).

34. Given the ambiguity of the language of the statute, we consider its legislative history. As the Commission acknowledged in the *First Report and Order*, however, ''[t]he legislative history does not definitively resolve the ambiguity regarding the intended application of the term 'primary video' as used in [the multicasting] context;'' *see* 16 FCC Rcd at 2621. The legislative history indicates that ''the must carry provisions were not intended to cover all uses of a signal,'' but they do not precisely specify which portion of a signal is entitled to carriage and which is not; *see* 16 FCC Rcd at 2621. In other words, ''[t]he term primary video, as found in Sections 614 and 615 of the Act, suggests that there is some video that is primary and some that is not,'' but the legislative history of these sections does not suggest precisely which video signal(s) is (are) primary and which is (are) not; *see* 16 FCC Rcd at 2621. The legislative history of subsequently enacted Section 336, which relates not to cable carriage obligations but mostly to digital television implementation, likewise does not reveal any clear intention of Congress with respect to the multicasting must-carry issue.

35. We next focus on the underlying purposes of the statutory provisions, and evaluate whether requiring cable operators to carry more than one programming stream of a multicasting station would fulfill those purposes. In *Turner II*, a majority of the Supreme Court recognized as ''important'' two ''interrelated interests'' that Congress sought to further through the must-carry provisions: (1) preserving the benefits of free, over-the-air local broadcast television for viewers, and (2) promoting ''the widespread dissemination of information from a multiplicity of sources.'' As explained below, we cannot find on the current record that a multicasting carriage requirement is necessary to further either of these goals. Based on the current record, we find a reasonable interpretation of the Act is to require cable operators to carry one programming stream.

36. Significantly, there is nothing in the current record to convince us that mandatory carriage of all multiple streams of a broadcaster's transmission is necessary to achieve either of these goals. In the analog context, broadcasters could invoke explicit Congressional findings that the benefits of free, over-the-air television for viewers would be jeopardized without must carry. Congress, however, has made no such findings regarding multicast must carry and broadcasters have not made a convincing argument that over-the-air broadcasting would be jeopardized in the absence of mandatory multicasting. Unlike in the analog carriage debate, here broadcasters fail to substantiate their claim that mandatory multicasting is essential to ensure station carriage or survival. Broadcasters argue that carriage of multicast streams is essential to help them develop and support additional programming streams, but they have not made the case on the current record that these additional programming streams are essential to preserve the benefits of a free, over-the-air television system for viewers. Broadcasters will continue to be afforded must carry for their main video programming stream, which can be in standard definition or high definition, and any additional material that is considered program-related. Broadcasters can also rely on the marketplace working without mandatory carriage in order to persuade cable systems to carry additional streams of programming. There is evidence from the record, as well as news accounts, that cable operators are voluntarily carrying the multiple streams of programming of some broadcast stations, including public television stations, that are currently multicasting. Indeed, the Association of Public Television Stations and the NCTA recently announced an agreement that involves cable operators carrying up to four programming streams of at least one public TV station in a DMA during the transition from analog to digital technology, and *every* public TV station in a DMA after the transition, subject to certain nonduplication contingencies. Under these circumstances, the interests of over-the-air television viewers appear to remain protected.

37. Likewise, based on the current record, there is little to suggest that requiring cable operators to carry more than one programming stream of a digital television station would contribute to promoting ''the widespread dissemination of information from a multiplicity of sources.'' Under a single-channel must-carry requirement, broadcasters will have a presence on cable systems. Adding additional channels of the same broadcaster would not enhance source diversity. Furthermore, programming shifted from a broadcaster's main channel to the same broadcaster's multicast channel would not promote diversity of information sources. Indeed, mandatory multicast carriage would arguably diminish the ability of other, independent voices to be carried on the cable system.

38. Additionally, no persuasive case has been made on the current record that a multicasting carriage requirement will facilitate the digital transition. High quality programming in a digital format is a major factor that will drive this transition. Some broadcasters explain that they are reluctant to invest in additional programming streams absent an assurance of carriage. In response, NCTA states that cable operators ''*want* to carry HDTV and other compelling digital broadcast content that is desired by their customers,'' and that they want to carry local programming to distinguish their offerings from satellite. NCTA also cautions that giving ''shelf space'' to broadcasters might lead to carriage of ''infomercials, home shopping, or other low value content.'' NCTA therefore suggests that a guaranteed carriage requirement would diminish incentives for broadcast stations to produce high quality programming, which would ''reduce incentive for consumers to switch to digital TV.''

39. Given the lack of a meaningful showing on the current record that mandatory carriage of more than one programming stream is necessary to

achieve any of the goals discussed above, we determine not to impose such a requirement. We thus find it a reasonable construction of the must-carry provisions of the Act, on the record before us and in light of the Supreme Court's precedent, not to require cable operators to designate capacity or ''shelf space'' for multicasting programming streams at the expense of other competing interests.

40. We also note that cable operators contend that requiring them to carry more than one programming stream would constitute a taking under the Fifth Amendment. Given that we decline to impose such a requirement, we do not reach this issue.

41. Nothing in this Order diminishes the Commission's commitment to completing action on the multiple open proceedings on localism and on the public interest obligations of digital broadcasters. We believe the public interest and localism proceedings are essential components of the Commission's efforts to complete the transition to digital television. The Commission intends to move forward on these decisions within the next few months and complete action in these dockets by the end of the year.

42. Accordingly, we grant in part and deny in part the petitions for reconsideration on this issue and affirm our decision in the *First Report and Order.* Therefore, if a digital broadcaster elects to divide its digital spectrum into several separate, independent and unrelated programming streams, only one of these streams is considered primary and entitled to mandatory carriage. The broadcaster must elect which programming stream is its primary video, and the cable operator is required to provide carriage of that stream. Cable operators can choose to carry additional video programming streams through retransmission consent agreements. As reflected in the statute, cable operators are also required to carry ''program-related material,'' to the extent technically feasible; *see* 47 U.S.C. 614(b)(3)(A). What constitutes program-related material in the new digital context is defined separately from primary video and will be addressed fully in a subsequent Report and Order in this docket.

IV. Procedural Matters

43. *Paperwork Reduction Act of 1995 Analysis.* This document does not contain new or modified information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), 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).

44. *Final Regulatory Flexibility Certification.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities;'' *see* 5 U.S.C. 601–612, 5 U.S.C. 605(b). The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction;'' *see* 5 U.S.C. 601(6). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act; *see* 5 U.S.C. 601(3), 5 U.S.C. 601(3). 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 Small Business Administration (SBA); *see* 15 U.S.C. 632.

45. In this Second Report and Order and First Order on Reconsideration, the Commission takes action on two significant cable carriage issues, the resolution of which are essential to the Commission's ongoing efforts to complete the transition from analog to digital television. The issues resolved in this Order concern (1) whether cable operators are required under the Communications Act to carry both the digital and analog signals of a station (also referred to as ''dual carriage'') during the transition when television stations are still broadcasting analog signals; and (2) whether the Commission, in the *First Report and Order* in this proceeding, properly construed the term ''primary video,'' which appears in Sections 614(b)(3) (for commercial broadcasters) and 615(g)(1) (for noncommercial broadcasters), as requiring cable operators to carry only a single video programming stream (and not multiple streams of several separate, independent, and unrelated programming streams). Further, in the *First Report and Order,* the Commission also determined that the statute neither mandates nor precludes the mandatory carriage of both a television station's digital and analog signals. The Commission tentatively concluded that, based on the available record evidence, a dual carriage requirement would likely violate cable operators' First Amendment rights. In order to evaluate the issue more fully, the Commission adopted a *Further Notice of Proposed Rulemaking.* In this Second Report and Order and First Order on Reconsideration, the Commission affirms its tentative decision in the *First Report and Order* not to impose a dual carriage requirement on cable operators, and declines, based on the record evidence, to require cable operators to carry any more than one programming stream of a digital television station that multicasts.

46. Although the Commission did not receive any comments directed at the Initial Regulatory Flexibility Analysis, some of the comments filed in response to the *Further Notice of Proposed Rulemaking* addressed issues of concern to small entities. The American Cable Association, for example, filed reply comments contending that dual carriage and mandatory multicast carriage would be overly burdensome for small cable operators because of the more limited channel capacity of smaller cable systems and that the costs of implementing such requirements, if imposed, ''present an economic impossibility'' for smaller systems. The Commission considered these concerns, and decided not to impose additional requirements. While small broadcast television stations could benefit from a decision to impose mandatory dual carriage and mandatory multicast carriage, consideration of the economic impact of our decision is only relevant to cable operators, because the obligation to comply with an expanded must carry requirement would attach (in the context of this proceeding) only to cable operators (*i.e.*, a decision not to impose expanded must carry requirements does not, in any way, result in any regulatory obligation on the part of television broadcast stations or any other non-cable entities. Our resolution of the specific issues in the Second Report and Order and First Order on Reconsideration does not result in any rule changes affecting small entities.

47. The Commission, therefore, certifies that the requirement of this Second Report and Order and First Order on Reconsideration will not have a significant economic impact on a substantial number of small entities. Rather, it appears that our decisions here are likely to foster competition in the video marketplace and ensure the ability of small cable systems, in particular, to maximize the use of its available capacity to deliver diverse digital programming and to offer other

services, such as high-speed Internet service, to customers.

48. The Commission will send a copy of the Second Report and Order and First Order on Reconsideration, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act; *see* 5 U.S.C. 801(a)(1)(A). In addition, the Second Report and Order and First Order on Reconsideration will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the **Federal Register**; *see* 5 U.S.C. 605(b).

V. Ordering Clauses

49. Accordingly, *it is ordered,* pursuant to Section 405(a) of the Communications Act of 1934, as amended, 47 U.S.C. 405(a), and § 1.429 of the Commission's rules, 47 CFR 1.429, that the petitions for reconsideration filed by the parties are granted in part and denied in part as indicated above, and that this Second Report and Order and First Order on Reconsideration is adopted.

50. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Second Report and Order and First Order on Reconsideration, including the Final Regulatory Flexibility Certification, to Congress, pursuant to the Congressional Review Act, and also to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–5611 Filed 3–21–05; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2004–17917]

Tire Safety Information

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule; response to petitions for reconsideration; technical amendment.

SUMMARY: In November 2002, NHTSA published a final rule establishing, among other things, new tire safety information labeling requirements for vehicles. In June 2004, we published a final rule (June 2004 final rule) responding to petitions for reconsideration on a variety of issues, and made certain amendments to the new vehicle labeling requirements. The new tire safety information labeling requirements for vehicles become effective September 1, 2005.

This document responds to petitions for reconsideration of the June 2004 final rule requesting further changes to the vehicle labeling requirements. After carefully considering the petitions, the agency is modifying certain aspects of these requirements by allowing the option of including selected additional information.

DATES: This rule is effective September 1, 2005, except for the amendment to S4.4.2, which is effective June 1, 2007. Voluntary compliance is permitted before that time. In addition, vehicle placards conforming to the amended requirements of S4.3 of 49 CFR 571.110, as published on November 18, 2002 (66 FR 69600) and including any correcting amendments, may be used for vehicles manufactured before September 1, 2006.

FOR FURTHER INFORMATION CONTACT: For technical and policy issues: Ms. Mary Versailles, Office of International Policy, Fuel Economy and Consumer Programs. Telephone: (202) 366–2750. Fax: (202) 493–2290. E-mail: *Mary.Versailles@nhtsa.dot.gov.*

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I. Summary of Decision

In November 2002, NHTSA published a final rule establishing, among other things, new tire safety information labeling requirements for vehicles. In June 2004, we published a final rule responding to petitions for reconsideration on a variety of issues, and made certain amendments to the new vehicle labeling requirements. In response to the June 2004 final rule, NHTSA received several new petitions for reconsideration. After considering these petitions, this final rule makes a technical amendment to the new vehicle labeling requirements to permit certain additional information on the placard and the label at the option of the manufacturer. Specifically, the manufacturers may show light truck tire load range identification and tire service description information on the placard or the label. Further, the manufacturers may place an alphanumeric and/or barcode part identifier along the bottom or side edges of the placard or the label. This final rule also clarifies certain placard and label subheading requirements and responds to several requests for legal interpretations. We are denying requests to delay the effective date of September 1, 2005 because we have neither changed nor imposed new mandatory vehicle labeling requirements. However, between September 1, 2005 and August 31, 2006, the manufacturers can use placards and labels that comply with the requirements of the November 2002 final rule.

II. Background

The Transportation Recall Enhancement, Accountability, and Documentation Act of 2000 (TREAD Act) [1] required the agency to, among other things, improve tire labeling in order to assist consumers in identifying tires that may be the subject of a recall.[2] Additionally, the TREAD Act provided that the agency may take whatever additional action it deemed appropriate to ensure that the public is aware of the importance of observing motor vehicle tire load limits and maintaining proper tire inflation levels for safe vehicle operation.[3] For example, such additional action could include a requirement that the manufacturers provide the vehicle purchasers with information on appropriate tire inflation levels and load limits.

In response to this mandate, NHTSA published a final rule (November 2002 final rule), which among other things, established new tire safety information labeling requirements for vehicles.[4] These requirements become effective September 1, 2005, and are specified in S4.3 of Federal Motor Vehicle Safety

[1] See Pub. L. 106–414, November 1, 2000.

[2] See *id* at Sec. 11(a).

[3] See *id* at Sec. 11(b).

[4] See 67 FR 69600 (November 18, 2002).

Standard (FMVSS) No. 110. The final rule requires that each vehicle (other than a motorcycle) with a Gross Vehicle Weight Rating (GVWR) of 10,000 pounds or less contain either a new Vehicle Placard showing certain tire and loading information (placard), or a combination of a placard currently required by FMVSS No. 110, and a new Tire Inflation Pressure Label (label). The final rule specifies the content, format, and location for the placard and the label. Subsequent documents clarified the applicability of the final rule [5] and extended the compliance date for the vehicle labeling provisions.[6]

On June 3, 2004, NHTSA published a final rule; response to petitions for reconsideration of the November 2002 final rule (June 2004 final rule).[7] The agency made the following changes to the vehicle labeling requirements:

- The placard and label could contain a barcode or vehicle identification number (VIN) on the right side of the placard or the label.
- The placard and the label could contain tire load indications of ''XL'' or ''Reinforced.''
- We clarified the use of red and yellow ink on the placard and the label.
- The placard format was revised to match the format of the label.
- The effective date for vehicle labeling requirements was extended to September 1, 2005.

Subsequent to issuing the June 2004 final rule, the agency published a correction notice and issued several letters of interpretation pertaining to questions addressed in this document. We will discuss our correction notice and relevant interpretation letters in Section IV.

III. Petitions for Reconsideration

NHTSA received three petitions for reconsideration of the June 2004 final rule from General Motors (GM), the Rubber Manufacturers Association (RMA), and the Alliance of Automobile Manufacturers (Alliance).[8] Further, the agency received several requests for legal interpretations of the new vehicle labeling requirements. We addressed some of these requests by issuing letters of interpretations, and promised to address other questions when we issued this document.

The following issues were raised in the petitions:

- GM petitioned the agency to allow optional light truck tire load identifications of B, C, D, E, or F on the placard and the label.
- Alliance and RMA petitioned the agency to allow optional service description (load index number and speed rating symbol) on the placard and the label.
- Alliance petitioned the agency to allow the use of a part identifier other than the VIN or a bar code on the placard and the label, and to delete the location requirements for that identifier.
- Alliance petitioned the agency to limit the spare tire information requirement to only compact spare tires, and not full-size spare tires or vehicles without spares.
- Alliance petitioned the agency to revise S4.3.3 to show tire and rim size information on the certification label only once if the same tire and rim combinations can apply to the front and rear axle.
- Alliance petitioned the agency to suspend the effective date until all issues have been resolved, allowing manufacturers the option of complying with: (a) the requirements in effect prior to November 2002 final rule; or (b) the requirements of the November 2002 final rule; or (c) the requirements of the June 2004 final rule.
- GM and Alliance petitioned the agency to correct the regulatory text so that it permits the use of subheadings ''size,'' or ''original tire size,'' or ''original size.''
- GM petitioned the agency to correct S4.3.4(c) and S4.3.4(b), which the agency had discussed in the preamble to the 2004 final rule, but failed to include in the regulatory text.

The following issues were raised in letters requesting legal interpretations and comments to the docket:

- VW asked if manufacturers could use placards and optional labels printed prior to the publication of the June 2004 final rule.
- Subaru and Hyundai asked the agency if manufacturers could use ''an alpha-numeric identifier'' in place of the VIN or barcode. These requests were similar to one of the issues raised by Alliance.
- In a comment to the docket, Ford indicated support for the Alliance petition and urged the agency to permit optional service description (load index number and speed rating symbol) on the placard or optional label.

IV. Discussion and Analysis

A. Optional Load Range Identification for Light Truck Tires

The current language of the new vehicle labeling requirements only lists optional tire load identifications ''XL'' or ''reinforced.'' [9] In its petition and a subsequent October 11, 2004 letter, GM asked the agency to amend the vehicle labeling requirements to also allow optional light truck tire load range identifications B, C, D, E, or F on the placard and label. GM noted that optional light truck load range identifications B, C, D, E, or F are used for light truck tires to identify load carrying capability in the same way load identification XL is used for passenger car tires to identify extra load carrying capability. GM reasoned that light truck owners should be made aware of tire load carrying capabilities so that they know to replace these tires with ones capable of holding similar loads. GM cautioned that the same size light truck tires may have different load carrying capabilities. Thus, it is not enough for the vehicle placard to specify the tire size. Alliance and RMA also urged the agency to allow optional light truck tire load range identifications for similar reasons.

In a letter to GM dated February 18, 2004, NHTSA stated that it was not the agency's intent to allow the load rating identification for passenger car tires, but prohibit it for light truck tires.[10] We interpreted the language of S4.3(i) of FMVSS No. 110 to permit the use of light truck tire load range identifications B, C, D, E, or F. We stated that we would amend the regulatory text to make this clear, and are doing so in this document.

B. Load Index Number and Speed Rating Symbol

RMA and Alliance petitioned the agency to allow the placard and the label to show service description information, consisting of a numeric tire load index and a speed rating. Ford also submitted a comment indicating support for the Alliance request to show this additional information.[11]

First, RMA and Alliance argued that speed rating symbols help assure compatibility between the maximum speed capability of the vehicle and tires. Alliance indicated that there is an industry consensus of opinion regarding service description information and its usefulness to consumers. In support of its assertion, Alliance stated that *www.TireRack.com* and the Tire and Rim Association 2004 Year Book use the service description information. RMA stated that tires that are designed to

[5] See June 26, 2003 correcting amendment at 68 FR 37981.

[6] See 68 FR 33655 (June 5, 2003).

[7] See 69 FR 31306.

[8] These petitions are available online at *http://dms.dot.gov/search/searchFormSimple.cfm* (Docket No. NHTSA–2004–17917).

[9] See S4.3(i) of FMVSS No. 110, effective September 1, 2005.

[10] See *http://www.nhtsa.dot.gov/cars/rules/interps/files/GF007220–2.html.*

[11] See Docket No. NHTSA–2004–17917–6.

withstand extended travel at high speeds may not have the same handling characteristics of other tires. Both RMA and Alliance suggested that the speed rating symbol was necessary to ensure that tires originally equipped on a given vehicle are replaced with similarly rated tires.

Second, with respect to tire load index, Alliance and RMA argued that the tire load index is necessary to alert consumers to load carrying capabilities of their tires. Both parties argued that there is enough space to include the speed rating and the load index without overcrowding the placard and the label.

On reconsideration, we have decided to amend the new vehicle labeling requirements to allow this information on the placard and the label at the option of the manufacturer.

We believe that the recommended tire inflation pressure, replacement tire size, and maximum load carrying capability rating are critical components of tire safety information pertinent to consumers. We believe that the tire speed rating, which indicates the tire's maximum speed capability (usually well in excess of speeds permitted on U.S. public roads), and the tire load index, which indicates the maximum load a tire can carry at the speed indicated by the speed rating symbol are not critical components of tire safety information, but may be beneficial to some consumers. We are persuaded by the petitioner's request to allow optional tire service description information for several reasons.

First, this optional tire service description information would take up minimal additional space on the placard or the label. Specifically, the load index is a two or three digit numerical code, and the speed rating is a single letter. Thus, the optional information amounts to three or four additional alphanumeric characters.

Second, as indicated by the RMA, vehicle manufacturers select, as original equipment, tires that match the maximum speed capability of the vehicle to which they are fitted. For some performance vehicles, this information may be helpful in enabling the consumer to select replacement tires consistent with the vehicle's speed capabilities.

Finally, we are persuaded by Alliance's argument that to optimize performance of certain vehicles, the replacement tires must match not only the size but also speed rating capability, which usually impacts vehicle performance and handling characteristics.

C. Supplemental Identifier Other Than VIN or Barcode

The current language of the new vehicle labeling requirements allows vehicle manufacturers to place an optional bar code or VIN along the right-hand edge of the vehicle placard and label.[12]

In a letter dated October 7, 2004, Hyundai asked whether it would be permissible to use an alphanumeric identifier other than the VIN or bar code, in order to ensure that the correct label is placed on each specifically configured vehicle.[13] Hyundai explained that depending on trim or performance variations, vehicles on the same assembly line may require different labels because they are equipped with different tires, or vary in recommended inflation pressures. Hyundai argued that an alphanumeric label identifier, other than VIN or barcode, could be helpful in ensuring that the correct label is placed on a specifically configured vehicle. Subaru made a similar request for a legal interpretation, and Alliance petitioned for similar relief. Alliance also asked for less restriction on the location of the identifier, arguing that the requirement that it be located along the right-hand edge of the placard or the label was ''arbitrary and unnecessarily restrictive.''

NHTSA agrees with the petitioners that an alphanumeric label identifier, other than VIN or barcode could be helpful in ensuring that different vehicles built on one assembly line are labeled correctly. In fact, when we issued the June 2004 final rule, we allowed the use of bar codes and VINs for that very purpose; i.e., to help manufacturers ensure correct label installation at the factory. Because we agree that different types of identifying information could be used for that purpose, we are amending S4.3(h) to allow for any form of optional alphanumeric identification information and/or barcode that helps the manufacturers ensure correct label installation at the factory.

With respect to the location of the optional alphanumeric identifier, we believe a greater degree of flexibility is warranted. As indicated in the November 2002 final rule, the purpose of the new vehicle labeling requirements is to make them more noticeable and more explicit. NHTSA explained that the actual arrangement or the shape of labels is less relevant than their content.[14] Accordingly, we are amending the regulatory text to allow the optional alphanumeric identifier to be located along either vertical edge or bottom edge of the label or the placard.

We continue to believe it is important that this optional information is located along the edges of the label or the placard, and ''away'' from the tire safety information pertinent to consumers. The new location and orientation choices for this optional information reduce the burden on the manufacturers, yet continues to ensure that a consumer would not perceive this information as something relevant to tire inflation and loading information.

D. Placard Format Subheadings

In their petitions, GM and Alliance asked the agency to correct the regulatory text so that it permits the use of subheadings ''size,'' or ''original tire size,'' or ''original size.'' GM noted that the agency had indicated it would do so in the preamble to the June 2004 final rule; however, the regulatory text did not reflect that change.[15]

When the agency issued the June 2004 final rule, we intended to allow the use of the three subheadings interchangeably. However, we inadvertently omitted this change from the regulatory text. In a document published on August 19, 2004, we corrected the regulatory text to permit the use of subheadings ''size,'' or ''original tire size,'' or ''original size.''[16]

Alliance petitioned the agency to limit the spare tire information requirements to only compact spare tires, and not include full-size spare tires. Alliance reasoned that the front and rear tire information fields within the placard or the label already provide the pertinent information for the full size spare tires. Further, Alliance noted that the inflation pressure for the full size spare might be different depending on whether the spare tire is installed in the front or rear of the vehicle. Alliance stated that, when the full size tire is in use, it would be better for consumers to rely on the inflation information specific to either front or rear of the vehicle. Thus, Alliance suggested that the information field for spare tires is unnecessary when a full size spare is provided.

We agree that the full size spare tire information on the placard and label may be redundant in some situations, and that more precise tire inflation pressure information may be already available on the same placard or the

[12] See S4.3(h) of FMVSS No. 110, effective September 1, 2005.

[13] See Docket No. NHTSA–2004–17917–10.

[14] See 67 FR 69600 at 69613.

[15] See 69 FR 31306 at 31315.

[16] See 69 FR 51399.

label. However, the manufacturers are in the best position to determine if additional full size spare tire information is necessary, or if the information already provided for the front and rear tires is sufficient.

Accordingly, we are allowing the manufacturers to omit the full size spare tire information, if they believe it to be redundant. Because the agency continues to believe that consumers would benefit from obtaining relevant spare tire information from the label or the placard, the label and the placard must nevertheless contain the subheading of ''spare.'' However, the manufacturers can use the words ''see above'' instead of providing the tire size and cold tire inflation pressure in the appropriate fields. By contrast, if the placard or the label contained no mention of the spare tire, some consumers could be deprived of vital tire safety information, including whether or not their vehicle is equipped with any spare tire at all. Contrary to Alliance's position, we do not believe that the consumers would necessarily know to adjust their spare tire pressure according to the tire information provided for front or rear tires.

We are amending the regulatory text to reflect this change.

In its petition, Alliance asked the agency not to require spare tire information subheadings for vehicles not equipped with spare tires. The agency believes it is appropriate to continue requiring spare tire information subheadings on all placards and labels. If no spare tire is provided, the appropriate field must include the word ''none.'' As discussed above, the agency believes that consumers would benefit from knowing that their vehicle is, or is not equipped with a spare tire. The placard and the label dedicated to critical tire safety information is the best place to alert the consumers that their vehicle is not equipped with a spare tire. Omitting the spare tire subheading does not convey this pertinent information to consumers. We believe that this requirement does not result in additional burden on vehicle manufacturers because it allows for a uniform placard and label format for all vehicle configurations.

E. Effective Date

In its petition, Alliance asked the agency to suspend the effective date of the June 2004 final rule until NHTSA responds to all petitions for reconsideration. Alliance suggested that the agency allow the use of vehicle labels that comply with: (1) The requirements in effect prior to the November 2002 final rule; (2) the requirements of the November 2002 final rule; or (3) the requirements of the June 2004 final rule.

The agency carefully considered Alliance's request and believes that delaying the effective date is not necessary for the following reasons.

First, this technical amendment does not impose any new mandatory vehicle labeling requirements and does not change the format of the placard or the label. Instead, in response to petitions for reconsideration, the agency is allowing the option of including certain additional information on the placard or the label. Thus, labels and placards printed before the publication of this document (in conformance with the requirements of the June 2004 final rule) are unaffected. For example, this document amends the regulatory text to allow the option of including an alphanumeric part identifier and load range identification on the placard or the label. Because these items are optional, the amendments do not result in any additional compliance burdens or require new label design efforts.

Second, as previously stated by this agency on numerous occasions, a pending petition for reconsideration does not toll the effective date of the subject final rule. NHTSA carefully considers all petitions for reconsideration arising from promulgation of new rules. After careful review, the agency decides whether to grant the petitions and whether to modify the rule. However, NHTSA's response to such petitions is prospective, and in the interim, the final rule remains effective as originally issued. Because manufacturers cannot assume that the requested changes will be made in response to petitions for reconsideration, they must take the necessary steps in order to timely comply with the original requirements of the subject final rule. In the present case, the manufacturers first became aware of the new labeling requirements in 2002. After responding to petitions, the agency amended the label format in June of 2004. No further required format changes are being made in this document. Thus, the manufacturers will have had almost 14 months to produce compliant placards and labels. Under these circumstances, the agency does not believe that extending the effective date is warranted.

In sum, the agency is denying the request to suspend the effective date of vehicle labeling requirements or to allow optional compliance with alternative vehicle labeling requirements.

In an August 25, 2004 e-mail requesting interpretation of the new vehicle labeling requirements, VW asked if, after September 1, 2005, it would be permissible to use the placards that comply with vehicle labeling requirements of the November 2002 final rule, but not the amended requirements of the June 2004 final rule, until the current stock of labels printed in response to the November 2002 final rule is depleted. VW indicated that the printed placards were not being used because the agency delayed the effective date of new vehicle labeling requirements.[17]

We note that VW and other manufacturers that printed placards and labels prior to issuance of the June 2004 final rule could use these placards and labels now, because these placards and labels comply with current vehicle labeling requirements in S4.3 of FMVSS No. 110. Thus, we do not believe that an excessive quantity of placards and labels would have to be discarded as a result of changes made in the June 2004 final rule.

However, because the placards and labels that conform to the improved labeling requirements of the November 2002 final rule (although not the format changes made in the June 2004 final rule), would meet the agency's basic goal of ensuring that the public is aware of the importance of observing motor vehicle tire load limits and maintaining proper tire inflation levels, we will permit the manufacturers to use the placards and labels printed to meet the November 2002 final rule for a period of 1 additional year. That is, between September 1, 2005 and August 31, 2006, the manufacturers can use placards and labels that comply with the requirements of the November 2002 final rule[18] or the requirements of the July 2004 final rule, as amended by this document.[19]

F. Miscellaneous Questions and Issues Addressed in Other Documents

1. On March 21, 2004, GM petitioned the agency to correct the regulatory text in S4.3.4(c) of FMVSS No. 110. The agency indicated that it would do so in the preamble to the June 2004 final rule, but inadvertently omitted relevant regulatory text. Instead, we corrected the regulatory text of S4.3.4(c) in a document published on August 19, 2004.[20] In the same document, the agency also corrected S4.2.2 of FMVSS No. 110.

In a letter dated September 23, 2004, GM asked whether a technical

[17] See Docket No. NHTSA–2004–1791–7.

[18] See 67 FR 69600 at 69623.

[19] See 69 31306 at 31317.

[20] See 69 FR 51399.

correction to S4.2.2 was necessary. Specifically, GM asked the agency to clarify the normal load requirements. In a letter dated January 3, 2005, we indicated that currently, S4.2.2 specifies normal load limits for passenger cars only. Effective June 1, 2007, S4.2.1 will specify the normal load limits for passenger cars, and S4.2.2 will specify the normal load requirements for multipurpose passenger vehicles, trucks, buses, and trailers with a GVWR of 10,000 pounds or less. We stated that the August 19, 2004 correction did not affect the date on which multipurpose passenger vehicles, trucks, buses, and trailers with a GVWR of 10,000 pounds will become subject to the normal load requirements.[21]

We reviewed this issue further and concluded that the change to S4.2.2 of FMVSS No. 110 was unnecessary. Accordingly, we are amending the regulatory language to correct this error.

2. S4.3.3 of FMVSS No. 110 requires that vehicles other than passenger cars show certain tire and rim size and recommended inflation pressure information on the certification label, in addition to the placard and the label discussed elsewhere in this document. Alliance petitioned the agency to change this requirement such that the tire and rim size information and recommended inflation pressure appear only once, if the same information applies to both the front and rear axles. The petitioner argues that repeating this information takes up unnecessary space when the same tire and rim combination is used on both axles.

The agency believes that the tire and rim size information and recommended inflation pressure do not take inordinate amount of space on the certification label. Further, we believe that listing this information separately for each axle avoids potential confusion and specifies the necessary information in a clear format.

In reviewing the example of the certification label requirements provided in S4.3.3 of FMVSS No. 110, we noticed that the example contains several metric value conversion errors. This document corrects these errors.

3. S4.4.2 of FMVSS No. 110, as amended on June 26, 2003, contains a typographical error.[22] Specifically, the regulatory text of that section incorrectly refers to S4.2.2 instead of referring to S4.4.2. This document corrects these errors.

4. In the June 2004 final rule, we stated that NHTSA is preparing to request OMB for clearance of the collections of information associated with that rulemaking.[23] That request was unnecessary because the OMB already approved the collection of information related to vehicle and tire labeling (OMB Control No. 2127–0503).[24] This approval expires 12/31/2005. NHTSA will be preparing a new request to OMB for information collection clearance in the near future.

This technical amendment does not contain additional ''collections of information,'' as that term is defined at 5 CFR Part 1320 *Controlling Paperwork Burdens on the Public.*

This technical amendment, made in response to petitions for reconsideration, will not impose or relax any substantive requirements or burdens on manufacturers. Instead this technical amendment clarifies existing requirements and allows certain optional information on the placard and the label.

V. Regulatory Text

List of Subjects in 49 CFR Part 571

Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

■ In consideration of the foregoing, part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 2011, 30115, 30166 and 30177; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.110 is amended by revising S4.2.2; S4.3(c), (d), (h) and (i); the example in the last paragraph of S4.3.3; S4.4.2 introductory text; and Figures 1 and 2 at the end of Section 571.110, to read as follows:

§ 571.110 Standard No. 110—Tire selection and rims for motor vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or less.

* * * * *

S4.2.2 The vehicle normal load on the tire shall not be greater than the test load used in the high speed performance test specified in S5.5 of § 571.109 for that tire.

* * * * *

S4.3 * * *

(c) Vehicle manufacturer's recommended cold tire inflation pressure for front, rear and spare tires, subject to the limitations of S4.3.4. For full size spare tires, the statement ''see above'' may, at the manufacturer's option replace manufacturer's recommended cold tire inflation pressure. If no spare tire is provided, the word ''none'' must replace the manufacturer's recommended cold tire inflation pressure.

(d) Tire size designation, indicated by the headings ''size'' or ''original tire size'' or ''original size,'' and ''spare tire'' or ''spare,'' for the tires installed at the time of the first purchase for purposes other than resale. For full size spare tires, the statement ''see above'' may, at the manufacturer's option replace the tire size designation. If no spare tire is provided, the word ''none'' must replace the tire size designation;

* * * * *

(h) At the manufacturer's option, identifying information provided in any alphanumeric and or barcode form, located vertically, along the right edge or the left edge of the placard or the label, or horizontally, along the bottom edge of the placard or the label; and

(i) At the manufacturer's option, the load range identification symbol, load index, and speed rating, located immediately to the right of the tire size designation listed in accordance with S4.3(d) above.

* * * * *

S4.3.3 * * *

Truck Example—Suitable Tire-Rim Choice

GVWR: 2,441 kilograms (5381 pounds).

GAWR: Front—1,299 kilograms (2,864 pounds) with P265/70R16 tires, 16 × 8.0 rims at 248 kPa (36 psi) cold single.

GAWR: Rear—1,299 kilograms (2,864 pounds) with P265/70R16 tires, 16 × 8.00 rims, at 248 kPa (36 psi) cold single.

* * * * *

S4.4.2. *Rim markings for vehicles other than passenger cars.* Each rim or, at the option of the manufacturer in the case of a single-piece wheel, each wheel disc shall be marked with the information listed in S4.4.2 (a) through (e), in lettering not less than 3 millimeters in height, impressed to a depth or, at the option of the manufacturer, embossed to a height of not less than 0.125 millimeters. The information listed in S4.4.2 (a) through (c) shall appear on the outward side. In the case of rims of multi piece construction, the information listed in S4.4.2 (a) through (e) shall appear on the rim base and the information listed in

[21] See *http://www.nhtsa.dot.gov/cars/rules/interps/files/GF007220.html.*

[22] See 68 FR 38116 at 38148.

[23] SSee 69 FR 31306 at 31317.

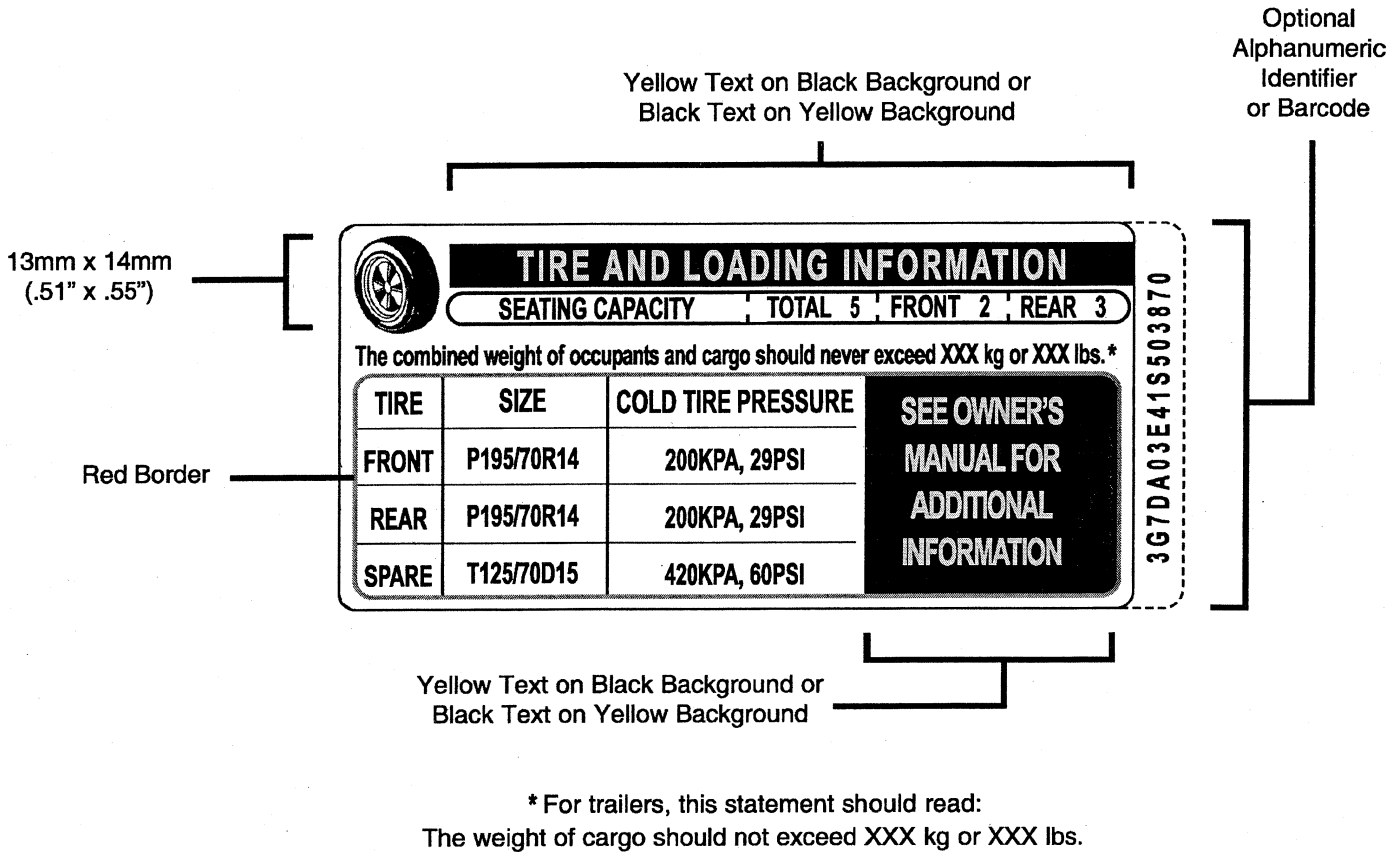
[24] See *http://www.whitehouse.gov/omb/library/OMBINV.STATE.DOT.htm#DOT.*

S4.4.2 (b) and (d) shall also appear on each other part of the rim.

* * * * *

BILLING CODE 4910–59–P

Vehicle Placard



* For trailers, this statement should read:
The weight of cargo should not exceed XXX kg or XXX lbs.

Figure 1

Tire Inflation Pressure Label

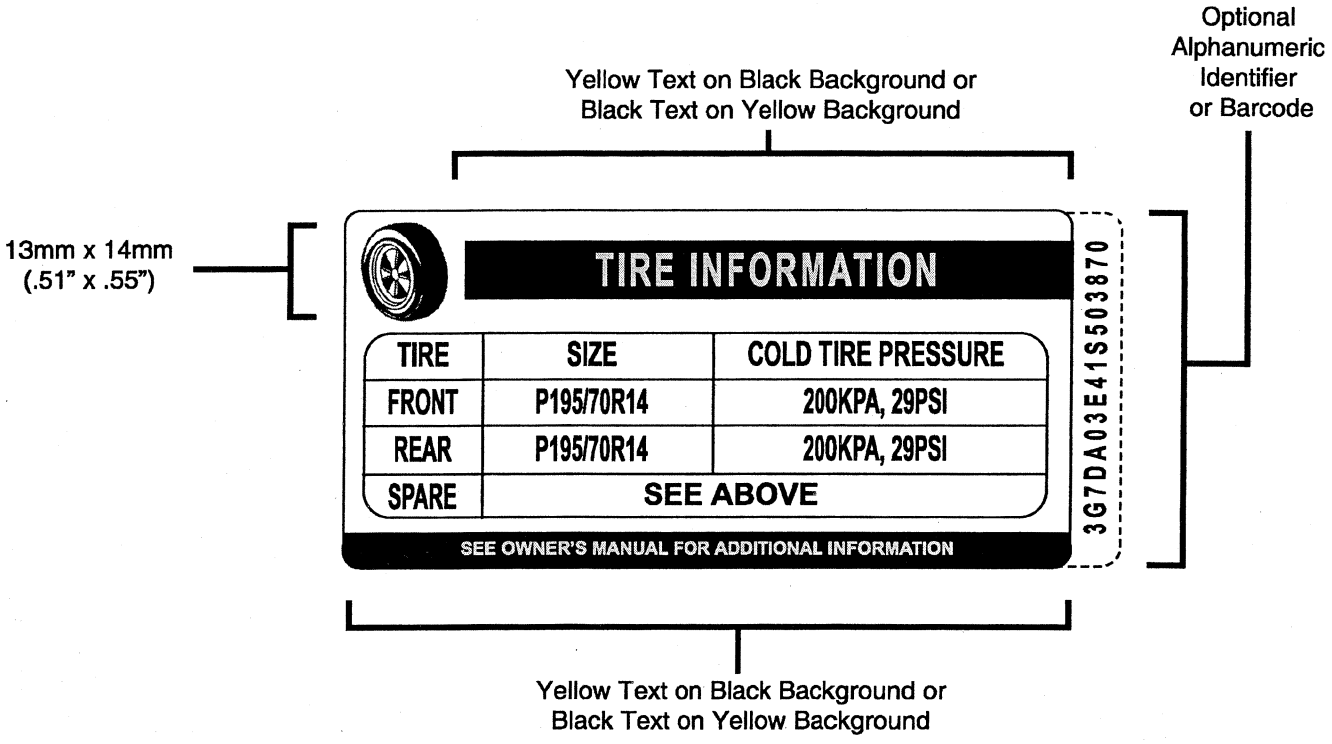


Figure 2

Issued: March 16, 2005.

Jeffrey W. Runge,

Administrator.

[FR Doc. 05–5580 Filed 3–21–05; 8:45 am]

BILLING CODE 4910–59–C

Proposed Rules

Federal Register
Vol. 70, No. 54
Tuesday, March 22, 2005

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

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[DHS–2004–0016]

Privacy Act of 1974: Implementation of Exemptions

AGENCY: Privacy Office, Department of Homeland Security.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security is concurrently establishing a new system of records pursuant to the Privacy Act of 1974 for the Bureau of Immigration and Customs Enforcement, Student and Exchange Visitor Program. In this proposed rulemaking, the Department proposes to exempt portions of this system of records from one or more provisions of the Privacy Act because of criminal, civil and administrative enforcement requirements.

DATES: Comments must be received on or before April 21, 2005.

ADDRESSES: You may submit comments, identified by docket number DHS–2004–0016, by one of the following methods:

EPA Federal Partner EDOCKET Web site: *http://www.epa.gov/feddocket*.

Follow instructions for submitting comments on the Web site.

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

Fax: 202–772–5036 (This is not a toll-free number).

Mail: Department of Homeland Security, Attn: Privacy Office/Nuala O'Connor Kelly, Chief Privacy Officer/202–772–9848, Washington, DC 20528.

Hand Delivery/Courier: Department of Homeland Security, Attn: Privacy Office/Nuala O'Connor Kelly, Chief Privacy Officer/202–772–9848, Anacostia Naval Annex, 245 Murray Lane, SW, Building 410, Washington, DC 20528, 7:30 a.m. to 4 p.m.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.epa.gov/feddocket*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.epa.gov/feddocket*. You may also access the Federal eRulemaking Portal at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Nuala O'Connor Kelly, Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528 by telephone 202–772–9848 or facsimile 202–772–5036.

SUPPLEMENTARY INFORMATION:

Background

Concurrently with the publication of this notice of proposed rulemaking, the Department of Homeland Security (DHS) is publishing a Notice establishing a new system of records that is subject to the Privacy Act of 1974, 5 U.S.C. 552a. This new system is the Student and Exchange Visitor Information System (SEVIS), maintained by the Student and Exchange Visitor Program. DHS is proposing to exempt this system, in part, from certain provisions of the Privacy Act.

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses and disseminates personally identifiable information. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. Individuals may request their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR part 5.

The Homeland Security Act of 2002 requires the Secretary of DHS to appoint a senior official to oversee implementation of the Privacy Act and to undertake other privacy-related activities. Pub. L. 107–296, section 222, 116 Stat. 2135, 2155 (Nov. 25, 2002) (HSA). The system of records being published today helps to carry out the DHS Chief Privacy Officer's statutory activities.

The Privacy Act requires each agency to publish in the **Federal Register** a description of the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency recordkeeping practices transparent, to notify individuals regarding the uses to which personally identifiable information is put, and to assist individuals to more easily find such files within the agency.

The Privacy Act allows government agencies to exempt certain records from the access and amendment provisions. If an agency claims an exemption, however, it must issue a Notice of Proposed Rulemaking to make clear to the public the reasons why a particular exemption is claimed.

DHS is claiming exemption from certain requirements of the Privacy Act for SEVIS. Because the purpose of the SEVIS system is to collect and maintain pertinent information on nonimmigrant students and exchange visitors and the schools and exchange visitor program sponsors that host them while in the United States in order to ensure that these individuals comply with the requirements of their admission, it is possible that the information in the record system may pertain to national security or law enforcement matters. In such cases, allowing access to such information could alert the subject of the information to an investigation of an actual or potential criminal, civil, or regulatory violation and reveal investigative interest on the part of DHS or another agency. Disclosure of the information would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the information would also permit the individual, who is the subject of a record, to impede the investigation and avoid detection or apprehension, which undermines the entire system. This exemption is a standard law enforcement and national security exemption utilized by numerous law enforcement and intelligence agencies.

List of Subjects in 6 CFR Part 5

Privacy; Freedom of information.

For the reasons stated in the preamble, DHS proposes to amend Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

1. The authority citation for Part 5 continues to read as follows:

Authority: Pub. L. 107–296, 116 Stat. 2135, 6 U.S.C. 101 *et seq.*; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

2. Add Appendix C to Part 5 the following:

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

This Appendix implements provisions of the Privacy Act of 1974 that permit the Department of Homeland Security (DHS) to exempt its systems of records from provisions of the Act.

Portions of the following DHS systems of records are exempt from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552(j) and (k):

1. DHS/ICE 001, the Student and Exchange Visitor Information System, which allows DHS to collect and maintain information on nonimmigrant students and exchange visitors, and the schools and exchange program sponsors that host them in the United States. The system permits DHS to monitor compliance by these individuals with the terms of their admission into the United States. Pursuant to exemptions (j)(2), (k)(1), (k)(2) and (k)(5) of the Privacy Act, portions of this system are exempt from 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4)(G), (H) and (I). Exemptions from the particular subsections are justified, on a case by case basis to be determined at the time a request is made, for the following reasons:

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

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation, of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation and avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. In addition, permitting access and amendment to such information also could disclose security-sensitive information that could be detrimental to homeland security.

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

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

Dated: March 15, 2005.

Nuala O'Connor Kelly,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 05–5584 Filed 3–21–05; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20661; Directorate Identifier 2004–NM–261–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–200B, 747–300, 747–400, and 747–400D 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 747–200B, 747–300, 747–400, and 747–400D series airplanes. This proposed AD would require modifying the lateral shear beam for the Door 5 crew rest and, for certain airplanes, replacing Zone E tie rods and modifying the Zone E stowbin ladder. This proposed AD is prompted by a report indicating that the lateral shear beam for the Door 5 crew rest does not meet the 9G forward loading requirement. We are proposing this AD to prevent the structural support for the Door 5 crew rest and Zone E stowbins from failing during an emergency, which could result in the crew rest or stowbins falling and consequent injury to crew and passengers.

DATES: We must receive comments on this proposed AD by May 6, 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–2005–20661; the directorate identifier for this docket is 2004–NM–261–AD.

FOR FURTHER INFORMATION CONTACT: Don Wren, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6451; 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–2005–20661; Directorate Identifier 2004–NM–261–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://*

dms.dot.gov, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

Examining the Docket

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

Discussion

We have received a report indicating that the lateral shear beam for the Door 5 crew rest does not meet the 9G forward loading requirement on certain Boeing Model 747 series airplanes. This condition, if not corrected, could result in the failure of the structural support for the Door 5 crew rest and Zone E stowbins, and could result in the crew rest or stowbins falling during an emergency and consequent injury to crew and passengers.

Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 747–53–2497, dated November 4, 2004 (for Boeing Model 747–200B and –300 series airplanes), which describes procedures for modifying the lateral shear beam for the Door 5 crew rest. The modification includes replacing the web with a new thicker web and installing additional stiffeners.

We have also reviewed Boeing Special Attention Service Bulletin 747–53–2481, dated October 24, 2002 (for Boeing Model 747–400 and –400D series airplanes), which describes procedures for modifying the lateral shear beam for the Door 5 crew rest and replacing Zone E tie rods with new tie rods and modifying the Zone E stowbin ladder by installing new intercostals.

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, except as discussed under ''Differences Between the Proposed AD and the Service Bulletins.''

Differences Between the Proposed AD and the Service Bulletins

Boeing Special Attention Service Bulletin 747–53–2497 recommends accomplishing the modification ''at the earliest opportunity when manpower, materials and facilities are available,'' and Boeing Special Attention Service Bulletin 747–53–2481 recommends accomplishing the modification ''within 3 years of the release date on the service bulletin.'' However, this proposed AD specifies accomplishing the modification within 60 months after the effective date of the AD. In developing an appropriate compliance time for this AD, we considered the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the modification. In light of all of these factors, we find a compliance time of 60 months for completing the proposed modification to be warranted, in that it represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety. We have coordinated this compliance time with the manufacturer.

Costs of Compliance

There are about 424 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 65 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Modification	86–207	$65	$7,095–$37,770	$12,685–$51,225	65	$824,525–$3,329,625

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–2005–20661; Directorate Identifier 2004–NM–261–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by May 6, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the Boeing airplanes, certificated in any category, specified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD.

(1) Model 747–200B and 747–300 series airplanes identified in Boeing Special Attention Service Bulletin 747–53–2497, dated November 4, 2004.

(2) Model 747–200B and 747–300 series airplanes on which Boeing Service Bulletins 747–25–2716, 747–25–2724, and 747–25–2784 have been done.

(3) Model 747–400 and 747–400D series airplanes identified in Boeing Special Attention Service Bulletin 747–53–2481, dated October 24, 2002.

Unsafe Condition

(d) This AD was prompted by a report that the lateral shear beam for the Door 5 crew rest does not meet the 9G forward loading requirement. We are issuing this AD to prevent the structural support for the Door 5 crew rest and Zone E stowbins from failing, which could result in the crew rest or stowbins falling during an emergency and consequent injury to crew and passengers.

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.

Model 747–200B and 747–300: Modification

(f) Within 60 months after the effective date of this AD, modify the lateral shear beam for the Door 5 crew rest by accomplishing all of the actions specified in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–53–2497, dated November 4, 2004.

Model 747–400 and 747–400D: Modification and Replacement

(g) Within 60 months after the effective date of this AD, modify the lateral shear beam for the Door 5 crew rest, replace the Zone E tie rods, and modify the Zone E stowbin ladder, by accomplishing all of the actions specified in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–53–2481, dated October 24, 2002.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, Seattle 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.

Issued in Renton, Washington, on March 9, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–5571 Filed 3–21–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20660; Directorate Identifier 2004–NM–242–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200 and –300 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 777–200 and –300 series airplanes. This proposed AD would require inspecting for the installation of the tie plate for the wire bundles routed from lower section 41 into the center control stand in the flight deck, and inspecting for any wire chafing or damage and repair if necessary, and installing a tie plate if necessary. This proposed AD is prompted by a report of missing tie plates for the wire bundles. We are proposing this AD to prevent wire chafing, which could result in the loss of flight control, communication, navigation, and engine fire control systems. Loss of these systems could consequently result in a significant reduction of safety margins, an increase in flight crew workload, and in the case where loss of engine fire control is combined with an engine fire, could result in an uncontrollable fire.

DATES: We must receive comments on this proposed AD by May 6, 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–2005–20660; the directorate identifier for this docket is 2004–NM–242–AD.

FOR FURTHER INFORMATION CONTACT: Georgios Roussos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6482; 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–2005–20660; Directorate Identifier 2004–NM–242–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

We have received a report indicating that, during manufacturing, the plastic tie plate for the wire bundle support was found missing on certain Boeing Model 777 series airplanes. Investigation by the manufacturer revealed ambiguity on the wire bundle installation drawing as a root cause of the missing tie plates. The tie plate prevents the wire bundles from chafing against adjacent structures. These wire bundles are routed from the lower section 41 into the center control stand in the flight deck. Wire chafing, if not corrected, could result in loss of flight control, communication, navigation and engine fire control systems. Loss of these systems could consequently result in a significant reduction of safety margins, an increase in flight crew workload, and in the case where loss of engine fire control is combined with an engine fire, could result in an uncontrollable fire.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 777–27A0060, dated September 18, 2003. The service bulletin describes procedures for inspecting for the installation of the tie plate for the wire bundles routed from lower section 41 into the center control stand, inspecting for any wire chafing or damage, repairing any wire chafing or damage, and installing a tie plate. 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, except as discussed below in ''Difference Between this Proposed AD and the Service Bulletin'' and ''Clarification of Error in the Service Bulletin.''

Difference Between This Proposed AD and the Service Bulletin

The service bulletin refers only to an ''inspection'' for chafing or damage of the wire bundles. We have determined that the procedures in the service bulletin should be described as a ''detailed inspection.'' Note 1 has been included in this AD to define this type of inspection.

Clarification of Error in the Service Bulletin

There is a typographical error in the Accomplishment Instructions of Boeing Service Bulletin 777–27A0060, dated September 18, 2003. Illustration D in Sheet 3 of 4, Figure 1: Wire Bundle Tie Plate Installation, identifies a part as a ''nut cup.'' The correct part name is ''nut clip.'' Boeing may issue an Information Notice on this error.

Costs of Compliance

There are about 289 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hour	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection	1	$65	$9	$74	130	$9,620

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–2005–20660; Directorate Identifier 2004–NM–242–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by May 6, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 777–200 and –300 series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 777–27A0060, dated September 18, 2003.

Unsafe Condition

(d) This AD was prompted by a report of missing tie plates for wire bundles that are routed from lower section 41 into the center control stand in the flight deck. We are issuing this AD to prevent wire chafing, which could result in the loss of flight control, communication, navigation, and engine fire control systems. Loss of these systems could consequently result in a significant reduction of safety margins, an increase in flight crew workload, and in the case where loss of engine fire control is combined with an engine fire, could result in an uncontrollable fire.

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.

Inspection

(f) Within 18 months after the effective date of this AD, inspect for installation of the tie plate for the wire bundles routed from lower section 41 into the center control stand in the flight deck, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–27A0060, dated September 18, 2003.

(1) If the tie plate is found to be installed, no further action is required by this AD.

(2) If the tie plate is missing, before further flight, do a detailed inspection of the wire bundles for any chafing or damage and repair if necessary, and install a tie plate in accordance with the Accomplishment Instructions of the service bulletin.

Note 1: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

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 9, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–5573 Filed 3–21–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20662; Directorate Identifier 2004–NM–191–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F Airplanes; and Model MD–11 and MD–11F 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 McDonnell Douglas airplanes. This proposed AD would require a general visual inspection for damage to the Firex discharge pipes and wye assembly of the number 2 engine fire extinguishing system; and corrective and other specified actions, as applicable. This proposed AD is prompted by reports of freezing damage to the Firex discharge pipes and wye assembly of the number 2 engine, and one report of a level 1 ENG FIRE AGENT LO alert during flight. We are proposing this AD to prevent accumulation of water in the discharge pipes and possible consequent freezing damage to the discharge pipes and wye assembly, which could lead to failure of the fire extinguishing system during a fire in the number 2 engine.

DATES: We must receive comments on this proposed AD by May 6, 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, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024).

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–2005–20662; the directorate identifier for this docket is 2004–NM–191–AD.

FOR FURTHER INFORMATION CONTACT: Samuel Lee, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5262; fax (562) 627–5210.

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–2005–20662; Directorate Identifier 2004–NM–191–AD'' in the subject line

of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

We have received reports of damage to the Firex discharge pipes and wye assembly of the number 2 engine of two McDonnell Douglas Model DC–10–30F airplanes, and one report of a level 1 ENG FIRE AGENT LO alert during flight on a Model DC–10–30F airplane. We have also received reports of accumulated water being discovered in the Firex discharge pipes of one Model DC–10–10F airplane and two Model MD–11F airplanes. Investigation revealed that water can collect and remain in the discharge pipes. This condition, if not corrected, could result in freezing and ice damage to the discharge pipes and wye assembly, and consequent failure of the fire extinguishing system during a fire in the number 2 engine.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin MD11–26A060, dated July 20, 2004 (for Model MD–11 and MD–11F airplanes), and Boeing Alert Service Bulletin DC10–26A065, dated August 19, 2004 (for Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F airplanes). The service bulletins describe procedures for performing a visual inspection for leaks, bulges, ruptures, or other damage to the Firex discharge pipes or wye assembly; and corrective actions and other specified actions, as applicable. Corrective actions include replacing the discharge pipes with new discharge pipes; and, if necessary, replacing the wye assembly with a new wye assembly. Other specified actions include modifying and reidentifying undamaged discharge pipes. 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.

Clarification of Inspection Terminology

Although the Boeing service bulletins contain instructions to ''visually examine'' the discharge pipes and wye assembly, this proposed AD would require a ''general visual inspection.'' We have defined this type of inspection in Note 1 of this proposed AD.

Costs of Compliance

There are about 530 airplanes of the affected design in the worldwide fleet. The following tables provide the estimated costs for U.S. operators to comply with this proposed AD. The proposed actions would be performed at an estimated average labor rate of $65 per work hour.

INSPECTION COSTS FOR ALL AIRPLANES

Action	Work hours	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection	1	$65	343	$22,295

REPLACEMENT COSTS FOR MODEL MD–11 AND MD–11F AIRPLANES

Action	Work hours	Parts cost	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Replace discharge pipe	2	$7,170	$7,300	195	$1,423,500

REPLACEMENT COSTS FOR DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A AND KDC–10), DC–10–40, DC–10–40F, MD–10–10F, AND MD–10–30F AIRPLANES

Group	Action	Work hours	Parts cost	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
1	Replace discharge pipe	2	$7,170	$7,300	231	$1,686,300

REPLACEMENT COSTS FOR DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A AND KDC–10), DC–10–40, DC–10–40F, MD–10–10F, AND MD–10–30F AIRPLANES—Continued

Group	Action	Work hours	Parts cost	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
2	Replace discharge pipe	2	8,794	8,924	16	142,784
3	Replace discharge pipe	2	7,170	7,300	11	80,300

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):

McDonnell Douglas: Docket No. FAA–2005–20662; Directorate Identifier 2004–NM–191–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by May 6, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F airplanes as identified in Boeing Alert Service Bulletin DC10–26A065, dated August 19, 2004; and Model MD–11 and MD–11F airplanes as identified in Boeing Alert Service Bulletin MD11–26A060, dated July 20, 2004; certificated in any category.

Unsafe Condition

(d) This AD was prompted by reports of freezing damage to the Firex discharge pipes and wye assembly of the number 2 engine, and one report of a level 1 ENG FIRE AGENT LO alert during flight. We are issuing this AD to prevent accumulation of water in the discharge pipes and possible consequent freezing damage to the discharge pipes and wye assembly, which could lead to failure of the fire extinguishing system during a fire in the number 2 engine.

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.

Inspection and Corrective and Other Specified Actions

(f) Within 12 months after the effective date of this AD, perform a general visual inspection for damage to the Firex discharge pipes and wye assembly of the fire extinguishing system of the number 2 engine, and corrective and other specified actions; by doing all the actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin MD11–26A060, dated July 20, 2004 (for Model MD–11 and MD–11F airplanes); or Boeing Alert Service Bulletin DC10–26A065, dated August 19, 2004 (for Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F airplanes); as applicable. Do the corrective and other specified actions, as applicable, prior to further flight.

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

Alternative Methods of Compliance (AMOCs)

(g) The Manager, Los Angeles 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 9, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–5574 Filed 3–21–05; 8:45 am]

BILLING CODE 4910–13–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1195

[Docket Nos. 2004–1; 2004–2]

RIN 3014–AA11

Americans With Disabilities Act (ADA) Accessibility Guidelines for Passenger Vessels; Large Vessels; Small Vessels

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Availability of Draft Guidelines; Advance Notice of Proposed Rule; Extension of time to file comments.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has placed in the docket and on its website for public review and comment draft guidelines which address accessibility to and in passenger vessels which are permitted to carry more than 150 passengers or more than 49 overnight passengers. The Access Board has also issued an Advance Notice of Proposed Rulemaking which addresses newly constructed or altered passenger vessels which carry 150 or fewer passengers or 49 or fewer overnight passengers. This document extends the deadline for comments on both the draft guidelines for large vessels and the ANPRM for small vessels.

DATES: Comments on the draft guidelines and the ANPRM must be received by July 28, 2005. Late comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent to the Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street NW., suite 1000, Washington, DC 20004–1111. E-mail comments should be sent to *pvag@access-board.gov.* Comments sent by e-mail will be considered only if they contain the full name and postal address of the sender in the text. Comments will be available for inspection at the above address from 9 a.m. to 5 p.m. on regular business days.

FOR FURTHER INFORMATION CONTACT: Paul Beatty, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington DC 20004–1111. Telephone number (202) 272–0012 (voice); (202) 272–0082 (TTY); Electronic mail address: *pvag@access-board.gov.*

SUPPLEMENTARY INFORMATION:

Notice of Availability of Draft Guidelines for Large Vessels

On November 26, 2004, the Architectural and Transportation Barriers Compliance Board (Access Board) issued a notice of availability of draft guidelines. The draft guidelines address accessibility to and in passenger vessels covered by the Americans with Disabilities Act, which are permitted to carry more than 150 passengers or more than 49 overnight passengers. (69 FR 69244; November 26, 2004). The notice of availability and the draft guidelines along with supplementary information have been placed in the rulemaking docket and on the Board's Web site (*http://www.access-board.gov/pvaac/noa.htm*). The Board is soliciting comments on the draft guidelines and will issue a notice of proposed rulemaking (NPRM) following a review of comments received. The notice of availability provided for a deadline of March 28, 2005 for comments to be submitted. This notice extends that deadline.

Advance Notice of Proposed Rulemaking for Small Vessels

Also on November 26, 2004, the Access Board published an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register**. (69 FR 69245; November 26, 2004). The ANPRM addresses the development of accessibility guidelines for newly constructed or altered passenger vessels covered by the Americans with Disabilities Act, which carry 150 or fewer passengers or 49 or fewer overnight passengers. The ANPRM is also on the Board's Web site at *http://www.access-board.gov/pvaac/anprm.htm.* The Board requested comments on the ANPRM and provided for a deadline of March 28, 2005. This notice extends that deadline.

Extension of Time for Filing Comments

The Board held a public hearing on the draft guidelines for large vessels and the ANPRM for small vessels on January 10, 2005 in Washington DC. At that time and since the notice of availability was issued, the Board has received requests for an extension of the comment period. Commenters have requested additional time to further review the detailed guidelines and provide in-depth comments. As a result, the Board has extended the time for filing comments by an additional four months. It is also the Board's intention to hold two additional public hearings. The location, date and time of the future hearings will be announced in a subsequent **Federal Register** notice and on the Board's Web site. The Board believes that the extension of time for comments and the two additional hearings will give the public a better opportunity to provide input on the Board's draft guidelines.

Regulatory Assessment

The Board has also drafted a plan for conducting a regulatory assessment of the passenger vessels guidelines. The plan provides for evaluating the potential impacts of the guidelines on new construction of passenger vessels through case studies, and outlines some methods for examining the impacts of the guidelines on alterations to passenger vessels. The plan is available for public review on the Board's Web site and the Board invites comment on the plan. (*http://www.access-board.gov/pvaac/assess-plan.htm*).

Department of Transportation

The Department of Transportation (DOT) is conducting a separate rulemaking to adopt the Access Board's guidelines as accessibility standards for passenger vessels covered by the ADA. The DOT rulemaking will also address operational issues related to passenger vessels. DOT issued a separate Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** on November 26, 2004. (69 FR 69246; November 26, 2004).

Availability of Copies and Electronic Access

Single copies of the passenger vessels rulemaking (Availability of Draft Guidelines, Draft Guidelines and Supplementary Information, Draft Plan for Regulatory Assessment, and ANPRM on Access to and in Small Passenger Vessels) may be obtained at no cost by calling the Access Board's automated publications order line (202) 272–0080, by pressing 2 on the telephone keypad, then 1 and requesting publication S–45. Please record your name, address, telephone number and publication code S–45. Persons using a TTY should call (202) 272–0082. Documents are available in alternate formats upon request. Persons who want a publication in an alternate format should specify the type of format (cassette tape, Braille, large print, or ASCII disk). Documents are also available on the Board's Web site (*http://www.access-board.gov*).

Lawrence W. Roffee,

Executive Director, Architectural and Transportation Barriers Compliance Board.

[FR Doc. 05–5636 Filed 3–22–05; 8:45 am]

BILLING CODE 8150–01–P

Notices

Federal Register

Vol. 70, No. 54

Tuesday, March 22, 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

Agricultural Marketing Service

[Doc. No. FV–04–302]

United States Standards for Grades of Sweet Potatoes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) is revising the United States Standards for Grades of Sweet Potatoes. USDA had received a request from several industry groups to add a new grade to the standards, U.S. No. 1 Petite. The change will allow the packing and shipping of smaller size sweet potatoes under the U.S. standards, thereby, improving the usefulness of the standards in serving the industry.

DATES: *Effective Date:* April 21, 2005.

FOR FURTHER INFORMATION CONTACT: David Priester, Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1661 South Building, STOP 0240, Washington, DC 20250–0240, Fax (202) 720–8871 or call (202) 720–2185; E-mail *David.Priester@usda.gov*. The final United States Standards for Grades of Sweet Potatoes, will be available either through the address cited above or by accessing the AMS Home Page on the web at *http://www.ams.usda.gov/standards/vegfm.htm*.

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), as amended, directs and authorizes the Secretary of Agriculture ''to develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices * * *.'' AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request. The United States Standards for Grades of Fruits and Vegetables not connected with Federal Marketing Orders or U.S. Import Requirements, no longer appear in the Code of Federal Regulations, but are maintained by USDA/AMS/Fruit and Vegetable Programs.

AMS is revising the voluntary U.S. Standards for Grades of Sweet Potatoes using procedures that appear in Part 36 Title 7 of the Code of Federal Regulations (7 CFR Part 36).

Background

On December 10, 2003, AMS published a notice in the **Federal Register** (68 FR 237) soliciting comments on a possible revision to the United States Standards for Grades of Sweet Potatoes. As a result, AMS received five comments from industry groups requesting the addition of a new grade entitled U.S. No. 1 Petite, with the same requirements as the U.S. No. 1 grade currently in the standard, except for the size requirements. The request specified that the size requirements for the U.S. No. 1 Petite be: A minimum diameter of 1½ inches, a maximum diameter of 2¼ inches, a minimum length of 3 inches and a maximum length of 7 inches.

A second notice was published in the October 29, 2004, **Federal Register** (69 FR 209) based on comments received on the first notice. AMS received seven comments from industry groups in response to the second notice. Six comments were in favor of the revision to the standard and one comment was opposed. The comments are available by accessing AMS's Home Page on the Internet at *http://www.ams.usda.gov/fv/fpbdocketlist.htm*.

One comment opposing the revision stated the new grade is of negative value to their members and will cause confusion. The commenter stated the new grade may result in a lower overall return to their growers as the size is similar to a medium size which is the cheapest grade they market. The marketing of sweet potatoes using any size within the U.S. standard is voluntary. AMS believes the addition of the new grade will not cause confusion and will aid those producers whom would like to market smaller size sweet potatoes using the U.S. standards.

AMS received six comments in favor of the revision. Those in favor of the new grade stated it would aid in the marketing of smaller size sweet potatoes as the U.S. standards currently require sweet potatoes to be a larger size in order to meet a grade. The change will allow the packing and shipping of smaller size sweet potatoes under the U.S. standards.

Based on comments received and information gathered, AMS believes the addition of the U.S. No. 1 Petite grade will facilitate the marketing of smaller size sweet potatoes and improve the standards usefulness in serving the industry.

The official grade of a lot of sweet potatoes covered by these standards are determined by the procedures set forth in the Regulations Governing Inspection, Certification, and Standards of Fresh Fruits, Vegetables and Other Products (Sec. 51.1 to 51.61).

Additionally, AMS is eliminating the unclassified category. This section is being removed in all standards, when they are revised. This category is not a grade and only serves to show that no grade has been applied to the lot. It is no longer considered necessary.

The United States Standards for Grades of Sweet Potatoes will become effective 30 days after the publication of this notice in the **Federal Register**.

Authority: 7 U.S.C. 1621–1627.

Dated: March 16, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–5608 Filed 3–21–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 04–141–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for pork and poultry products from Mexico transiting the United States.

DATES: We will consider all comments that we receive on or before May 23, 2005.

ADDRESSES: You may submit comments by any of the following methods:

EDOCKET: Go to *http://www.epa.gov/feddocket* 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 you have entered EDOCKET, click on the ''View Open APHIS Dockets'' link to locate this document. Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 04–141–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 04–141–1.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: For information on regulations for pork and poultry products transiting the United States, contact Dr. Christopher Robinson, Senior Staff Veterinarian, Technical Trade Services Team, National Center for Import and Export, VS, 4700 River Road Unit 39, Riverdale, MD 20737; (301) 734–7837. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Pork and Poultry Products From Mexico Transiting the United States.

OMB Number: 0579–0145.

Type of Request: Extension of approval of an information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture is responsible for, among other things, regulating the importation into the United States of certain animals and animal products to prevent the introduction of serious pests and diseases of livestock into the United States.

The regulations for the importation of animals and animal products are contained in 9 CFR parts 92 through 98.

The regulations in 9 CFR 94.15 allow fresh (chilled or frozen) pork and pork products and poultry carcasses, parts, and products (except eggs and egg products) that are not eligible to enter into the United States to transit the United States from specified States in Mexico, via land ports, for export to another country.

The regulations set out conditions for the transit movements that protect against the introduction of classical swine fever or exotic Newcastle disease into the United States.

These conditions involve the use of several information collection activities, including the completion of an import permit application, the placement of serially numbered seals on product containers, and the forwarding of a pre-arrival notification to U.S. port personnel.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.8 hours per response.

Respondents: Exporters in Mexico and full-time, salaried veterinarians employed by Mexico's Federal animal health protection service.

Estimated annual number of respondents: 75.

Estimated annual number of responses per respondent: 10.

Estimated annual number of responses: 750.

Estimated total annual burden on respondents: 600 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 16th day of March 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E5–1246 Filed 3–21–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—State Administrative Expense Funds Regulations

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this Notice announces the Food and Nutrition Service's (FNS) intention to request Office of Management and Budget (OMB) review of the information collection related to State administrative expense funds.

DATES: To be assured of consideration, comments must be received by May 23, 2005.

ADDRESSES: Send comments and requests for copies of this information collection to: Mr. Terry Hallberg, Chief, Program Analysis and Monitoring Branch, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 636, Alexandria, Virginia 22302. Comments will also be accepted via E-Mail submission if sent to *CNDPROPOSAL@FNS.USDA.GOV.*

Comments are invited on: (a) Whether the proposed collection of information

is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. All responses to this Notice will be summarized and included in the request for OMB approval, and will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Hallberg at (703) 305–2590.

SUPPLEMENTARY INFORMATION:

Title: State Administrative Expense Funds Regulations.

OMB Number: 0584–0067.

Form Number(s): FNS–74, FNS–525.

Expiration Date: September 30, 2005.

Type of Request: Extension of a currently approved collection.

Abstract: Section 7 of the Child Nutrition Act of 1966 (Pub. L. 89–642), 42 U.S.C. 1776, authorizes the Department to provide Federal funds to State agencies (SAs) for administering the Child Nutrition Programs. State Administrative Expense Funds (SAE), 7 CFR Part 235, sets forth procedures and recordkeeping requirements for use by SAs in reporting and maintaining records of their needs and uses of SAE funds.

Estimate of Burden: There is no change to the reporting or recordkeeping burdens.

Estimated Time per Response: 2.27 hours.

Estimated Number of Respondents: 88 respondents.

Average Number of Responses per Respondent: 2,052 responses.

Estimated Total Annual Burden on Respondents: 12,922 burden hours.

Dated: March 11, 2005.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 05–5569 Filed 3–21–05; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

The Emergency Food Assistance Program; Availability of Commodities for Fiscal Year 2005

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the surplus and purchased commodities that the Department expects to make available for donation to States for use in providing nutrition assistance to the needy under the Emergency Food Assistance Program (TEFAP) in Fiscal Year (FY) 2005. The commodities made available under this notice must, at the discretion of the State, be distributed to eligible recipient agencies for use in preparing meals, and/or for distribution to households for home consumption.

EFFECTIVE DATE: October 1, 2004.

FOR FURTHER INFORMATION CONTACT: Lillie Ragan, Assistant Branch Chief, Policy Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302–1594 or telephone (703) 305–2662.

SUPPLEMENTARY INFORMATION: In accordance with the provisions set forth in the Emergency Food Assistance Act of 1983 (EFAA), 7 U.S.C. 7502, and the Food Stamp Act of 1977, 7 U.S.C. 2011, *et seq.,* the Department makes commodities and administrative funds available to States for use in providing nutrition assistance to those in need through TEFAP. In accordance with 7 CFR 251.3(h), each State's share of TEFAP commodities and administrative funds is based 60 percent on the number of low-income households within the State and 40 percent on the number of unemployed persons within the State. State officials are responsible for establishing the network through which the commodities will be used by eligible recipient agencies (ERAs) in providing nutrition assistance to those in need, and for allocating commodities and administrative funds among those agencies. States have full discretion in determining the amount of commodities that will be made available to ERAs for use in preparing meals, and/or for distribution to households for home consumption.

The types of commodities the Department expects to make available to States for distribution through TEFAP in FY 2005 are described below.

Surplus Commodities

Surplus commodities donated for distribution under TEFAP are Commodity Credit Corporation (CCC) commodities purchased under the authority of section 416 of the Agricultural Act of 1949, 7 U.S.C. 1431 (section 416) and commodities purchased under the surplus removal authority of section 32 of the Act of August 24, 1935, 7 U.S.C. 612c (section 32). The types of commodities typically purchased under section 416 include dairy, grains, oils, and peanut products. The types of commodities purchased under section 32 include meat, poultry, fish, vegetables, dry beans, juices and fruits.

In FY 2005, the Department anticipates that there will be sufficient quantities of nonfat dry milk and ready-to-eat pudding available for donation under section 416, and frozen turkey breast, canned and frozen orange juice, fruit-nut mix, dried cherries, dates, figs, canned tomatoes, walnuts, canned and frozen asparagus, canned salmon, sweet potatoes, dried cranberries, and cranberry juice under section 32, to support the distribution of these commodities through TEFAP. Other surplus commodities may be made available to TEFAP later in the year. The Department would like to point out that commodity acquisitions are based on changing agricultural market conditions; therefore, the availability of commodities is subject to change.

Approximately $65.4 million in surplus commodities purchased in FY 2004 are being delivered to States in FY 2005. These commodities include frozen strawberries, frozen peaches, frozen orange juice, walnuts, and the following canned items: tomatoes, apricots, peaches, mixed fruit, pineapple and orange juices, asparagus and salmon.

Purchased Commodities

In accordance with section 27 of the Food Stamp Act of 1977, 7 U.S.C. 2036, the Secretary is directed annually, through FY 2007, to purchase $140 million worth of commodities for distribution through TEFAP. These commodities are made available to States in addition to those surplus commodities which otherwise might be provided to States for distribution under TEFAP. However, the Consolidated Appropriations Act, 2005 (Pub. L. 108–447) permits States to convert any or all of their fair share of $10 million of these funds to administrative funds to pay costs associated with the distribution of TEFAP commodities at the State and local level.

In addition, $50 million was appropriated under the Commodity Assistance Program heading of the Consolidated Appropriations Act, 2005, as administrative funds. However, 0.80% of this amount, or $400,000, was rescinded as the result of an across the board reduction in discretionary spending, leaving $49.6 million to be allocated to the States for administrative funds. State agencies have the option of requesting that the Department use any or all of their ''fair shares'' of this $49.6 million to purchase additional commodities for them.

For FY 2005, the Department anticipates purchasing the following commodities for distribution through TEFAP: Dehydrated potatoes, corn syrup, egg mix, blackeye beans, great northern beans, kidney beans, lima beans, pinto beans, dried plums, raisins, bakery mix, lowfat bakery mix, egg noodles, white and yellow corn grits, macaroni, oats, peanut butter, rice, spaghetti, vegetable oil, rice cereal, corn flakes, corn squares, oat cereal, bran flakes, frozen ground beef, frozen chicken, frozen ham, frozen turkey roast, and the following canned items: Green beans, refried beans, vegetarian beans, carrots, cream corn, whole kernel corn, sliced potatoes, spaghetti sauce, tomatoes, tomato sauce, tomato soup, vegetarian soup, apple juice, cranapple juice, grapefruit juice, orange juice, pineapple juice, tomato juice, apricots, peaches, pineapples, applesauce, pears, plums, beef, beef stew, chicken, pork, tuna, turkey and roasted peanuts. The amounts of each item purchased will depend on the prices the Department must pay, as well as the quantity of each item requested by the States. Changes in agricultural market conditions may result in the availability of additional types of commodities or the non-availability of one or more types listed above.

Dated: March 11, 2005.

Roberto Salazar,

Administrator.

[FR Doc. 05–5557 Filed 3–21–05; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Lincoln County Resource 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 Kootenai National Forest's Lincoln County Resource Advisory Committee will meet on Wednesday April 6, 2005 at 6 p.m. at the Supervisor's Office in Libby, Montana for a business meeting. The meeting is open to the public.

DATES: April 6, 2005.

ADDRESSES: Kootenai National Forest, Supervisor's Office, 1101 U.S. Hwy 2 West, Libby, Montana.

FOR FURTHER INFORMATION CONTACT: Barbara Edgmon, Committee Coordinator, Kootenai National Forest at (406) 293–6211, or e-mail *bedgmon@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda topics include presentation on road storage, status of approved projects, and receiving public comment. If the meeting date or location is changed, notice will be posted in the local newspapers, including the Daily Interlake based in Kalispell, Montana.

Dated: March 16, 2005.

Bob Castaneda,

Forest Supervisor.

[FR Doc. 05–5570 Filed 3–21–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Revolving Fund Program; Announcement of Grant and Loan Application Deadlines and Funding Levels

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of funding availability and solicitation of applications.

SUMMARY: The Rural Utilities Service (RUS) announces that it is accepting grant applications for its Revolving Fund Program (RFP) for fiscal year (FY) 2005. FY 2005 available funding for the RFP grant program is $496,000.

DATES: You may submit completed RFP grant applications on paper or electronically according to the following deadlines:

- Paper applications must be postmarked and mailed, shipped, or sent overnight no later than May 23, 2005, to be eligible for FY 2005 grant funding. Late applications are not eligible for FY 2005 grant funding.
- Electronic applications must be submitted through Grants.gov no later than May 23, 2005, to be eligible for FY 2005 grant funding.

ADDRESSES: You may obtain application guides and materials for the RFP program from the RUS Water and Environmental Programs (WEP) Web site: *http://www.usda.gov/rus/Water.* You may also request application guides and materials from RUS by contacting the WEP at (202) 720–9586.

Submit completed paper applications for RFP grant to the Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 2233, STOP 1570, Washington, DC 20250–1570. Applications should be marked ''Attention: Assistant Administrator, Water and Environmental Programs.''

Submit electronic grant applications at *http://www.grants.gov* (Grants.gov), following the instructions you find on that Web site.

FOR FURTHER INFORMATION CONTACT: Stephen S. Saulnier, Loan Specialist, Water Program Division, Rural Utilities Service, U.S. Department of Agriculture, telephone: (202) 690–2526, fax: (202) 690–0649.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Utilities Service (RUS).

Funding Opportunity Title: Grant Program To Establish a Fund for Financing Water and Wastewater Projects (Revolving Fund Program (RFP)).

Announcement Type: Funding Level Announcement, and Solicitation of Applications.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.864.

Dates: You may submit a completed application for a RFP grant on or before May 23, 2005.

Reminder of Competitive Grant Application Deadline: Applications must be mailed, shipped or submitted electronically through Grants.gov no later than May 23, 2005, to be eligible for FY 2005 grant funding.

Items in Supplementary Information

I. Funding Opportunity: Brief introduction to the RFP.

II. Award Information: Available funds, maximum amounts.

III. Eligibility Information: Who is eligible, what kinds of projects are eligible, what criteria determine basic eligibility.

IV. Application and Submission Information: Where to get application materials, what constitutes a completed application, how and where to submit applications, deadlines, items that are eligible.

V. Application Review Information: Considerations and preferences, scoring criteria, review standards, selection information.

VI. Award Administration Information: Award notice information, award recipient reporting requirements.

VII. Agency Contacts: Web, phone, fax, email, contact name.

I. Funding Opportunity

Drinking water systems are basic and vital to health and economic development. With dependable water facilities, rural communities can attract families and businesses that will invest in the community and improve the quality of life for all residents. Without dependable water facilities, the communities cannot sustain economic development.

The Rural Utilities Service (RUS) supports the sound development of rural communities and the growth of our economy without endangering the environment. RUS provides financial and technical assistance to help communities bring safe drinking water and sanitary, environmentally sound waste disposal facilities to rural Americans in greatest need.

The Revolving Fund (RFP) Grant Program has been established to assist communities with water or wastewater systems. Qualified private non-profit organizations will receive RFP grant funds to establish a lending program for eligible entities. Eligible entities for the revolving loan fund will be the same entities eligible to obtain a loan, loan guarantee, or grant from the Rural Utilities Service Water and Waste Disposal and Wastewater loan and grant programs. As grant recipients, the non-profit organizations will set up a revolving loan fund to provide loans to finance predevelopment costs of water or wastewater projects, or short-term small capital projects not part of the regular operation and maintenance of current water and wastewater systems. The amount of financing to an eligible entity shall not exceed $100,000.00 and shall be repaid in a term not to exceed 10 years. The rate shall be determined in the approved grant work plan.

II. Award Information

FY 2005 funding for the RFP Grant Program is $496,000.

III. Eligibility Information

A. What Are the Basic Eligibility Requirements for Applying?

1. Is a private, non-profit organization that has tax-exempt status from the United States Internal Revenue Service (IRS);

2. Is legally established and located within one of the following:

a. A state within the United States.

b. The District of Columbia.

c. The Commonwealth of Puerto Rico.

d. A United States territory.

e. Has the legal capacity and authority to carry out the grant purpose;

f. Has a proven record of successfully operating a revolving loan fund to rural areas;

g. Has capitalization acceptable to the Agency, and is composed of at least 51 percent of the outstanding interest or membership being citizens of the United States or individuals who reside in the United States after being legally admitted for permanent residence;

h. Has no delinquent debt to the Federal Government or no outstanding judgments to repay a Federal debt; and

i. Demonstrates that it possesses the financial, technical, and managerial capability to comply with Federal and State laws and requirements.

B. What Are the Basic Eligibility Requirements for a Project?

1. The following activities are authorized under the RFP statute:

a. Grant funds must be used to capitalize a revolving fund program for the purpose of providing direct loan financing to Ultimate Recipients for pre-development costs associated with proposed or with existing water and wastewater systems; or

b. Short-term costs incurred for equipment replacement, small-scale extension of services, or other small capital projects that are not part of the regular operations and maintenance activities of existing water and wastewater systems.

2. Grant funds may not be used to pay any of the following:

a. Payment of the Intermediary's administrative costs or expenses, and

b. Delinquent debt owed to the Federal Government.

IV. Application and Submission Information

A. Where To Get Application Information

The application guide, copies of necessary forms, the RFP regulation, and samples are available from these sources:

1. The RFP of RUS Web site: *http://www.usda.gov/rus/water*, or *http://www.grants.gov.*

2. Telephone the RFP of RUS for paper copies: (202) 720–9586.

B. You May File an Application in Either Paper or Electronic Format

1. Applications submitted on paper:

a. Send or deliver paper applications by the U.S. Postal Service (USPS) or courier delivery services to: Assistant Administrator, Water and Environmental Programs, Rural Utilities Service, 1400 Independence Avenue, SW., STOP 1548, Room 5145 South, Washington, DC 20250–1548. RUS will not accept applications by fax or e-mail.

b. Submit the original paper application (no stamped, photocopied, or initialed signatures) and two copies on or before the deadline date. The application and any materials sent with it become Federal records by law and cannot be returned to you.

2. Electronically submitted applications:

a. Applications will not be accepted by RUS via facsimile machine or electronic mail.

b. Electronic applications for grants will be accepted if submitted through the Federal Government's Grant.gov Web site: *http://www.grants.gov.*

c. How to register with Grants.gov: You must be registered with Grants.gov before you can submit a grant application. If you have not used Grants.gov before, you will need to register with the Central Contractor Registry (CCR) and the Credential Provider. You will also need a DUNS number to access or register for these services. The registration processes may take several business days to complete. Follow the instructions at Grants.gov for registering and submitting an electronic application. RUS may request original signatures on electronically submitted documents later.

d. The CCR registers your organization, housing your organizational information and allowing Grants.gov to use it to verify your identity. You may register for the CCR by calling the CCR Assistance Center at 1–888–227–2423 or you may register online at: *http://www.ccr.gov.*

e. The Credential Provider gives you or your representative a username and password, as part of the Federal Government's e-Authentication to ensure a secure transaction. You will need the username and password when you register with Grants.gov or use Grants.gov to submit your application. You must register with the Central Provider through Grants.gov: *https://apply.grants.gov/OrcRegister.*

f. DUNS number. As required by OMB, a Dun and Bradstreet Data Universal Numbering System (DUNS) number (DUNS) number is required for paper and electronically submitted grant applications. The Standard Form 424 (SF–424), ''Application for Federal Assistance'' contains a field for you to use when supplying your DUNS number. Obtaining a DUNS number costs nothing and requires a brief telephone call to Dun and Bradstreet. To verify that your organization has a

DUNS number or to receive one, call the dedicated toll-free request line at 1–866–705–5711. The following information is required when requesting a DUNS number:

(i) Legal Name.

(ii) Headquarters name and address of the organization

(iii) Doing business as (dba) or other name by which the organization is commonly recognized.

(iv) Physical address.

(v) Mailing address (if separate from headquarters and/or physical address).

(vi) Telephone number.

(vii) Contact name and title.

(viii) Number of employees at the physical location.

For more information, please visit Grants.gov and the Dun and Bradstreet Web site: *http://www.dunandbradstreet.com.*

C. What Constitutes a Completed Application?

1. To be considered for a RFP grant award, you must be an eligible entity and must submit a complete application on or before May 23, 2005. You should consult the cost principles and general administrative requirements for grants pertaining to their organizational type in order to prepare the budget and complete other parts of the application. You also must demonstrate compliance (or intent to comply), through certification or other means, with a number of public policy requirements.

2. Applicants must complete and submit the following forms to apply for a RFP grant:

a. Standard Form 424, ''Application for Federal Assistance.''

b. Standard Form 424A, ''Budget Information—Non-Construction Programs.''

c. Standard Form 424B, ''Assurances—Non-Construction Programs.''

d. Standard Form LLL, ''Disclosure of Lobbying Activity.''

e. Form RD 400–1, ''Equal Opportunity Agreement.''

f. Form RD 400–4, ''Assurance Agreement (Under Title VI, Civil Rights Act of 1964.)''

3. The project proposal should outline the project in sufficient detail to provide a reader with a complete understanding of how the loan program will work. Explain what you will accomplish by lending funds to eligible entities. Demonstrate the feasibility of the proposed loan program in meeting the objectives of this grant program. The proposal should cover the following elements:

a. Present a brief project overview. Explain the purpose of the project, how it relates to RUS's purposes, how you will carry out the project, what the project will produce, and who will direct it.

b. Describe why the project is necessary. Demonstrate that eligible entities need loan funds. Quantify the number of prospective borrowers or provide statistical or narrative evidence that a sufficient number of borrowers will exist to justify the grant award. Describe the service area. Address community needs.

c. Clearly state your project goals. Your objectives should clearly describe the goals and be concrete and specific enough to be quantitative or observable. They should also be feasible and relate to the purpose of the loan program.

d. The narrative should cover in more detail the items briefly described in the Project Summary. It should establish the basis for any claims that you have substantial expertise in promoting the safe and productive use of Revolving Funds. In describing what the project will achieve, you should tell the reader if it also will have broader influence. The narrative should address the following points:

(i) Document your ability to administer and service a revolving fund in accordance with the provisions of 7 CFR Part 1783.

(ii) Document that, to establish the revolving fund, you can commit financial resources your organization controls. This documentation should describe the sources of funds other than the RFP grant that will be used to pay your operational costs and provide financial assistance for projects.

(iii) Demonstrate that you have secured commitments of significant financial support from other funding sources, if appropriate.

(iii) List the fees and charges that borrowers will be assessed.

e. The work plan must describe the tasks and activities that will be accomplished with available resources during the grant period. It must show the work you plan to do to achieve the anticipated outcomes, goals, and objectives set out for the RFP Program. The plan must:

(i) Describe the work to be performed by each person.

(ii) Give a schedule or timetable of work to be done.

(iii) Show evidence of previous experience with the techniques to be used or their successful use by others.

(iv) Outline the loan program to include the following: Specific loan purposes, a loan application process; priorities, borrower eligibility criteria, limitations, fees, interest rates, terms, and collateral requirements.

(v) Provide a marketing plan.

(vi) Explain the mechanics of how you will transfer loan funds to the borrowers.

(vii) Describe follow-up or continuing activities that should occur after project completion such as monitoring and reporting borrowers' accomplishments.

(viii) Project Evaluation. It should describe how the results will be evaluated, in line with the project objectives.

(ix) Personnel. The applicant should list all personnel responsible for administering this program along with a statement of their qualifications and experience.

f. The written justification for projected costs should explain how budget figures were determined for each category. It should indicate which costs are to be covered by grant funds and which costs will be met by your organization or other organizations. The justification should account for all expenditures discussed in the narrative. It should reflect appropriate cost-sharing contributions. The budget justification should explain the budget and accounting system proposed or in place. The administrative costs for operating the budget should be expressed as a percentage of the overall budget. The budget justification should provide specific budget figures, rounding off figures to the nearest dollar. Applicants should consult OMB Circular A–122: ''Cost Principles for Non-Profit Organizations'' for information about appropriate costs for each budget category.

g. In addition to completing the standard application forms, you must submit supplementary materials.

h. Demonstrate that your organization is legally recognized under state and Federal law. Satisfactory documentation includes, but is not limited to, certificates from the Secretary of State, or copies of state statutes or laws establishing your organization. Letters from the IRS awarding tax-exempt status are not considered adequate evidence.

i. Submit a certified list of directors and officers with their respective terms.

j. Submit evidence of tax exempt status from the Internal Revenue Service.

k. You must disclose debarment and suspension information required in accordance with 7 CFR, Part 3017, subpart 3017.335, if it applies. The section heading is ''What information must I provide before entering into a covered transaction with the Department of Agriculture?'' It is part of the Department of Agriculture's rules on Government-wide Debarment and Suspension.

l. Submit the most recent audit of your organization.

m. Submit the following financial statements:

(i) A pro forma balance sheet at start-up and for at least three additional years; Balance sheets, income statements, and cash flow statements for the last three years. If your organization has been formed less than three years, the financial statements should be submitted for the periods from inception to the present.

(ii) Projected income and cash flow statements for at least three years supported by a list of assumptions showing the basis for the projections.

(iii) The projected income statement and balance sheet must include one set of projections that shows the revolving loan fund only and a separate set of projections that shows your organization's total operations.

n. You may present additional information to support and describe your plan for achieving the grant objectives. The information may be regarded as essential for understanding and evaluating the project such as letters of support, resolutions, policies, etc. The supplements may be presented in appendices to the proposal.

4. You must identify all of your organization's known workplaces by including the actual address of buildings (or parts of buildings) or other sites where work under the award takes place. Workplace identification is required under the drug-free workplace requirements in accordance with 7 CFR, Part 3021, subpart 3021.230. The section heading is ''How and when must I identify workplaces?'' This is part of the Department of Agriculture's rules on Government-wide Requirements for Drug-Free Workplace (Financial Assistance).

V. Application Review Information

A. Criteria

1. Receipt Acknowledgment by letter sent within 30 days of receiving your application, RUS will acknowledge the application's receipt. Your application will be reviewed for completeness to determine if you included all of the items required. If your application is incomplete or ineligible, RUS will return it to you with an explanation.

2. A review team, composed of at least two members, will evaluate all applications and proposals. They will make overall recommendations based on factors such as eligibility, application completeness, and conformity to application requirements. They will score the applications based on criteria in the next section.

3. All applications that are complete and eligible will be ranked competitively based on the following scoring criteria:

Scoring criteria	Points
1. Degree of expertise and successful experience in Up to 30 making and servicing commercial loans, with a points successful record.	Up to 30 points.
2. Percentage of applicant contributions. Points allowed under this paragraph will be based on written evidence of the availability of funds from sources other than the proceeds of a RFP grant to pay part of the cost of a loan recipient's project. In-kind contributions will not be considered. Funds from other sources as a percentage of the RFP grant and points corresponding to such percentages are as follows:	
Less than 20 percent—	Ineligible.
At least 20 percent but not more than 49 percent of 10 points the total project costs	10 points.
At least 50 percent of the total project costs	20 points.
3. Extent to which the work plan clearly articulates a well thought out approach to accomplishing objectives; points clearly defines who will be served by the project or program; and includes all components listed in 1783.37(b)(14).	Up to 40 points.
4. Description of the service area, particularly the range of the area:	
State	10 points.
Regional	15 points.
National	20 points.
5. Extent to which the problem or issue being addressed in the Needs Assessment is defined clearly and points supported by data.	Up to 15 points.
6. Extent to which the goals and objectives are clearly defined, tied to the need as defined in the Needs points Assessment, and are measurable.	Up to 15 points.
7. Extent to which the evaluation methods are specific to the program, clearly defined, measurable, with points expected program outcomes.	Up to 20 points.
8. Administrator's discretion, taking into consideration such factors as: Creative outreach ideas for marketing RFP loans; Amount of funds requested in relation to the amount of needs demonstrated in the proposal; Excellent utilization of a previous revolving loan fund; and (d) Optimizing the use of agency resources.	Up to 10 points.

VI. Award Review Process

A. RUS Will Rank All Qualifying Applications by Their Final Score

Applications will be selected for funding, based on the highest scores and the availability of funding for RFP grants. Each applicant will be notified in writing of the score its application receives.

B. Application Determinations

In making its decision about your application, RUS may determine that your application is:

1. Eligible and selected for funding,

2. Eligible but offered fewer funds than requested,

3. Eligible but not selected for funding; or,

4. Ineligible for the grant.

C. Appeals

In accordance with 7 CFR part 1900, subpart B, you generally have the right to appeal adverse decisions. Some adverse decisions cannot be appealed. For example, if you are denied RUS funding due to a lack of funds available for the grant program, this decision cannot be appealed. However, you may make a request to the National Appeals Division (NAD) to review the accuracy of our finding that the decision cannot be appealed. The appeal must be in writing and filed at the appropriate Regional Office, which can be found at *http://www.nad.usda.gov/offices.htm* or by calling (703) 305–1166.

VII. Award Administration Information

A. Terms and Conditions of Grant Award

Applicants selected for funding will complete a grant agreement which outlines the terms and conditions of the grant award.

B. Grantee Reimbursement

1. SF–270, ''Request for Advance or Reimbursement,'' will be completed by the grantee and submitted to either the State or National Office not more frequently than monthly.

2. Upon receipt of a properly completed SF–270, the funds will be requested through the field office terminal system. Ordinarily, payment will be made within 30 days after receipt of a proper request for reimbursement.

3. Grantees are encouraged to use women- and minority-owned banks (a bank which is owned at least 50 percent by women or minority group members) for the deposit and disbursement of funds.

C. Post-Award Project Changes

Any change in the scope of the project, budget adjustments of more than 10 percent of the total budget, or any other significant change in the project must be reported to and approved by the approval official by written amendment to RUS Guide 1775–1. Any change not approved may be cause for termination of the grant.

D. Project Reporting

1. Grantees shall constantly monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved.

2. SF–269, ''Financial Status Report (short form),'' and a project performance activity report will be required of all grantees on a quarterly basis, due 30 days after the end of each quarter.

3. A final project performance report will be required with the last SF–269 due 90 days after the end of the last quarter in which the project is completed. The final report may serve as the last quarterly report.

4. All multi-State grantees are to submit an original of each report to the National Office. Grantees serving only one State are to submit an original of each report to the State Office. The project performance reports should detail, preferably in a narrative format, activities that have transpired for the specific time period.

5. The grantee will provide an audit report or financial statements as follows:

a. Grantees expending $500,000 or more Federal funds per fiscal year will submit an audit conducted in accordance with OMB Circular A–133. The audit will be submitted within 9 months after the grantee's fiscal year. Additional audits may be required if the project period covers more than one fiscal year.

b. Grantees expending less than $500,000 will provide annual financial statements covering the grant period, consisting of the organization's statement of income and expense and balance sheet signed by an appropriate official of the organization. Financial statements will be submitted within 90 days after the grantee's fiscal year.

VII. Agency Contacts

A. Web site: http://www.usda.gov/rus/water. The RUS' Web site maintains up-to-date resources and contact information for RFP programs.

B. Telephone: 202–720–9586.

C. Fax: 202–690–0649.

D. E-mail: stephen.saulnier@usda.gov.

E. Main point of contact: Stephen Saulnier, Loan Specialist, Water and Environmental Programs, Water Programs Division, Rural Utilities Service, U.S. Department of Agriculture.

Dated: March 3, 2005.

Curtis M. Anderson,

Acting Administrator, Rural Utilities Service.

[FR Doc. 05–5582 Filed 3–21–05; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 15–2005]

Foreign-Trade Zone 22—Chicago, IL; Application for Subzone, Michelin North America (Tire Distribution), Monee, IL

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Illinois International Port District, grantee of FTZ 22, requesting special-purpose subzone status for the tire and tire accessory warehousing/distribution facility of Michelin North America (MNA), in Monee, Illinois. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 14, 2005.

The MNA facility (1 building, 721,761 sq. ft. on 34.9 acres) is located at 25850 S. Ridgeland Avenue, within the Bailly Ridge Corporate Center, Monee, Illinois (Will County). The facility (80 employees) may be used under FTZ procedures for warehousing, inspection, labeling, packaging, scrapping, and distribution of tires and tire accessories (including tire flaps, inner tubes and gaskets). Some 50 to 80 percent of the tires at the facility are sourced abroad. About 25–30 percent of the tires at the facility are currently re-exported.

Zone procedures would exempt MNA from Customs duty payments on foreign products that are re-exported. On domestic sales, the company would be able to defer payments until merchandise is shipped from the plant. MNA would be able to avoid duty on foreign products which become scrap/waste, estimated at 1–3 percent of total inventory. FTZ designation would further allow MNA to realize significant logistical/procedural benefits. The application indicates that the savings from zone procedures will help improve the facility's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St., NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

The closing period for their receipt is May 23, 2005. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to June 6, 2005).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 200 West Adams Street, Suite 2450, Chicago, IL 60606.

Dated: March 15, 2005.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–5623 Filed 3–21–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Certain Preserved Mushrooms from the People's Republic of China: Extension of Time Limit for Preliminary Results of the Eighth Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 22, 2005.

FOR FURTHER INFORMATION CONTACT: Steve Winkates at (202) 482–1904, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

Background

At the request of Blue Field (Sichuan) Food Industrial Co., Ltd., the Department of Commerce (''the Department'') initiated a new shipper review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China (''PRC'') for the period February 1, 2004, through July 31, 2004. *See Certain Preserved Mushrooms from the PRC: Initiation of Eighth New Shipper Antidumping Duty Review*, 69 FR 57264 (September 24, 2004). The preliminary results of this review are currently due no later than March 16, 2005.

Extension of Time Limit for Preliminary Results of Review

Pursuant to 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (''the Act'') and 19 CFR 351.214(i)(1), the Department will issue the preliminary results of a new shipper review within 180 days after the date on which the new shipper review was initiated, and issue the final results within 90 days after the date on which the preliminary results were issued. The Department may, however, extend the deadline for completion of the preliminary results of a new shipper review to 300 days if it determines that the case is extraordinarily complicated (19 CFR 351.214(I)(2)).

The Department finds that it is not practicable to complete the preliminary results of this new shipper review within the statutory time limit of 180 days. Specifically, we find that additional time is needed to conduct our *bona fide* sales analysis based on our findings at verification. Given that additional time is needed to conduct our *bona fide* sales analysis, we find that this case is extraordinarily complicated.

Accordingly, the Department is extending the time limit for the completion of the preliminary results of this new shipper review until July 14, 2005, which is 300 days after the date on which the new shipper review was initiated. The final results will, in turn, be due 90 days after the date of issuance of the preliminary results, unless extended.

This notice is in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2).

Dated: March 15, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–1251 Filed 3–21–05; 8:45 am]

BILLING CODE: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–868

Folding Metal Tables and Chairs from the People's Republic of China: Notice of Partial Rescission of Second Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 22, 2005.

FOR FURTHER INFORMATION CONTACT: Amber Musser or Brian C. Smith, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1777 or (202) 482–1766, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 2004, the Department of Commerce (''the Department'') published in the **Federal Register** (69 FR 30873) a notice of ''Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review'' of the antidumping duty order on folding metal tables and chairs from the People's Republic of China (''PRC'') for the period June 1, 2003, through May 31, 2004.

On June 25, 2004, Wok and Pan Industry, Inc. (''Wok & Pan'') requested an administrative review of its sales. On June 28, 2004, Cosco Home and Office Products (an importer of the merchandise subject to this antidumping duty order) requested an administrative review of the antidumping duty order for the following companies: Feili Furniture Development Limited Quanzhou City, Feili Furniture Development Co., Ltd., Feili Group (Fujian) Co., Ltd., and Feili (Fujian) Co., Ltd (collectively ''Feili'') and New–Tec Integration Co., Ltd. (''New–Tec''). On June 29, 2004, Feili requested an administrative review of its sales. On June 30, 2004, Dongguan Shichang Metals Factory Co., Ltd., Dongguan Shichang Metals Factory Ltd., and Maxchief Investments Limited (collectively ''Shichang''), and Lifetime Hong Kong Ltd. and Lifetime (Xiamen) Plastic Products Ltd. (collectively ''Lifetime'') requested an administrative review of their sales. Also on June 30, 2004, the Meco Corporation (''the petitioner'') requested an administrative review of the antidumping duty order for the following companies: Feili, New–Tec, and Shichang.

On July 28, 2004, the Department published a notice of initiation of an administrative review of the antidumping duty order on folding metal tables and chairs from the PRC with respect to these companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 69 FR 45010, 45011 (July 28, 2004) (''Initiation Notice'').

On September 2, 2004, Lifetime withdrew its request for an administrative review. On September 7, 2004, the petitioner withdrew its request for an administrative review of Shichang. On September 8, 2004, Shichang withdrew its request for an administrative review.

Partial Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review in whole or in part if a party that requested the review withdraws its request within ninety days of publication of the **Federal Register** notice that initiated the review. Therefore, as the petitioner, Lifetime, and Shichang were the only parties that made requests for review on behalf of Lifetime and Shichang, and because the petitioner, Lifetime, and Shichang have all withdrawn their requests for review in accordance with 19 CFR 351.213(d)(1), the Department is rescinding in part this review of the antidumping duty order on folding metal tables and chairs from the PRC with respect to Lifetime and Shichang. This review will continue with respect to Feili, New–Tec, and Wok & Pan.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(l) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: March 16, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–1250 Filed 3–21–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–867]

Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review: Automotive Replacement Glass Windshields from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 22, 2005.

FOR FURTHER INFORMATION CONTACT: Jon Freed or Will Dickerson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3818, or 482–1778, respectively.

Background

On May 27, 2004, the Department published in the **Federal Register** a notice of the initiation of the antidumping duty administrative review of automotive replacement glass windshields from the People's Republic of China for the period April 1, 2003, through March 31, 2004. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 69 FR 30282 (May 27, 2004). On October 12, 2004, the Department published in the **Federal Register** a notice rescinding the administrative review of two companies which had withdrawn their requests for reviews. *See Notice of Partial Rescission of the Antidumping Duty Administrative Review: Certain Automotive Replacement Glass Windshields from the People's Republic of China*, 69 FR 60612 (October 12, 2004). On December 3, 2004, the Department published in the **Federal Register** a notice extending the time limit for the preliminary results of the administrative review from December 31, 2004, to March 31, 2005. *See Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review: Automotive Replacement Glass Windshields from the People's Republic of China*, 69 FR 70224 (December 3, 2004). The preliminary results of review are currently due no later than March 31, 2005.

Extension of Time Limit of Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), states that, if it is not practicable to complete the review within the time specified, the administering authority may extend the 245-day period to issue its preliminary results by up to 120 days. Completion of the preliminary results of this review within the 245-day period is not practicable because the Department needs additional time to analyze a significant amount of information pertaining to verification of one company's questionnaire responses and to review supplemental questionnaire responses of a second company.

Because it is not practicable to complete this review within the time specified under the Act, we are extending the time limit for issuing the preliminary results of review by an additional 30 days, in accordance with section 751(a)(3)(A) of the Act. Therefore, as 30 days from March 31, 2005, falls on a Saturday, the preliminary results are now due on May 2, 2005, the next business day. The final results of review continue to be due 120 days after the date of publication of the preliminary results.

Dated: March 15, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–1249 Filed 3–21–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

U.S. Healthcare Technologies Trade Mission

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice to U.S. Healthcare Technologies Trade Mission to Australia and New Zealand, September 12–16, 2005.

SUMMARY: The United States Department of Commerce, International Trade Administration, U.S. Commercial Service, Office of Global Trade Programs, is organizing a Healthcare Technologies Trade Mission to Sydney and Melbourne, Australia and to Auckland, New Zealand, September 12–16, 2005.

The trade mission will target the IT-healthcare sub-sector, *e.g.*, electronic patient records, automated patient scheduling, telemedicine, but will also include other sectors within the healthcare industry.

FOR FURTHER INFORMATION CONTACT: Office of Global Trade Programs; Room 2012; Department of Commerce; Washington, DC 20230; Tel: (202) 482–4457; Fax: (202) 482–0178.

SUPPLEMENTARY INFORMATION:

HEALTHCARE TECHNOLOGIES TRADE MISSION

Australia and New Zealand

September 12–16, 2005

Mission Statement

I. Description of the Mission

The United States Department of Commerce, International Trade Administration, U.S. Commercial Service, Office of Global Trade Programs, is organizing a Healthcare Technologies Trade Mission to Sydney and Melbourne, Australia and to Auckland, New Zealand, September 12–16, 2005.

The trade mission will target the IT-healthcare sub-sector, *e.g.*, electronic patient records, automated patient scheduling, telemedicine, but will also include other sectors within the healthcare industry.

The focus of the mission will be to match participating U.S. companies with qualified agents, distributors, representatives, licensees, and joint venture partners, and where appropriate, arrange for appointments with government officials, in these markets. Consumers in Australia and New Zealand have a strong affinity for U.S. products.

II. Commercial Setting for the Mission

Over 85 percent of medical devices and diagnostics used in Australia are imported, with approximately 60 percent of these products coming from the U.S. Other major market suppliers are the E.U. and Japan. The Australian medical equipment market is valued at approximately US$2 billion, representing about one percent of the global medical market.

Australia is a mature market for medical equipment, and its high per capita income and sophisticated health system translate into demand for a broad range of cutting-edge medical equipment. As in the United States, Australians are educated consumers, and expect state-of-the-art medical treatment, which ensures continuous

demand for innovative medical equipment and products.

Government policy and the provision of public health services also stimulate demand for medical equipment. Australia has a government-funded healthcare system, *i.e.*, the government (at all levels) is the primary purchaser of medical equipment. Public hospitals account for approximately 70 percent of sales of medical equipment, while 30 percent of sales are made to the private sector. As the costs of maintaining a public healthcare system increase, public hospital administrators and medical staff are directed to choose the best product available, at the lowest possible cost.

U.S. medical equipment is traditionally well received in Australia due to its perceived high quality. Opportunities are particularly strong for state-of-the-art and innovative medical equipment and products that can result in significant improvement in clinical outcomes. In particular, products that leads to faster patient recovery, and which reduce hospital and rehabilitation costs, are in demand.

Additionally, health IT products are in demand in Australia. For example, the specialized application of IT that enables healthcare organizations to deliver better health outcomes have strong sales potential. Products that improve the delivery of services by reducing medical errors and adverse medical events, and increase patient safety and satisfaction, such as health information management systems, and patient administration and clinical information systems, are all experiencing growth.

Under the Australia-U.S. Free Trade Agreement, U.S. medical equipment continues to receive duty-free treatment. U.S. firms are also allowed to compete for Australia's government purchases on a nondiscriminatory basis.

Commercial Setting—New Zealand

In New Zealand, 100 percent of medical devices and diagnostics are imported, with approximately 60 percent coming from the United States, 30 percent from Europe, and 10 percent from Asia. The New Zealand medical equipment market is estimated at US$500 million.

Major hospital expansions, upgrading and redevelopment are ongoing and are being undertaken in the country's most populated areas, Auckland, Wellington and Christchurch, driving demand for medical equipment and services.

New Zealand's health system is comprised of public, private and voluntary sectors that interact to provide and fund health care. Presently, approximately 80 percent of health care is publicly funded and is comprised of local General Practitioners that refer to specialists when required. The government provides free medical care to children under seven. The wait for non-critical surgery can be quite long, and private insurance is becoming quite popular. The increased use of privately funded facilities provides additional opportunities for U.S. medical exporters. Best prospects in these facilities include cardiac and diagnostic equipment.

New Zealand's total health expenditure as a percentage of Gross Domestic Products was recently measured at approximately 9 percent and had increased from the previous period. The publicly funded portion of health expenditures comprised the bulk of this figure, and also increased over the same period.

New Zealand's aging population will increase demand for facilities such as retirement villages with on-site hospitals that will require not only medical services but also medical equipment. Orthopedic and other musculo-skeletal conditions have become the major cause of disability in New Zealand, and represent areas of demand for U.S. medical exporters.

As in Australia, opportunities for exporters of health IT products are strong. Large U.S. companies in this sector have not yet entered the New Zealand market, so there is unmet demand for new health IT technologies.

III. Goals for the Mission

The Trade Mission's goal is to provide market entry or increased sales into the Australia and New Zealand markets for U.S. healthcare firms and/or IT firms with healthcare-related products or services, as well as first-hand market information and access to key government officials and potential business partners.

IV. Scenario for the Mission

The trade mission will spend two days in Sydney, two days in Melbourne, and one day in Auckland.

In each country, the U.S. Commercial Service will:

- Provide a market briefing highlighting opportunities in the healthcare technologies sector;
- Schedule one-on-one appointments with potential business partners for each participant.

In Australia, the U.S. Commercial Service will:

Arrange a hospitality event to introduce participants to key business and industry officials.

Timetable

Sunday, September 11, 2005
  Arrive in Sydney
Monday, September 12, 2005
  Breakfast Market Briefing in Sydney
Trade Mission Meetings in Sydney
Evening Reception
Tuesday, September 13, 2005
  Trade Mission Meetings in Sydney

Travel to Melbourne

Wednesday, September 14, 2005
  Breakfast Market Briefing in Melbourne
  Trade Mission Meetings in Melbourne
  Evening Reception
Thursday, September 15, 2005
  Trade Mission Meetings in Melbourne

Travel to Auckland

Friday, September 16, 2005
  Breakfast Market Briefing in Auckland
  Trade Mission Meetings in Auckland

Conclusion of Trade Mission

V. Criteria for Participant Selection

- Relevance of the company's business line to the mission scope and goals
- Potential for business in the selected markets
- Timeliness of the company's completed application, participation agreement, and payment of the mission participation fee
- Provision of adequate information on the company's products and/or services and communication of the company's primary objectives to facilitate appropriate matching with potential business partners
- Certification that the company's products and/or services are manufactured or produced in the United States or if manufactured/produced outside of the United States, the product/service must be marketed under the name of a U.S. firm and have U.S. content representing at least 51 percent of the value of the finished good or service.

Any partisan political activities of an applicant, including political contributions, will be entirely irrelevant to the selection process.

The mission will be promoted through the following venues: Export Assistance Centers and the Healthcare Team; USCS Trade Events List *http://www.export.gov*; industry newsletters; the **Federal Register**; relevant trade publications; relevant trade associations; past Commerce trade mission participants; various in-house and purchased industry lists, and on the Commerce Department trade missions calendar: *http://www.ita.doc.gov/doctm/tmcal.html.*

Recruitment will begin immediately and will close on July 29, 2005. The trade mission participation fee will be US$3,500 per company. The participation fee does not include the cost of travel and lodging. Participation is open to the first 10 qualified U.S. companies. Applications received after that date will be considered only if space and scheduling constraints permit.

Contact Information

Bill Kutson, Project Manager, U.S. Commercial Service, Global Trade Programs, U.S. Department of Commerce, Room 2012, Washington, DC 20230, Tel: (202) 482–2839, Fax: (202) 482–0178, E-mail: *William.Kutson@mail.doc.gov.*

Dated: March 14, 2005.

Nancy Hesser,

Industry Sector Manager, Office of Trade Event Programs.

[FR Doc. E5–1235 Filed 3–21–05; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031705B]

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Application for an Exempted Fishing Permit

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

ACTION: Notice; receipt of an exempted fishing permit application; intent to issue the EFP; request for comments.

SUMMARY: NMFS announces the receipt of an exempted fishing permit (EFP) application, and the intent to issue EFPs for vessels participating in an observation program to monitor the incidental take of salmon and groundfish in the shore-based component of the Pacific whiting fishery. The EFPs are necessary to allow trawl vessels fishing for Pacific whiting to delay sorting their catch, and thus to retain prohibited species and groundfish in excess of cumulative trip limits until the point of offloading. These activities are otherwise prohibited by Federal regulations. The EFPs will be effective no earlier than April 1, 2005, and would expire no later than May 31, 2006, but could be terminated earlier under terms and conditions of the EFPs and other applicable laws.

DATES: Written comments must be received by April 1, 2005.

ADDRESSES: Send comments or request for copies of the EFP application to Carrie Nordeen, Northwest Region, NMFS, 7600 Sand Point Way NE., Bldg. 1, Seattle, WA 98115 0070 or email to *2005WhitingEFP.nwr@noaa.gov*. Comments sent via email, including all attachments, must not exceed a 10 megabyte file size.

FOR FURTHER INFORMATION CONTACT: Carrie Nordeen at (206) 526 6144.

SUPPLEMENTARY INFORMATION: This action is authorized by the Magnuson-Stevens Fishery Conservation and Management Act provisions at 50 CFR 600.745, which state that EFPs may be used to authorize fishing activities that would otherwise be prohibited. At the November 2004 Pacific Fishery Management Council (Pacific Council) meeting in Portland, Oregon, NMFS received an application for these EFPs from the States of Washington, Oregon, and California. An opportunity for public testimony was provided during the Pacific Council meeting. The Pacific Council recommended that NMFS issue the EFPs, as requested by the States. NMFS is working with the States and participants of the EFP to resolve funding, full retention, and monitoring issues affecting this EFP.

Issuance of these EFPs, to about 40 vessels, will continue an ongoing program to collect information on the incidental catch of salmon and groundfish in whiting harvests delivered to shore-based processing facilities by domestic trawl vessels. Because whiting deteriorates rapidly, whiting must be minimally handled and immediately chilled to maintain the flesh quality. As a result, many vessels dump catch directly or near directly into the hold and are unable to effectively sort their catch.

The issuance of EFPs will allow vessels to delay sorting of groundfish catch in excess of cumulative trip limits and prohibited species until offloading. These activities are otherwise prohibited by regulation. In 2004, electronic monitoring systems were provided by NMFS to catcher vessels participating in the whiting EFP as part of a pilot study to evaluate if these systems would be useful tools to verify full retention and/or document discard at sea. Based on the results from the 2004 pilot study, electronic monitoring systems may be useful tools to monitor compliance with full retention requirements. NMFS will continue to evaluate the usefulness of electronic monitoring tools during the 2005 whiting EFP and will once again provide electronic monitoring systems to participating vessels.

Delaying sorting until offloading will allow samplers located at the processing facilities to collect incidental catch data for total catch estimates and will enable whiting quality to be maintained. Without an EFP, groundfish regulations at 50 CFR 660.306(a)(2) require vessels to sort their prohibited species catch and return them to sea as soon as practicable with minimum injury. Similarly, regulations at 50 CFR 660.306(a)(10) prohibit the retention of groundfish in excess of the published trip limits.

In addition to providing information that will be used to monitor the attainment of the shore-based whiting allocation, information gathered through these EFPs is expected to be used in a future rulemaking. In the near future, NMFS is considering implementing, through federal regulation, a monitoring program for the shore-based Pacific whiting fleet. The Pacific Council recommended using EFPs only until a permanent monitoring program can be developed and implemented. NMFS is developing a preliminary draft Environmental Assessment that includes a range of alternative monitoring systems for the shore-based Pacific whiting fishery. At its June 2004 meeting, the Pacific Council considered a preliminary range of alternatives for a monitoring program that focus on three major issues: (1) The monitoring program (i.e., federal observers, state monitors, electronic monitoring, or a combination thereof); (2) tracking and disposition of prohibited species and groundfish overages; and (3) mechanisms for funding of the monitoring program. In summer 2005, the Pacific Council is expected to adopt a revised range of alternatives for public review that cover these same issues. In autumn 2005, the Pacific Council is expected to make final recommendations to NMFS regarding this monitoring program. NMFS would then prepare a proposed rule, which would include a public comment period, followed by a final rule implementing a monitoring program before the start of the 2006 shore-based primary Pacific whiting season.

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

Dated: March 17, 2005.

Alan D. Risenhoover,

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

[FR Doc. E5–1248 Filed 3–21–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031705D]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; proposal for an exempted fishing permit to conduct experimental fishing; request for comments.

SUMMARY: NMFS announces that the Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator) proposes to recommend that an exempted fishing permit (EFP) be issued in response to an application submitted by the Cape Cod Commercial Hook Fishermen's Association (CCCHFA), in collaboration with the New England Aquarium and NMFS. The EFP would allow up to 20 vessels to retain undersized Atlantic cod (*Gadus morhua*) while fishing in the Georges Bank Cod Hook Sector Area from approximately May 2005 through April 2006. The Assistant Regional Administrator has made a preliminary determination that the application contains all of the required information and warrants further consideration and that the activities to be authorized under the EFP would be consistent with the goals and objectives of the Northeast Multispecies Fishery Management Plan. However, further review and consultation may be necessary before a final determination is made to issue an EFP.

DATES: Written comments on this action must be received on or before April 6, 2005.

ADDRESSES: Comments on this notice may be submitted by e-mail to: *DA5–54@noaa.gov*. Include in the subject line the following document identifier: ''Comments on CCCHFA Sub-legal Cod Survival EFP Proposal.''

Comments may also be sent to: Patricia A. Kurkul, Regional Administrator, NMFS, NE Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on CCCHFA Sub-legal Cod Survival EFP Proposal.''

Or, comments may be faxed to: (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Jason Blackburn, Fishery Management Specialist, phone: 978–281–9326, fax: 978–281–9135.

SUPPLEMENTARY INFORMATION: On February 24, 2005, CCCHFA, in collaboration with the New England Aquarium and NMFS, submitted a complete application for a continuation of their study on mortality rates and survivability of undersized Atlantic cod harvested in the bottom-set longline and jig fisheries in southern New England. The applicant has submitted a new EFP request for a continuation of the study they began in 2004. Their initial efforts were hampered by a variety of setbacks, which limited the amount of sampling carried out under the original EFP in 2004. The new EFP would allow the applicant to continue their sampling regime during all four seasons of the 2005 fishing year, allowing them to complete their study, and assess seasonal differences in the rates of survival. The CCCHFA has requested exemption from the restrictions on possession of undersized Atlantic cod at 50 CFR 648.83(a) in order to retain sub-legal cod for study. The applicant has also requested that trips used solely for the purposes of retrieving fish cages be exempt from the multispecies Days-At-Sea (DAS) requirements specified at § 648.82(a). The proposed study would occur inside the Georges Bank Cod Hook Sector Area. At no time would fishing operations be conducted inside year-round closure areas.

The experiment would occur from approximately May 2005 through April 2006, during which time longline vessels would sample at 20, 30, and 40 fathoms (36.6, 54.9, and 73.2 m, respectively), for up to a total of 54 trips. There would be an additional 18 trips used solely for the purposes of retrieving fish cages. There would be no fish landed during cage retrieval trips. There would be up to 20 vessels participating in this study. Each vessel would fish its bottom-set longline gear consisting of 1,800 ft (548.6 m) of mainline with 300 number 12 circle hooks spaced every 6 ft (1.83 m). Approximately 3,600 hooks would be set per fishing day, with a soak time of 3–4 hours. After the vessel sets the longline, it would begin the jigging portion of the study. The undersized cod would be measured, weighed, and tagged to determine survivability rates of the undersized cod. The applicant would use several different handling techniques for all longline caught fish: Alternate fish would be flipped off the hook or snubbed (allowing the hook to pass through the jaw). All fish caught during the jigging portion would be flipped off the hook. During each season, a minimum of 150 undersized fish would be collected and retained for 72 hours in each cage at each of the sample depths. The cage would be constructed to hug tight to the sea floor and to resist rolling in the highly tidal areas. The cage gear was designed in 2004 to meet the requirements of the Atlantic Large Whale Take Reduction Plan. Other than the above protocol, the vessels would follow normal fishing practices. All fish landed would be subject to existing minimum size and trip limit requirements. All mortality associated with this research project has been fully accounted for in the Amendment 13 rebuilding plan, and is controlled by the Georges Bank Cod Hook Sector Hard Total Allowable Catch (TAC), and through the use of A DAS.

A scientific data collector would be present on board each participating vessel. Scientific data collectors would be responsible for collecting all relevant biological and environmental data. CCCHFA would be responsible for developing a full report of the results of this study, and for providing this report to NMFS.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

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

Dated: March 17, 2005.

Alan D. Risenhoover,

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

[FR Doc. E5–1252 Filed 3–21–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

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

DATES: Interested persons are invited to submit comments on or before May 23, 2005.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early

opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

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

Dated: March 16, 2005.

Angela C. Arrington,

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

Institute of Education Sciences

Type of Review: Revision.

Title: Early Childhood Longitudinal Study-Birth Cohort: Kindergarten and First Grade Field Test and Full Scale.

Frequency: One time.

Affected Public: Individuals or household; Businesses or other for-profit; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden: Responses: 562. *Burden Hours:* 197.

Abstract: The Early Childhood Longitudinal Study, Birth Cohort (ECLS–B) is a nationally representative longitudinal study of children born in the year 2001. Children are assessed using state of the art assessment tools and parents are interviewed as well as child care providers and school personnel. Together with the Kindergarten component of this early childhood studies program, the survey informs the research and general community about children's health, early learning, development and education experiences. The focus of this survey is on characteristics of children and their families that influence children's first experiences with the demands of formal schools as well as early health care and in- and out-of-home experiences.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2721. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–5634 Filed 3–21–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

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

DATES: Interested persons are invited to submit comments on or before May 23, 2005.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

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

Dated: March 16, 2005.

Angela C. Arrington,

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

Institute of Education Sciences

Type of Review: New.

Title: System Clearance for Cognitive, Pilot and Field Test Studies.

Frequency: On Occasion.

Affected Public:

Individuals or household; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 1,500. *Burden Hours:* 4,000.

Abstract: This is a request for a generic clearance for the National Center for Education Statistics to conduct various procedures to test questionnaires and survey procedures. These procedures include but are not limited to experiments with levels of

incentives for various types of survey operations, focus groups, cognitive laboratory activities, pilot testing, experiments with questionnaire design, and usability testing of electronic data collection instruments.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2722. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, D.C. 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–5635 Filed 3–21–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.038, 84.033, and 84.007]

Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant Programs

ACTION: Notice of the 2005–2006 award year deadline dates for the campus-based programs.

SUMMARY: The Secretary announces the 2005–2006 award year deadline dates for the submission of requests and documents from postsecondary institutions for the campus-based programs.

SUPPLEMENTARY INFORMATION: The Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) programs are collectively known as the campus-based programs.

The Federal Perkins Loan Program encourages institutions to make low-interest, long-term loans to needy undergraduate and graduate students to help pay for their education.

The FWS program encourages the part-time employment of needy undergraduate and graduate students to help pay for their education and to involve the students in community service activities.

The FSEOG program encourages institutions to provide grants to exceptionally needy undergraduate students to help pay for their cost of education.

The Federal Perkins Loan, FWS, and FSEOG programs are authorized by parts E and C, and part A, subpart 3, respectively, of title IV of the Higher Education Act of 1965, as amended.

Throughout the year, in its ''Dear Colleague'' letters, the Department will continue to provide additional information for the listed individual deadline dates via the Information for Financial Aid Professionals (IFAP) Web site at: *http://www.ifap.ed.gov*.

Deadline Dates: The following table provides the 2005–2006 award year deadline dates for the submission of applications, reports, and waiver requests for the campus-based programs. Institutions must meet the established deadline dates to ensure consideration for funding or a waiver, as appropriate.

2005–2006 AWARD YEAR DEADLINE DATES

What does an institution submit?	Where is it submitted?	What is the deadline for submission?
1. A request for a waiver of the FWS Community Service Expenditure Requirement for the 2005–2006 award year.	The FWS Community Service waiver request and justification must be submitted by one of the following methods:. Hand delivery to: FWS Coordinator, U.S. Department of Education, 830 First Street, NE., room 61C4, Washington, DC 20002, or. Mail to: The same above address for hand delivery, except use Zip Code 20202–5453, or. Fax to: (202) 275–0950.	April 29, 2005.
2. The Campus-Based Reallocation Form designated for the return of 2004–2005 funds and the request of supplemental FWS funds for the 2005–2006 award year.	The Reallocation Form must be submitted electronically and is located in the ''Setup'' section of the FISAP on the Internet at: *http://www.cbfisap.ed.gov*.	August 19, 2005.
3. The 2004–2005 Fiscal Operations Report and 2006–2007 Application to Participate (FISAP).	The FISAP is located on the Internet at the following site: *http://www.cbfisap.ed.gov*. The FISAP form must be submitted electronically via the Internet, and the combined signature page must be mailed to: The FISAP Administrator, INDUS Corporation, 1951 Kidwell Drive, Eighth Floor, Vienna, VA 22182.	September 30, 2005.
4. The Work-Colleges Program Report of 2004–2005 award year expenditures.	The 2004–2005 Work-Colleges Program Report can be found in the ''Setup'' section of the FISAP on the Internet at: *http://www.cbfisap.ed.gov*. The report must be signed and submitted by:. Hand delivery to: Work-Colleges Program, Campus-Based Systems and Operations Division, U.S. Dept. of Education, 830 First Street, NE., room 61F1, Washington, DC 20002, or. Mail to: The same above address for hand delivery except use Zip Code 20202–5453.	October 21, 2005.
5. A request for a waiver of the 2006–2007 award year penalty for the underuse of 2004–2005 award year funds.	The request for a waiver can be found in Part II, Section C of the FISAP on the Internet at: *http://www.cbfisap.ed.gov*.	February 10, 2006.

2005–2006 AWARD YEAR DEADLINE DATES—Continued

What does an institution submit?	Where is it submitted?	What is the deadline for submission?
	The request and justification must be submitted electronically via the Internet.	
6. The Institutional Application for Approval to Participate in the Federal Student Financial Aid Programs.	An institution that has not already established eligibility must submit an application to Case Management and Oversight through the ED website at: *http://www.eligcert.ed.gov*.	February 10, 2006.
7. The Institutional Application and Agreement for Participation in the Work-Colleges Program for the 2006–2007 award year.	The Institutional Application and Agreement for Participation in the Work-Colleges Program can be found in the ''Setup'' section of the FISAP on the Internet at: *http://www.cbfisap.ed.gov*. The application and agreement must be signed and submitted by: Hand delivery to: Work-Colleges Program, Campus-Based Systems and Operations Division, U.S. Dept. of Education, 830 First Street, NE., room 61F1, Washington, DC 20002, or Mail to: The same above address for hand delivery except use Zip Code 20202–5453.	March 10, 2006.
8. A request for a waiver of the FWS Community Service Expenditure Requirement for the 2006–2007 award year.	The FWS Community Service waiver request and justification must be submitted by one of the following methods: Hand delivery to: FWS Coordinator, U.S. Department of Education, 830 First Street, NE., room 61C4, Washington, DC 20002, or Mail to: The same above address for hand delivery, except use Zip Code 20202–5453, or Fax to: (202) 275–0950.	April 28, 2006

Note:
- The deadline for electronic submissions is 11:59 p.m. (Eastern Time) on the applicable deadline date. Transmissions must be completed and accepted by 12:00 midnight to meet the deadline.
- Paper documents that are sent through the U.S. Postal Service must be postmarked by the applicable deadline date.
- Paper documents that are hand delivered by a commercial courier must be received no later than 4:30 pm (Eastern time) on the applicable deadline date.

Proof of Mailing or Hand Delivery of Paper Documents

If you submit paper documents when permitted by mail or by hand delivery from a commercial courier, we accept as proof one of the following:

(1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(2) A legibly dated U.S. Postal Service postmark.

(3) A legibly dated shipping label, invoice, or receipt from a commercial courier.

(4) Other proof of mailing or delivery acceptable to the Secretary.

If the paper documents are sent through the U.S. Postal Service, we do not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. An institution should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office. All institutions are encouraged to use certified or at least first-class mail.

The Department accepts hand deliveries from commercial couriers between 8 a.m. and 4:30 p.m., eastern time, Monday through Friday except Federal holidays.

Sources for Detailed Information on These Requests

A more detailed discussion of each request for funds or a waiver is provided in a specific ''Dear Colleague'' letter, which is posted on the Department's Web page at least 30 days before the established deadline date for the specific request. Information on these items is also found in the Federal Student Aid Handbook.

Applicable Regulations: The following regulations apply to these programs:

(1) Student Assistance General Provisions, 34 CFR part 668.

(2) General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program, 34 CFR part 673.

(3) Federal Perkins Loan Program, 34 CFR part 674.

(4) Federal Work-Study Programs, 34 CFR part 675.

(5) Federal Supplemental Educational Opportunity Grant Program, 34 CFR part 676.

(6) Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600.

(7) New Restrictions on Lobbying, 34 CFR part 82.

(8) Government wide Requirements for Drug-Free Workplace (Financial Assistance), 34 CFR part 84.

(9) Government wide Debarment and Suspension (Nonprocurement), 34 CFR part 85.

(10) Drug and Alcohol Abuse Prevention, 34 CFR part 86.

FOR FURTHER INFORMATION CONTACT: Kathleen Wicks, Acting Director of Campus-Based Systems and Operations Division, U.S. Department of Education, Federal Student Aid, 830 First Street, NE., Union Center Plaza, room 61C3, Washington, DC 20202–5345. Telephone: (202) 377–3110 or via the Internet: *kathleen.wicks@ed.gov*.

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 program contact person

listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document

You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

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

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

Program Authority: 20 U.S.C. 1087aa *et seq.*; 42 U.S.C. 2751 *et seq.*; and 20 U.S.C. 1070b *et seq.*

Dated: March 17, 2005.

Theresa S. Shaw,

Chief Operating Officer, Federal Student Aid.

[FR Doc. 05–5639 Filed 3–21–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

DEPARTMENT OF THE INTERIOR

Memorandum of Understanding Between the Department of the Interior and the Department of Energy

AGENCIES: Office of Environmental Management, Department of Energy, and Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of draft memorandum of understanding.

SUMMARY: The Department of Energy (DOE) and the Department of the Interior (DOI) plan to enter into a Memorandum of Understanding (MOU), no later than six months after the publication of this draft MOU. The purpose of the MOU is to describe how the Departments will cooperate in transferring administrative jurisdiction for certain lands within the Rocky Flats Environmental Technology Site (Rocky Flats) from DOE to DOI and the transition of Rocky Flats from a defense nuclear facility into the Rocky Flats National Wildlife Refuge (the Refuge). The text of the draft MOU is set forth below.

DATES: Comments on the draft MOU are due by May 23, 2005.

ADDRESSES: Comments should be sent to: U.S. Department of Energy, Office of Environmental Management, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Matthew Duchesne, of the Office of Environmental Management, at the address in the **ADDRESSES** section; telephone (202) 586–6540. This is not a toll-free number.

Authority: The Rocky Flats National Wildlife Refuge Act of 2001, Public Law 107–107, Title XXXI, Subtitle F (December 28, 2001).

Signed at Washington, DC, on March 15, 2005.

Paul M. Golan,

Principal Deputy Assistant Secretary for Environmental Management, Department of Energy.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior.

Implementation of the Rocky Flats National Wildlife Refuge Act of 2001

I. Purpose, Authority, and Scope

A. Purpose

This Memorandum of Understanding (MOU) is entered into by the U.S. Department of Energy (DOE) and the U.S. Department of the Interior (Interior), hereinafter referred to as the Parties, regarding the Rocky Flats Environmental Technology Site (Rocky Flats), Colorado. This MOU describes how the Parties will cooperate in transferring administrative jurisdiction (the transfer) of certain lands within Rocky Flats from DOE to Interior and the transition of Rocky Flats from a former defense nuclear facility to the Rocky Flats National Wildlife Refuge (Refuge).

B. Authority

The authority for this MOU is section 3175 of the Rocky Flats National Wildlife Refuge Act of 2001, Public Law 107–107, sections 3171 to 3182 (Dec. 28, 2001) (the Act), 16 U.S.C. 668dd note.

C. Scope

The Act requires that the Parties carry out the transfer of administrative jurisdiction pursuant to an MOU that:

1. Provides for the division of responsibilities between the Secretary of Energy and the Secretary of the Interior necessary to carry out such transfer of lands that will become the Refuge;

2. Addresses the impacts that any property rights referred to in section 3179(a) of the Act may have on the management of the Refuge, and provide strategies for resolving or mitigating these impacts;

3. Identifies the land the administrative jurisdiction of which is to be transferred to the Secretary of the Interior; and

4. Specifies the allocation of the Federal costs incurred at the Refuge after the date of such transfer for any site investigations, response actions, and related activities for covered substances.

II. Background

A. The majority of the Rocky Flats site has generally remained undisturbed since its acquisition by the Federal Government.

B. The State of Colorado is experiencing increasing growth and development, especially in the metropolitan Denver Front Range area in the vicinity of the site. That growth and development reduces the amount of open space and thereby diminishes for many metropolitan Denver communities the vistas of the striking Front Range mountain backdrop.

C. The Act provides that after the cleanup and closure of Rocky Flats, it shall thereafter be retained by the United States and managed so as to preserve the value of the site for open space and wildlife habitat.

D. Rocky Flats provides habitat for many wildlife species, including a number of threatened and endangered species, and is marked by the presence of rare xeric tallgrass prairie plant communities. Establishing the site as a unit of the National Wildlife Refuge System will promote the preservation and enhancement of those resources for present and future generations.

E. The mission of the National Wildlife Refuge System is to administer a national network of lands and waters for the conservation, management, and, where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans (16 U.S.C. at 68dd(a)(2)).

F. Section 3177 of the Act provides that the Refuge shall be managed for the purposes of: Restoring and preserving native ecosystems; providing habitat for, and population management of, native plants and migratory and resident wildlife; conserving threatened and endangered species (including species that are candidates for listing under the Endangered Species Act of 1973 (16 U.S.C. 11531 *et seq.*)); and providing opportunities for compatible scientific research. Management of the Refuge shall ensure that wildlife-dependent recreation and environmental education and interpretation are the priority public uses of the Refuge.

G. Section 3175 of the Act provides that the transfer of administrative jurisdiction will be completed without cost to Interior.

H. Section 3175 of the Act also provides that the transfer of administrative jurisdiction will not result in a reduction in funds available to DOE for cleanup and closure of Rocky Flats.

I. This MOU complies with the foregoing requirements of the Act and also addresses opportunities for cooperation between the Parties on issues related to management of natural resources prior to the transfer of administrative jurisdiction. Further, this MOU addresses post transfer issues related to oversight, operation, maintenance, and monitoring of response actions.

J. Nothing in this MOU shall relieve, and no action may be taken under this MOU to relieve, DOE, Interior, or any other person from any liability or other obligation at Rocky Flats under CERCLA, RCRA, or any other Federal or State law.

III. Definitions

A. CERCLA

The term ''CERCLA'' means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 *et seq.*).

B. Cleanup and Closure

The term ''Cleanup and Closure'' means the response actions for covered substances carried out at Rocky Flats, as required by any of the following:

1. The Rocky Flats Cleanup Agreement (RFCA)
2. CERCLA;
3. The Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 *et seq.*; and
4. The Colorado Hazardous Waste Act (CHWA), sections 25–15–101 to 25–15–327, Colorado Revised Statutes.

C. Consultation

In the context of this MOU, the term ''Consultation'' means normal discussion which will occur between Interior and DOE whenever either Party seeks advice or exchanges information. As used herein, ''consultation'' does not imply consultation under provisions of section 7 of the Endangered Species Act unless explicitly stated as such.

D. Covered Substance

The term ''Covered Substance'' means any of the following:

1. Any hazardous substance, as such term is defined in paragraph (14) of section 101 of CERCLA (42 U.S.C. 9601(14)). This includes all radioactive substances released at Rocky Flats by DOE; and

2. Any pollutant or contaminant, as such term is defined in paragraph (33) of such section 101, (42 U.S.C. 9601 (33)); and

3. Any petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of paragraph (14) of such section 101 (42 U.S.C. 9601 (14)); and

4. Any other substance, material, or waste the release of which the Parties jointly agree (or is determined through dispute resolution) requires a response action to protect human health and the environment.

E. Land Use Controls

The term ''Land Use Controls'' means any type of physical, legal, or administrative mechanism used to restrict the use of, or limit access to, real property to ensure that there are no unacceptable risks to human health, safety, or the environment. Land use controls consist of Engineering Controls and/or Institutional Controls. Land use controls may be either temporary or permanent. The establishment of the Refuge under the Act does not constitute a land use control for purposes of this MOU.

F. Institutional Controls

The term ''Institutional Controls'' means any non-engineering measure, such as legal or administrative mechanisms, whether temporary or permanent, designed to prevent or limit exposure to Covered Substances left in place at a site or to assure effectiveness of the chosen remedy.

G. Interior

The term ''Interior'' means the United States Department of the Interior, including the United States Fish and Wildlife Service (FWS).

H. Overlay Refuge

The term ''Overlay Refuge'' means those lands at Rocky Flats under the jurisdiction, custody, and control of DOE, but over which FWS exercises natural resource management activities by agreement with, and permission from, DOE. Subject to that permission and subject to DOE's continuing jurisdiction, custody, and control, FWS is authorized to manage fish and wildlife resources on an Overlay Refuge pursuant to the National Wildlife Refuge Administration Act, 16 U.S.C. 668dd *et seq.*

I. RCRA

The term ''RCRA'' means the Solid Waste Disposal Act (42 U.S.C. 6901 *et seq.*), popularly known as the Resource Conservation and Recovery Act.

J. Refuge

The term ''Refuge'' means the Rocky Flats National Wildlife Refuge established under section 3177 of the Act.

K. Response Action

The term ''Response Action'' means any of the following:

1. A response, as such term is defined in paragraph (25) of section 101 of CERCLA (42 U.S.C. 9601 (25));
2. A corrective action or closure under RCRA or CHWA; or
3. Any requirement for institutional controls imposed by any of the laws referred to in subparagraph (1) or (2).

L. Retained Property

The term ''Retained Property'' means the real property and facilities at Rocky Flats and identified in section 3175(d)(1) of the Act.

M. RFCA

The term ''RFCA'' means the Rocky Flats Cleanup Agreement, an intergovernmental agreement, dated July 19, 1996, among DOE, the U.S. Environmental Protection Agency (EPA), and the Department of Public Health and Environment of the State of Colorado (CDPHE).

N. Rocky Flats

1. Except as provided in subparagraph (2) of this paragraph, the term ''Rocky Flats'' means the Rocky Flats Environmental Technology Site, Colorado, a former defense nuclear facility, as depicted on the map entitled, ''Rocky Flats Environmental Technology Site'' dated October 22, 2001, and attached to this MOU as Attachment A and available for inspection in the office of the Regional Director, U.S. Fish and Wildlife Service, Division of Realty, 3rd Floor, 134 Union Boulevard, Lakewood, Colorado. The map is also available at the Rocky Flats Reading Room located at the Front Range Community College, 3705 W. 112th Avenue, Westminster, Colorado.

2. The term ''Rocky Flats'' does not include: (i) The land and facilities of DOE's National Renewable Energy Laboratory, including the acres retained by the DOE under section 3174(f) of the Act; and (ii) any land and facilities not within the boundaries depicted on the map referred to in subparagraph (1) of this paragraph.

O. Transferred Property

The term ''Transferred Property'' shall mean the real property transferred by the Secretary of the Department of Energy to the administrative jurisdiction, custody, and control of the Secretary of the Department of the Interior pursuant to section 3175 of the Act.

IV. Applicable Laws

All applicable Federal and State laws including, but not limited to the following, will be implemented in accordance with the Parties' responsibilities under the MOU:

1. CERCLA;
2. RCRA;
3. CHWA;
4. The Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*);
5. The National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd *et seq.*);
6. The Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*);
7. The Economy Act (31 U.S.C. 1535 *et seq.*); and
8. The Bald and Golden Eagle Protection Act (16 U.S.C. 668–668d).

V. Relevant Agreements

The following Agreements are relevant to and are not modified by this MOU:

1. RFCA;
2. ''Memorandum of Agreement for Coordination of Endangered Species Act Compliance with Activities at Rocky Flats Environmental Technology Site'' (March 23, 1999) among FWS, EPA, CDPHE, Colorado Department of Natural Resources, and DOE. (This Memorandum of Agreement established a process for the five parties to work together to achieve compliance with the mandates of the Rocky Flats Cleanup Agreement, other site closure activities, and the Endangered Species Act);
3. ''Interagency Agreement, number DE–A134–99 RF 01776, between FWS and DOE, Rocky Flats Field Office for The Rock Creek Fish and Wildlife Cooperative Management Area at the Rocky Flats Environmental Technology Site'' (May 17, 1999). (This interagency agreement identified technical services to be provided by FWS for the purpose of conserving, protecting, developing, and managing the habitat on the portion of the Rocky Flats Buffer Zone designated by Rocky Flats as the Rock Creek Reserve); and
4. ''Interagency Agreement, number DE-AI34–02 RF 02046, between FWS and DOE, Rocky Flats Field Office for Wildlife Refuge Transition/Technical Assistance'' (December 15, 2001) (IA). (This interagency agreement includes work by FWS necessary to effect the transfer of certain Rocky Flats lands to Interior for establishment of the Refuge, including mutually agreed technical services to facilitate that transfer).

VI. Covered Substances and Response

A. Responsibilities of DOE

1. As between the Parties and subject to section 3180(b) of the Act, with respect to the Transferred Property and to Retained Property, DOE shall have sole and exclusive Federal responsibility to fund and implement any Response Action (including operation and maintenance and Land Use Controls) required by applicable law or implementing regulations, including but not limited to CERCLA, RCRA, and CHWA, to address Covered Substances resulting from the activities of DOE (including entities acting with permission or under the authority of or in a contractual relationship with DOE) or which are present at the time of transfer by DOE to Interior (including contamination that is subsequently discovered), except to the extent that Interior or a third party caused or contributed to such contamination after the date of transfer.

2. In carrying out Response Actions at Rocky Flats, DOE will consult with FWS to ensure that Response Actions are carried out in a manner consistent with refuge purposes as specified in the Act. Selected Response Actions at Rocky Flats should reflect the intended future land use as a wildlife refuge for Response Action decisions where FWS recommendations are not implemented by DOE. DOE shall provide a written explanation for its decisions to FWS.

3. In administering the property to be retained by DOE under section 3175(d) of the Act, DOE shall consult with FWS to minimize any conflict between administration of the retained land by DOE for purposes relating to Response Actions and administration of the land transferred under section 3175(a) to FWS for refuge purposes. The Parties shall strive to meet the needs of managing the transferred lands for refuge purposes and managing the retained lands to meet Response Action objectives. In the case of any conflict between administering the retained lands for Response Actions and administering the transferred lands for refuge purposes which cannot be resolved through dispute resolution, administration of the retained lands for Response Actions shall take priority.

4. DOE will complete a risk assessment that will include a comprehensive ecological risk assessment for Rocky Flats.

5. DOE will evaluate the effects of remedial alternatives on natural resource restoration and incorporate into Response Actions restoration of natural resources injured by Covered Substances or Response Actions, including associated waste management structures, as appropriate.

6. In consultation with Interior, DOE will conduct periodic remedy reviews and take any necessary actions in accordance with CERCLA section 121 (c) and the RFCA for which DOE is responsible under this MOU and applicable law, to ensure that the selected remedy is still protective of human health and the environment. Such reviews may result in DOE conducting additional Response Actions, including removing or modifying Land Use Controls. DOE will conduct additional Response Actions as appropriate if the remedy fails or if new contamination is discovered that is not addressed by an existing remedy.

7. Pursuant to section 3175(a)(3) of the Act, DOE will request the Certificate of Completion from EPA.

B. Interior Responsibilities

1. Interior will manage the Refuge in accordance with applicable law, including but not limited to, the National Wildlife Refuge System Administration Act of 1966, as amended.

2. Interior will provide technical assistance to DOE to help coordinate Response Actions with the stated purposes of the Refuge, by reviewing and commenting on the impacts, if any, of proposed Response Actions on the future use of Rocky Flats as a unit of the National Wildlife Refuge System.

3. Interior will complete a Level III Contaminants Survey of Rocky Flats pursuant to Interior Departmental Manual Part 602, Chapter 2.

4. Interior will prepare the Comprehensive Conservation Plan for management of the Refuge pursuant to section 3178 of the Act.

5. Interior will be responsible for managing the Refuge for the purposes specified in the Act and in accordance with the National Wildlife Refuge System Administration Act. Interior shall not be responsible for any operations and maintenance related to Response Actions following the establishment of the Refuge.

6. Interior shall record any Land Use Controls, as documented in Land Use Control Records, on the FWS's Land Status Map for Rocky Flats, or other appropriate Interior land status map.

7. Following the transfer of administrative jurisdiction, FWS will provide DOE with access to the Refuge as may be reasonably required to carry out the provisions of this MOU and DOE's obligations under applicable requirements. Prior to entry, except in cases of emergency, DOE will provide FWS with reasonable notice, to allow coordination between Response Actions and Refuge management activities.

8. Interior will provide information to DOE for the preparation of the annual report on funding required by section 3182 of the Act and will submit the report to Congress jointly with DOE.

C. Discovery of Additional Covered Substances

1. If Interior discovers additional Covered Substances for which DOE is responsible on the Transferred Property, or otherwise identifies a previously unidentified condition associated with such Covered Substances that may require a Response Action, it will notify DOE of such Covered Substances or condition as soon as reasonably possible after such discovery.

2. After DOE receives notice from Interior, any regulatory agency or other third party, of the presence of Covered Substances for which DOE is responsible, DOE will provide a written status report to Interior as soon as practical, but in no event later than 30 days after Interior's notification of additional Covered Substances in accordance with section VI, paragraph C.1 of this MOU, for which DOE is responsible.

3. Under certain circumstances, Interior may discover Covered Substances that require an emergency response because they pose a risk to human health or the environment. Interior may take whatever action is necessary to isolate and prevent access to the contaminated site for purposes of protecting human health or the environment. Before taking further action, Interior will provide further notice to DOE, which, in consultation with Interior, will determine whether further Response Actions are required and how such Response Actions will be accomplished.

4. If Interior incurs response costs associated with Covered Substances for which DOE is responsible under this MOU, DOE will reimburse Interior for reasonable and legally authorized costs incurred by Interior. Interior requests for reimbursement will be in writing and will include appropriate receipts or other documentation. DOE will review such requests and upon approval, DOE will reimburse Interior subject to availability of appropriated funds. DOE will use its best efforts to secure appropriations to fulfill its obligations under this MOU.

VII. Retained DOE Property

A. The Parties anticipate that some contaminated areas of the site over which the Act requires DOE to retain administrative jurisdiction for a Response Action may have natural resource values. FWS may decide it wants to manage all or portions of DOE Retained Property as an Overlay Refuge subject to DOE's agreement and the continued jurisdiction, custody, and control of the land by DOE. Any agreement to manage Retained Property as an Overlay Refuge will be memorialized in a subsequent agreement.

B. To the extent permitted by law, Retained Property should be managed for the purposes identified at section 3177(e)(2) of the Act.

C. In those instances where FWS is managing Retained Property as an Overlay Refuge, FWS will not take actions contrary to any land use restrictions pursuant to CERCLA and/or any other Federal or State environmental law. Prior to engaging in any action that may disturb the surface soils of or any structure or engineered facility located on such lands, FWS will seek and obtain DOE approval prior to implementing any ground disturbing activity.

D. DOE shall retain sole and exclusive authority and responsibility to fund and maintain all necessary physical security prior to completion of Response Actions.

E. DOE and FWS will periodically review FWS activities on Retained Property to ensure that they are consistent with Response Actions. At a minimum, this review will begin not later than one year following the establishment of the Overlay Refuge and will recur annually in the month of the anniversary of the Overlay Refuge.

VIII. Existing Private Property Rights

A. The Act requires that the final MOU address the impacts that any mineral rights may have on the management of the Refuge, and provide strategies for resolving or mitigating these impacts. A substantial portion of the mineral estate associated with lands at Rocky Flats is privately owned. The Parties recognize that the exercise of certain existing privately-owned mineral rights, particularly surface mining of gravel and other aggregate material, at Rocky Flats will have an adverse impact on the management of the Refuge. Interior does not believe it can manage the Refuge for meeting the purposes of section 3177(e)(2) if those mineral rights are exercised. Accordingly, Interior will not accept transfer of administrative jurisdiction for lands subject to the mining of gravel and other aggregate material at Rocky Flats from DOE until the DOI determines that the affected mineral rights are adequately protected from development. The Parties are continuing to discuss this issue, and recognize that the Final MOU will need to address strategies for resolving or mitigating the impacts of surface mining on the Refuge.

B. Water rights, water easements, and utility rights-of-way are not anticipated to interfere with managing the Refuge for its intended purposes.

IX. Identification of Lands To Be Transferred

A. As of the date of this MOU, Response Action decisions, land use planning decisions and title review of the mineral estate have not been completed. Such decisions and title review must be completed prior to Interior and DOE determining which lands will be administratively transferred to Interior. Accordingly, the Parties intend to modify this MOU in the future to identify the lands to be transferred as necessary in order to implement section 3175 of the Act.

B. DOE will retain administrative jurisdiction, authority, and control over real property and facilities at Rocky Flats used for or related to a Response Action and subject to Section VII of this MOU. For purposes of this paragraph, real property and facilities include caps, barrier walls, fences, and monitoring or treatment wells and other engineered structures as well as real property or other facilities that DOE must retain to implement Response Actions in accordance with appropriate requirements.

C. The Parties anticipate that the administrative jurisdiction over most of Rocky Flats may be transferred from DOE to Interior. It is also anticipated that most of the industrial area, as identified on Attachment B as Retained Property, may not be transferred to Interior.

D. As required by section 3175(d)(2) of the Act, following completion of the required Response Action decisions and land use planning decisions and subject to Section VIII of this MOU, DOE will consult with FWS, the Administrator of EPA, and the Governor of the State of Colorado, on the identification of all real property and facilities to be retained.

E. DOE shall prepare an exact acreage and legal description of the land that

will become the Refuge, based on a survey that is mutually satisfactory to the Parties. As part of the transfer, DOE will notify the General Services Administration (GSA) of the transfer and revise the DOE Real Property records accordingly and any other DOE records used for reporting to the GSA. When reporting to GSA, DOE will maintain the Rocky Flats facility identification name and numbers as long as needed, and Interior will apply for its own facility identification name and number for the Refuge when administrative jurisdiction is transferred to Interior.

F. DOE will collect all applicable real estate records, maps, and electronic data associated with the acquisition, land management, and any disposals of the Refuge real estate and related property. DOE will transfer this information to Interior.

G. Until the transfer of administrative jurisdiction is completed, DOE will continue to operate and maintain all U.S. Government property and facilities at Rocky Flats, unless otherwise agreed to in writing by the Parties.

X. Buildings and Other Improvements

Under section 3175(c) of the Act, Interior may request the transfer of buildings and other improvements for the purposes of managing the Refuge. Interior agrees that DOE's need to retain, demolish, or otherwise dispose of certain facilities will take priority over requests for transfer to Interior.

XI. DOE Funded Activities

A. DOE will provide funding to Interior for activities necessary for the transition of Rocky Flats to its future use as a Refuge. Those activities include, but are not limited to, the following:

1. Implementation of this MOU.
2. Preparation of the Comprehensive Conservation Plan for the Refuge.
3. Interior Level III Contaminants Survey and other environmental monitoring required for the transfer, and ecological investigations necessary for the transfer.
4. Interior review and comment on cleanup plans and documents and consultation on remedy selection.
5. Real estate related work necessary to effect the transfer of jurisdiction pursuant to applicable Federal law and regulations.
6. This MOU shall not be used to obligate or commit funds or as the basis for the transfer of funds. The details of the levels of support to be furnished to one organization by the other with respect to funding will be developed in specific interagency agreements or other agreements. While reimbursement will be subject to the availability of funds, DOE agrees that funding under this MOU will receive priority consideration over other expenditures because of the importance of this MOU enabling DOE to complete its accelerated cleanup and closure of Rocky Flats and agrees to seek funds from Congress to satisfy its responsibilities under this MOU in the event that funds are insufficient.

B. Procedures for DOE funding of Interior activities pursuant to this MOU follow:

1. With respect to Interior activities that DOE funds in accordance with this MOU, under the Act, Interior will annually provide an estimate of its funding needs to DOE for the following fiscal year by October 31 of each year that this MOU remains in effect.
2. No funds are authorized to be transferred between the Parties by this MOU. Subject to requirements of the Anti-Deficiency Act, the Economy Act, and other applicable requirements, transfer of funds from DOE to Interior will be made on an annual basis as agreed upon in an annual or multi-year Interagency Agreement or Cooperative Agreement between DOE and Interior. Interior will maintain financial records to support periodic DOE audits of expenses in such detail and as often as deemed necessary by the DOE.
3. In accordance with section 3175(f) of the Act, the Parties acknowledge that funds will not be taken from Rocky Flats closure project funds either to implement the Act or to effect the transition of the site to National Wildlife Refuge status.
4. The Parties will comply with the requirements of section 3182 of the Act regarding an annual joint report to Congress on costs incurred to implement the Act in the prior fiscal year, as well as funds required for implementation in the current and subsequent fiscal years. The Parties agree to report costs incurred and future funding needs to the Congressional Committees responsible for DOE appropriations. DOE will draft, for joint DOE and Interior submission, annual reports to Congress on the cost of implementation of the Act pursuant to section 3182 of the Act.

C. The Parties agree to use their best efforts to work cooperatively to minimize the overall cost of the transition and transfer of administrative jurisdiction hereunder. Examples of these efforts could include use of existing environmental and ecological data, data that DOE already plans to collect to support the cleanup and closure of Rocky Flats, coordinated closure project planning, and the potential to share staff.

XII. Tort Claims

DOE shall process and adjudicate all administrative claims and defend all litigation asserted under the Federal Tort Claims Act that arise from any activity of DOE with respect to Rocky Flats or any Covered Substance for which DOE is responsible under this MOU. Interior shall process and adjudicate all administrative claims and defend all litigation asserted under the Federal Tort Claims Act that are not the responsibility of DOE. Each Party shall cooperate and assist the other in providing information relating to any such claims.

XIII. Enforcement Actions

As between the Parties, to the extent authorized by law and consistent with this MOU, DOE is responsible for responding to any administrative or legal actions brought to enforce the requirements of applicable laws or regulations concerning Covered Substances for which DOE has retained responsibility.

XIV. Delegation of Authority

A. Each Party will appoint a Manager who will be responsible for overseeing the work performed under this MOU. Managers will have the responsibility to implement this MOU. Either Manager should be available to meet on site at least monthly as requested by the other Manager.

B. The Manager for Interior will be the Refuge Project Leader appointed to oversee the Refuge and will serve as DOE's single point of contact for all activities at Rocky Flats and consultation requirements under section 7 of the Endangered Species Act.

C. The Manager for DOE will be designated in writing by the Assistant Secretary for Environmental Management within 30 days following execution of this MOU.

D. Any actions of the Managers that involve funding to implement this MOU will require DOE Headquarters review.

XV. Dispute Resolution

A. Interior and DOE Managers shall make a good faith effort to resolve all disputes concerning the implementation of this MOU, including planning, management activities, and the transfer of property and facilities from DOE to FWS. If any such dispute cannot be resolved informally at the Manager level, Dispute Resolution may be initiated pursuant to this section.

B. To initiate Dispute Resolution, the disputing Manager shall give to the other Manager a written notice of the dispute and the disputing Party's intent to initiate dispute resolution. The notice

shall include a detailed explanation of the dispute. Upon the other Manager's receipt of such notice, that Manager shall have 15 working days to provide to the disputing Party a written answer to the notice and explanation. The notice and answer, including any exhibits thereto, shall be the Record of Dispute. After such 15-day period has expired, the Managers shall make their best efforts to resolve the dispute within 20 working days.

C. If the Managers do not resolve the dispute within 20 days, the dispute will be elevated to FWS's Regional Director and DOE's Rocky Flats Manager or successor. Within 30 working days of receiving the Record of Dispute, they shall confer and attempt to resolve the dispute.

D. If the Parties do not resolve the dispute within 45 working days, the disputing Party may elevate the dispute to DOE's Assistant Secretary for Environmental Management and the Director of FWS. Within 30 working days of such elevation, the Deputy Assistant Secretary for Environmental Cleanup and Acceleration and the Director shall confer and resolve the dispute.

XVI. No Third Party Rights

This MOU is intended only to establish the terms and conditions for the transfer of the property described herein, and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable by any person against the United States, its agencies, or any other person.

XVII. Cost Recovery, Contribution or Other Actions

Nothing in this MOU is intended to prevent the United States from bringing a cost recovery, contribution, or other action that would otherwise be available under Federal or State law.

XVIII. MOU Modification

This MOU shall remain in effect for both Parties, subject to modification by mutual agreement, made in writing and signed by both Parties.

Department of Energy.

Paul M. Golan,
Principal Deputy Assistant Secretary for Environmental Management.
Date: _____

Department of the Interior.

Craig Manson,
Assistant Secretary for Fish and Wildlife and Parks.
Date: _____

[FR Doc. 05–5597 Filed 3–21–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Grande Ronde—Imnaha Spring Chinook Hatchery Project Final Design and Property Acquisition

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of availability of Record of Decision (ROD).

SUMMARY: This notice announces the availability of the ROD to fund the final design and property acquisition portions of the Proposed Action for the Grande Ronde—Imnaha Spring Chinook Hatchery Project in Northeast Oregon, as well as additional valuation studies recommended by the Northwest Power and Conservation Council. This decision is based on the Final Grande Ronde—Imnaha Chinook Hatchery Project Environmental Impact Statement (DOE/EIS–0340, July 2004). Decisions to fund the construction of the project itself, post-construction operations, facilities maintenance, and/or monitoring and evaluation of the project will follow after the design and additional cost evaluation. The purpose of the project is to aid the conservation and recovery of the Snake River spring/summer Chinook salmon native to the Grand Ronde and Imnaha subbasins of Northeast Oregon (Blue Mountain Province), which are listed as threatened and are protected by the Endangered Species Act. Adequate, contemporary hatchery facilities are needed to mitigate for and recover these fish stocks.

ADDRESSES: Copies of the ROD and EIS may be obtained by calling BPA's toll-free document request line, 1–800–622–4520. The ROD and EIS Summary are also available on our Web site, *www.efw.bpa.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Mickey Carter, Bonneville Power Administration—KEC–4, P.O. Box 3621, Portland, Oregon 97208–3621; toll-free telephone number 1–800–282–3713; fax number 503–230–5699; or e-mail *macarter@bpa.gov*.

Issued in Portland, Oregon, on March 11, 2005.

Stephen J. Wright,
Administrator and Chief Executive Officer.

[FR Doc. 05–5605 Filed 3–21–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–383–064]

Dominion Transmission, Inc.; Notice of Service Agreements

March 15, 2005.

Take notice that on March 9, 2005, Dominion Transmission, Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Twelfth Revised Sheet No. 1300 and Sixth Revised Sheet No. 1402, to become effective April 1, 2005.

DTI states that the purpose of this filing is to disclose three nonconforming service agreements that materially deviate from DTI's form of service agreements. DTI states that the service agreements are with Virginia Natural Gas Company, Philadelphia Gas Works, and Rochester Gas & Electric Corporation.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

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

Comment Date: 5 p.m. Eastern Time on March 22, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1231 Filed 3–21–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–13–018]

East Tennessee Natural Gas, LLC; Notice of Compliance Filing

March 15, 2005.

Take notice that on March 10, 2005, East Tennessee Natural Gas, LLC (East Tennessee) submitted a compliance filing pursuant to the Commission's November 26, 2004 order in the above-captioned docket.

East Tennessee states that copies of the filing were served on parties on the official service list in the above-captioned proceeding, as well as all customers and interested state commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

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

Magalie R. Salas,

Secretary.

[FR Doc. E5–1224 Filed 3–21–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–13–017]

East Tennessee Natural Gas, LLC; Notice of Proposed Amendment to Negotiated Rate

March 15, 2005.

Take notice that on March 10, 2005, East Tennessee Natural Gas, LLC (East Tennessee) tendered for filing an Amendment to a negotiated rate approved by the Commission in the above-captioned docket on November 26, 2004.

East Tennessee states that the proposed amendment would reduce the rate that the Public Service Commission of North Carolina, Inc., pays for service under its service agreement with East Tennessee, but it would raise the charge for fuel and lost-and-unaccounted-for gas.

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 in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). 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.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1232 Filed 3–21–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–225–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

March 15, 2005.

Take notice that on March 8, 2005, Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, request a proposed effective date of April 1, 2005:

Fifty-Seventh Revised Sheet No. 7
Fifty-Seventh Revised Sheet No. 8

ESNG states that the purpose of this instant filing is to track rate changes attributable to storage services purchased from Transcontinental Gas Pipe Line Corporation (Transco) under their rate schedules GSS and LSS.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested state commissions.

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 in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). 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.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1230 Filed 3–21–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–15–002]

El Paso Natural Gas Company; Notice of Compliance Filing

March 15, 2005.

Take notice that, on March 10, 2005, El Paso Natural Gas Company (El Paso) tendered for filing a compliance filing pursuant to the Commission's Order issued February 10, 2005 in Docket No. RP05–15–001.

El Paso states that it is filing TSA No. 9MGB with Aquila Energy Marketing Corporation for the Commission's information and review in compliance with the Commission's Order.

El Paso states that copies of its filing have been sent to all parties of record and affected state commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

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

Magalie R. Salas,

Secretary.

[FR Doc. E5–1227 Filed 3–21–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–224–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 15, 2005.

Take notice that on March 8, 2005, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to be effective April 8, 2005:

Eighth Revised Sheet No. 19–A
Seventh Revised Sheet No. 20
Seventh Revised Sheet No. 32
Seventh Revised Sheet No. 102

Northwest states that the purpose of this filing is to remove tariff provisions implementing the Commission's CIG/Granite State policy concerning a shipper's retention of its discounted rates when a secondary point is used.

Northwest states that a copy of this filing has been served upon Northwest's customers and interested state regulatory commissions.

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 in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). 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.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1229 Filed 3–21–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–202–001]

Panhandle Eastern Pipe Line Company, LP; Notice of Compliance Filing

March 15, 2005.

Take notice that on March 9, 2005, Panhandle Eastern Pipe Line Company, LP (Panhandle) filed a correction to the

filing on February 28, 2005 in the above-referenced proceeding.

Panhandle states that its has come to its attention that one of the supporting schedules included in the February 28 filing did not reflect the projected market zone throughput upon which Panhandle's projected fuel percentages for the April through October 2005 period are based.

Panhandle states that copies of the filing are being sent to all customers, state agencies and parties to this proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

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

Magalie R. Salas,

Secretary.

[FR Doc. E5–1228 Filed 3–21–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–404–001]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

March 15, 2005.

Take notice that on March 9, 2005 Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1 revised tariff sheet No. 180 requesting an effective date of February 1, 2005.

Tennessee states that it is tendering the referenced tariff sheet to reflect the elimination of CNG/Dominion and the addition of TransCanada Power (Castleton) LLC under Rate Schedule NET to permit TransCanada to assume Dominion's entitlements under a new firm transportation agreement pursuant to Tennessee's Rate Schedule NET.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

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

Magalie R. Salas,

Secretary.

[FR Doc. E5–1233 Filed 3–21–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Comments, Recommendations, Terms and Conditions, and Prescriptions and Establishing a Revised Procedural Schedule for Relicensing

March 15, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2195–011.

c. *Date filed:* August 26, 2004.

d. *Applicant:* Portland General Electric Company.

e. *Name of Project:* Clackamas River Hydroelectric Project, P–2195 (formerly Oak Grove, P–135 and North Fork, P–2195 projects).

f. *Location:* On the Oak Grove Fork of the Clackamas River on Mount Hood National Forest, and on the Clackamas River in Clackamas County, Oregon, near Estacada, Oregon.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Julie Keil, Portland General Electric, 121 SW Salmon Street, Portland, Oregon 97204, Phone: 503–464–8864.

i. *FERC Contact:* John Blair at 202–502–6092; e-mail *john.blair@ferc.gov*.

j. Deadlines for filing license amendments, comments, recommendations, terms and conditions are listed in item ''o'' of this notice, Procedural Schedule.

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.

Amendments, comments, recommendations, terms and conditions and prescriptions 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.

k. This application has been accepted for filing.

l. The existing 44-megawatt Oak Grove development consists of a 100-foot-high dam at the lower end of Timothy Lake, and a 68-foot-high diversion dam below Lake Harriet, both on the Oak Grove Fork of the Clackamas River. The powerhouse is located on the Clackamas River. A 115 kV transmission line runs 18.8 miles to the Faraday switchyard. The Oak Grove development is located on U.S. Forest Service and Bureau of Land Management land. The 129-megawatt North Fork development is located on the Clackamas River and is composed of: a 206-foot-high dam with powerhouse located at the lower end of North Fork Reservoir; a 47-foot-high dam with powerhouse located at the lower end of Faraday Lake; and a 85-foot-high dam with powerhouse located at the lower end of Estacada Lake. A 115 kV transmission line runs 4 miles to the Faraday switchyard. The North Fork development is located on U.S. Forest Service and Bureau of Land Management land. On June 18, 2003, Oak Grove and North Fork licenses were amended combining the two projects into one license called the Clackamas River Project No. 2195.

m. A copy of the application 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 email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

All filings must (1) bear in all capital letters the title ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS,'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirement of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

o. Procedural Schedule (supercedes Procedural Schedule notice dated October 22, 2004): The application will be processed according to the following schedule. Revisions to the schedule may be made as appropriate.

Milestone	Date
Application Acceptance	October 22, 2004.
Interventions & Protests due (60 days after Application Acceptance)	December 20, 2004.
Additional Information Due (90 days from Application Acceptance)	January 19, 2005.
Notice for Mandatory Terms & Conditions, Recommendations, Application Amendments, Ready for Environmental Analysis.	March 15, 2005.
Application Amendments Due	June 11, 2005.
Portland General Electric files Settlement Agreement In Principle and Biological Evaluation, and resubmits 401 Water Quality Certificate application.	June 30, 2005.
Mandatory Terms & Conditions & Recommendations due	July 11, 2005.
Portland General Electric's reply to Mandatory Terms & Conditions and Recommendations	August 24, 2005.
Issue Draft Environmental Impact Statement (DEIS) and Biological Assessment; Initiate Endangered Species Act Consultation (ESA).	November 14, 2005.
Comments due on DEIS (45 days after issuance)	December 28, 2005.
ESA Completed; Biological Opinion due (135 days from initiation)	March 28, 2006.
Final Environmental Impact Statement (FEIS) Issued	May 29, 2006.
Forest Service files final 4(e) conditions (30 days after FEIS)	June 27, 2006.
Action due on 401 Water Quality Certificate application (one year after submittal)	June 30, 2006.
Ready for Commission Action	September 30, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1226 Filed 3–21–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Public Notice

March 15, 2005.

The public should take notice that the Federal Energy Regulatory Commission has stopped the receipt of mail from the United States Postal Service effective today March 15, 2005. At this time, the Commission does not know when postal service will resume. The Commission continues to receive filings from private mail delivery services, including messenger services.

The Commission strongly encourages electronic filing of documents in lieu of paper by using the ''eFiling'' link at *http://www.ferc.gov.*

The Commission expects to issue another notice in the future to inform

the public when postal service will resume.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1225 Filed 3–21–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2003–0018, FRL–7887–5]

Agency Information Collection Activities: Continuing Collection; Comment Request; Water Quality Standards Regulation (Renewal), EPA ICR Number 0988.09, OMB Control Number 2040–0049

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection for the Water Quality Standards Regulation. This ICR is scheduled to expire on August 31, 2005. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before May 23, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OW–2003–0018, to EPA online using EDOCKET (our preferred method), by e-mail to *ow-docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Water (4101T), 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Frederick D. Leutner, Office of Water (4305T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 566–0400; fax number: (202) 566–0409; e-mail address: *leutner.fred@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OW–2003–0018, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Affected entities: Entities potentially affected by this action are all States and certain authorized Indian tribes that adopt water quality standards under the Clean Water Act; and water dischargers subject to certain requirements related to water quality standards in the Great Lakes system, including dischargers in the following SIC categories: Mining (SIC codes 10, 14); Food (20); Pulp and Paper (26); Inorganic Chemical Manufacturing (281); Organic Chemical Manufacturing (28); Petroleum Refining (29); Metal Manufacturing (33), Metal Finishing (34–37); Steam Electric (4911), and Publically Owned Treatment Works (4952). For the purposes of the Regulation, the term ''State'' means the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Title: Water Quality Standards Regulation (Renewal).

Abstract: Water quality standards are provisions of State, Tribal, and Federal law that consist of designated uses for waters of the United States, water quality criteria to protect the designated uses, and an antidegradation policy. Section 303(c) of the Clean Water Act requires States and authorized Tribes to establish water quality standards, and to review and, if appropriate, revise their water quality standards once every three years. The Act also requires EPA to review and either approve or disapprove the new or revised standards, and to promulgate replacement Federal standards if necessary. Section 118(c)(2) of the Act specifies additional water quality standards requirements for waters of the Great Lakes system.

The Water Quality Standards Regulation (40 CFR part 131 and portions of part 132) governs national implementation of the water quality standards program. The Regulation describes requirements and procedures for States and authorized Tribes to develop, review, and revise their water quality standards, and EPA procedures for reviewing and approving the water quality standards. The regulation requires the development and submission of information to EPA, including:

—The minimum elements in water quality standards that each State or Tribe must submit to EPA for review, including any new or revised water quality standards resulting from the jurisdiction's triennial review (40 CFR 131.6 and 131.20). The elements include use designations for specific water bodies; methods used and analyses conducted to support water quality standards revisions; supporting analysis for use attainability analyses; water quality criteria sufficient to protect the designated uses; methodologies for site-specific criteria development; an antidegradation policy; certification by the jurisdiction's Attorney General or other appropriate legal authority that the water quality standards were duly adopted pursuant to State or Tribal law; information that will aid EPA in determining the adequacy of the scientific basis for the standards; and information on general policies that may affect the implementation of the standards.

—Information that an Indian Tribe must submit to EPA in order to determine whether a Tribe is qualified to

administer the water quality standards program (40 CFR 131.8).

—Information a State or Tribe must submit if it chooses to exercise a dispute resolution mechanism for disputes between States and Tribes over water quality standards on common water bodies (40 CFR 131.7).

—Information related to public participation requirements during State and Tribal review and revision of water quality standards (40 CFR 131.20). States and Tribes must hold public hearings as part of their triennial reviews, and make any proposed standards and supporting analyses available to the public before the hearing.

The Regulation establishes specific additional requirements for water quality standards and their implementation in the waters of the Great Lakes system, contained in the Water Quality Guidance for the Great Lakes System (40 CFR part 132). This portion of the Regulation includes the following requirements for information collection: bioassay tests to support the development of water quality criteria; studies to identify and provide information on antidegradation control measures that will guard against the reduction of water quality in the Great Lakes system; and information collection and record keeping activities associated with analyses and reporting to request regulatory relief from Guidance requirements. The Guidance includes additional information collections that are addressed in separate Information Collection Requests for the National Pollutant Discharge Elimination System program.

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

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The public reporting and recordkeeping burden for this collection of information is estimated to average 856 hours per response annually. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: March 10, 2005.

Mary T. Smith,

Acting Director, Office of Science and Technology.

[FR Doc. 05–5613 Filed 3–21–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Regional Docket Nos. II–2002–09, II–2003 –01, II–2003 –02; FRL–7887–8]

Clean Air Act Operating Permit Program; Petitions for Objection to State Operating Permits for Bristol-Myers Squibb Co. Inc.; Eastman Kodak Co., Kodak Park Facility; and Eastman Kodak Co., Kodak Power and Steam Generation Plant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final orders, addressing three State operating permits.

SUMMARY: This document announces that the EPA Administrator has addressed three citizen petitions asking EPA to object to operating permits issued to three facilities by the New York State Department of Environmental Conservation (NYSDEC). Specifically, the Administrator has partially granted and partially denied three petitions submitted by the New York Public Interest Research Group (NYPIRG) to object to the state operating permits issued to Bristol-Myers Squibb Co. Inc., Eastman Kodak Co., Kodak Park Facility, and Eastman Kodak Co., Kodak Power and Steam Generation Plant. Pursuant to section 505(b)(2) of the Clean Air Act (Act), petitioner may seek judicial review of those portions of the petitions which EPA denied in the United States Court of Appeals for the appropriate circuit. Any petition for review shall be filed within 60 days from the date this notice appears in the **Federal Register**, pursuant to section 307 of the Act.

ADDRESSES: You may review copies of the final orders, the petitions, and other supporting information at the EPA Region 2 Office, 290 Broadway, New York, New York 10007–1866. If you wish to examine these documents, you should make an appointment at least 24 hours before visiting day. Additionally, the final orders are available electronically at: *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitiondb.htm.*

FOR FURTHER INFORMATION CONTACT: Steven Riva, Chief, Permitting Section, Air Programs Branch, Division of Environmental Planning and Protection, EPA Region 2, 290 Broadway, 25th Floor, New York, New York 10007–1866, telephone (212) 637–4074.

SUPPLEMENTARY INFORMATION: The Act affords EPA a 45-day period to review, and object to as appropriate, operating permits proposed by state permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator within 60 days after the expiration of this review period to object to state operating permits if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise such issues during the comment period or the grounds for the issues arose after this period.

I. Bristol-Myers Squibb

On September 12, 2002, the EPA received a petition from NYPIRG, requesting that EPA object to the issuance of the title V operating permit for Bristol-Myers Squibb Co., Inc. (BMS). On February 18, 2005, the Administrator issued an order partially granting and partially denying the BMS petition. The order explains the reasons behind EPA's conclusion that the NYSDEC must: (1) Explain in the statement of basis the scope of the Operational Flexibility Plan and the part

70 provisions it implements; re-open the permit to ensure that conditions 6, 7, and 8 are consistent with the requirements of part 70 and NYSDEC's approved title V program; and revise the permit to clarify that changes made at the BMS facility pursuant to the Operational Flexibility Plan shall not be eligible for the permit shield; (2) revise the ''general permittee obligations'' section of the permit relative to the annual compliance certification requirements; and (3) add appropriate periodic monitoring in certain permit conditions. The order also explains EPA's reasons for denying NYPIRG's remaining claims.

II. Kodak Park

On April 1, 2003, the EPA received a petition from NYPIRG, requesting that EPA object to the issuance of the title V operating permit for the Eastman Kodak Co., Kodak Park Facility. On February 18, 2005, the Administrator issued an order partially granting and partially denying the Kodak Park petition. The order explains the reasons behind EPA's conclusion that the NYSDEC must: (1) Explain in the statement of basis the scope of the Operational Flexibility Plan and the part 70 provisions it implements; re-open the permit to ensure that condition 8 is consistent with the requirements of part 70 and NYSDEC's approved title V program; and revise the permit to clarify that changes made at the Kodak facility pursuant to the Operational Flexibility Plan shall not be eligible for the permit shield; (2) revise the ''general permittee obligations'' section of the permit relative to the annual compliance certification requirements; (3) add appropriate periodic monitoring in certain permit conditions; and (4) move the sulfur dioxide provisions of 6 NYCRR 212.4(a) for U–00063 to the federal/state side of the permit. The order also explains EPA's reasons for denying NYPIRG's remaining claims.

III. Kodak Power

On April 1, 2003, the EPA received a petition from NYPIRG, requesting that EPA object to the issuance of the title V operating permit for the Eastman Kodak Co., Kodak Power and Steam Generation Plant. On February 18, 2005, the Administrator issued an order partially granting and partially denying the Kodak Power petition. The order explains the reasons behind EPA's conclusion that the NYSDEC must reopen the permit to: (1) Explain in the statement of basis the scope of the Operational Flexibility Plan and the part 70 provisions it implements; re-open the permit to ensure that condition 8 is consistent with the requirements of part 70 and NYSDEC's approved title V program; and revise the permit to clarify that changes made at the Kodak facility pursuant to the Operational Flexibility Plan shall not be eligible for the permit shield; (2) revise the ''general permittee obligations'' section of the permit relative to the annual compliance certification requirements. The order also explains EPA's reasons for denying NYPIRG's remaining claims.

Dated: March 10, 2005.

George Pavlou,

Acting Deputy Regional Administrator, Region 2.

[FR Doc. 05–5615 Filed 3–21–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7887–4]

Gulf of Mexico Program Management Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act (Public Law 92–463), EPA gives notice of a meeting of the Gulf of Mexico Program (GMP) Management Committee (MC).

DATES: Special Partnership Presentations will be held on Tuesday, April 12, 2005, from 5 p.m. to 7 p.m. and the meeting will be held on Wednesday, April 13, 2005, from 9 a.m. to 3 p.m.

ADDRESSES: The meeting will be held at the Omni Royal Orleans Hotel, 621 Saint Louis Street, New Orleans, LA 70140 (504–529–5333).

FOR FURTHER INFORMATION CONTACT: Gloria D. Car, Designated Federal Officer, Gulf of Mexico Program Office, Mail Code EPA/GMPO, Stennis Space Center, MS 39529–6000 at (228) 688–2421.

SUPPLEMENTARY INFORMATION: Proposed agenda topics include: Gulf States Priority Initiatives Report; Non-Government Partnership Reports on GMP Focused Objectives and Key Initiatives; Focus Area Status Reports and Comprehensive Meeting Recommendations. The meeting is open to the public.

Dated: March 14, 2005.

Gloria D. Car,

Designated Federal Officer.

[FR Doc. 05–5612 Filed 3–21–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket Number ORD–2005–0002; FRL–7887–6]

Board of Scientific Counselors, Human Health Subcommittee Meeting—April 2005

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

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 (via conference call) of the Board of Scientific Counselors (BOSC) Human Health Subcommittee.

DATES: The conference call will be held Friday, April 8, 2005, from 3 p.m. to 5 p.m. eastern standard time (e.s.t.), and may adjourn early if all business is completed.

ADDRESSES: *Conference call:* 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 call from Virginia Houk, whose contact information is listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Document Availability

The draft agenda for the conference call is available from Virginia Houk, 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 date of the conference call. 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 at the conference call may contact Virginia Houk, 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 the conference call 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 date.

FOR FURTHER INFORMATION CONTACT: Virginia Houk, Designated Federal Officer, Environmental Protection Agency, Office of Research and Development, Mail Code B305–02, Research Triangle Park, NC 27711; telephone (919) 541–2815; fax (919) 685–3250; e-mail *houk.virginia@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

This notice announces a meeting (via conference call) of the BOSC Human Health Subcommittee. The purpose of the meeting is to finalize a draft report on EPA's Human Health Research Program. Proposed agenda items for the conference call include, but are not limited to: presentations of the Subcommittee's draft responses to the charge questions and approval of the final draft report prior to its submission to the BOSC Executive Committee. The conference call is open to the public.

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–2005–0002. 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 agendas may be viewed at the Board of Scientific Counselors, Human Health Meetings 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–2005–0002).

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–2005–0002) 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–2005–0002. 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–2005–0002. 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–2005–0002.

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–2005–0002 (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 15, 2005.

Jeffrey Morris,

Acting Director, Office of Science Policy.

[FR Doc. 05–5614 Filed 3–21–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[FCC 05–39]

Federal-State Conference on Accounting Issues

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document extends the Federal-State Joint Conference On Accounting Issues (Joint Conference) until March 1, 2007. This extension provides the Joint Conference with the time needed to consider and make recommendations on additional accounting and reporting issues.

FOR FURTHER INFORMATION CONTACT: Thaddeus Machcinski, Pricing Policy Division, Wireline Competition Bureau at (202) 418–0808.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's order released February 16, 2005. This order extends the Joint Conference until March 1, 2007. The Joint Conference was convened in September of 2002 with the task of reexamining the Commission's accounting and reporting requirements. In the order convening the Joint Conference, the Commission also stated that it would revisit the need for the Joint Conference in two years.

The Commission believes that continued dialogue between the Commission and the states on accounting matters will be useful. Accordingly, the Commission has extended the Joint Conference until March 7, 2007.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–5610 Filed 3–21–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Bank or Bank Holding Companies; Correction

This notice corrects two notices (FR Doc. 05-4663) published on pages 11980-11981 of the issue for Thursday, March 10, 2005.

Under the Federal Reserve Bank of Atlanta heading, the entry for Douglas Williams and Zella Irene Williams, both of Portland, Tennessee, is revised to read as follows:

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Douglas Williams and Zella Irene Williams, both of Portland, Tennessee; to acquire additional voting shares of First Farmers Bancshares, Inc., Portland, Tennessee, and thereby indirectly acquire additional voting shares of The Farmers Bank, Portland, Tennessee.

Comments on this application must be received by March 24, 2005.

In addition, under the Federal Reserve Bank of Chicago heading, the entry for Everett D. Lawrence, Marshall, Illinois, Lawrence Gravel, Phyllis Lawrence, and Kim Schmidt, is revised to read as follows:

B. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Everett D. Lawrence, Marshall, Illinois, Lawrence Gravel, Phyllis Lawrence, and Kim Schmidt, acting in concert to retain voting shares of Preferred Bancorp, Inc. Casey, Illinois, and thereby indirectly retain voting shares of Preferred Bank, Casey, Illinois.

Comments on this application must be received by March 24, 2005.

Board of Governors of the Federal Reserve System, March 16, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–5560 Filed 3–21–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 15, 2005.

A. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Edgebrook Bancorp, Inc., Chicago, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Edgebrook Bank, Chicago, Illinois.

B. Federal Reserve Bank of Minneapolis (Jacqueline G. Nicholas, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Choice Financial Holdings, Inc., Grafton, North Dakota; to acquire 85 percent of the voting shares of Peoples State Bank of Comfrey, Comfrey, Minnesota.

In connection with this application, Applicant also has applied to operate a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y as a result of the conversion of Peoples State Bank of Comfrey, Minnesota, to a federal savings bank, to be known as Choice Financial Savings Bank, Comfrey, Minnesota.

Board of Governors of the Federal Reserve System, March 16, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–5561 Filed 3–21–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to

acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 15, 2005.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. Nicholas, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Carlson Bankshares, Inc., Comfrey, Minnesota; to acquire shares of Peoples State Bank of Comfrey, Comfrey, Minnesota, and thereby engage in operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y, upon its conversion to a savings association, to be known as Choice Financial Savings Bank, Comfrey, Minnesota.

Board of Governors of the Federal Reserve System, March 16, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.05–5562 Filed 3–21–05; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Children, Youth and Families

[Program Announcement No. FV01–2005]

Family Violence Prevention and Services Program

AGENCY: Family and Youth Services Bureau (FYSB), Administration on Children, Youth and Families (ACYF), Administration for Children and Families, (ACF), Department of Health and Human Services (HHS).

ACTION: Notice of the availability of funding to States for family violence prevention and services.

SUMMARY: This announcement governs the proposed award of formula grants under the Family Violence Prevention and Services Act to States (including Territories and Insular Areas). The purpose of these grants is to assist States in establishing, maintaining, and expanding programs and projects to prevent family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents.

This announcement sets forth the application requirements, the application process, and other administrative and fiscal requirements for grants in fiscal year (FY) 2005.

CFDA Number: 93.671, Family Violence Prevention and Services.

DATES: Applications for FY 2005 State grant awards meeting the criteria specified in this instruction should be received no later than April 21, 2005.

ADDRESSES: Applications should be sent to Family and Youth Services Bureau, Administration on Children, Youth and Families, Administration for Children and Families, Attn: Ms. Sunni Knight, 330 C Street, SW., Room 2117, Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: William D. Riley at (202) 401–5529; or e-mail at *WRiley@acf.hhs.gov*, or Sunni Knight at (202) 401–5319 or e-mail at *GKnight@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Annual State Administrators Grantee Conference

State Family Violence Prevention and Services Act (FVPSA) administrators should plan to attend the annual State Administrators Grantee Conference. A subsequent Program Instruction and/or Information Memorandum will advise the State FVPSA administrators of the date, time, and location of their grantee conference.

Client Confidentiality

FVPSA programs must establish or implement policies and protocols for maintaining the safety and confidentiality of the victims of domestic violence, sexual assault, and stalking. It is essential that the confidentiality of adult victims and their children receiving FVPSA services be protected. Consequently, when providing statistical data on program activities and program services, individual identifiers of client records will not be used (section 303(a)(2)(E)).

Stop Family Violence Postal Stamp

The U.S. Postal Service was directed by the ''Stamp Out Domestic Violence Act of 2001'' (the Act), P.L. 107–67, to make available a ''semipostal'' stamp to provide funding for domestic violence programs. Funds raised in connection with sales of the stamp, less reasonable costs, have been transferred to the U.S. Department of Health and Human Services during FY 2004 in accordance with the Act for support of services to children and youth exposed to domestic violence. It is projected that additional Stamp revenues will be received during FY 2005. Subsequent to the receipt of the stamp proceeds, a program announcement will be issued providing guidance and information on the process and requirements for awards to programs providing services to children and youth.

The Importance of Coordination of Services

The impacts of family and intimate violence include physical injury and death of primary or secondary victims, psychological trauma, isolation from family and friends, harm to children witnessing or experiencing violence in homes in which the violence occurs, increased fear, reduced mobility and employability, homelessness, substance abuse, and a host of other health and related mental health consequences.

Coordination and collaboration among the police, prosecutors, the courts, social service providers (which may include faith-based organizations), child welfare and family preservation services, and medical and mental health service providers is needed to provide more responsive and effective services to victims of domestic violence and their families. It is essential that all interested parties are involved in the design and improvement of intervention and prevention activities.

To help bring about a more effective response to the problem of domestic violence, the Department of Health and Human Services (HHS) urges the designated State agencies receiving funds under this grant announcement to coordinate activities funded under this grant with other new and existing resources for the prevention of family and intimate violence and related issues.

Programmatic and Funding Information

A. Background

Title III of the Child Abuse Amendments of 1984, (Pub. L. 98–457, 42 U.S.C. 10401, *et seq.*) is entitled the Family Violence Prevention and

Services Act (the Act). The Act was first implemented in FY 1986, was amended in 1992 by Pub. L. 102–295, in 1994 by Pub. L. 103–322, in 1996 by Pub. L. 104–235, and in 2000 by the Victims of Trafficking and Violence Protection Act (Pub. L. 106–386). The Act was most recently amended by the ''Keeping Children and Families Safe Act of 2003'' (Pub. L. 108–36).

The purpose of this legislation is to assist States, Native American Tribes (including Alaskan Native Villages) and Tribal organizations in supporting the establishment, maintenance, and expansion of programs and projects to prevent incidents of family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents.

During FY 2004, 224 grants were made to States and Tribes or Tribal organizations. The Department also made 53 family violence prevention grant awards to non-profit State domestic violence coalitions.

In addition, the Department supports the National Resource Center for Domestic Violence (NRC) and four Special Issue Resource Centers (SIRCs). The SIRCs are the Battered Women's Justice Project, the Resource Center on Child Custody and Protection, Sacred Circle Resource Center for the Elimination of Domestic Violence Against Native Women and the Health Resource Center on Domestic Violence. The purpose of the NRC and the SIRCs is to provide resource information, training, and technical assistance to Federal, State, and Native American agencies, local domestic violence prevention programs, and other professionals who provide services to victims of domestic violence.

In February, 1996, the Department funded the National Domestic Violence Hotline (NDVH) to ensure that every woman has access to information and emergency assistance wherever and whenever she needs it. The NDVH is a 24-hour, toll-free service which provides crisis assistance, counseling, and local shelter referrals to women across the country. Hotline counselors also are available for non-English speaking persons and for people who are hearing-impaired. The Hotline number is 1–800–799–SAFE; the TDD number for the hearing impaired is 1–800–787–3224. As of August 31, 2003 the National Domestic Violence Hotline had answered over 1 million calls.

B. Funds Available

For FY 2005, The Department of Health and Human Services will make available for grants to designated State agencies seventy percent of the amount appropriated under section 310(a)(1) of the Family Violence Prevention and Services Act which is not reserved under section 310(a)(2). In separate announcements the Department will allocate 10 percent of the foregoing appropriation to the Tribes and Tribal organizations for the establishment and operation of shelters, safe houses, and the provision of related services; and 10 percent to the State Domestic Violence Coalitions to continue their work within the domestic violence community by providing technical assistance and training, and advocacy services among other activities with local domestic violence programs and to encourage appropriate responses to domestic violence within the States.

Five percent of the amount appropriated under section 310(a)(1) of the Family Violence Prevention and Services Act which is not reserved under section 310(a)(2) will be available in FY 2005 to continue the support for the National Resource Center and the four Special Issue Resource Centers. Additional funds appropriated under the FVPSA will be used to support other activities, including training and technical assistance, collaborative projects with advocacy organizations and service providers, data collection efforts, public education activities, research and other demonstration projects as well as the ongoing operation of the National Domestic Violence Hotline.

C. State Allocation

Family Violence grants to the States, the District of Columbia, and the Commonwealth of Puerto Rico are based on a population formula. Each State grant shall be $600,000 with the remaining funds allotted to each State on the same ratio as the population of the State has to the population of all States (section 304(a)(2)). State populations are determined on the basis of the most recent census data available to the Secretary and, if available, the annual current census data produced by the Secretary of Commerce pursuant to section 181 of Title 13.

For the purpose of computing allotments, the statute provides that Guam, American Samoa, the Virgin Islands, and the Northern Mariana Islands will each receive grants of not less than one-eighth of 1 percent of the amounts appropriated (section 304(a)(1)).

General Grant Requirements Applicable to States

A. Definitions

States should use the following definitions in carrying out their programs. The definitions are found in Section 320 of the Act.

(1) Family Violence: Any act or threatened act of violence, including any forceful detention of an individual, which (a) results or threatens to result in physical injury and (b) is committed by a person against another individual (including an elderly person) to whom such person is or was related by blood or marriage or otherwise legally related or with whom such person is or was lawfully residing.

(2) Shelter: The provision of temporary refuge and related assistance in compliance with applicable State law and regulation governing the provision, on a regular basis, which includes shelter, safe homes, meals, and related assistance to victims of family violence and their dependents.

(3) Related assistance: The provision of direct assistance to victims of family violence and their dependents for the purpose of preventing further violence, helping such victims to gain access to civil and criminal courts and other community services, facilitating the efforts of such victims to make decisions concerning their lives in the interest of safety, and assisting such victims in healing from the effects of the violence. Related assistance includes:

(a) Prevention services such as outreach and prevention services for victims and their children, assistance for children who witness domestic violence, employment training, parenting and other educational services for victims and their children, preventive health services within domestic violence programs (including nutrition, disease prevention, exercise, and prevention of substance abuse), domestic violence prevention programs for school age children, family violence public awareness campaigns, and violence prevention counseling services to abusers;

(b) Counseling with respect to family violence, counseling or other supportive services by peers, individually or in groups, and referral to community social services;

(c) Transportation and technical assistance with respect to obtaining financial assistance under Federal and State programs, and referrals for appropriate health-care services (including alcohol and drug abuse treatment), but shall not include reimbursement for any health-care services;

(d) Legal advocacy to provide victims with information and assistance through the civil and criminal courts, and legal assistance; or

(e) Children's counseling and support services, and child care services for children who are victims of family violence or the dependents of such victims, and children who witness domestic violence.

B. Expenditure Period

The FVPSA funds may be used for expenditures from October 1 of each fiscal year for which they are granted, and will be available for expenditure through September 30 of the following fiscal year, *i.e.*, FY 2005 funds may be used for expenditures from October 1, 2004 through September 30, 2006.

Re-allotted funds, if any, are available for expenditure until the end of the fiscal year following the fiscal year that the funds became available for re-allotment. FY 2004 grant funds which are made available to the States through re-allotment, under section 304(d)(2), must be expended by the State no later than September 30, 2006.

C. Reporting Requirements: State Performance Report

Section 303(a)(4) requires that States file a performance report with the Department describing the activities carried out, and inclusion of an assessment of the effectiveness of those activities in achieving the purposes of the grant. Section 303(a)(5) requires that the State file a report that contains a description of the activities carried out with funds expended for State administrative costs.

A section of this performance report must be completed by each grantee or sub-grantee that performed the direct services contemplated in the State's application certifying performance of such services. State grantees should compile performance reports into a comprehensive report for submission.

The Performance Report should include the following data elements as well as narrative examples of success stories about the services which were provided. The Performance Report should include the following data elements:

Funding—The total amount of the FVPSA grant funds awarded; the percentage of funding used for shelters, and the percentage of funding used for related services and assistance.

Shelters—The total number of shelters and shelter programs (safe homes/motels, etc.) assisted by FVPSA program funding. Data elements should include:

- The number of women sheltered
- The number of shelters and safe houses in the State
- The number of young children sheltered (birth–12 years of age)
- The number of teenagers and young adults (13–18 years of age)
- The number of men sheltered
- The number of elderly serviced
- The average length of stay
- The number of women, children, teens, and men who were turned away because shelter was unavailable
- The number of women, children, teens, and men who were referred to other shelters due to a lack of space

Types of individuals served (including special populations)—Record information by numbers and percentages against the total population served. Individuals and special populations served should include:

- Racial identification;
- Cultural classification;
- Language (other than English);
- Geographically isolated from shelter (urban or rural);
- Women of color;
- Persons with disabilities; and
- Other special needs populations.

Related services and assistance—List the types of related services and assistance provided to victims and their family members by indicating the number of women, children, and men that have received services. Services and assistance may include but are not limited to the following:

- Individual counseling
- Group counseling
- Crisis intervention/hotline
- Information and referral
- Batterers support services
- Legal advocacy services
- Transportation
- Services to teenagers
- Child Care
- Training and technical assistance
- Housing advocacy
- Other innovative program activities

Volunteers—List the total number of volunteers and hours worked

Identified Abuse—Indicate the number of women, children, and men who were identified as victims of physical, sexual, and emotional abuse.

Service referrals—List the number of women, children, and men referred for the following services: (Note: If the individual was identified as a batterer please indicate.)

- Alcohol abuse
- Drug abuse
- Batterer intervention services
- Abuse as a child
- Witnessed abuse
- Emergency medical intervention
- Law enforcement intervention

The Performance Report should include narratives of success stories of services provided and the positive impact on the lives of children and families. Examples may include the following:

- An explanation of the activities carried out including an assessment of the major activities supported by the family violence funds, what particular priorities within the State were addressed, and what special emphases were placed on these activities;
- A description of the specific services and facilities that your agency funded, contracted with, or otherwise used in the implementation of your program (*e.g.*, shelters, safe-houses, related assistance, programs for batterers);
- An assessment of the effectiveness of the direct service activities contemplated in the application;
- A description of how the needs of under-served populations, including populations under-served because of ethnic, racial, cultural, language diversity, or geographic isolation were addressed,
- A description and assessment of the prevention activities supported during the program year, *e.g.*, community education events, and public awareness efforts; and
- A discussion of exceptional issues or problems arising, but not addressed in the application.

Performance reports for the States are due on an annual basis at the end of the calendar year (December 29). Performance reports should be sent to Family and Youth Services Bureau, Administration on Children, Youth and Families, Administration for Children and Families, Attn: William Riley, 330 C Street, SW., Room 2117, Washington, DC 20447.

Please note that section 303(a)(4) of the FVPSA requires the Department to suspend funding for an approved application if any State applicant fails to submit an annual performance report or if the funds are expended for purposes other than those set forth under this announcement.

D. Financial Status Reports

All State grantees are reminded that the annual Financial Status Reports (Standard Form SF–269A) are due 90 days after the end of each Federal fiscal year. The first SF–269A is due December 29, 2005. The final SF–269A is due December 29, 2006. Completed reports should be sent to: Doris Lee, Division of Mandatory Grants, Office of Grants Management, Office of Administration, Administration for Children and Families, 370 L'Enfant Promenade SW., Washington, DC 20447. Standard Form 269A can be found at:

http://www.whitehouse.gov/omb/grants/grants_forms.html

Application Requirements

A. Eligibility

''States'' as defined in section 320 of the Act are eligible to apply for funds. The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

In the past, Guam, American Samoa, the Virgin Islands and the Commonwealth of the Northern Mariana Islands have applied for funds as a part of their consolidated grant under the Social Services Block grant. These jurisdictions need not submit an application under this Program Announcement if they choose to have their allotment included as part of a consolidated grant application.

Additional Information on Eligibility

All applicants must have a Dun & Bradstreet Universal Numbering System (DUNS) number. On June 27, 2003, the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires all Federal grant applicants to provide a Dun & Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*http://www.Grants.gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement, and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com.*

B. Approval/Disapproval of a State Application

The Secretary will approve any application that meets the requirements of the Act and this announcement and will not disapprove any such application except after reasonable notice of the Secretary's intention to disapprove has been provided to the applicant and after a 6-month period providing an opportunity for applicant to correct any deficiencies.

The notice of intention to disapprove will be provided to the applicant within 45 days of the date of the application.

C. Content of the State Application

The State's application must be submitted by the Chief Executive Officer of the State and signed by the Chief Executive Officer or the Chief Program Official designated as responsible for the administration of the Act.

Each application must contain the following information or documentation:

(1) The name of the State agency, the name of the Chief Program Official designated as responsible for the administration of funds under this Act and coordination of related programs within the State, and the name of a contact person if different from the Chief Program Official (section 303(a)(2)(D)).

(2) A plan describing in detail how the needs of underserved populations will be met, such as populations which are underserved due to ethnic, racial, cultural, or language diversity; alienage status; geographic isolation; disability; or age (section 303(a)(2)(C)).

(a) Identify the underserved populations that are being targeted for outreach and services.

(b) In meeting the needs of the underserved population, describe the domestic violence training that will be provided to the individuals who will do the outreach and intervention to these populations. Describe the specific service environment, *e.g.*, new shelters, services for the battered elderly, women of color, etc.

(c) Describe the public information component of the State's outreach program; describe the elements of your program that are used to explain domestic violence, the most effective and safe ways to seek help, identify available resources, etc.

(3) Provide a complete description of the process and procedures used to involve State domestic violence coalitions, knowledgeable individuals and interested organizations, and assure an equitable distribution of grants and grant funds within the State and between rural and urban areas in the State (sections 303(a)(2)(C) and 311(a)(5)).

(4) Provide a complete description of the process and procedures implemented that allow for the participation of the State domestic violence coalition in planning and monitoring the distribution of grant funds and determining whether a grantee is in compliance with section 303(a)(2) of the Act and (section 311(a)(5).

(5) Provide a copy of the procedures developed and implemented that assure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services by any program assisted under the Act (section 303(a)(2)(E)).

(6) Include a description of how the State plans to use the grant funds, a description of the target population, the number of shelters to be funded, the services the state will provide, and the expected results from the use of the grant funds (section 303(a)(2)).

(7) Provide a copy of the law or procedures that the State has implemented for the eviction of an abusive spouse from a shared household (section 303 (a)(2)(F)).

Each application must contain the following assurances:

(a) That grant funds under the Act will be distributed to local public agencies and nonprofit private organizations (including religious and charitable organizations and voluntary associations) for programs and projects within the State to prevent incidents of family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents in order to prevent future violent incidents (section 303(a)(2)(A)).

(b) That not less than 70 percent of the funds distributed shall be used for immediate shelter and related assistance, as defined in section 320(5)(A), to the victims of family violence and their dependents and not less than 25 percent of the funds distributed shall be used to provide related assistance (section 303(g)).

(c) That not more than 5 percent of the funds will be used for State administrative costs (section 303(a)(2)(B)(i)).

(d) That in distributing the funds, the States will give special emphasis to the support of community-based projects of demonstrated effectiveness carried out by non-profit private organizations particularly those projects the primary purpose of which is to operate shelters for victims of family violence and their dependents and those which provide counseling, advocacy, and self-help services to victims and their children (section 303(a)(2)(B)(ii)).

(e) That grants funded by the States will meet the matching requirements in section 303(f), *i.e.*, not less than 20 percent of the total funds provided for a project under Chapter 110 of Title 42 of the U.S. Code with respect to an existing program, and with respect to an entity intending to operate a new program under this title, not less than 35 percent. The local share will be cash or in-kind; and the local share will not

include any Federal funds provided under any authority other than this chapter (section 303(f)).

(f) That grant funds made available under this program by the State will not be used as direct payment to any victim or dependent of a victim of family violence (section 303(d)).

(g) That no income eligibility standard will be imposed on individuals receiving assistance or services supported with funds appropriated to carry out the Act (section 303(e)).

(h) That the address or location of any shelter-facility assisted under the Act will not be made public, except with the written authorization of the person or persons responsible for the operation of such shelter (section 303(a)(2)(E)).

(i) That all grants, programs or other activities funded by the State in whole or in part with funds made available under the FVPSA will prohibit discrimination on the basis of age, handicap, sex, race, color, national origin or religion (section 307).

(j) That funds made available under the FVPSA will be used to supplement and not supplant other Federal, State, and local public funds expended to provide services and activities that promote the purposes of the FVPSA (section 303(a)(4)).

(k) That States will comply with the applicable Departmental recordkeeping and reporting requirements and general requirements for the administration of grants under 45 CFR part 92.

Other Information

A. Notification Under Executive Order 12372

This program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' for State plan consolidation and implication only—45 CFR 100.12. The review and comment provisions of the Executive Order and Part 100 do not apply.

B. The Paperwork Reduction Act of 1995 (Pub. L. 104–13)

Public reporting burden for this collection of information is estimated to average six hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection information.

The project description is approved under OMB control number 0970–0274 which expires August 31, 2005. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

C. Certifications

Applications must comply with the required certifications found at the Appendices as follows:

Anti-Lobbying Certification and Disclosure Form (*See* Appendix A): Applicants must furnish prior to award an executed copy of the Standard Form LLL, Certification Regarding Lobbying, when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form, if applicable, with their applications (approved by the Office of Management and Budget under control number 0348–0046). Applicants must sign and return the certification with their application.

Certification Regarding Environmental Tobacco Smoke (*See* Appendix B): Applicants must also understand they will be held accountable for the smoking prohibition included within Public Law 103–227, Title XII Environmental Tobacco Smoke (also known as the PRO-KIDS Act of 1994). A copy of the **Federal Register** notice which implements the smoking prohibition is included with forms. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

These certifications also may be found at: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Dated: March 14, 2005.

Joan E. Ohl,

Commissioner, Administration on Children, Youth and Families.

Appendices—Required Certifications:

A. Certification Regarding Lobbying
B. Certification Regarding Environmental Tobacco Smoke

Appendix A—Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Appendix B—Certification Regarding Environmental Tobacco Smoke

Public Law 103227, Part C Environmental Tobacco Smoke, also known as the Pro Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by

Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity. By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act.

The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

[FR Doc. 05–5555 Filed 3–21–05; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Nonvoting Members Representing Industry Interests on Public Advisory Panels or Committees; Food Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for a nonvoting industry representative to serve on the Food Advisory Committee (the Committee) in FDA's Center for Food Safety and Applied Nutrition (CFSAN).

DATES: Industry organizations interested in participating in the selection of a nonvoting member to represent industry for the pending vacancy on the Committee must send a letter to FDA by April 21, 2005, stating their interest. Concurrently, nomination materials for prospective candidates should be sent to FDA by April 21, 2005. A nominee may either be self-nominated or nominated by an organization to serve as a nonvoting industry representative.

ADDRESSES: All letters of interest and nominations should be sent to Marcia Moore (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Marcia Moore, Center for Food Safety and Applied Nutrition (HFS–6), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2397, FAX 301–436–2633, e-mail: *marcia.moore@cfsan.fda.gov*.

SUPPLEMENTARY INFORMATION: The agency intends to fill a vacancy for a nonvoting industry representative on the Committee identified in section I of this document.

I. Functions

The Advisory Committee Under the Purview of CFSAN

Food Advisory Committee

The Committee shall provide advice primarily to the Director of CFSAN, and as needed to the Commissioner of Food and Drugs (the Commissioner) and other appropriate officials, on emerging food safety, food science, nutrition, and other food-related health issues that FDA considers of primary importance for its food and cosmetics programs. The Committee may be charged with reviewing and evaluating available data and making recommendations on matters such as those relating to the following topics: (1) Broad scientific and technical food or cosmetic related issues, (2) the safety of new foods and food ingredients, (3) labeling of foods and cosmetics, (4) nutrient needs and nutritional adequacy, and (5) safe exposure limits for food contaminants. The Committee also may be asked to provide advice and make recommendations on ways of communicating to the public the potential risks associated with these issues and on approaches that might be considered for addressing the issues.

II. Selection Procedure

Any organization in the food manufacturing industry wishing to participate in the selection of a nonvoting member to represent industry on the Committee should send a letter stating that interest to the FDA contact (see **FOR FURTHER INFORMATION CONTACT**) within 30 days of publication of this notice. Persons who nominate themselves as an industry representative for the Committee will not participate in the selection process. It is, therefore, recommended that nominations be made by someone within an organization, trade association, or firm who is willing to participate in the selection process. Within the subsequent 30 days, FDA will send a letter to each organization and a list of all nominees along with their resumes. The letter will state that the interested organizations are responsible for conferring with one another to select a candidate, within 60 days after receiving the letter, to serve as the nonvoting member representing on the Committee. If no individual is selected within that 60 days, the Commissioner may select the nonvoting member to represent industry interests.

III. Application Procedure

Individuals may nominate themselves or an organization representing the food manufacturing industry may nominate one or more individuals to serve as a nonvoting industry representative. A current curriculum vitae (which includes the nominee's business address, telephone number, and e-mail address) and the name of the committee of interest should be sent to the FDA contact person (see **FOR FURTHER INFORMATION CONTACT**). FDA will forward all nominations to the organizations that have expressed interest in participating in the selection process for that committee.

FDA has a special interest in ensuring that women, minority groups, individuals with physical disabilities, and small businesses are adequately represented on its advisory committees. Therefore, the agency encourages nominations for appropriately qualified candidates from these groups.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: March 14, 2005.

Shelia Dearybury Walcoff,

Associate Commissioner for External Relations.

[FR Doc. 05–5552 Filed 3–21–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Nonvoting Members Representing Industry Interests on Public Advisory Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for nonvoting industry representatives to serve on the National Mammography Quality Assurance Advisory Committee (NMQAAC) in the Center for Devices and Radiological Health (CDRH). FDA has a special interest in ensuring that women, minority groups, individuals with disabilities, and small businesses are adequately represented on its advisory committees. Therefore, the agency encourages nominations for appropriately qualified candidates from these groups.

DATES: Industry organizations interested in participating in the selection of a nonvoting member to represent industry for the vacancies listed in this notice must send a letter to FDA by April 21, 2005, stating their interest in the

committee (NMQAAC). Concurrently, nomination materials for prospective candidates should be sent to FDA by April 21, 2005. A nominee may either be self-nominated or nominated by an organization to serve as a nonvoting industry representative.

ADDRESSES: All letters of interest and nominations should be sent to the contact person listed in the **FOR FURTHER INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Walker, Center for Devices and Radiological Health (HFZ–17), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 240–276–0450, ext. 114.

SUPPLEMENTARY INFORMATION: The Mammography Quality Standards Reauthorization Act of 2004 (Public Law 108–365) requires the addition of at least two industry representatives with expertise in mammography equipment to the National Mammography Quality Assurance Advisory Committee.

I. Functions of NMQAAC

The functions of the NMQAAC are to advise FDA on: (1) Developing appropriate quality standards and regulations for mammography facilities, (2) developing appropriate standards and regulations for bodies accrediting mammography facilities under this program, (3) developing regulations with respect to sanctions, (4) developing procedures for monitoring compliance with standards, (5) establishing a mechanism to investigate consumer complaints, (6) reporting new developments concerning breast imaging which should be considered in the oversight of mammography facilities, (7) determining whether there exists a shortage of mammography facilities in rural and health professional shortage areas and determining the effects of personnel on access to the services of such facilities in such areas, (8) determining whether there will exist a sufficient number of medical physicists after October 1, 1999, and (9) determining the costs and benefits of compliance with these requirements.

II. Selection Procedure

Any organization representing the mammography device industry wishing to participate in the selection of a nonvoting member to represent industry should send a letter stating that interest to the FDA contact (see **FOR FURTHER INFORMATION CONTACT**) within 30 days of publication of this notice. Persons who nominate themselves as industry representatives will not participate in the selection process. It is, therefore, recommended that nominations be made by someone within an organization, trade association or firm who is willing to participate in the selection process. Within the subsequent 30 days, FDA will send a letter to each organization and a list of all nominees along with their resumes. The letter will state that the interested organizations are responsible for conferring with one another to select a candidate, within 60 days after receiving the letter, to serve as the nonvoting member representing the a particular committee. If no individual is selected within the 60 days, the Commissioner of Food and Drugs (the Commissioner) may select the nonvoting member to represent industry interests.

III. Qualifications

Persons nominated for membership on the committee as an industry representative must meet the following criteria:(1) Demonstrate expertise in mammography equipment and (2) be able to discuss equipment specifications and quality control procedures affecting mammography equipment. The industry representative must be able to represent the industry perspective on issues and actions before the advisory committee; serve as liaison between the committee and interested industry parties; and facilitate dialogue with the advisory committee on mammography equipment issues.

IV. Application Procedure

Individuals may nominate themselves, or an organization representing the mammography device industry may nominate one or more individuals to serve as nonvoting industry representatives. A current curriculum vitae (which includes the nominee's business address, telephone number, and e-mail address) and the name of the committee of interest should be sent to the FDA contact person. FDA will forward all nominations to the organizations that have expressed interest in participating in the selection process for the committee.

FDA has a special interest in ensuring that women, minority groups, individuals with disabilities, and small businesses are adequately represented on its advisory committees. Therefore, the agency encourages nominations for appropriately qualified candidates from these groups.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14 relating to advisory committees.

Dated: March 14, 2005.

Sheila Dearybury Walcoff,

Associate Commissioner for External Relations.

[FR Doc. 05–5551 Filed 3–21–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Toxicology Program; National Toxicology Program (NTP) Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM); Request for Nominations for an Independent Peer Review Panel To Evaluate In Vitro Testing Methods for Estimating Acute Oral Systemic Toxicity and Request for In Vivo and In Vitro Data

AGENCY: National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH), HHS.

ACTION: Request for nominations for an independent peer review panel and request for *in vivo* and *in vitro* data.

SUMMARY: The NTP Interagency Center for Evaluation of Alternative Toxicological Methods (NICEATM) in collaboration with the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) is planning to convene an independent peer review panel (hereafter, Panel) to evaluate the validation status of two *in vitro* cytotoxicity assays for estimating *in vivo* acute oral toxicity. The Panel will evaluate the usefulness, limitations, accuracy, and reliability of these test methods for their intended purpose. NICEATM requests nominations of expert scientists for consideration as potential Panel members. ICCVAM will consider the conclusions and recommendations from the Panel in developing test method recommendations and performance standards for these test methods. Data from standard *in vivo* acute oral toxicity testing and *in vitro* cytotoxicity testing also is requested.

DATES: Nominations and data should be received by noon on May 6, 2005.

ADDRESSES: Nominations and data should be sent by mail, fax, or e-mail to Dr. William S. Stokes, Director of NICEATM, at NICEATM, NIEHS, P.O. Box 12233, MD EC–17, Research Triangle Park, NC 27709, (phone) 919–541–2384, (fax) 919–541–0947, (e-mail) *niceatm@niehs.nih.gov.* Courier address: NICEATM, 79 T.W. Alexander Drive,

Building 4401, Room 3128, Research Triangle Park, NC 27709.

FOR FURTHER INFORMATION CONTACT: NICEATM, NIEHS, P.O. Box 12233, MD EC–17, Research Triangle Park, NC 27709, (phone) 919–541–2384, (fax) 919–541–0947, (e-mail) *niceatm@niehs.nih.gov.*

SUPPLEMENTARY INFORMATION:

Background

NICEATM and the European Committee on the Validation of Alternative Methods (ECVAM) conducted a collaborative validation study to independently evaluate the usefulness of two *in vitro* basal cytotoxicity assays proposed for estimating *in vivo* rat acute oral toxicity. Neutral red uptake assays using both a mouse cell line (*i.e.,* BALB/c 3T3 fibroblasts) and a primary human cell type (*i.e.,* normal human epithelial keratinocytes) were evaluated in a multi-laboratory validation study. Cytotoxicity results are proposed for use in predicting starting doses for *in vivo* acute oral lethality assays, which may reduce the number of animals required for such determinations.

NICEATM is preparing Background Review Documents on the two *in vitro* test methods that will contain comprehensive summaries of available data, an analysis of the accuracy and reliability of standardized test method protocols, and related information characterizing the current validation status of these assays. Once completed, the Background Review Documents will be provided to the Panel and made available to the public. Meeting information, including date and location, and public availability of the Background Review Documents will be announced in a future **Federal Register** notice and posted on the ICCVAM/NICEATM Web site (*http://iccvam.niehs.nih.gov*).

Request for the Nomination of Scientists for the Peer Review Panel

NICEATM invites nominations of scientists with relevant knowledge and experience to serve on the Panel. Areas of relevant expertise include, but are not limited to: physiology and pharmacology, acute systemic toxicity testing in animals, evaluation and treatment of acute toxicity in humans, development and use of *in vitro* methodologies, biostatistical data analysis, knowledge of chemical data sets useful for validation of acute toxicity studies, and hazard classification of chemicals and products. Each nomination should include the person's name, affiliation, contact information (*i.e.* mailing address, e-mail address, telephone and fax numbers), and a brief summary of relevant experience and qualifications. Nominations should be sent to NICEATM by mail, fax, or e-mail within 45 days of the publication of this notice. Correspondence should be directed to Dr. William Stokes, Director, NICEATM, at the address given above.

Request for Data

NICEATM invites the submission of data from standard *in vivo* acute oral toxicity testing and *in vitro* cytotoxicity testing. Two previous requests for existing *in vivo* and *in vitro* acute toxicity data have been made (**Federal Register,** Vol. 69, No. 201, pp. 61504–5, October 19, 2004 and Vol. 65, No. 115, pp. 37400–3, June 14, 2000). *In vivo* and *in vitro* acute toxicity testing data for chemicals or products should be sent to NICEATM by mail, fax, or e-mail to the address given above. Data submitted by the deadline listed in this notice will be considered during an evaluation of the validation status of the two cytotoxicity methods, anticipated in late 2005; however, data will be accepted at any time. Chemical and protocol information/test data submitted in response to this notice may be incorporated in future NICEATM and ICCVAM reports and publications as appropriate.

When submitting chemical and protocol information/test data, please reference this **Federal Register** notice and provide appropriate contact information (name, affiliation, mailing address, phone, fax, e-mail, and sponsoring organization, as applicable).

NICEATM prefers data to be submitted as copies of pages from study notebooks and/or study reports, if available. Raw data and analyses available in electronic format may also be submitted. Each submission for a chemical should preferably include the following information, as appropriate:

- Common and trade name.
- Chemical Abstracts Service Registry Number (CASRN).
- Chemical class.
- Product class.
- Commercial source.
- *In vitro* basal cytotoxicity test protocol used.
- *In vitro* cytotoxicity test results.
- *In vivo* acute oral toxicity test protocol used.
- Individual animal responses at each observation time (if available).
- The extent to which the study complied with national or international Good Laboratory Practice (GLP) guidelines.
- Date and testing organization.

Those persons submitting data on chemicals tested for *in vitro* basal cytotoxicity are referred to the standard test-reporting template recommended for the High Production Volume (HPV) program at *http://www.epa.gov/chemrtk/toxprtow.htm* or at *http://iccvam.niehs.nih.gov/methods/invitro.htm. In vivo* data for the same chemicals should be reported as recommended in the test reporting section of the current Environmental Protection Agency (EPA) guideline for acute oral toxicity (EPA, 2002).

Submitted data will be used to further evaluate the usefulness and limitations of *in vitro* cytotoxicity data for estimating acute oral toxicity and will be included in a database to support the investigation of other test methods necessary to improve the accuracy of *in vitro* assessments of acute systemic toxicity.

Background Information on ICCVAM and NICEATM

ICCVAM is an interagency committee composed of representatives from 15 Federal regulatory and research agencies that use or generate toxicological information. ICCVAM conducts technical evaluations of new, revised, and alternative methods with regulatory applicability and promotes the scientific validation and regulatory acceptance of toxicological test methods that more accurately assess the safety and hazards of chemicals and products and that refine, reduce, and replace animal use. The ICCVAM Authorization Act of 2000 (Pub. L. 106–545, available at *http://iccvam.niehs.nih.gov/about/PL106545.htm*) establishes ICCVAM as a permanent interagency committee of the NIEHS under the NICEATM. NICEATM administers the ICCVAM and provides scientific and operational support for ICCVAM-related activities. NICEATM and ICCVAM work collaboratively to evaluate new and improved test methods applicable to the needs of Federal agencies. Additional information about ICCVAM and NICEATM can be found at the following Web site: *http://iccvam.niehs.nih.gov.*

Dated: March 11, 2005.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

[FR Doc. 05–5564 Filed 3–21–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute (NHLBI); Opportunity for a Cooperative Research and Development Agreement (CRADA) To Identify Small Molecule Inhibitors of Human Macrophage Cholesterol Accumulation for Therapy of Atherosclerotic Cardiovascular Diseases

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: Macrophage cholesterol accumulation in blood vessels leads to the development of atherosclerotic plaques, the cause of most heart attacks and strokes. Recently, research from Dr. Howard Kruth, head of the Experimental Atherosclerosis Section of NHLBI has elucidated a novel mechanism of receptor-independent macrophage cholesterol accumulation[1,2]. In this pathway, human macrophages take up low-density lipoprotein (LDL), the main carrier of blood cholesterol, by fluid-phase endocytosis, an uptake pathway that can be activated in macrophages. Activated macrophages show greatly stimulated uptake of fluid and LDL contained in the fluid through macropinocytosis, a fluid-phase endocytic uptake pathway unique to macrophages. This mechanism of LDL uptake and macrophage cholesterol accumulation does not depend on binding of LDL to receptors. Macrophage macropinocytosis of LDL produces levels of cholesterol accumulation similar to that observed for macrophages isolated from atherosclerotic plaques, something that does not occur when human macrophages take up LDL by receptor-mediated mechanisms in these macrophages.

The NHLBI is seeking CRADA collaborators to work with investigators in the Experimental Atherosclerosis Section of NHLBI to identify inhibitors of this cholesterol uptake pathway. The collaborator will provide high throughput screening capabilities coupled with small molecule and/or siRNA libraries of test compounds, or other methodologies to identify potential inhibitors of this pathway. A cell-based screening assay that will have predictive value with human macrophages will be developed jointly by the NHLBI investigators and the collaborator based on published and unpublished research findings of the NHLBI investigators. The goal of this collaboration will be to identify compounds that selectively inhibit macrophage macropinocytosis and consequently macrophage uptake of LDL and cholesterol accumulation. Compounds identified will be further tested in a suitable animal model of atherosclerosis to determine their effect on macrophage cholesterol accumulation and atherosclerotic plaque development. Macropinocytosis also mediates entry of microorganisms such as HIV into macrophages. Thus, discovery of macropinocytosis inhibitors may be relevant not only to atherosclerosis treatment but also to certain infectious disease treatments.

References

1. Kruth, H.S., Huang, W., Ishii, I., and Zhang, W.Y.: Macrophage foam cell formation with native low density lipoprotein. J. Biol. Chem. 277:34573–34580, 2002.

2. Kruth, H.S., Jones, N.L., Huang, W., Zhao, B., Ishii, I., Chang, J., Combs, C.A. Malide, D., and Zhang, W.Y.: Macropinocytosis is the endocytic pathway that mediates macrophage foam cell formation with native LDL. J. Biol. Chem. 280:2352–2360, 2005.

Contact: Inquiries concerning this CRADA opportunity should be directed to Ms. Peg Koelble, Technology Transfer Specialist, Office of Technology Transfer and Development, NHLBI, NIH; 6705 Rockledge Drive, Suite 6018, MSC 7992; Bethesda, Maryland 20892–7992, Telephone: 301–594–4095; Fax: 301–594–3080; E-mail: *Koelblep@nhlbi.nih.gov.* Inquires must be received no later than 60 days after March 22, 2005.

Dated: March 11, 2005.

Dr. Carl Roth,

Associated Director for Scientific Program Operations, National Heart, Lung, and Blood Institute.

[FR Doc. 05–5565 Filed 3–21–05; 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: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Government Performance and Results Act Client/Participant Outcome (OMB No. 0930–0208)—Revision

The mission of SAMHSA is to improve the effectiveness and efficiency of substance abuse and mental health treatment and prevention services across the United States. All of SAMHSA's activities are designed to ultimately reduce the gap in the availability of substance abuse and mental health services and to improve their effectiveness and efficiency.

Data currently are collected from all SAMHSA best practices and targeted capacity expansion grants and contracts where client outcomes are to be assessed at intake (or initial contact), 6 and 12 months post admission or post-intervention. SAMHSA-funded projects are required to submit these data as a contingency of their award. The analysis of the data will also help determine whether the goal of reducing health and social costs of drug use to the public is being achieved.

The primary purpose of this data collection activity is to meet the reporting requirements of the Government Performance and Results Act (GPRA) by allowing SAMHSA to quantify the effects and accomplishments of SAMHSA programs. In addition, the data will be useful in addressing goals and objectives outlined in ONDCP's *Performance Measures of Effectiveness.* The revision of this data collection affects only the Center for Substance Abuse Treatment (CSAT). The proposed revision will modify the CSAT services instrument to include new questions on family characteristics, specific services and social connectedness to align with the SAMHSA Administrator's seven domains for national outcomes measures. In addition, the data collection time points will change to intake, discharge, and 6 months post admission.

The following is the estimated annual response burden for this collection.

Center/No. of annual clients-participants	Responses per client/ participant	Hours per response	Total hours	Proportion of added burden	Total hour burden
CMHS					
3,750	3	.33	3,713	0.70	2,599
CSAP					
12,150	3	.33	12,029	0.72	8,661
CSAT					
28,000*	3	.33	27,720	0.33	9,148
3,100**	4***	.33	4,092	0.33	1,350
9,800****	3	.33	9,702	0.33	3,202
114,600****	1	.10	11,460	0	0
16,570****	3	.16	7,954	0	0
Subtotal 172,070					13,700
Total 187,970					24,960

Note: This is the maximum additional burden if all clients/participants complete three sets of items. CSAP and CSAT adolescent clients/participants do not usually receive all four data collections. Added burden proportion is an adjustment reflecting the extent to which programs typically already collect the data items. The formula for calculating the proportion of added burden is: Total number of items in the standard instrument minus the number of core GPRA items currently included divided by the total number of items in the standard instrument.

*Adults.

**Adolescents.

*** Four data collections for adolescents.

**** Screening, Brief Intervention, Treatment and Referral (SBIRT) grant program: 9,800 complete all GPRA sections; 114,600 complete sections A & H, all of these items are asked during the regular intake process resulting in zero burden; and 16,570 complete sections A, B, & H, all of these items are asked during the regular intake process resulting in zero burden.

Written comments and recommendations concerning the proposed information collection should be sent by April 21, 2005 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: March 16, 2005.

Patricia S. Bransford,

Acting Executive Officer, SAMHSA.

[FR Doc. 05–5568 Filed 3–21–05; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[DHS–2005–0018]

Data Privacy and Integrity Advisory Committee

AGENCY: Office of the Secretary, Department of Homeland Security.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: This notice announces the date, time, location, and agenda for the inaugural meeting of the Department of Homeland Security Data Privacy and Integrity Advisory Committee.

DATES: This meeting will be held on Wednesday, April 6, 2005, in Washington, DC.

ADDRESSES: The Department of Homeland Security Data Privacy and Integrity Advisory Committee meeting will be held at the Mayflower Hotel Colonial Ballroom, 1127 Connecticut Avenue, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nuala O'Connor Kelly, Chief Privacy Officer, or Rebecca J. Richards, Executive Director, Data Privacy and Integrity Advisory Committee, Department of Homeland Security, Washington, DC 20528 by telephone (202) 772–9848 or facsimile (202) 772–5036 or by e-mail *PrivacyCommittee@dhs.gov.*

SUPPLEMENTARY INFORMATION: The inaugural meeting of the Department of Homeland Security (DHS) Data Privacy and Integrity Advisory Committee (Privacy Advisory Committee) will be on Wednesday, April 6, 2005, at the Mayflower Hotel Colonial Ballroom, 1127 Connecticut Avenue, NW., Washington, DC 20036. The meeting will begin at 8:30 a.m. and continue until 4:30 p.m. Although most of the meeting is open to the public, the sessions between 11:45 a.m. and 2:15 p.m. will be closed in order to permit the Privacy Advisory Committee members to receive administrative briefings concerning travel, ethics and security matters that pertain to their membership.

At this first meeting, the Chief Privacy Officer of DHS will welcome and introduce the members of the Privacy Advisory Committee. DHS component offices will provide an overview of information about the Department for the benefit of the Privacy Advisory Committee members and the general public. The Privacy Advisory Committee will then discuss areas of focus for its initial work on privacy issues within DHS.

At the end of the meeting, between 3:45 p.m. and 4:30 p.m., public comments will be accepted. All those who wish to testify must register and, in order to allow as many people as possible to testify, should limit their remarks to two minutes. For security purposes, any member of the public who wishes to attend the public session should provide his or her name no later than 5 p.m. e.s.t., Wednesday, March 30, 2005, to Rebecca J. Richards via e-mail at *PrivacyCommittee@dhs.gov,* or via telephone at (202) 772–9848. Photo identification will be required for entry on the day of the meeting to verify those individuals who have registered for the public session, and everyone who plans to attend must be present and seated by 8:15 a.m. (or 2 p.m., if only attending the afternoon sessions). Registration information required for attendance will

only be used for verification purposes on the day of the meeting.

Persons with disabilities who require special assistance should indicate this in their admittance request and are encouraged to indicate anticipated special needs as early as possible.

Although every effort will be made to accommodate all members of the public, seating is limited and will be allocated on a first-come, first-served basis.

Persons who are unable to attend or speak at the meeting may submit comments, identified by docket number DHS–2005–0018, by *one* of the following methods:

• EPA Federal Partner EDOCKET Web site: *http://www.epa.gov/feddocket.* Follow instructions for submitting comments on the Web site.

The Department of Homeland Security has joined the Environmental Protection Agency (EPA) online public docket and comment system on its Partner Electronic Docket System (Partner EDOCKET). The Department of Homeland Security and its agencies (excluding the United States Coast Guard and Transportation Security Administration) will use the EPA Federal Partner EDOCKET system. The USCG and TSA [legacy Department of Transportation (DOT) agencies] will continue to use the DOT Docket Management System until full migration to the electronic rulemaking federal docket management system in 2005.

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

• E-mail: *PrivacyCommittee@dhs.gov.* Include docket number in the subject line of the message.

• Fax: (202) 772–5036.

• Mail: Rebecca J. Richards, Executive Director, Data Privacy and Integrity Advisory Committee, Department of Homeland Security, Washington, DC 20528.

All comments received will be posted without change to *www.epa.gov/feddocket,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.epa.gov/feddocket.* You may also access the Federal eRulemaking Portal at *http://www.regulations.gov.*

Basis for Closure

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended, 86 Stat. 770, the Secretary has determined that portions of this Privacy Advisory Committee meeting, which are referenced above as ''administrative briefings,'' are excluded from the Open Meetings requirement pursuant to the authority contained in 41 CFR 102–3.160(b).

Dated: March 16, 2005.

Michael Chertoff,

Secretary.

[FR Doc. 05–5583 Filed 3–21–05; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[DHS–2004–0015]

Privacy Act of 1974; System of Records

AGENCY: United States Immigration and Customs Enforcement, Directorate for Border and Transportation Security, Department of Homeland Security.

ACTION: Notice of Privacy Act systems of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Bureau of Immigration and Customs Enforcement, a component agency within the Directorate for Border and Transportation Security of the Department of Homeland Security is giving notice that it proposes to add a new system of records to the Department's inventory of record systems. The system of records is the Student and Exchange Visitor Information System.

DATES: Comments must be received on or before April 21, 2005.

ADDRESSES: You may submit comments, identified by Docket Number DHS–2004–0015, by one of the following methods:

• EPA Federal Partner EDOCKET Web Site: *http://www.epa.gov/feddocket.* Follow instructions for submitting comments on the web site.

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

• Fax: (202) 772–5036 (This is not a toll-free number).

• Mail: Nuala O'Connor Kelly, Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528; Susan Geary, SEVIS Program Manager, Immigration and Customs Enforcement, 800 K Street, NW., Suite 1000, Washington, DC 20536.

• Hand Delivery/Courier: Nuala O'Connor Kelly, Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received will be posted without change to *http://www.epa.gov/feddocket,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received go to *http://www.epa.gov/feddocket.* You may also access the Federal eRulemaking Portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nuala O'Connor Kelly, Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528; Student and Exchange Visitor Information System Program Manager, 800 K Street, NW., Suite 1000, Washington DC 20536 by telephone (202) 305–2346 or by facsimile (202) 353–3723.

SUPPLEMENTARY INFORMATION: Pursuant to Section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104–208, 110 Stat. 3009, as amended, and other statutes, Congress has mandated that the Department of Homeland Security (DHS), in consultation with the Departments of State (DoS) and Education, develop a national system to collect and maintain pertinent information on nonimmigrant students and exchange visitors, and the schools and exchange visitor program sponsors that host these individuals in the United States. In accordance with that mandate, the predecessor to the Bureau of Immigration and Customs Enforcement (ICE), a component agency within the Directorate for Border and Transportation Security of DHS, developed the Student and Exchange Visitor Information System (SEVIS). SEVIS is an Internet-based system that allows DHS to collect, maintain and use biographical information relating to students and exchange visitors and the approved schools and designated exchange visitor program sponsors that host nonimmigrant (F&M) students and (J) exchange visitors.

In order to maintain these records, ICE proposes to establish a system of records under the Privacy Act, 5 U.S.C. 552a, DHS/ICE–001. The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses and disseminates personally identifiable information. The Privacy Act requires each agency to publish in the **Federal**

Register a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency recordkeeping practices transparent, to notify individuals regarding the uses to which personally identifiable information is put, and to assist the individual to more easily find such files within the Agency.

DHS/ICE is here publishing the description of a new system of records governing the information collected and maintained in SEVIS.

In accordance with 5 U.S.C. 552a(r), a report of this new system of records has been provided to the Office of Management and Budget (OMB) and to the Congress.

DHS/ICE 001

SYSTEM NAME:

Department of Homeland Security (DHS), United States Immigration and Customs Enforcement (ICE), Student and Exchange Visitor Information System (SEVIS).

SYSTEM LOCATION:

SEVIS is an electronic system. The hardware for the system is physically housed in a government-secured facility located in Rockville, Maryland and at a contingency site. The system is accessible via Internet or Intranet by DHS offices at Headquarters, Regional and District offices, Service Centers, sub-offices, Ports-of-Entry and foreign offices. The system is also accessible via Internet by designated school officials and responsible officers of exchange visitor programs that input information on students and exchange visitors into the system. Additionally, the system is accessed directly by DHS approved elements of Department of State (DoS) and by the Federal Bureau of Investigation (FBI).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

SEVIS contains information on nonimmigrants who have applied for and been granted F–1, M–1 and J–1 visas to enter the United States as students or exchange visitors and their dependents who have been granted F–2, M–2, and J–2 visas.[1] Some of the individuals whose information is contained in SEVIS may become United States citizens or legal permanent residents. SEVIS also contains records relating to the certified schools, designated sponsors, as well as individual hosts of students and exchange visitors in the United States.

CATEGORIES OF RECORDS IN THE SYSTEM:

SEVIS contains biographical information relating to students and exchange visitors including name, date and place of birth, country of citizenship, current address where the student/exchange visitor and his or her dependents physically reside, current academic status, date of commencement of studies, degree program and field of study, whether the student has been certified for practical training, and the beginning and end dates of certification, termination date and reason, number of credits (if known) completed each semester, and information from the Certificate of Eligibility, Forms I–20 or DS–2019. SEVIS also maintains records on the DHS certified schools and DoS designated sponsors in the United States that host F, M and J nonimmigrants, which includes certified school/designated sponsor name, status, address, course of study or program costs, Designated School Official/Responsible Officer contact information, and programs and/or courses of study. Certified schools are those public/private educational institutions that have been approved by DHS to accept nonimmigrant F and M visa category students. Designated sponsors are those government and non-government organizations/agencies/institutions that have been designated by DoS to administer one or more J visa category nonimmigrant exchange visitor programs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 107–173, Enhanced Border Security and Visa Entry Reform Act of 2002; Public Law, 107–56, USA PATRIOT Act; Public Law 104–208, Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996; the Immigration and Nationality Act (INA), as amended; 8 CFR part 214 and 22 CFR part 514.

PURPOSE (S) OF THE SYSTEM:

SEVIS is a system of records tracking F, M and J nonimmigrants and their dependents during their stay in the United States. It enables the Secretary of Homeland Security to monitor the progress and status of lawfully admitted F, M, and J visa category nonimmigrants residing in the United States, and to analyze all the information gathered for purposes of homeland security, law enforcement, immigration control and other mission-related functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To appropriate Federal, State, local, foreign, international or tribal government agencies or organizations that are lawfully engaged in collecting law enforcement intelligence information (whether civil or criminal) and/or charged with investigating, prosecuting, enforcing or implementing civil and/or criminal laws, related rules, regulations or orders, to enable these entities to carry out their law enforcement responsibilities.

B. To an attorney or representative who is acting on behalf of an individual covered by this system of records for use in any proceeding before the Executive Office for Immigration Review.

C. To a Congressional office from the record of an individual in response to an inquiry from that Congressional office made at the request of the individual to whom the record pertains.

D. To the National Archives and Records Administration or other federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. Sections 2904 and 2906.

E. To the Department of Justice or other federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when: (a) DHS, or (b) any employee of DHS in his/her official capacity, or (c) any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee, or (d) the United States or any agency thereof, is a party to the litigation or has an interest in such litigation.

F. To contractors, grantees, experts, consultants, volunteers, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal government, when necessary to accomplish an agency function related to this system of records.

[1] F nonimmigrants are foreign students pursuing a full course of study in a college, university, seminary, conservatory, academic high school, private elementary school, other academic institution, or language training program in the United States that has been approved to enroll foreign students. J nonimmigrants are foreign nationals who have been selected by a sponsor designated by the DoS to participate in an exchange visitor program in the United States. M nonimmigrants are foreign students who are pursuing a full course of study in a vocational school or other recognized nonacademic institution in the United States that has been certified to enroll foreign students.

G. To a former employee of the Department for purposes of: responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

H. To an agency, organization, or individual for the purposes of performing authorized audit or oversight operations.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The information in the system is maintained in an automated database in electronic format. A record, or any part thereof, may be printed and stored in the applicant's alien file (A-file.) [2]

RETRIEVABILITY:

DHS indexes and will retrieve SEVIS records by a number of data elements relating to the students and exchange visitors contained in the system including the name, unique SEVIS identification number assigned to the subject, and date of birth. Records on DHS certified schools and DoS designated sponsors can be retrieved by similar data elements relating to the respective institution or organization.

SAFEGUARDS:

Information in this system is safeguarded in accordance with applicable laws, rules, and policies. All records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include restricting access to authorized personnel who have a need-to-know, using locks, and password protection identification features. The system is also protected through a multi-layer security approach. The protective strategies are physical, technical, administrative and environmental in nature and provide access control to sensitive data, physical access control to DHS facilities, confidentiality of communications, authentication of sending parties, and personnel screening to ensure that all personnel with access to data are screened through background investigations commensurate with the level of access required to perform their duties. SEVIS was specifically designed to be accessed by non-government users (certified schools and designated sponsors) so they could create the records and populate the database. Specific safeguards have been put in place to ensure the integrity of the school certification, sponsor designation, and ID/password issuance/access processes.

RETENTION AND DISPOSAL:

The National Archives and Records Administration (NARA) approved a retention schedule for SEVIS records, N1–563–04–1, on February 11, 2004. Under this retention schedule, four types of data files are retained for SEVIS: (1) Batch data temporary files (containing student records) are retained for a period not to exceed one year. These files are held temporarily on a server within the DoJ data center; (2) student/ exchange visitor data files residing in SEVIS are backed-up daily and retained/archived for 75 years; (3) certified school and designated sponsor data files residing in SEVIS proper are backed-up daily and retained/archived for 75 years; and (4) beta test files are retained for 60 days on-line. For historical purposes, and because specific immigration law enforcement or benefit case file research can span decades, DHS/ICE maintains SEVIS records in accordance with the above disposition schedule for their entire 75-year retention period. If the data becomes too large it will be copied onto electronic media and stored at the DOJ Data Center in Rockville, MD or Dallas, TX. At the end of the retention period, files are electronically expunged from fileservers and Compact Disks (CDs) through degaussing, a method of erasing magnetic media and the removal of remnants of previously recorded signals.

SYSTEM MANAGER(S) AND ADDRESS:

SEVIS Program Manager, Student and Exchange Visitor Program (SEVP), 800 K Street, NW., Suite 1000, Washington, DC 20536.

NOTIFICATION PROCEDURES:

To determine whether this system contains records relating to you, write to the System Manager identified above.

RECORD ACCESS PROCEDURES:

Requests for access must be in writing and should be addressed to the System Manager above, the ICE FOIA office, or DHS Privacy Office. Requests should conform to the requirements of 6 CFR part 5, Subpart B, which provides the rules for requesting access to Privacy Act records maintained by DHS. The envelope and letter should be clearly marked ''Privacy Act Access Request.'' The request should include a general description of the records sought and must include the requester's full name, current address, and date and place of birth. The request must be signed and either notarized or submitted under penalty of perjury. Some information may be exempt from access provisions as described in the section entitled ''Systems Exempted from Certain Provisions of the Act.'' An individual who is the subject of a record in this system may access those records that are not exempt from disclosure. A determination whether a record may be accessed will be made at the time a request is received.

CONTESTING RECORD PROCEDURES:

Same as ''Notification Procedures'' and ''Record Access Procedures,'' above.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from DHS certified schools and DOS designated exchange visitor program sponsors, which provide information on their nonimmigrant students and exchange visitors. The certified schools and designated sponsors collect the required information from individual applicants and enter that data into SEVIS. Additional information is collected on nonimmigrant students and exchange visitors when they enter or exit the United States. This information is provided to SEVIS via system interfaces. Throughout the individual's stay in the United States, Designated School Officials (DSOs) and Responsible Officials (ROs) at the certified schools and designated sponsors are required to update SEVIS with current information on the F, M, and J nonimmigrants.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Certain portions or all of these records may be exempt from disclosure pursuant to 5 U.S.C. 552a(k)(2).

Dated: March 15, 2005.

Nuala O'Connor Kelly,

Chief Privacy Officer.

[FR Doc. 05–5585 Filed 3–21–05; 8:45 am]

BILLING CODE 4410–10–P

[2] The system notice for the A-file is JUSTICE/INS–001A, last published in the **Federal Register** on September 7, 2001 (66 FR 46812).

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, U.S. Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The submission describes the nature of the information collection, the categories of respondents, the estimated burden (i.e., the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

Title: Debt Collection Financial Statement.

OMB Number: 1660–0011.

Abstract: FEMA Form 22–13 is used to collect information from debtors to evaluate financial conditions and their ability to repay FEMA debts. This information will obtain current credit data about debtors who has a pending debt. Once this information is obtained, FEMA will determine whether a collection action can be developed using terms for installment repayment agreements, compromises or completely terminate a debtors collection action.

Affected Public: Individuals or Households.

Number of Respondents: 300.

Estimated Time per Respondent: 45 minutes.

Estimated Total Annual Burden Hours: 225.

Frequency of Response: On Occasion.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs at OMB, Attention: Desk Officer for the Department of Homeland Security/FEMA, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503 or facsimile number (202) 395–7285. Comments must be submitted on or before April 21, 2005. In addition, interested persons may also send comments to FEMA (see contact information below).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Section, FEMA at 500 C Street, SW., Room 316, Washington, DC 20472, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov.*

Dated: March 10, 2005.

George S. Trotter,

Acting Branch Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. 05–5566 Filed 3–21–05; 8:45 am]

BILLING CODE 9110–49–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, U.S. Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The submission describes the nature of the information collection, the categories of respondents, the estimated burden (i.e., the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

Title: National Fire Programs (NFP) Stakeholders Interview.

OMB Number: 1660–NEW14.

Abstract: Consistent with performance-based management practices, the NFP is developing a comprehensive Strategic Business and Implementation Plan. This information collection will capture stakeholders' perspective critical to the NFP's ability to plan effectively and deliver demand-driven products and services. Data findings will be used to: (1) Support the development of the Strategic Business and Implementation Plan, and (2) set customer service standards.

Affected Public: State, local and tribal governments and not-for-profit organizations.

Number of Respondents: 50 respondents.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 50 burden hours.

Frequency of Response: Once.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs at OMB, Attention: Desk Officer for the Department of Homeland Security/FEMA, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503, or facsimile number (202) 395–7285. Comments must be submitted on or before April 21, 2005.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Section Chief, Records Management, FEMA at 500 C Street, SW., Room 316, Washington, DC 20472, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov.*

Dated: March 10, 2005.

George S. Trotter,

Acting Branch Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. 05–5567 Filed 3–21–05; 8:45 am]

BILLING CODE 9010–17–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

[CA 668_05_1610_PG_083A]

Santa Rosa and San Jacinto Mountains National Monument Advisory Committee; Notice of Intent To Call for Public Nominations for National Monument Advisory Committee

AGENCIES: Bureau of Land Management, U.S. Department of the Interior and Forest Service, U.S. Department of Agriculture.

ACTION: Call for nominations for the appointment of five open positions on the Santa Rosa and San Jacinto Mountains National Monument Advisory Committee.

SUMMARY: The Santa Rosa and San Jacinto Mountains National Monument

Act of 2000 (Act) requires the establishment of a citizens advisory committee to advise the Secretary of the U.S. Department of the Interior and the Secretary of the U.S. Department of Agriculture on resource management issues associated with the Santa Rosa and San Jacinto Mountains National Monument. The National Monument Advisory Committee provides advice to the Secretaries on issues regarding the implementation of the National Monument Management Plan.

This notice is an open request for the public to submit nomination applications for the five (5) National Monument Advisory Committee (MAC) positions, which will be open with the expiration of current members' terms in November 2005.

The National Monument Advisory Committee is managed under the provisions of the Federal Advisory Committee Act. The call for open nominations for appointment involves representatives for:

- City of Cathedral City
- City of Indian Wells
- Coachella Valley Mountains Conservancy
- County of Riverside
- Winter Park Authority

Nominations applications are available on-line at [w] *http://www.ca.blm.gov/palmsprings/santarosa/santa_rosa_national_monument.html*; or may be requested by telephone or fax at [p] (760) 251–4800, [f] (760) 251–4899; via mail by writing to Santa Rosa and San Jacinto Mountains National Monument Advisory Committee Nominations, Attn: National Monument Manager—Application Request, c/o Bureau of Land Management, Palm Springs-South Coast Field Office, P.O. Box 581260, North Palm Springs, California 92258; [e] *ca_srsj_nm@ca.blm.gov;* or visiting either the Palm Springs-South Coast Field Office at 690 West Garnet Avenue, or the National Monument Visitor Center at 51–500 Highway 74, Palm Desert, California 92260.

DATES: Submit completed nominations to the address listed below no later than May 23, 2005.

ADDRESSES: Santa Rosa and San Jacinto Mountains National Monument Advisory Committee Nominations, Attn: National Monument Manager, c/o Bureau of Land Management, Palm Springs-South Coast Field Office, P.O. Box 581260, North Palm Springs, California 92258–1260.

Telephone, Fax, and e-mail: [p] (760) 251–4804; [f] (760) 251–4899; [e] *ca_srsj_nm@ca.blm.gov.*

FOR FURTHER INFORMATION CONTACT: Frank Mowry, Writer-Editor, Santa Rosa and San Jacinto Mountains National Monument, (760) 251–4822.

SUPPLEMENTARY INFORMATION: As directed by the Act, the Secretary of the Interior and the Secretary of Agriculture have jointly established an advisory committee for the Santa Rosa and San Jacinto Mountains National Monument. The National Monument Advisory Committee's purpose is to advise the Secretaries with respect to the implementation of the National Monument Management Plan. The National Monument Advisory Committee meets several times a year. Their purpose is to gather and analyze information, conduct studies and field examinations, hear public testimony, ascertain facts, and, in an advisory capacity only, develop recommendations concerning the implementation of the National Monument Management Plan. The designated Federal officer, or their designee, in connection with special needs for advice, may call additional meetings as necessary.

In accordance with the National Monument Advisory Committee Charter, any individual or organization may nominate one or more persons to serve on the National Monument Advisory Committee. Individuals may nominate themselves for National Monument Advisory Committee membership. To make a nomination, individuals must submit a completed nomination form; letters of reference, from the represented interests or organization; and any other information explaining the nominee's qualifications, to the offices listed above. Applications must be completed in full following application instructions. **Note:** Incorrectly completed or incomplete applications will be rejected. Nomination applications become the property of the Department of the Interior, Bureau of Land Management, Santa Rosa and San Jacinto Mountains National Monument and will not be returned. Nominations may be made for the following categories of interest, as specified in the Act:

- A representative from the Coachella Valley Mountains Conservancy;
- A representative of the following two cities:
  - City of Cathedral City, California
  - Indian Wells, California;
- A representative from the County of Riverside, California; and
- A representative from the Winter Park Authority.

Nominations to the National Monument Advisory Committee should describe and document the proposed member's qualifications for membership.

Nomination forms will be available on-line through the National Monument's Web site at [w] *http://www.ca.blm.gov/palmsprings/santarosa/santa_rosa_national_monument.html.* Forms may be picked up in person by visiting the Bureau of Land Management, Palm Springs-South Coast Field Office, 690 West Garnet Avenue, North Palm Springs, CA 92258, from the National Monument Visitor Center at 51–500 Highway 74, Palm Desert, CA 92262. Forms may be requested by telephone or fax at: [p] (760) 251–4800; [p] (760) 862–9984; [f] (760) 251–4899; or in writing to the National Monument at either the BLM or via e-mail at [e] *ca_srsj_nm@ca.blm.gov.*

National Monument Advisory Committee members are appointed for 3-year terms. The Secretary of the Interior will make appointments to the National Monument Advisory Committee with the concurrence of the Secretary of Agriculture. All National Monument Advisory Committee members are volunteers and serve without pay, but will be reimbursed for travel and per diem expense at the current rates for government employees under 5 U.S.C. 5703.

Dated: February 1, 2005.

Gail Acheson,

Bureau of Land Management, Palm Springs-South Coast, Field Office Manager.

Dated: February 1, 2005.

Danella George,

Santa Rosa and San Jacinto Mountains, National Monument Manager.

Dated: January 18, 2005.

Laurie Rosenthal,

District Ranger, San Jacinto Ranger District, San Bernardino National Forest.

[FR Doc. 05–5453 Filed 3–18–05; 8:45 am]

BILLING CODE 4310–40–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

[USITC SE–05–009]

AGENCY HOLDING THE MEETING: International Trade Commission.

TIME AND DATE: April 6, 2005 at 11 a.m.

PLACE: Room 101, 500 E. Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.

2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–1076 (Final) (Live Swine from Canada)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before April 25, 2005.)
5. *Outstanding action jackets:* none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Dated: Issued: March 17, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–5703 Filed 3–18–05; 8:45 am]

BILLING CODE 7020–02–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Committee on Rules of Practice and Procedure

AGENCY: Judicial Conference of the United States, Committee on Rules of Practice and Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Committee on Rules and Practice and Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: June 15–16, 2005.

TIME: 8:30 a.m. to 5 p.m.

ADDRESSES: Boston College Law School, East Wing 200, 885 Centre Street, Newton, Massachusetts.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: March 15, 2005.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 05–5599 Filed 3–21–05; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Evidence

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Evidence.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Evidence will hold a one-day meeting. The meeting will be open to public observation but not participation.

DATES: April 28, 2005.

TIME: 7:30 a.m. to 5 p.m.

ADDRESSES: The Hermosa Inn, 5532 North Palo Cristi Road, Scottsdale, Arizona 85253.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: March 15, 2005.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 05–5600 Filed 3–21–05; 8:45 am]

BILLING CODE 2210–53–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Appellate Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Appellate Procedure.

ACTION: Notice of open meetings.

SUMMARY: The Advisory Committee on Rules of Appellate Procedure will hold a one-day meeting. The meeting will be open to public observation but not participation.

DATES: April 18, 2005.

TIME: 8:30 a.m. to 5 p.m.

ADDRESSES: Thurgood Marshall Federal Judiciary Building, Judicial Conference Center, One Columbus Circle, NE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: March 15, 2005.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 05–5601 Filed 3–21–05; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Civil Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Civil Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Civil Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: April 14–15, 2005.

TIME: 8:30 a.m. to 5 p.m.

ADDRESSES: Thurgood Marshall Federal Judiciary Building, Judicial Conference Center, One Columbus Circle, NE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: March 15, 2005.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 05–5602 Filed 3–21–05; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Criminal Procedure.

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Criminal Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Criminal Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: April 4–5, 2005.

TIME: 8:30 a.m. to 5 p.m.

ADDRESSES: Days Inn, 155 Meeting Street, Charleston, South Carolina.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: March 15, 2005.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 05–5603 Filed 3–21–05; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Bankruptcy Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Bankruptcy Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Bankruptcy Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: September 29–30, 2005.

TIME: 8:30 a.m. to 5 p.m.

ADDRESSES: Eldorado Hotel, 309 West San Francisco Street, Santa Fe, New Mexico.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: March 15, 2005.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 05–5604 Filed 3–21–05; 8:45 am]

BILLING CODE 2210–55–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,114]

Bourns Microelectronics Modules, Inc., Formerly Known as Microelectronics Modules Corporation, a Subsidiary of Bourns, Inc., New Berlin, WI; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Bourns Microelectronics Modules, Inc., formerly known as Microelectronics Modules Corporation, a subsidiary of Bourns, Inc., New Berlin, Wisconsin. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–56,114; Bourns Microelectronics Modules, Inc., formerly known as Microelectronics Modules Corporation, a subsidiary of Bourns, Inc., New Berlin, Wisconsin (March 10, 2005)

Signed at Washington, DC, this 11th day of March, 2005.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E5–1240 Filed 3–21–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,520; TA–W–55,520A]

Galey & Lord Industries, Inc. Now Known as Galey & Lord Industries, LLC, New York Office New York, New York; Galey & Lord Industries, Inc. Now Known As Galey & Lord Industries, LLC Greensboro Textile Administration LLC, Greensboro Office, Greensboro, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on September 20, 2004, applicable to workers of Galey & Lord Industries, Inc., New York, New York and Galey & Lord Industries, Inc., Greensboro Corporate Office, Greensboro, North Carolina. The notice was published in the **Federal Register** on October 4, 2004 (69 FR 62463).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of cotton fabric.

New information shows that Galey & Lord Industries, Inc., New York, New York is now known as Galey & Lord Industries, LLC, New York Office, New York, New York and Galey & Lord Industries, Inc., is now known as Galey & Lord Industries, LLC, Greensboro Textile Administration LLC, Greensboro Office, Greensboro, North Carolina. Workers separated from employment at the subject firm had their wages reported under two separate unemployment insurance (UI) tax accounts for Galey & Lord Industries, LLC, New York Office, New York, New York and Galey & Lord Industries, LLC, Greensboro Textile Administration LLC, Greensboro Office, Greensboro, North Carolina.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Galey & Lord Industries, Inc., now known as Galey & Lord Industries, LLC, New York Office, New York, New York and Galey & Lord Industries, Inc., now known as Galey & Lord Industries, LLC, Greensboro Textile Administration LLC, Greensboro Office, Greensboro, North Carolina who were adversely affected by increased imports.

The amended notice applicable to TA–W–55,520 and TA–W–55,520A are hereby issued as follows:

All workers of Galey & Lords Industries, Inc., now known as Galey & Lords Industries, LLC, New York Office, New York, New York (TA–W–55,520) and Galey & Lord Industries, Inc., now known as Galey & Lord Industries, LLC, Greensboro Textile Administration LLC, Greensboro Office, Greensboro, North Carolina (TA–W–55,520A) who became totally or partially separated from employment on or after August 24, 2003, through September 20, 2006, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 9th day of March 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–1244 Filed 3–21–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,898]

Glenshaw Glass Company Glenshaw, PA; Notice of Negative Determination on Reconsideration

On February 1, 2005, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The Department's Notice of determination was published in the **Federal Register** on February 22, 2005 (70 FR 8638).

The Department initially denied Trade Adjustment Assistance (TAA) to former workers of Glenshaw Glass Company, Glenshaw, Pennsylvania because the ''contributed importantly'' and shift of production group eligibility requirements of Section 222(3) of the Trade Act of 1974, as amended, were not met. The initial investigation revealed that, during the relevant period, the subject company did not import products like or directly competitive with glass containers and that the subject company did not shift production abroad. The survey conducted by the Department of the subject company's major declining customers for the periods 2002, 2003, January through September 2003 and January through September 2004 revealed no direct imports and a

negligible amount of indirect imports during the surveyed period.

The Department determined that the predominate cause of workers' separations at the subject company was related to the flood that shut down the subject company's furnaces beginning on September 17, 2004.

In the request for reconsideration, the petitioner inferred that imports contributed to the closure of the subject facility.

During the reconsideration investigation, the Department requested additional information from the subject company, including information which would enable the Department to conduct an expanded customer survey.

A careful review of the new information obtained during the reconsideration investigation revealed that the subject company's production level increased January through September 2004 from January through September 2003 levels, prior to the flood, and that subject company sales to customers increased January through September 2004 from January through September 2003 levels.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Glenshaw Glass Company, Glenshaw, Pennsylvania.

Signed at Washington, DC, this 9th day of March, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–1242 Filed 3–21–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,975]

Global Metalform LLC Scranton, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 10, 2004 in response to a worker petition filed by a company official on behalf of workers at Global MetalForm LLC, Scranton, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 1st day of March, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–1241 Filed 3–21–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,149]

Honeywell International, Transportation Systems/Friction Materials Division, Cleveland, TN; Notice of Revised Determination of Alternative Trade Adjustment Assistance on Reconsideration

The Department issued a Notice of Affirmative Determination Regarding Application for Reconsideration for workers and former workers of the subject firm on March 1, 2005. The Notice will soon be published in the **Federal Register**.

The petitioner asserts in the request for reconsideration that the workers of the subject firm possess skills which are not easily transferable to other jobs in the local commuting area.

New information provided by the company official indicates that the workers possess skills that are not easily transferable to other jobs in the local commuting area and that competitive conditions within the industry are adverse.

The Department found during initial investigation that at least five percent of the workforce at the subject from is at least fifty years of age.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that the requirements of Section 246 of the Trade Act of 1974, as amended, have been met for workers at the subject firm.

In accordance with the provisions of the Act, I make the following certification:

All workers of Honeywell International, Transportation Systems/Friction Material Division, Cleveland, Tennessee, who became totally or partially separated from employment on or after December 3, 2003 through December 20, 2006, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 9th day of March 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–1238 Filed 3–21–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,634]

KOPIN Corporation, Taunton, MA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 25, 2005 in response to a petition filed by a company official on behalf of workers of KOPIN Corporation, Taunton, Massachusetts.

The petition regarding the investigation has been deemed invalid. Consequently, the investigation has been terminated. Moreover, the petitioner has been contacted. A new petition was submitted recently and shall be instituted.

Signed at Washington, DC, this 3rd day of March, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–1237 Filed 3–21–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,748]

Liz Claiborne, Inc., North Bergen, NJ; Notice of Affirmative Determination Regarding Application for Reconsideration

By application of December 10, 2004, a representative of the New York Metropolitan Area Joint Board, UNITE HERE requested administrative reconsideration of the Department of Labor's negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA), applicable to workers of the subject firm. The Department's negative determination was issued on November 9, 2004.

The Notice of determination was published in the **Federal Register** on December 9, 2004 (69 FR 71429).

In the request for reconsideration, the petitioner asserts that, contrary to the Department's findings, the subject worker group's separation from the subject firm was due to the shift of sample production abroad.

The Department has carefully reviewed the petitioner's request for reconsideration as well as the subject firm's response, and has determined that the Department will conduct further investigation based on the new information provided by the petitioner and the company official.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 1st day of March, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–1243 Filed 3–21–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,986]

Matsushita Electronic Components Corporation of America, a Subsidiary of Matsushita Electric Corporation of America, Including Leased Workers of Staffing Solutions, Now Known as Panasonic Electronic Devices Corporation of America, Knoxville, TN; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on June 16, 2004, applicable to workers of Matsushita Electronic Components Corporation of America, a subsidiary of Matsushita Electric Corporation of America, including leased workers of Staffing Solutions, Knoxville, Tennessee. The notice was published in the **Federal Register** on July 7, 2004 (69 FR 40984).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of speakers, capacitors and aluminum foil.

New information shows that as the result of a corporate decision, Matsushita Electronic Components Corporation of America, a subsidiary of Matsushita Electric Corporation of America will become known as Panasonic Electronic Devices Corporation of America as of April 1, 2005. Workers separated from employment as the subject firm will have their wages reported under a separate unemployment insurance (UI) tax account for Panasonic Electronic Devices Corporation of America. Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Matsushita Electronic Components Corporation of America, a subsidiary of Matsushita Electric Corporation of America who were adversely affected by a shift in production to China.

The amended notice applicable to TA–W–54,986 is hereby issued as follows:

All workers of Matsushita Electronic Components Corporation of America, a subsidiary of Matsushita Electric Corporation of America, now known as Panasonic Electronic Devices Corporation of America, including leased workers of Staffing Solutions, Knoxville, Tennessee, who became totally or partially separated from employment on or after May 25, 2003, through June 16, 2006, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 8th day of March, 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–1236 Filed 3–21–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,227]

Robert Bosch Corporation, Automotive Technology—Chassis Division, Including Leased Workers at Olsten Staffing, Defender Services, FOOD Service, Inc., IH Services, Securitas, Sumter, SC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on August 2, 2004, applicable to workers of Robert Bosch Corporation, Automotive Technology—Chassis Division, including leased workers at Olsten Staffing, Sumter, South Carolina. The notice was published in the **Federal Register** on August 20, 2004 (69 FR 51716).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information shows that leased workers of Defender Services, Food Service, Inc., IH Services and Securitas were employed at Robert Bosch Corporation, Automotive Technology—Chassis Division, at the Sumter, South Carolina location of the subject firm.

Based on these findings, the Department is amending this certification to include leased workers of Defender Services, Food Service, Inc., IH Services and Securitas working at Robert Bosch Corporation, Automotive Technology—Chassis Division, Sumter, South Carolina.

The intent of the Department's certification is to include all workers employed at Robert Bosch Corporation, Automotive Technology—Chassis Division, who were adversely affected by a shift in production to Mexico.

The amended notice applicable to TA–W–55,227 is hereby issued as follows:

All workers of Robert Bosch Corporation, Automotive Technology—Chassis Division, Sumter, South Carolina, including leased workers of Olsten Staff, Defender Services, Food Service, Inc., IH Services and Securitas working at Robert Bosch Corporation, Automotive Technology—Chassis Division, Sumter, South Carolina, who became totally or partially separated from employment on or after July 2, 2003, through August 2, 2006, are eligible to apply for adjustment assistance

under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 4th day of March 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–1245 Filed 3–21–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,134; TA–W–56,134A]

Tyco Electronics, Power Components (COEV) Division, Watertown, SD, Including an Employee of Tyco Electronics, Power Components, (COEV) Division, Watertown, SD, Located in Plano, TX; Amended Notice of Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on January 19, 2005, applicable to workers of Tyco Electronics, Power Components (COEV) Division, Watertown, South Dakota. The notice was published in the **Federal Register** on February 7, 2005 (70 FR 6460).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that a worker separation occurred involving an employee of the Watertown, South Dakota facility of Tyco Electronics, Power Components (COEV) Division who was located in Plano, Texas. Mr. Dale E. Booso provided sales support services for the production of transformers and other components for networking, power and broadband magnetic products at the Watertown, South Dakota location of the subject firm.

Based on these findings, the Department is amending this certification to include an employee of the Watertown South Dakota facility of Tyco Electronics, Power Components (COEV) Division located in Plano, Texas. Since workers of the Watertown, South Dakota location of the subject firm were certified eligible to apply for alternative trade adjustment assistance, the Department is extending this eligibility to Mr. Dale E. Booso in Plano, Texas.

The intent of the Department's certification is to include all workers of Tyco Electronics, Power Components (COEV) Division, Watertown, South Dakota, who were adversely affected by increased imports.

The amended notice applicable to TA–W–56,134 is hereby issued as follows:

All workers of Tyco Electronics, Power Components (COEV) Division, Watertown, South Dakota (TA–W–56,134), including an employee of Tyco Electronics, Power Components (COEV) Division, Watertown, South Dakota, located in Plano, Texas (TA–W–56,134A), who became totally or partially separated from employment on or after December 2, 2003, through January 19, 2007, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 9th day of March 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–1239 Filed 3–21–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Request for Certification of Compliance—Rural Industrialization Loan and Grant Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration is issuing this notice to announce the receipt of the following Form 4279–2, ''Certification of Non-Relocation and Market and Capacity Information Report'' for the following:

Applicant/Location: SteelCorr, LLC/Lowndes County, Mississippi.

Principal Product: Hot Rolled, Pickled and Oiled, Cold Rolled, and Galvanized Steel Coils.

Type of Business Activity: Steel.

Section 188 of the Consolidated Farm and Rural Development Act of 1972, as established under 29 CFR part 75, authorizes the United States Department of Agriculture (USDA) to make or guarantee loans or grants to finance industrial and business activities in rural areas.

As a prior condition for approval of any loan, guarantee, or grant requested under the program, the Secretary of Labor must certify to the Secretary of Agriculture that the assistance is not calculated to or likely to result in: (a) A transfer of any employment or business activity from one area to another by the loan applicant's business operation; or, (b) An increase in the production of goods, materials, services, or facilities in an area where there is not sufficient demand to employ the efficient capacity of existing competitive enterprises unless the financial assistance will not have an adverse impact on existing competitive enterprises in the area. The Employment and Training Administration (ETA) within the Department of Labor is responsible for the review and certification process.

FOR FURTHER INFORMATION CONTACT: Thomas M. Dowd, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., Room S–2307, Washington, DC 20210; Telephone: (202) 693–2700 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: All interested parties may submit comments in writing no later than fourteen (14) days after the publication of this Notice. Copies of adverse comments received will be forwarded to the applicant noted above.

Dated: Signed at Washington, DC, this 18th day of March, 2005.

Emily Stover DeRocco,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 05–5730 Filed 3–21–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Business Research Advisory Council; Notice of Meetings and Agenda

The regular Spring meetings of the Business Research Advisory Council and its committees will be held on April 13 and 14, 2005. All of the meetings will be held in the Conference Center of the Postal Square Building, 2 Massachusetts Avenue, NE., Washington, DC.

The Business Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's program. Membership consists of technical officials from American business and industry.

The schedule and agenda for the meetings are as follows:

Wednesday, April 13, 2005—Conference Rooms 9 and 10

10–11:30 a.m.—Committee on Occupational Safety and Health

1. 2003 Survey of Occupational Injuries and Illnesses Results
   a. December Summary Release
   b. March Case and Demographics Release
2. 2002 Data on Time of Event and Time Shift Started (released December 2, 2004)
3. Update on the Special Survey on Workplace Violence Prevention Practices
4. Occupational Safety and Health Statistics Strategic Planning (including a discussion of potential updates to OIICS)
5. Years of Potential Life Lost (Another Measure of Workplace Fatalities)
6. Budget Update
7. Other Business
8. Discussion of agenda items for the Fall 2005 meeting

1–2:30 p.m.—Committee on Price Indexes

1. Transfer Pricing in the International Price Program
2. Outlet Effects in the Consumer Price Index
3. Review of other program developments
4. Discussion of agenda items for the Fall 2005 meeting

3–4:30 p.m.—Committee on Compensation and Working Conditions

1. Upcoming changes in the Employment Cost Index
   a. Presentation on switch to the North American Industry Classification System and the Standard Occupational Classification system, reweighting and rebasing, and methodological changes
   b. Discussion of publication plans and continuity concerns
2. Research proposes new measure: Presentation on the Employment Cost Index excluding incentive paid workers
3. Research opportunities: Discussion of possible additional Employment Cost Index series
4. Discussion of agenda items for the Fall 2005 meeting

Thursday, April 14, 2005—Conference Rooms 9 & 10

8:30–10 a.m.—Committee on Productivity and Foreign Labor Statistics

1. Industry labor productivity updates plan and improvement initiatives
2. Productivity and costs measures for new service industries
3. Employment and compensation data for China
4. Current international technical cooperation activities
5. Discussion of agenda items for the Fall 2005 meeting

10:30 a.m.–12 p.m.—Council Meeting

1. Council Chair's remarks
2. Commissioner's remarks
3. Discussion of agenda items for the Fall 2005 council meeting

1:30–3 p.m.—Committee on Employment and Unemployment Statistics

1. House of Representatives resolution on BLS measurement of employment—request for BRAC recommendations for research or options to explore for improving measurement.
2. Current Employment Statistics (CES) survey planned revisions
3. Estimating the impact of natural disasters on monthly employment measures—request for BRAC input on the best approach given measurement limitations
4. Proposed revision to North American Industry Classification System
5. NAICS for 2007
6. Discussion of agenda items for the Fall 2005 meeting

The meetings are open to the public. Persons wishing to attend these meetings as observers should contact Tracy A. Jack, Liaison, Business Research Advisory Council, at 202–691–5869.

Signed at Washington, DC, the 11th day of March, 2005.

Kathleen P. Utgoff,

Commissioner.

[FR Doc. 05–5577 Filed 3–21–05; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Humanities; Advisory Committee; Notice of Meeting

March 16, 2005.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended) notice is hereby given that a meeting of the National Council on the Humanities will be held in Washington, DC on April 7–8, 2005.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support from the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, DC. Members will attend in person and by teleconference. The agenda for the session on Thursday, April 7, 2005, consists of a committee meeting of the Preservation and Access committee which will be held from 10 a.m., in Room 507, until adjourned. The session on Friday, April 8, 2005, will convene at 10 a.m., in Room 507, until adjourned. This meeting will not be open to the public pursuant to subsections (c)(4), (c)(6) and (c)(9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which will constitute a clearly unwarranted invasion of personal privacy; and information the disclosure of which would significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated July 19, 1993.

Further information about this meeting can be obtained from Mr. Daniel C. Schneider, Advisory Committee Management Officer, Washington, DC 20506, or call area code (202) 606–8322, TDD (202) 606–8282. Advance notice of any special needs or accommodations is appreciated.

Daniel C. Schneider,

Advisory Committee Management Officer.

[FR Doc. 05–5596 Filed 3–21–05; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

DATE: Weeks of March 21, 28, April 4, 11, 18, 25, 2005.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of March 21, 2005

There are no meetings scheduled for the Week of March 21, 2005.

Week of March 28, 2005—Tentative

Monday, March 28, 2005

9:30 a.m. Discussion of Security Issues (closed-Ex. 1 & 9)

Tuesday, March 29, 2005

9:30 a.m. Briefing on Office of Nuclear Security and Incident Response (NSIR) Programs, Performance, and Plans (Public Meeting) (Contact: Robert Caldwell, 301–415–1243)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*

1 p.m. Discussion of Security Issues (Closed—EX. 1)

Week of April 4, 2005—Tentative

Tuesday, April 5, 2005

9:30 a.m. Briefing on Office of Research (RES) Programs, Performance, and Plans (Public Meeting) (Contact: Alix Dvorak, 301–415–6601)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*

Wednesday, April 6, 2005

9:30 a.m. Briefing on Status of New Site and Reactor Licensing (Public Meeting) (Contact: Steven Bloom, 301–415–1313)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*

Thursday, April 7, 2005

1:30 p.m. Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Contact: John Larkins, 301–415–7360)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*

Week of April 11, 2005—Tentative

There are no meeting scheduled for the Week of April 11, 2005.

Week of April 18, 2005—Tentative

Wednesday, April 20, 2005

9:30 a.m. Meeting with Advisory Committee on the Medical uses of Isotopes (ACMUI) (Public Meeting) (Contact: Angela McIntosh, 301–415–5030)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*

1:30 p.m. Briefing on Office of Nuclear Reactor Regulation (NRR) Programs, Performance, and Plans (Public Meeting) (Contact: Laura Gerke, 301–415–4099)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*

Week of April 25, 2005—Tentative

Tuesday, April 26, 2005

9:30 a.m. Briefing on Grid Stability and Offsite Power Issues (Public Meeting) (Contact: John Lamb, 301–415–1446)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*

* The schedule for Commission meeting is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Dave Gamberoni, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at *http://www.nrc.gov/what-we-do/policy-making/schedule.html*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify the NRC's Disability Program Coordinator, August Spector, at 301–415–7080, TDD: 301–415–2100, or by e-mail at *aks@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: March 17, 2005.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 05–5682 Filed 3–18–05; 9:30 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extensions:

Rule 701; OMB Control No. 3235–0522; SEC File No. 270–306. Regulations 14D and 14E; OMB Control No. 3235–0102; SEC File No. 270–114. Schedule 14D–9.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Securities Act Rule 701 requires issuers conducting employee benefit plan offerings in excess of $5 million in reliance on the rule to provide the employees covered by the plan with risk and financial statement disclosures. The purpose of Rule 701 is to ensure that a basic level of information is available to employees and others when substantial amounts of securities are issued in compensatory arrangements. Information provided under Rule 701 is mandatory. Approximately 300 companies annually rely on the Rule 701 exemption. The Rule 701 disclosure takes an estimated 2 hours to prepare for a total annual burden of 600 hours. We estimate that 25% of the 600 total burden hours (150 reporting burden hours) is prepared by the company.

Regulations 14D and 14E and related Schedule 14D–9 require information important to security holders in deciding how to respond to tender offers. This information is made available to the public. Information provided on Schedule 14D–9 is mandatory. Approximately 360 companies annually file Schedule 14D–9. The Schedule takes an estimated 258 hours to prepare for a total annual burden of 92,880 hours. We estimate that 25% of the 92,880 total burden hours (23,220 reporting burden hours) is prepared by the company.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to *David_Rostker@omb.eop.gov;* and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: March 7, 2005.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–1234 Filed 3–21–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51380; File No. SR–PCX–2005–29]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Regarding Q Orders

March 16, 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 March 9, 2005, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by PCX. The Exchange filed this proposal as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCX, through its wholly-owned subsidiary PCX Equities, Inc. (''PCXE''), proposes to amend its rules governing the Archipelago Exchange (''ArcaEx''), the equities trading facility of PCXE. With this filing, the Exchange proposes to amend its rule describing Q Orders.

The text of the proposed rule change appears below. Proposed deletions are in brackets.

* * * * *

Rules of PCX Equities, Inc.

* * * * *

Rule 7

Equities Trading

* * * * *

Orders and Modifiers

Rule 7.31 (a)–(j)—No change.

Rule 7.31 (k) Q Order.

(1) A Q Order is a limit order submitted to the Archipelago Exchange by a Market Maker. [A Q Order may not be a Working Order.]

(2) Auto Q Order. A Q Order may be designated as an Auto Q Order that would automatically repost a Q Order after an execution in the ArcaEx book at a designated increment [inferior to the price at which it was originally posted] and for the same amount of shares. After an execution, the Auto Q order would continue to repost in the ArcaEx book pursuant to Rule 7.36 and would be assigned a new price time priority as of the time of each reposting at the determined increment and size until the total tradable size threshold is reached. When entering an Auto Q Order, a Market Maker would establish the following parameters: (i) price; (ii) size; (iii) buy or sell; (iv) increment update; and (v) total tradable size.

(l)–(hh)—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, PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of its continuing efforts to enhance participation on the ArcaEx facility, the PCX is proposing to amend PCXE Rule 7.31(k) to provide market makers with additional Q Order functionality by allowing (i) reserve capability and (ii) re-posting Auto Q Orders at the same price.

Currently, PCXE Rule 7.31(k) requires Auto Q Orders to be re-posted at increments inferior to the price at which they were originally posted. ArcaEx proposes to modify language of PCXE Rule 7.31(k) to enable re-posting at any increment. Currently, PCXE Rule 7.31(k) does not allow Q Orders to be Working Orders. ArcaEx proposes removing the limitation that Q Orders may not be Working Orders to allow Q Orders reserve capability.

The proposed changes to the Q Order functionality are similar to the Auto Quote Refresh (''AQR'') functionality currently available to Nasdaq market makers as described in NASD Rule 4710(b)(2)(B). For example, the AQR refreshes a market maker's quote when it is decremented to an amount and price level designated by the market maker. The Auto-Q Order functions in the same manner in that the Q Order is updated upon an execution at the size of the original Q order and at a price level designated by the market maker. Further, the AQR provides reserve capability. Accordingly, ArcaEx seeks to provide that same functionality.

The Exchange believes that implementing these changes will provide ETP Holders with greater opportunities for executing orders and attract additional market maker participation on the ArcaEx system. Furthermore, the Exchange believes the proposed changes are merely technical changes to the existing Q Order functionality.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been designated by the PCX as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act[7] and subparagraph (f)(6) of Rule 19b–4 thereunder.[8] The foregoing rule change: (1) Does not significantly affect the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) by its terms does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest. Consequently, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

Pursuant to Rule 19b–4(f)(6)(iii), a proposed ''non-controversial'' rule change does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest. The PCX has requested that the Commission waive the 30-day operative delay. The Commission has determined that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay.[11] Accelerating the operative date will allow the PCX to immediately allow Q Orders reserve capability, and to enable re-posting at any increment. 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 Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Act.

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–PCX–2005–29 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–PCX–2005–29. 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 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–PCX–2005–29 and should be submitted on or before April 12, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–1247 Filed 3–21–05; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Notice Announcing Implementation of Sections 302 and 303 of the Social Security Protection Act of 2004

AGENCY: Social Security Administration (SSA).

ACTION: Notice.

SUMMARY: The purpose of this notice is to announce that the Social Security Administration (SSA) has implemented sections 302 and 303 of the Social Security Protection Act of 2004 (SSPA). Section 302 of the SSPA extends the current attorney fee withholding and payment process under title II of the Social Security Act (the Act) to claims for benefits under title XVI of the Act. Section 303 of the SSPA requires the Commissioner of Social Security (the Commissioner) to develop and implement a five-year nationwide demonstration project that extends to certain non-attorney representatives of claimants under titles II and XVI of the Act the option to have approved representatives' fees withheld and paid directly from a beneficiary's past-due benefits.

FOR FURTHER INFORMATION CONTACT: Michael Zambonato, Social Security Administration, Office of Income Security Programs, 2709 Rolling Road, Baltimore, MD 21244, (410) 965–5419.

SUPPLEMENTARY INFORMATION: Pursuant to section 303(d) of the SSPA, the Commissioner notified Congress on February 28, 2005, of our completion of the actions necessary to fully implement the requirements for full operation of the demonstration project on fee withholding for non-attorneys. Accordingly, the five-year period of the demonstration project under section 303 began on February 28, 2005. As provided in section 302(c) of the SSPA, the extension of the current representative fee withholding and payment process under title II of the Act to claims for benefits under title XVI of the Act also became effective for favorably decided cases effectuated on or after February 28, 2005.

Additional information on the implementation of section 302 can be found in operating instructions that we have issued on fee withholding and direct payment of fees under title XVI in the Program Operations Manual System (POMS), Subchapters GN 03920, GN 03930, and GN 03940. These instructions may be accessed from our Web site at *http://www.socialsecurity.gov,* using the link to Our Program Rules. You can also access these instructions directly at *http://policy.ssa.gov/poms.nsf/subchapterlist!openview&restricttocategory=02039.*

In accordance with the provisions of section 303, we will determine the eligibility of applicants to participate in the demonstration project on fee withholding for non-attorneys through a process by which we will determine if applicants satisfy the prerequisites to participate in that project. We provided information on the prerequisites process in a **Federal Register** notice published on January 13, 2005 (70 FR 2447). Additional information on the demonstration project and the prerequisites process is available on our Representing Claimants Web site at *http://www.ba.ssa.gov/representation/.*

As we explained in our **Federal Register** notice of January 13, 2005, we are using a private contractor to assist us in administering the process for determining eligibility to participate in the demonstration project. The contractor is CPS Human Resource Services (CPS). CPS has established an informational Web site at *http://www.cps.ca.gov/tlc/ssa/about.asp* that provides general information on eligibility requirements, the application process, and deadlines. CPS has also established a site for taking applications at *http://www.cps.ca.gov/tlc/ssa/signin.asp.* CPS can be reached by:

- Mail, sent to: CPS Human Resource Services, SSA Non-Attorney Representative Demonstration Project, 241 Lathrop Way, Suite A, Sacramento, CA 95815–4242.
- E-mail, sent to *SSA@cps.ca.gov.*
- Telephone, toll free at 1–800–376–5728. The local number in Sacramento is 916–263–3600.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; and 96.006, Supplemental Security Income)

Fritz Streckewald,

Assistant Deputy Commissioner for Program Policy, for Disability and Income Security Programs.

[FR Doc. 05–5581 Filed 3–21–05; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 5032]

Bureau of Nonproliferation; Extension of Waiver of Missile Proliferation Sanctions Against Chinese Government Activities

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: A determination has been made to extend the waiver of import sanctions against certain activities of the Chinese Government that was announced on September 19, 2003, pursuant to the Arms Export Control Act, as amended.

EFFECTIVE DATE: March 18, 2005.

FOR FURTHER INFORMATION CONTACT: Vann H. Van Diepen, Office of Chemical, Biological and Missile Nonproliferation, Bureau of Nonproliferation, Department of State ((202) 647–1142).

SUPPLEMENTARY INFORMATION: A determination was made on September 9, 2004, pursuant to section 73(e) of the Arms Export Control Act (22 U.S.C. 2797b(e)) that it was essential to the national security of the United States to waive for a period of six months the import sanction described in Section 73(a)(2)(C) of the Arms Export Control Act (22 U.S.C. 2797b(a)(2)(C)) against the activities of the Chinese Government described in section 74(a)(8)(B) of the Arms Export Control Act (22 U.S.C. 2797c(a)(8)(B))—*i.e.*, activities of the Chinese government relating to the development or production of any missile equipment or technology and activities of the Chinese government affecting the development or production of electronics, space systems or equipment, and military aircraft (see **Federal Register** Vol. 68, no. 182, Friday, Sept. 19, 2003). This action was effective on September 18, 2004.

On March 17, 2005, a determination was made pursuant to section 73(e) of the Arms Export Control Act (22 U.S.C. 2797b(e)) that it is essential to the national security of the United States to extend the waiver period for an additional six months, effective from the date of expiration of the previous waiver (March 18, 2005).

These measures shall be implemented by the responsible agencies as provided in Executive Order 12851 of June 11, 1993.

Dated: March 18, 2005.

Mark T. Fitzpatrick,

Deputy Assistant Secretary, Acting , Bureau of Nonproliferation, Department of State.

[FR Doc. 05–5738 Filed 3–21–05; 8:45 am]

BILLING CODE 4710–27–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2004–18745]

Grant of Application of American Suzuki Motorcycle Corporation for Renewals of Temporary Exemptions From Federal Motor Vehicle Safety Standard No. 123

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Grant of application for renewals of temporary exemptions from a Federal motor vehicle safety standard.

SUMMARY: This notice grants the application by a motorcycle manufacturer, American Suzuki Motorcycle Corporation (Suzuki) for renewals of temporary exemptions from a provision in the Federal motor vehicle safety standard on motorcycle controls and displays specifying that a motorcycle rear brake, if provided, must be controlled by a right foot control. We are permitting Suzuki to use the left handlebar as an alternative location for the rear brake control. Suzuki has asserted that ''compliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall level of safety at least equal to the overall safety level of nonexempt vehicles.''

DATES: The grant of the application for renewals of temporary exemption expires December 31, 2007.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may contact Mr. Michael Pyne, Office of Crash Avoidance Standards at (202) 366–4171. His FAX number is: (202) 493–2739.

For legal issues, you may contact Ms. Dorothy Nakama, Office of the Chief Counsel at (202) 366–2992. Her FAX number is: (202) 366–3820.

You may send mail to these officials at: National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

49 U.S.C. Section 30113(b) provides the Secretary of Transportation the authority to exempt, on a temporary basis, motor vehicles from a motor vehicle safety standard under certain circumstances. The exemption may be renewed, if the vehicle manufacturer reapplies. The Secretary has delegated the authority for Section 30113(b) to NHTSA.

NHTSA has established regulations at 49 CFR Part 555, *Temporary Exemption from Motor Vehicle Safety and Bumper Standards.* Part 555 provides a means by which motor vehicle manufacturers may apply for temporary exemptions from the Federal motor vehicle safety standards on the basis of substantial economic hardship, facilitation of the development of new motor vehicle safety or low-emission engine features, or existence of an equivalent overall level of motor vehicle safety.

Federal Motor Vehicle Safety Standard (FMVSS) No. 123, *Motorcycle controls and displays* (49 CFR 571.123) specifies requirements for the location, operation, identification, and illumination of motorcycle controls and displays, and requirements for motorcycle stands and footrests. Among other requirements, FMVSS No. 123 specifies that for motorcycles with rear wheel brakes, the rear wheel brakes must be operable through the right foot control, although the left handlebar is permissible for motor-driven cycles (*See* S5.2.1, and Table 1, Item 11). Motor-driven cycles are motorcycles with

motors that produce 5 brake horsepower or less (*See* 49 CFR 571.3, Definitions).

On November 21, 2003, NHTSA published in the **Federal Register** (68 FR 65667) a notice proposing two regulatory alternatives to amend FMVSS No. 123. Each alternative would require that for certain motorcycles without a clutch control lever, the rear brakes must be controlled by a lever located on the left handlebar. We also requested comment on industry practices and plans regarding controls for motorcycles with integrated brakes. If this proposed rule is made final, the left handlebar would be permitted as an alternative location for the rear brake control.

II. Applications for Renewals of Temporary Exemptions From FMVSS No. 123

NHTSA has received applications for renewals of temporary exemption from S5.2.1 and Table 1, Item 11 from American Suzuki Motorcycle Corporation (Suzuki), a motorcycle manufacturer. Suzuki asks for extensions of existing temporary exemptions for the Burgman 400 (also known as the AN 400)(for Model Years (MYs) 2005 and 2006), and the Burgman 650 (also known as the AN 650)(for MYs 2005 and 2006). Both the Burgman 400 and Burgman 650 motorcycles are considered ''motor scooters.''

The safety issues are identical in the case of both of these motorcycles. Suzuki has applied to use the left handlebar as the location for the rear brake control on its motorcycles whose engines produce more than 5 brake horsepower (both the Burgman 400 and the Burgman 650). The frames of each of the motorcycles have not been designed to mount a right foot operated brake pedal (*i.e.*, these motor scooters have a platform for the feet and operate only through hand controls). Applying considerable stress to this sensitive pressure point of the motor scooter frame by putting on a foot operated brake control could cause failure due to fatigue, unless proper design and testing procedures are performed.

III. Why Suzuki Claims the Overall Level of Safety of the Motorcycles Equals or Exceeds That of Nonexempted Motorcycles

Suzuki has argued that the overall level of safety of the motorcycles covered by its petitions equals or exceeds that of a nonexempted motorcycle for the following reasons. Suzuki has stated that the Burgman scooters are equipped with automatic transmissions. As there is no foot-operated gear change, the operation and use of a motorcycle with an automatic transmission is similar to the operation and use of a bicycle, and the vehicles can be operated without requiring special training or practice.

Suzuki provided test data with its October 4, 2002 original temporary exemption petition showing that the Burgman 400 ''can easily meet'' the braking performance requirements in FMVSS No. 122, *Motorcycle brake systems*. Suzuki provided similar test data with its June 2, 2002 original temporary exemption petition for the Burgman 650, which also showed that the Burgman 650 ''can easily meet FMVSS No. 122.''

Suzuki further stated that it will not sell more than 2,500 exempted vehicles in the U.S. in any 12-month period for which an exemption may be granted. At the end of the exemption period, Suzuki stated that it does not intend to comply with the rear brake control requirements of FMVSS No. 123. Under previously granted exemptions, Suzuki sold approximately 2,702 Burgman 400 scooters and approximately 2, 947 Burgman 650 scooters over a two-year period.

IV. Why Suzuki Claims an Exemption Would Be in the Public Interest and Would Be Consistent With the Objectives of Motor Vehicle Safety

Suzuki offered the following reason why another temporary exemption for its motorcycles would be in the public interest and would be consistent with the objectives of motor vehicle safety. Suzuki asserted that the level of safety of the Burgman scooters is ''at least equal to similar vehicles that are certified to FMVSS No. 123.'' Suzuki further asserted that scooters like the Burgman 400 and Burgman 650 are of interest to the public, evidenced by the number of companies that have previously requested exemptions to sell similar products in the U.S., the favorable public comment on the exemption requests, and the number of scooters sold under the granted exemptions.

V. Notification of Receipt of Applications and Public Comments

On December 3, 2004 (69 FR 70304) [Docket No. NHTSA–2004–18745], we published a **Federal Register** notice announcing the receipt of applications for renewals of exemptions from Suzuki. We published Suzuki's reasons why the overall safety of the motorcycles equals or exceeds that of nonexempted motorcycles, and why Suzuki claimed an exemption would be in the public interest and would be consistent with the objectives of motor vehicle safety. We asked for public comment on Suzuki's application.

We received no comments in response to the December 3, 2004 document.

VI. NHTSA's Decisions on the Applications

It is evident that, unless Standard No. 123 is amended to permit or require the left handlebar brake control on motor scooters with more than 5 hp, Suzuki will be unable to sell its motorcycles if it does not receive a temporary exemption from the requirement that the right foot pedal operate the brake control. It is also evident from the previous grants of similar petitions that we have repeatedly found that the motorcycles exempted from the brake control location requirement of Standard No. 123 have an overall level of safety at least equal to that of nonexempted motorcycles.

In consideration of the foregoing, we hereby find that Suzuki has met its burden of persuasion that to require compliance with Standard No. 123 would prevent Suzuki from selling a motor vehicle with an overall level of safety at least equal to the overall safety level of nonexempt vehicles. We further find that a temporary exemption is in the public interest and consistent with the objectives of motor vehicle safety. Therefore:

1. NHTSA Temporary Exemption No. EX02–3, exempting American Suzuki Motorcycle Corporation from the requirements of item 11, column 2, table 1 of 49 CFR 571.123 Standard No. 123 *Motorcycle Controls and Displays,* that the rear wheel brakes be operable through the right foot control, is hereby extended to expire on December 31, 2007. This exemption applies only to the Burgman 400 (also known as the AN 400).

2. NHTSA Temporary Exemption No. EX02–2 exempting American Suzuki Motorcycle Corporation from the requirements of item 11, column 2, table 1 of 49 CFR 571.123 Standard No. 123 *Motorcycle Controls and Displays,* that the rear wheel brakes be operable through the right foot control, is hereby extended to expire on December 31, 2007. This exemption applies only to the Burgman 650 (also known as the AN 650).

Authority: 49 U.S.C. Section 30113; delegations of authority at 49 CFR 1.50 and 501.4.

Issued on: March 16, 2005.

Jeffrey W. Runge,

Administrator.

[FR Doc. 05–5579 Filed 3–21–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 657]

Rail Rate Challenges Under the Stand-Alone Cost Methodology

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of public hearing.

SUMMARY: The Surface Transportation Board (Board) will hold a public hearing beginning at 10 a.m. on Tuesday, April 26, 2005, at its offices in Washington, DC, to provide interested persons an opportunity to express their views on the subject of rail rate challenges under the stand-alone cost (SAC) methodology. Persons wishing to speak at the hearing should notify the Board in writing. This notice reschedules a public hearing originally planned for March 24, 2005, as described in a notice published on February 23, 2005 (70 FR 8874).

DATES: The public hearing will take place on Tuesday, April 26, 2005. Any person wishing to speak at the hearing should file with the Board a written notice of intent to participate, and should indicate a requested time allotment, as soon as possible but no later than April 15, 2005. Each speaker should also file with the Board his/her written testimony by April 20, 2005. Written submissions by interested persons who do not wish to appear at the hearing will also be due by April 20, 2005.

ADDRESSES: All notices of intent to participate and testimony may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should comply with the Board's *http://www.stb.dot.gov* Web site, at the ''E-FILING'' link. Any person submitting a filing in the traditional paper format should send an original and 10 copies of the filing (referring to STB Ex Parte No. 657) to: Surface Transportation Board, Attn: STB Ex Parte No. 657, 1925 K Street, NW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Raymond A. Atkins, (202) 565–1624. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: (800) 877–8339.]

SUPPLEMENTARY INFORMATION: In a decision served on March 14, 2005, the Board has rescheduled the hearing at the request of Alliance for Rail Competition and 17 other entities. The Board is holding the public hearing to provide a forum for the expression of views by rail shippers, railroads, and other interested persons, on the Board's consideration of rail rate challenges under the SAC methodology. This hearing will provide a forum for the discussion of any suggestions and proposals that interested persons might wish to offer regarding the Board's consideration of rail rate reasonableness challenges under the SAC methodology. The hearing is not intended to offer a forum for discussion of pending cases, but rather is intended as an opportunity for interested persons to address broader issues that may cut across SAC cases generally.

Date of Hearing. The hearing will begin at 10 a.m. on Tuesday, April 26, 2005, in the 7th floor hearing room at the Board's headquarters in Washington, DC, and will continue, with short breaks if necessary, until every person scheduled to speak has been heard.

Notice of Intent To Participate. Any person wishing to speak at the hearing should file with the Board a written notice of intent to participate, and should indicate a requested time allotment, as soon as possible, but no later than April 15, 2005.

Testimony. Each speaker should file with the Board his/her written testimony by April 20, 2005. Also, any interested person who wishes to submit a written statement without appearing at the April 26 hearing should file that statement by April 20, 2005.

Board Releases and Live Audio Available Via the Internet. Decisions and notices of the Board, including this notice, are available on the Board's Web site at *http://www.stb.dot.gov.* This hearing will be available on the Board's Web site by live audio streaming. To access the hearing, click on the ''Live Audio'' link under ''Information Center'' at the left side of the home page beginning at 10 a.m. on April 26, 2005.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Dated: March 14, 2005.

Vernon A. Williams,

Secretary.

[FR Doc. 05–5515 Filed 3–21–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Public Meeting of the President's Advisory Panel on Federal Tax Reform

AGENCY: Department of the Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice advises all interested persons of the locations of the March 23, 2005, and the March 31, 2005, public meetings of the President's Advisory Panel on Federal Tax Reform. These meetings were previously announced in 70 FR 11731 (March 9, 2005) and 70 FR 12532 (March 14, 2005).

DATES: The meetings will be held on Wednesday, March 23, 2005, at 9:30 a.m., in New Orleans, Louisiana, and on Thursday, March 31, 2005, at 9 a.m. in San Francisco, California.

ADDRESSES: The March 23 meeting will be held at The Louisiana Children's Museum, 420 Julia Street, New Orleans, Louisiana, 70130. The March 31 meeting will be held at the Fort Mason Center, Landmark Building A, Fort Mason Center, San Francisco, California, 94123–1382. Seating will be available on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: The Panel staff at (202) 927–2TAX (927–2829) (not a toll-free call) or e-mail *info@taxreformpanel.gov* (please do not send comments to this box). Additional information is available at *http://www.taxreformpanel.gov.*

Dated: March 18, 2005.

Mark S. Kaizen,

Designated Federal Officer.

[FR Doc. 05–5741 Filed 3–21–05; 8:45 am]

BILLING CODE 4810–25–P

Corrections

Federal Register

Vol. 70, No. 54

Tuesday, March 22, 2005

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL TRADE COMMISSION

Premerger Notification; Reporting and Waiting Period Requirements

Correction

In notice document 05–4301 appearing on page 11526 in the issue of March 8, 2005, make the following correction:

On page 11526, in the first column, in the **DATES** section, in the second line, ''April 6, 2005'' should read ''April 7, 2005''.

[FR Doc. C5–4301 Filed 3–21–05; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9164]

RIN 1545–BC33

Prohibited Allocations of Securities in an S Corporation

Correction

In rule document 04–27294 beginning on page 75455 in the issue of Friday, December 17, 2004, make the following corrections:

§ 1.409(p)–1T [Corrected]

1. On page 75462, in § 1.409(p)–1T(c)(3)(ii), in the first column, in the fifth line, ''(d)(2)(ii)(b)'' should read ''(d)(2)(ii)(*b*)''.

2. On page 75466, in the same section, in paragraph (h), in *Example 3*, in paragraph (i), in the table, in the second column heading, ''Present value of nonqualified deferred compensation'' should read ''Present value of nonqualified deferred compensation on determination date''.

3. On the same page, in the same section, in the same table, in the fourth column heading, ''New shares of synthetic equity on determination'' should read ''New shares of synthetic equity on determination date''

4. On the same page, in the same section, in the same table, in the fifth column heading, ''Aggregate number of synthetic equity shares'' should read ''Aggregate number of synthetic equity shares on determination date''.

5. On page 75468, in the first column, in the signature, ''**Mark M. Matthews**'' should read ''**Mark E. Matthews**''.

[FR Doc. C4–27294 Filed 3–21–05; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
March 22, 2005

Part II

Department of Transportation

Office of the Secretary

49 CFR Part 23

Participation by Disadvantaged Business Enterprises in Airport Concessions; Final Rule and Proposed Rule

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 23

[Docket No. OST–97–2550]

RIN 2105–AC91

Participation by Disadvantaged Business Enterprises in Airport Concessions

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This rule revises and updates the Department's regulation concerning participation by airport concessionaire disadvantaged business enterprises (ACDBEs) in the concessions activities of airports receiving Federal financial assistance from the airport improvement program (AIP) of the Federal Aviation Administration (FAA). It makes the ACDBE concessions rule parallel in many important respects to the Department's DBE regulation for Federally-assisted contracts. It also addresses issues such as goal-setting, personal net worth and business size standards, and counting ACDBE participation by car rental companies.

DATES: *Effective Date:* This rule is effective April 21, 2005.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, SW., Room 10424, Washington, DC 20590, phone numbers (202) 366–9310 (voice), (202) 366–9313 (fax), (202) 755–7687 (TTY), *bob.ashby@ost.dot.gov* (e-mail); and Michael Freilich, National External Program Manager, Office of Civil Rights, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Phone numbers 202–267–7551 (voice), 202–267–5565 (fax).

SUPPLEMENTARY INFORMATION:

Background

This final rule revises and updates the Department's regulation to ensure nondiscrimination in the provision of opportunities for disadvantaged business enterprises in airport concessions (49 CFR Part 23). The regulation is mandated by 49 U.S.C. 47107(e), originally enacted in 1987 and amended in 1992. The current language of this section is the following:

(e) Written Assurances of Opportunities for Small Business Concerns. (1) The Secretary of Transportation may approve a project grant application under this subchapter for an airport development project only if the Secretary receives written assurances, satisfactory to the Secretary, that the airport owner or operator will take necessary action to ensure, to the maximum extent practicable, that at least 10 percent of all business at the airport selling consumer products or providing consumer services to the public are small business concerns (as defined by regulations of the Secretary) owned and controlled by a socially and economically disadvantaged individual (as defined in section 47113(a) of this title).

(2) An airport owner or operator may meet the percentage goal of paragraph (1) of this subsection by including any business operated through a management contract or subcontract. The dollar amount of a management contract or subcontract with a disadvantaged business enterprise shall be added to the total participation by disadvantaged business enterprises in airport concessions and to the base from which the airport's percentage goal is calculated. The dollar amount of the management contract or subcontract with a non-disadvantaged business enterprise and the gross revenue of business activities to which the management contract or subcontract pertains may not be added to this base.

(3) Except as provided in paragraph (4) of this subsection, an airport owner or operator may meet the percentage goal of paragraph (1) of this subsection by including the purchase from disadvantaged business enterprises of goods and services used in businesses conducted at the airport, but the owner or operator and the businesses conducted at the airport shall make good faith efforts to explore all available options to achieve, to the maximum extent practicable, compliance with the goal through direct ownership arrangements, including joint ventures and franchises.

(4)(A) In complying with paragraph (1) of this subsection, an airport owner or operator shall include the revenues of car rental firms in the base from which the percentage goal in paragraph (1) is calculated.

(B) An airport owner or operator may require a car rental firm to meet a requirement under paragraph (1) of this subsection by purchasing or leasing goods or services from a disadvantaged business enterprise. If an owner or operator requires such a purchase or lease, a car rental firm shall be permitted to meet the requirement by including purchases or leases of vehicles from any vendor that qualifies as a small business concern owned and controlled by a socially and economically disadvantaged individual.

(C) This subsection does not require a car rental firm to change its corporate structure or to provide for direct ownership arrangement to meet the requirement of this subsection.

(5) This subsection does not preempt—

(A) A State or local law, regulation, or policy enacted by the governing body of an airport owner or operator or;

(B) The authority of a State or local government or airport owner or operator to adopt or enforce a law, regulation, or policy related to disadvantaged business enterprises.

(6) An airport owner or operator may provide opportunities for a small business concern owned and controlled by a socially and economically disadvantaged individual to participate through direct contractual agreement with that concern.

(7) An air carrier that provides passenger or property-carrying services or another business that conduct aeronautical activities at an airport may not be included in the percentage goal of paragraph (1) * * *.

The present version of Part 23 was issued in 1992 (57 FR 18410, April 30, 1992) and amended in 1999 (64 FR 5126, February 2, 1999). There have been three proposed rules to revise Part 23: in 1993 (58 FR 52050, October 8, 1993), 1997 (62 FR 24548, May 30, 1997), and 2000 (65 FR 54454; September 8, 2000). This final rule responds to comments on the most recent of these proposals.

In the 2000 proposal, the Department suggested making the DBE concessions rule a subpart of 49 CFR Part 26, the DBE rule for DOT-assisted contracts. However, the DOT-assisted contracts and concessions rules are based on different statutes. They apply to different kinds of businesses, and concern distinct types of relationships between recipients of DOT financial assistance and businesses. There are a number of substantive differences between the two regulatory schemes (*e.g.*, business size standards). For these reasons, the Department has decided to keep the two regulations separate. ACDBEs will continue to be governed by Part 23, as revised by this issuance, and DOT-assisted contracts DBE provisions will remain in Part 26. Keeping the regulatory provisions separate should help to avoid confusion.

The Supreme Court's decision in *Adarand* v. *Pena*, which established the requirement that race-conscious affirmative action programs meet the ''strict scrutiny'' standard of review, was rendered in 1995. In 1999, when the Department made major changes to Part 26 in order to meet *Adarand* requirements, we did not issue a comprehensive revision of the airport concessions DBE requirements. Consequently, one of the most important functions of this final rule is to ensure that the airport concessions requirements of Part 23 meet *Adarand* requirements.

In 2003–04, the Department's Office of Inspector General (IG) issued two reports that addressed fraud and abuse problems in the Department's DBE program. Many of the IG's recommendations focused on the need for more effective oversight of the DBE program by state and local recipients and by DOT operating administrations. However, some of the IG's recommendations directly concerned

regulatory provisions governing the airport concessions DBE program. Probably the two most significant IG recommendations were that the Department expeditiously complete this rulemaking and that it include a specific personal net worth standard for owners of ACDBEs. The Department takes the IG's findings and recommendations very seriously, and we believe that the prevention of fraud and abuse in all portions of the DBE program is a very high priority. This final rule, like the 2000 proposed rule, includes a specific personal net worth standard. The accompanying supplemental notice of proposed rulemaking asks for comment on additional steps the Department might take to prevent fraud and abuse.

Major Issues

The Department identified the following issues as the most important in developing this final rule: Small business size standards, personal net worth standards, counting of ACDBE participation by car rental companies, and the goal-setting process. The bulk of comments on the 2000 NPRM concerned these issues. This portion of the preamble describes each of these issues, notes how the Department proposed to resolve it in the 2000 NPRM, summarizes comments on it, and provides a rationale for the Department's decision.

1. Small Business Size Standards

Size standards in this ACDBE regulation are important for a number of reasons. They implement the statutory requirement that participants be small businesses. They provide a means to ensure that a firm's participation in DBE programs is not necessarily of indefinite duration: if a firm grows to exceed size standards, it ceases to be eligible for the program. They are calibrated to help meet the objectives of the program, including permitting ACDBE firms to compete in the airport concessions market.

In Part 26, businesses seeking DBE certification must, by statute, meet SBA size standards and an additional cap on average annual gross receipts, currently set at $17.42 million and subject to periodic adjustments for inflation. These requirements do not apply to Part 23, since the ACDBE statute gives the Secretary discretion to set size standards for concessions. For most airport concessions, the size standard under current Part 23 is $30 million average annual gross receipts. The proper business size standard for the ACDBE program has been the subject of comment on all the Part 23 NPRMs that the Department has issued. For the reasons stated in the supplemental notice of proposed rulemaking (SNPRM) that we are publishing in today's **Federal Register,** the Department is seeking additional comment on a number of size-related issues.

In the interim, we will maintain the status quo with respect to Part 23 size standards, with the two exceptions discussed below. First, since goods and services purchased by concessionaires from ACDBE businesses can count toward ACDBE goals, we think it is important to clarify in the regulatory text our understanding of the application of the rule's size standards to ACDBE goods and services providers. For certification purposes, a firm that provides goods and services to airport concessionaires is an ACDBE if, assuming it meets other eligibility criteria, it meets the size standards for ACDBE concessionaires. A firm that provides restaurant equipment to a restaurant at the airport, for purposes of Part 23, must meet the general Part 23 size standard, rather than the smaller SBA or Part 26 standards, to be an eligible ACDBE, so that the restaurant and the airport can count the purchase toward DBE goals.

Second, with respect to banks, the Department received a petition for rulemaking from a financial institution saying that organizations in its position were unable to compete against much larger institutions (*i.e.*, in the hundred billion dollars in assets range) at the current size standard of $150 million in assets. The petitioner had been certified by an airport sponsor as an MBE (in a local MBE program) and a DBE with assets of $275 million. However, because this exceeded the $150 million standard, the petitioner was subsequently decertified. We believe that the petitioner has a fair point, with respect to the competitive disadvantages it faces against far larger institutions. Consequently, we will increase the banks and financial institutions size standards to $275 million, which will allow DBE financial institutions to participate at a level that is more competitive.

We also note that the SBA business size standards no longer use an employee number standard for car dealers, but rather use a gross receipts standard. We believe that this approach, consistent with the way the Department approaches most business size standards in this rule, is sensible. Consequently, we are using the $30 million gross receipts standard for car dealers as well as for other concession-related businesses, rather than the previous employee number standard.

2. Personal Net Worth

In order to meet narrow tailoring requirements, it is essential that a DBE program not be overinclusive. The statutory scope of the ACDBE program is to ensure nondiscrimination for airport concession businesses owned and controlled by individuals who are socially and economically disadvantaged. To prevent the program from becoming overinclusive, the ACDBE program should ensure that persons who are not disadvantaged do not have the opportunity to participate.

By statute, persons in certain designated groups are presumed to be socially and economically disadvantaged. The Department has always held this presumption to be rebuttable. That is, if a member of a designated group is shown to be non-disadvantaged, he or she would no longer be able to participate as an ACDBE owner. (Likewise, a person who is not presumed to be disadvantaged could participate if he demonstrated, on an individual basis, that he is socially and economically disadvantaged.) This rebuttable presumption feature of the existing rule is intended to provide a safeguard against the program becoming overinclusive, since a UCP (or recipient in a state where a UCP is not yet in effect)—on its own or in response to a complaint—has the authority to determine that an individual should no longer be regarded as disadvantaged.

The Department has recognized, however, that in the absence of a specific criterion for determining whether the presumption of disadvantage has been rebutted, there are difficult problems of proof and judgment when an issue is raised concerning the application of the presumption to an individual. For this reason, in the 1999 revision to Part 26, the Department adopted a numerical standard for this purpose. The absence of such a specific numerical standard in Part 23 has caused confusion. As noted above, the Department's Office of Inspector General (OIG) has recommended that Part 23 include a PNW numerical standard.

The Department agrees that Part 23 should include a PNW numerical standard. The question confronting the Department in this rulemaking is what that standard should be. In the 2000 NPRM, we proposed a $2 million PNW standard. This was higher than the $750,000 standard of Part 26 in recognition of the generally accepted proposition that airport concession businesses are more capital intensive, higher cash flow businesses than many businesses working under Part 26. The

owners of concessions therefore need more assets in order to enter and thrive.

There were a variety of comments on the PNW proposal. Many of the airport commenters generally said that we should not impose ''onerous'' requirements on ACDBEs or airports in the PNW area. They did not provide any specifics, however. Some airports supported the proposed $2 million cap, while an airport trade association and other airports said that $2 million or an unspecified higher standard would be appropriate. However, other airports and a union said that the $2 million proposal was too high. Generally, these comments said that a cap at this level or higher would undermine the reason for having a PNW standard, allow persons into the program that were too rich, and lead to overinclusiveness problems. One of these commenters suggested a $1 million standard and another suggested $750,000. Another comment said that whatever the PNW level was, it should be the same for concessions and DOT-assisted contracts.

Many comments from ACDBEs and from an ACDBE trade association, as well as some airports, said that the final rule should not include any PNW standard or that the cap should be significantly higher (*e.g.,* $3–10 million). Their main argument, which some comments fleshed out with real-world examples, is that in order to finance business expansion in a capital-intensive field like concessions, lenders required very high asset levels on the part of owners. If a business could not expand without its owners accumulating enough assets to exceed the $2 million cap, the ACDBE program would create a glass ceiling.

Some comments suggested ways of limiting the adverse effects of PNW. These included (1) making PNW a rebuttable presumption; (2) establishing a sliding scale for PNW, relative to the projected gross sales of the business; (3) having a two-tier (*e.g.,* entry and retention) standard; (4) establishing some system that would reflect the individual situations of businesses and owners, and (5) excluding from the PNW calculation assets encumbered (*e.g.,* as collateral for a loan) for business purposes. A number of commenters also favored grandfathering existing concessionaires, so they did not lose their certification and contracts because of a new PNW standard coming into being.

Since the 2000 SNPRM, Federal courts have decided a number of cases upholding Part 26 as being narrowly tailored. The existence of the $750,000 PNW cap in Part 26 was one of the factors leading to these successful defenses of the regulation. This strengthens the Department's belief that a PNW cap of this kind is appropriate to add to Part 23.

The Department has concluded that $750,000 is an appropriate standard for PNW. It is consistent with the Part 26 standard, and it has been approved by the courts in that context. Having only one PNW standard will avoid confusion between the Part 23 and Part 26 portions of the Department's DBE program. It will avoid concerns about overinclusiveness in the program by ensuring that persons who would fairly be perceived as too wealthy for a program aimed at assisting ''disadvantaged'' individuals do not participate. It responds to the concerns about confusion and fraud that were the basis for the OIG's recommendation.

At the same time, the Department is sensitive to the concern of commenters that a PNW standard at this level could inhibit opportunities for business owners to enter the concessions field and expand existing businesses.

We do not believe that having a substantially higher PNW standard across the board is the best way to respond to this concern: too high a standard would undermine the rationale for having a PNW standard in the first place. It could lead to concerns about overinclusiveness and to the perception that the program was not appropriately focused on disadvantaged individuals.

In calculating PNW, Part 26 makes reasonable exclusions for the business owner's equity in his or her owner's primary residence and the business applying for certification. In the different business context of concessions, the Department will add a third exclusion. Assets that the owner/applicant can demonstrate are necessary to obtain financing to enter or expand a concessions business at an airport subject to Part 23 (*e.g.,* by producing letters from banks to that effect) would also be excluded from the PNW calculation, as would assets that have in fact been encumbered to support existing financing for the applicant's business. This provision would extend only to ''recourse'' assets (*i.e.,* those that were encumbered or to be encumbered in order to obtain financing, as in a case where an asset is used a collateral for a loan).

For example, if the owner/applicant for ACDBE certification to operate a fast food franchise at an airport could document that MegaBurger Corporation requires the franchisee to have $X in assets before it will grant the franchise, that amount would be excluded from the PNW calculation. Likewise, if the owner of an ACDBE retail or service business who wished to expand operations to another airport could document that a number of financial institutions required $Y in personal assets to back a loan needed for the expansion, $Y would be excluded from the PNW calculation. Airports/UCPs would be responsible for verifying the documentation pertinent to this exclusion.

Without unduly expanding the well-accepted $750,000 standard, this approach will take into account individual circumstances and avoid the ''glass ceiling'' effect of an across-the-board PNW standard about which commenters were concerned. There will be additional information that owners will have to obtain and recipients and UCPs will have to evaluate, but we believe that this is justified in the interest of a narrowly tailored regulation that remains fair and flexible regulation that achieves the objectives of nondiscrimination and opening business opportunities to ACDBEs.

To prevent the eligibility standards from becoming too open-ended, resulting in the participation of individuals so wealthy that it would be difficult to justify their inclusion in a program aimed at disadvantaged individuals, we are adding a $3 million cap on this third exclusion. This figure is consistent with many comments concerning the appropriate extent of a PNW threshold. That is, an applicant could present documentation to the certifying authority that he or she required a certain amount of assets to open or expand a concessions business. If that amount exceeded $3 million, the amount of the individual's net worth above $3 million would be added to the PNW calculation.

Here is an example of how these provisions would work. A hypothetical business owner, Ms. T, has a gross PNW of $4.6 million. The equity in her primary residence is $400,000. Her equity in the business is $500,000. She produces adequate documentation from at least two financial institutions that they will require $3.6 million in assets to support their granting the loan necessary to open a concession business at a particular airport. (Ms. T's documentation would also need to justify the need for a loan of the amount referenced in the letters from the financial institutions, documenting the build-out costs and other capital investment needed to begin operating the concession.)

Because $3.6 million exceeds the $3 million cap on the third exclusion from the PNW calculation, $600,000 would count toward that calculation. In this case, her net PNW would be $700,000

($4.6 million—$3 million—$400,000—$500,000). This amount is less than the PNW threshold, so Ms. T would be an eligible ACDBE owner. However, if her gross PNW were $5 million, then her net PNW, after subtracting all three exclusions, would be $1.1 million, putting her over the PNW threshold and making her ineligible to be an ACDBE owner.

Certifying authorities need to carefully evaluate accounting mechanisms that applicants may use to try to circumvent the PNW threshold. For example, if within two years prior to or following an application for certification, an applicant transfers assets (*e.g.,* to a family member or to a trust), the certifying authority should regard those assets as continuing to count against the applicant's PNW.

Because we often receive questions on this point, we want to emphasize that PNW is calculated separately for each individual who the applicant business claims to be a disadvantaged owner and controller of the business. In a situation where there is more than one disadvantaged individual involved in a business, PNW is not aggregated for the owners. It remains an individual-by-individual calculation. It is never necessary to obtain PNW statements from people who do not claim to be disadvantaged individuals for purposes of ownership or control (*e.g.,* a white male who is a participant in the company).

3. Counting ACDBE Credit for Car Rental Companies

The issue of how to assign DBE credit to car rental companies is the longest-running, most divisive issue in the history of Part 23. Briefly stated, the issue concerns situations in which a car rental company purchases an often large number of cars (a ''fleet purchase'') from a motor vehicle manufacturer. Typically, the vehicles themselves are transported directly (''drop-shipped'') from the manufacturer (*e.g.,* Ford or General Motors) to the car rental company's airport facility, never physically touching the property of a car dealer. However, usually because of state laws that require vehicles to be purchased from a car dealer, the transactions are invoiced through a dealer, who receives a small fee for processing the paperwork.

If the dealer in this situation is an ACDBE, how much ACDBE credit is it appropriate for the car rental company to claim? Is it the entire value of the vehicle (many thousands of dollars) or merely the transaction fee that the dealer receives (perhaps $50–200)? Under normal DBE counting principles, such as those of § 26.55, the answer is clearly the latter. A DBE whose commercially useful function is limited to processing or expediting a transaction, and who does not meet the rule's definition of a regular dealer with respect to the items in question, receives only its fee or commission for the work it actually does. Even if it is acting as a regular dealer, credit is limited to 60 percent of the value of the goods purchased.

However, subsection (e)(4)(B) of the ACDBE statute provides that ''a car rental firm shall be permitted to meet the [ACDBE goal] requirement by including purchases or leases of vehicles from any vendor that qualifies as'' an ACDBE. Car rental industry commenters have argued strongly, in response to the 2000 SNPRM and its predecessors, that this provision means that airports must count the entire value of cars purchased via ACDBE car dealers, however contrary such a result would be to the way DBE credit is counted in any other context.

Prior to the 2000 SNPRM, trade associations for ACDBEs and car rental companies made a joint recommendation to DOT to resolve the issue. They proposed that, of the first 10 percent of an airport's concession-specific goal for a car rental company, 70 percent could be achieved by counting the full value of cars purchased through ACDBE dealers, with the remaining 30 percent accounted for by other purchases of goods and services from ACDBEs. However, for any increment of an airport's concession-specific goal over 10 percent, the car rental company could achieve all of that increment through counting the full value of cars purchased through ACDBE car dealers. The 2000 SNPRM proposed to adopt the recommendation, except for the provision calling for being able to meet all of the portion of a goal exceeding 10 percent via counting the full price of cars purchased through ACDBE car dealers.

Comments to the 2000 SNPRM took a variety of positions on the proposal. Three airports and an airport trade association opposed permitting car rental vehicle purchases to count toward goals. Another airport said that airports should get DBE participation by subcontracting with DBEs that directly own a concession. The airport trade association and four airports opposed the ''10 per cent'' provision of the trade associations' recommendation, which the Department had not included in the SNPRM. A car rental trade association, on the other hand, insisted that the Department must accept all provisions of the recommendation, including the 10 percent provision, and the ACDBE trade association that had joined in the recommendation continued to support it.

In the SNPRM, the Department also proposed a two-goal structure, with separate overall goals for car rental companies and all other concessionaires, respectively. As discussed later in this preamble, the Department is adopting this proposal. This provision has the important benefit of preventing the often very large gross receipts of car rental companies and potentially very high DBE participation dollar amounts resulting from counting the full value of vehicles in toward DBE goals from overwhelming DBE goals and participation in other areas of concessions. Having this separate goal for car rental companies therefore significantly reduces the possibility of skewing the program and limiting opportunities to other DBEs as the result of permitting car rental companies to count the full value of vehicles purchased through ACDBE car dealers.

For this reason, and in order to avoid any possibility of conflict with the statute, the Department has decided that the final rule will permit car rental companies to count the full value of vehicle purchases from ACDBE car dealers. We are not adopting the trade associations' recommendation. While we appreciate the associations' efforts to find a compromise resolution to this issue, we believe that there is no sound basis for mandating the proposed 70/30 division or for the use of the statute's aspirational 10 percent goal to play an operational role in determining how ACDBE credit is counted. In fact, we believe the use of the 10 percent goal in this way is inconsistent with a narrowly tailored ACDBE program.

Nevertheless, the Department is concerned that this resolution of the issue could have adverse effects on ACDBEs who seek to sell services or goods other than vehicles to car rental companies. Consequently, airports would require car rental companies to document to the airport the good faith efforts they have made to obtain participation from ACDBE vendors of goods and services (other than car dealers). Airports would not set a numerical goal for the use of these vendors, and there are many ways that car rental companies could show good faith efforts to this end. One of these might be for a car rental company, as suggested by the trade associations' recommendation, to obtain 30 percent of its ADCBE credit from the use of ACDBE vendors of goods and services.

4. Overall Goals

In Part 26, the Department established a data-driven overall goal-setting mechanism that directed recipients, including airports, to establish a goal estimating the amount of DBE participation that they would expect if there were a ''level playing field'' in contracting, free from the effects of discrimination. Recipients were also required to estimate how much of that goal could be achieved through race-neutral means. Recipients were permitted to use race-conscious means, such as contract goals, only to obtain that part of their overall goal they could not achieve through race-neutral means. The rule made clear that recipients were not to be penalized for not making their overall goal, and that the statutory 10 percent goal was an ''aspirational'' goal that did not affect the operation of recipients' DBE programs. Since Part 26 was issued, every Federal court that has considered the question has determined that this goal setting mechanism is consistent with narrow tailoring requirements of constitutional law.

The 2000 SNPRM for Part 23 essentially proposed to adopt, in a somewhat shortened form, the Part 26 goal-setting concepts. In addition, the SNPRM proposed a two-goal structure for concessions. That is, airports would set one overall goal for car rental companies and another overall goal for all other concessions. The purpose of this structure was to ensure that the much larger dollar volumes and much broader counting rules involved in the car rental industry at many airports did not so skew the airport's goal that other types of DBE businesses could not benefit from the program. The Department also sought comment on the idea of having a nationwide goal for major car rental companies, somewhat analogous to the transit vehicle manufacturer goal provision of Part 26.

Six airports, an ACDBE trade association, and an ACDBE favored, and one airport and a consultant opposed, separate goals for car rental and non-car rental activities. A car rental association gave qualified support to the idea, but commented that it thought that each airport would need to make a separate compelling need finding with respect to car rentals. Five airports supported and one opposed allowing an option for national car rental goals; ACDBE and car rental industry trade associations expressed doubt that the idea was workable. Another large airport suggested separate goals for goods and services on one hand, and direct ownership arrangements for car rental companies on the other.

An airport trade association and nine airports asked for greater guidance and clarification on how the goal-setting system would work in the concessions area, saying that such factors as the absence of data comparable to the DOT-assisted contracting world and the difficulty of integrating goods and services, management contracts, and direct ownership arrangements under the same overall goal made implementation very burdensome and confusing. Three of these commenters plus an ACDBE trade association said the same point applied to the race neutral/race conscious split in the concessions context. One airport supported the NPRM as written.

One airport wanted to use set-asides for car rentals. An airport trade association wanted airports to be able to set goals based on the number of concessions without going through a wavier procedure, and one airport supported the waiver process. A car rental industry trade association argued that race-neutral methods must be used chronologically before race-conscious methods could be used.

The Department believes that it is very important to include the two-goal structure in the final rule. We agree that it does, to an extent, increase the administrative workload of airports. However, it recognizes the differences between the car rental industry and other types of concessions, a difference that is meaningful in the context of a narrowly tailored regulation. Most important, in light of the statutory provision concerning the counting of vehicle purchases as a means of meeting car rental companies' ACDBE goals, it avoids a distortion resulting from the very large dollar amounts of participation attributed to ACDBE car dealers that could otherwise skew an airport's ADCBE program. Having a separate goal for non-car rental activities will ensure that retail businesses, management contractors, and other concessionaires will have the opportunity to compete on a level playing field not only vis-à-vis non-ACDBE firms, but also vis-à-vis firms in a very different industry where ACDBE participation is counted very differently. Having a separate goal for car rental companies does not, in our view, require a localized finding of discrimination pertaining specifically to the car rental industries. There is a national determination of compelling need for the entire program, and a division of overall goals into two segments for administrative purposes does not call for additional findings of need for the program.

Particularly given that courts have found that Part 26, including its goal-setting mechanism, meets narrow tailoring requirements, the Department believes it is essential to conform the Part 23 goal-setting provisions as closely as possible to those of Part 26. These requirements are spelled out in greater detail here than in the 2000 SNPRM, which should assist airports in complying with them. We also give airports from 1–3 years to establish new goals, which should allow them time to complete the work involved. Of course, by this time, airports have had five years' experience in working with Part 26 goals, and so using a parallel mechanism in Part 23 should be an easier and more familiar exercise than it might have seemed in 2000. We would also call airports' attention to the goal-setting ''Tips'' on the Department's DBE Web site (*http://osdbuweb.dot.gov/business/dbe/tips.html*). The Department plans to develop a revised version of these Tips specifically pertaining to airport concessions in the near future.

Because the Department believes it would be difficult to devise an overall goal based on the number of concession businesses or contracts, as distinct from the receipts of concession firms, the final rule does not include the provision allowing recipients to seek waivers to establish a goal on that basis, as the 2000 SNPRM proposed. However, airports can use the program waiver provision of § 23.13 to request authority to use a goal-setting mechanism that differs from that of Subpart D of Part 23.

While the idea of a transit vehicle manufacturer-like nationwide goal for large car rental companies remains intriguing, the Department is not sure that this approach is feasible. Therefore, rather than include such a provision in the final rule, we are asking for further comment on this subject in the SNPRM. Set-asides and quotas are not an appropriate part of a narrowly tailored rule, and Part 23 prohibits airports from using these measures.

The argument that recipients must, in a chronological sense, use race-neutral methods before they can use race-conscious methods has been raised in litigation under Part 26. It has not prevailed. Nor does it make sense as policy. Airports are required to give priority to the use of race-neutral means, meaning that they must achieve as much as possible of their overall goals through race-neutral means. The utility of race-neutral means, or the necessity of race-conscious means, is likely to vary throughout the year as different sorts of business opportunities occur. For example, obtaining ACDBE

participation in one business opportunity in February of a certain year may require race-conscious measures, while an excellent race-neutral opportunity may occur in November of that year.

Section-by-Section Analysis

This portion of the preamble discusses, in turn, each section of the final rule, providing, as appropriate, responses to comments, additional information about the Department's rationale for adopting individual provisions, and the Department's intent for how the provisions should be interpreted and implemented.

Section 23.1 What Are the Objectives of This Part?

The objectives of this program are very similar to those stated for Part 26. Extensive information has been developed over the years, which may be found in such sources as disparity studies of which the Department is aware and data presented to Congress (*e.g.,* in the context of the floor discussion of the 1998 reauthorization of the DBE program for Federal Highway Administration and Federal Transit Administration financial assistance) that supports the proposition that there is not a level playing field for small disadvantaged businesses in the U.S. The legislative history of the original ACDBE statute itself shows that Congress was very concerned that DBE firms had the ''fair'' (*i.e.,* nondiscriminatory) access to concession opportunities (*see* 133 Congressional Record 25986–87; October 1, 1987).

Under Part 26, many airports have had to continue race-conscious methods to achieve their overall goals, which are in turn a measure of the level of DBE participation they could expect absent the effects of discrimination. There is no reason to believe, and no one has submitted any information to the Department's rulemakings to suggest, that airport concession programs are exempt from the effects of discrimination to which other public sector business activities at airports and elsewhere are subject. Race-conscious methods continue to be a necessary part of a narrowly tailored strategy to ensure nondiscrimination in concessions.

Section 23.3 What Do the Terms Used in This Part Mean?

Most of the comment on this section concerned the issue of whether advertising firms should be included in the definition of ''concession.'' A substantial number of letters from mostly small-to-medium sized airports supported including advertising companies. One large airport opposed doing so. Three of the comments favoring advertising suggested limitations. One said that only billboards on public access roads to the terminal or other facilities for travelers should count. Another said only in-terminal ads should count. The third said that only companies ''primarily'' in the business of advertising in terminals should be viewed as concessions (as opposed, for instance, to telecommunications or internet companies whose terminal ads were tangential to their main business).

While the existing Part 23 does not explicitly address the issue, many airports have certified advertising firms as DBEs for many years. Advertising appears to be a field in which DBE firms have had some success. It is also a field in which small businesses, including ACDBEs, must often compete against very large corporations. The level playing field that Part 23 attempts to provide is of considerable importance to firms in that position.

Like management contractors and some providers of telecommunications services, advertising firms often do not have stores located on the airport. Nevertheless, firms of these kinds provide important services to members of the public who use the airport. These firms have the objective of selling products to the public, and their existence at airports provides services to the public. They have financial relationships with the airport similar to those of more traditional food and retail concessions. We do not believe it would be sound policy, or required by law, to oust advertising firms from the ACDBE program. Consequently, to avoid confusion, we have explicitly included such firms in the ''concession'' definition. We do not think it would be useful to limit their participation to a particular advertising location on the airport, such as terminals or billboards along access roads; the legal and policy situation of one such location is not readily distinguishable from others.

Consistent with the 1992 amendment to the statute, the definition of ''concession'' now specifically includes firms with management contracts or subcontracts and businesses that provide goods and services to other concessionaires. Of course, businesses of this kind must be certified as ACDBEs in order to generate ACDBE credit in this program.

The definition of an ACDBE is consistent with that of Part 26. With some exceptions, the certification provisions of Part 26 apply to ACDBEs. Some comments addressed the provision of certification standards stating that an ACDBE must be an existing business. Four large airports opposed this requirement (one suggested that a firm could be certified based on its business plan). Their main rationale was that the requirement would be a barrier to new businesses. One large airport supported the requirement. We believe that it is important to retain this requirement, in order to ensure that only genuinely eligible businesses are certified as ACDBEs. When a business is still in the process of formation, it is all the more difficult to determine whether disadvantaged individuals really own and control it. It is difficult to make a site visit to a business plan. Given the increased emphasis on preventing DBE fraud, we believe that the existing business requirement is essential. At the same time, as under Part 26, it is not appropriate to refuse to certify a business solely because it is a new business, but it must exist.

A car rental association continued to advocate the position, which it had taken in comments on previous proposed rules, that so-called ''dealers in development'' (*i.e.,* dealers participating in manufacturers' development programs that did not fully meet Part 23 ownership and control criteria, such as 51 percent ownership by disadvantaged individuals) should be certified as ACDBEs. In the preambles to its 1997 and 2000 proposals, the Department had explained at some length why we concluded that a business that did not meet generally applicable DBE ownership and control criteria should not be certified as an ACDBE. Nothing in the comments in the docket for this rulemaking has provided a persuasive reason to change the Department's position.

Concession businesses must serve the public on the airport. Airport and ACDBE trade associations, one business, and nine airports supported the consequent concept that businesses on airport property that do not primarily serve travelers should not be counted as concessions. One commenter suggested waiving this requirement for small airports in Alaska. We agree that businesses that do not primarily serve the public should not be viewed as concessions. If one or more small businesses or airports in Alaska wish to seek a waiver from this provision, they may apply under the provisions of § 23.13.

One commenter asked whether management contracts included contracts for the management of hotels on the airport. While it is not necessary to include this level of detail in the regulatory text, we see no reason to

believe that hotel management contracts would be treated differently from any other kind of management contracts. In evaluating whether a management contractor provides a commercially useful function and the amount of ACDBE credit that should be given for the contractor's work, an airport should scrutinize carefully the actual tasks performed by the ACDBE as an entity to make sure that they are consistent with the credit claimed.

One large airport suggested that the joint venture definition not require that the DBE partner perform an independent part of the work, arguing that concessions joint ventures did not operate in this way. We have become aware that some concessions joint ventures indeed do not involve an ACDBE performing an independent part of the work; some of these have been the focus of fraud investigations by the Department's Inspector General and other law enforcement organizations. If the ADCBE participant is not required to perform independently a distinct portion of the joint venture's work, it becomes very easy for a prime concessionaire seeking to circumvent ACDBE requirements by having an ACDBE ''silent partner'' on its payroll. We believe that changing this provision would adversely affect the integrity of the program. Because joint ventures have become a problematic part of the ACDBE program, the Department is drafting additional guidance on the subject, which we intend to post on the DOT DBE Web site as soon as it is available.

We also note that UCPs and airports should not certify joint ventures themselves as ACDBEs, and the definition makes this point explicit. By definition, a joint venture is an association of an ACDBE and another firm to carry out a single business enterprise. As noted in Part 26 (§ 26.73(e)), ''[a]n eligible DBE firm must be owned by individuals who are socially and economically disadvantaged * * * [A] firm that is not owned by such individuals, but instead is owned by another firm—even a DBE firm—cannot be an eligible DBE.'' Even if a joint venture is more than 51 percent owned by a ACDBE firm, therefore, the joint venture—because it is owned by other firms, not directly by disadvantaged individuals—cannot be an eligible ACDBE firm. (This same point applies to DBEs under Part 26.) We note that, given the counting rule for joint ventures in Parts 23 and 26, this fact should not make any difference in the way that ACDBE credit is counted. Credit toward DBE goals is awarded under both rules only for the distinct, clearly defined portion of the work of the joint venture performed by the DBE or ACDBE participant, regardless of the certification status of the joint venture entity. In reviewing currently certified firms (*see* § 23.31(c)), airports and UCPs should remove joint venture entities (though not certified DBE firms that participate in joint ventures) from their directories, consistent with this direction.

The other definitions are consistent with those in Part 26 and have not changed substantively from the 2000 SNPRM. They were not the source of additional comment. We have added, for administrative purposes, definitions of small, medium, large hub, and non-hub primary airports.

Section 23.5 To Whom Does This Part Apply?

This section recites that Part 23 applies to airports that have received FAA financial assistance for airport development since January 1988, when the Department's airport concessions DBE rules first went into effect. Note that, under § 23.21, not all airports covered by Part 23 are required to have an ACDBE program.

Section 23.7 How Long Do the Provisions of This Part Remain in Effect?

The Department is introducing a ''sunset'' provision into the final rule as a way of addressing the durational element of narrow tailoring. A narrowly-tailored rule is not intended to remain in effect indefinitely. Rather, the rule should be reviewed periodically to ensure that it continues to be needed and that it remains a constitutionally appropriate way of implementing its objectives. Consequently, this provision states that this rule will terminate and cease being operative in five years, unless the Department extends it. We intend, beginning four years from now, to review the rule to determine whether it should be extended, modified, or allowed to expire. Of course, the underlying DBE statute remains in place, and its requirements continue to apply regardless of the status of this regulation, absent future Congressional action.

Section 23.9 What Are the Nondiscrimination and Assurance Requirements of This Part for Recipients?

This section cross references the nondiscrimination requirements of Part 26 and provides the text of assurances that airports must include in concession agreements and management contracts in the future. The section does not require airports to revise existing contracts to include the assurance text.

Section 23.11 What Compliance and Enforcement Provisions Are Used Under This Part?

This section recites that standard FAA/DOT enforcement procedures—the same ones used for Part 26—apply to Part 23.

Section 23.13 How Does the Department Issue Guidance, Interpretations, Exemptions, and Waivers Pertaining to This Part?

This section parallels Part 26, § 26.15, concerning guidance, interpretations, exemptions and waivers. Program participants should note that guidance provided concerning existing Part 23 should not be relied upon in the future, given the many changes made in this final rule. The Department will issue new or revised guidance concerning the revised Part 23.

Section 23.21 Who Must Submit an ACDBE Program to FAA, and When?

The basic trigger for the requirement to have an ACDBE program is being a primary airport and receiving FAA financial assistance. Other categories of airports (*e.g.*, non-primary or general aviation airports) do not have to submit an ACDBE program. Airports that currently have a DBE program under the existing Part 23 must update their programs to meet the requirements of this new rule. They will do so on the same three-year staggered schedule provided for submission of ACDBE goals (*i.e.*, next January for large and medium hubs, next year for small hubs, and the following year for non-hub primary airports).

Until FAA approves revised programs, airports will continue to use their existing concessions DBE programs. Airports should review their programs immediately to ensure that they do not contain any provisions that are contrary to this part, however. For example, this part prohibits the use of set-asides. If an airport's current program provides for the use of set-asides, that provision should be deleted at once, even though the airport's revised program is not due be submitted to FAA until one to three years from now.

Section 23.23 What Administrative Provisions Must Be in a Recipient's ACDBE Program?

Section 23.25 What Measures Must Recipients Include in Their ACDBE Programs To Ensure Nondiscriminatory Participation of ACDBEs in Concessions?

Section 23.23 provides a structure for a recipient's ACDBE program that is parallel to that for Part 26 DBE programs. Indeed, where an airport must have both an ACDBE program and a DBE program, the administrative provisions can be combined to a considerable degree.

Section 23.25 requires goal-setting as provided in Subpart D of Part 26, the use of race-neutral measures by airports themselves to obtain DBE participation, and the use of race-conscious measures like concession-specific goals when race-neutral measures standing alone are not sufficient to meet overall goals. Airports are expected to include the race-neutral and, if needed, race-conscious measures they will implement in the ACDBE programs they submit to the FAA. The section notes that concession opportunities are to be sought in all areas of the concession industry, so that different kinds of businesses have the chance to participate. It is not appropriate to have a single area of concessions or a few firms so dominating ACDBE participation that others lack a realistic opportunity to help meet the overall goal.

Section 23.25(f) is a new paragraph incorporating the last clause of subsection (e)(3) of the statute. Paragraph (f) provides that an airport's ACDBE program ''must require businesses subject to ACDBE goals at the airport (except car rental companies) make good faith efforts to explore all available options to meet goals, to the maximum extent practicable, through direct ownership arrangements with DBEs.'' Both in the statute and in paragraph (f), this requirement operates in the context of the ability of airport businesses to meet ACDBE goals through the purchase of goods and services from ACDBE vendors. While meeting goals through the purchase of goods and services is authorized, it is important for ACDBE goals to encourage the participation of ACDBEs in a variety of ways. It is a healthier situation for ACDBE programs, for example, if ACDBE participation a business or airport comes not only through goods and services purchases but also through individual concessions run by ACDBEs.

The parenthetical ''except car rental companies'' reflects another provision of the statute (subsection (e)(4)(C)), which provides that car rental firms are not required to change their corporate structure to provide for direct ownership arrangements. This means, for example, that car rental companies that operate corporation-owned stores cannot be required to obtain ACDBE participation through such means as subleases or joint ventures. This limitation does not apply to non-car rental concession businesses, however. Even if a non-car rental business (*e.g.*, a news and gift shop company) normally operates corporation-owned stores, direct ownership arrangements with ACDBEs that might alter or create an exception to the firm's normal way of doing business are among the options the business must make good faith efforts to explore under this provision.

Section 23.27 What Information Does a Recipient Have To Retain and Report About Implementation of Its ACDBE Program?

Recipients must save compliance information for three years. Beginning March 1, 2006, recipients will submit a report of ACDBE participation (*see* Appendix A). The report is a modification of the Part 26 reporting form that the Department issued in June 2003, with instructions adapted for purposes of the ACDBE program.

Section 23.29 What Monitoring and Compliance Procedures Must Recipients Follow?

Ensuring that participants in the ACDBE program comply with the requirements of this rule and preventing fraudulent activities in the program are among the most important responsibilities of recipients. It is not enough merely to set goals and award concessions; airports must make sure that promised ACDBE participation really occurs after award and that participants are not able to circumvent the requirements of the program to the detriment of actual ACDBE participation. Each ACDBE program must include the monitoring and compliance measures the airport will use, including levels of effort and resources devoted to this task. For example, the program would describe the frequency of reviews of records, on-site reviews of concession workplaces, etc., to determine whether ACDBEs are actually performing the work for which credit is being claimed and that participants are not circumventing program requirements. This kind of oversight is crucial to combating ACDBE fraud, and FAA will closely scrutinize this aspect of ACDBE programs to ensure that levels of effort are sufficient.

In addition, if an airport includes additional provisions beyond what Part 23 requires (*see* § 23.77), FAA has a responsibility to review such provisions and work with airports to ensure that additional provisions do not create policy or legal problems. FAA will reject program submissions that are inconsistent with Part 26.

Subpart C—Certification of ACDBEs

Certification under Part 23 basically follows the model of Part 26, with the exception of those areas—such as size standards, discussed above—in which the Department recognizes differences in the ACDBE and DOT-assisted contracts marketplaces. Firms certified under Part 26 are eligible under Part 23 as well, provided they can control the firm with respect to the concession activities involved. Part 26 certification standards and procedures—even if not specifically referenced in Part 23—are intended to apply to the ACDBE program except where otherwise provided.

Section 23.39 mentions a number of other differences between Part 23 and Part 26 certification. These differences are self-explanatory, for the most part. The reason for not applying Part 26's special provision for Alaska Native Corporation-owned firms is that the statute requiring this provision in DOT-assisted contracts does not apply in the ACDBE context, since this context does not involve DOT-assisted contracts.

The eligibility of joint ventures has been a continuing problem under the DBE program, including both eligibility and operational issues that have called the legitimacy of joint venture arrangements into question. The Inspector General has pointed to situations in which joint ventures or similar arrangements appear to have been used as a subterfuge by firms seeking to evade or defraud the program. The rule's definition of joint ventures makes explicit that these entities should not be certified as DBEs in their own right. As noted above, the Department is planning to make available additional guidance concerning the use of joint ventures in the ACDBE program, including certification issues pertaining to joint ventures.

When the rule says that suppliers of goods and services to concessionaires are to be evaluated for certification as ACDBEs according to the provisions of this part (§ 23.39(i)), we mean that Part 23 provisions (*e.g.*, concerning personal net worth and business size) are to be used for this purpose. Firms that provide goods and services to concessionaires are not subject to the

somewhat different certification provisions of Part 26.

In certain respects, particularly with respect to personal net worth, this rule changes the eligibility criteria for ACDBEs. Consequently, airports or UCPs, are required to review the eligibility of currently certified firms. These reviews must take place within three years of the most recent certification of the firm, or a year from the rule's effective date, whichever comes later. Any firm that loses eligibility because of the new PNW requirements would be able to complete work on an existing contract or other concession agreement, with its participation counted toward ACDBE goals. Options, extensions, renewals, etc., of the firm's participation beyond the termination of the agreement in force at the time of the firm's decertification would not count as DBE participation, however.

We emphasize that Part 26 standards do apply to certifications under Part 23 for most aspects of ownership and control. For example, absentee ownership of firms raises the same control issues in a Part 23 context as it does in a Part 26 context (*see* § 26.71(j)). Also, as the definition of ''concession'' now explicitly provides, recipients should not certify holding companies as ACDBEs. Holding companies do not perform concession activities. While holding companies may play a narrow role in DBE and ACDBE firms (*see* § 26.73(e)), the holding companies themselves are not certified in this role. Recipients should pay careful attention to affiliation relationships between and among holding companies and their concession subsidiaries. It is likely that, when a concession that is owned by a holding company seeks certification, the concession is affiliated with both the holding company itself and other subsidiaries of the holding company. These relationships can have important effects on the ability of the applicant firm to meet size standards.

Recipients should also pay close attention to affiliation relationships that may arise in joint venture arrangements. If one participant in a joint venture—or other business arrangement—exerts too much control over the business decisions and operational activities of another, then there may be an affiliation relationship between the two and/or an issue of whether the second firm is sufficiently independent to be certified.

On-site reviews are a key part of the concession certification process. The Department realizes that, particularly for a concession that does not yet have a location established on an airport, it may be difficult to identify a ''job site'' at which to conduct such a review. In this case, recipients could conduct the on-site review solely at the firm's headquarters or other principal place of doing business.

At the time that this rule is being issued, not all states have approved unified certification programs (UCPs). Until a UCP is approved and in operation for a given state, individual airports in that state continue to have responsibility for certifying ACDBEs. Once a UCP is approved and in operation in a state, certification of ACDBEs becomes the responsibility of the UCP, rather than of individual airports.

Section 23.41 What Is the Basic Overall Goal Requirement for Recipients?

Having overall goals is a basic requirement of airports' ACDBE programs, without which airports are not eligible for FAA financial assistance. Overall goals cover periods of three years, rather than one year as in the case of Part 26, in recognition of the longer time frames involved in concession relationships between businesses and airports. As discussed above, recipients are required to have two separate overall goals: One for car rentals, and one for all concessions other than car rentals.

There is an important exception to this general rule, designed to reduce administrative burdens on airports that have little or no concessions activity. If an airport has less than $200,000 in concessions revenue (averaged over three years), in either the car rental or non-car rental category, then the airport does not have to submit an overall goal in that category. The Department believes that requiring airports that have little or no concession revenues to pursue the overall-goal setting process is likely to be unproductive, if not altogether futile. At the same time, this provision focuses ACDBE goal-setting efforts on those airports where these efforts are most likely to result in meaningful ACDBE participation. Airports that did not have to set an overall goal for one or both categories would still be required to pursue race-neutral means to provide opportunities for ACDBEs in their concessions activities.

This determination is made separately for each of the two overall goal categories. For example, suppose Airport X has had non-car rental concession revenues of $150,000, $200,000, and $175,000 in 2002, 2003, and 2004, respectively. Under this rule, it would not have to submit a non-car rental overall goal in 2005, because the average of its non-car rental revenues over the preceding three years was less than $200,000. On the other hand, if Airport X's average car rental concession revenues were $300,000 for the same period, it would have to submit an overall goal for car rentals in 2005.

Based on recent FAA data, virtually all larger airports (large and medium hubs) would have to submit both overall goals. These airports account for the vast majority of all concession revenues in both the car rental and non-car rental categories. Among intermediate-size airports (small hubs), all but five of 69 would have to submit car rental goals, and 50 of the 69 would have to submit non-car rental goals. Among 390 small airports (non-hubs), 309 would not have to submit car rental goals and 233 would not have to submit non-car rental goals. Many of these small airports (165 with respect to car rentals, and 92 with respect to non-car rental concessions) report no concession revenues in those categories.

As under Part 26, goals must be for DBEs in general, as opposed to group-specific goals for one or another subgroup of DBEs. Also as under Part 26, airports can apply for a program waiver of this provision if, based on evidence (*e.g.*, from a disparity study) showing underutilization only of certain groups, they believe that use of group-specific goals is necessary to achieve the objectives of a narrowly-tailored program.

Section 23.43 What Are the Consultation Requirements in the Development of Recipients' Overall Goals?

Section 23.45 What Are the Requirements for Submitting Overall Goal Information to the FAA?

The process of setting overall goals includes consultation with stakeholders in the ACDBE program. A public comment period, as such, is not required, however. In the Department's experience with Part 26's requirement for a comment period, few comments have been received by most recipients. We do not believe that such a requirement would be productive in the concessions context, which is even more specialized and less likely to be the subject of meaningful comment from anyone except stakeholders, who are covered by the consultation requirement.

The rule requires recipients to submit overall goals every three years. In order to give smaller airports more time to work with the goal-setting process, we are establishing the following schedule for submitting new overall goals and

new ACDBE programs: January 2006 for large and medium hubs, October 2006 for small hubs, and the October 2007 for smaller primary airports. Revised goals are then due October 2008, 2009, and 2010, respectively, and every three years thereafter. If an airport changes status (*e.g.*, a small hub increases in size to become a medium hub), it will stay on the original schedule. This will also mean that FAA will not have to focus on reviewing goals from all airports in any one year, making its review process more efficient. In the time before an airport has its first new goals under this rule approved by FAA, it must continue using its existing goals.

Some airport commenters asked for additional flexibility in terms of submission dates for goals (*e.g.*, with respect to airports' fiscal years, which differ from the Federal fiscal year in some cases). In our view, it is not as necessary to tie the submission of concessions goals to fiscal years as it may be for Part 26 goals, since the latter are more dependent on contracting under a particular fiscal year's Federal funds. However, if an airport has difficulty with the standard goal submission dates in the final rule, it can ask FAA for a program waiver to establish a different date for its submissions.

Section 23.47 What Is the Base for a Recipient's Goal for Concessions Other Than Car Rentals?

Section 23.49 What Is the Base for a Recipient's Goal for Car Rentals?

Section 23. 47 concerns the base for the first of the two overall goals that airports must set. The base for this goal includes the gross receipts of all concessions at the airport, with three important exceptions. First, as the title of the section indicates, the receipts of car rental concessions are not counted in the base for this goal. Secondly, companies' receipts that are not generated from concession activities do not become part of the base. In the example provided in the regulatory text, the receipts generated by a restaurant in the terminal are added to the base, while the receipts of the same food service company's flight catering activities are not.

The third exception is statutory, required by the plain language of 49 U.S.C. 47107(e)(2). Under this statutory provision, the dollar amount of the management contract or subcontract with an ACDBE and the gross receipts of a business activity to which such a management contract or subcontract pertains are added to the base for this goal, while the dollar amount of the management contract or subcontract with a non-ACDBE firm and the gross receipts of business activities to which such a management or subcontract pertains are not.

Section 23.49 concerns the second of the two goals, that for car rentals. It is straightforward: the base for this goal includes the total gross receipts of car rental operations at your airport, and nothing else. In setting car rental goals, airports may take into account the way in which car rental participation is counted, so that goals remain proportional to the type of participation submitted by the car rental companies.

Section 23.51 How Are a Recipient's Overall Goals Expressed and Calculated?

This section concerns the very important subject of airports' calculation of overall goals. It applies to both the overall goal for car rentals and the overall goal for other concession activities. It is designed to parallel the goal-setting mechanism of Part 26, which has withstood a number of legal challenges.

We recognize that, particularly for some large airports, it is possible that the market area for many types of concessions could be nationwide in scope. Even some of the smaller airports may have national or regional market areas in some or all of their concession categories. As the Department develops goal-setting guidance for airports, we will explore, in cooperation with the Census Bureau and airports, whether it would be possible to establish national availability estimates in particular categories. If this approach proves feasible, it would allow the Department to go ahead and set availability estimates in a number of industry categories, which could allow concerned airports to simply use those estimates with whatever weights are appropriate for each airport.

We are aware of the concern some airport commenters expressed about the utility of existing data to set goals for concessions. In this context, it is important to remember that what the rules call for is the best available data. The rules do not demand perfect data. It is likely true that Census data and the NAICS codes do not specify what firms are willing to work in the airport context. This, of course, is also true in the DOT-assisted contracting context. For example, the NAICS codes do not tell us which florists are willing to be florists at airports. By the same token, the codes do not indicate which heavy construction firms are willing to perform heavy construction at airports. Despite this, we still use the NAICS codes to provide an indication of availability in the construction context, and we can use the same codes in the florist context as well.

Looking at the Census Bureau's County Business Patterns database, it appears that that the primary codes most likely to be useful to airports will probably be 44 (Retail Trade) and 72 (Accommodation and food services). Both of these categories break down into 6 digit codes in most (even small) metropolitan areas and counties. For instance, 44 includes tape, CD and pre-recorded music stores (451220), florists (453110), and gift, novelty and souvenir stores (453220). NAICS code 72 includes, among other things, cafeterias (722212), full-service restaurants (722110) and drinking places (alcoholic beverages) (722410).

We would point out that even some specialized types of business that operate as concessions have NAICS codes of their own (*e.g.*, 812113 for nail salons and 454210 for vending machine operators). Even shoeshine kiosks, which do not have a specific NAICS code, can be included a broader category of ''other personal services.'' The fact of the matter is that these categories are probably more specific than the categories available for construction and other activities frequently used under Part 26. We see no reason that the Census databases and NAICS codes cannot be used for goal-setting under Part 23.

One potential problem that we would ask airports and UCPs to address is the potential under-representation of ACDBEs in directories. That is, program participants have expressed concern that, because concession opportunities occur less frequently than Part 26 contracting opportunities, and because certification offices may have been more focused on Part 26 contracting, fewer ACDBEs may appear on some certification lists. This could lead, in turn, to Step 1 relative availability calculations being unrealistically low. The Department recommends that airports and UCPs conduct outreach activities to encourage potential ACDBEs to seek certification. Airports could also augment their counts of available DBEs with firms in local MBE/WBE directories and Part 26 DBE directories (*i.e.*, with respect to firms on those lists in concession-relevant NAICS codes), or trade association lists. Moreover, to the extent they have evidence of ACDBE under-representation in directories, airports could use this evidence as part of a Step 2 adjustment.

The regulatory text does not use the term ''bidders list'' that Part 26 uses.

Rather, Part 23 uses the term ''active participants list.'' This is because ''bidding,'' in the sense the term is used in DOT-assisted contracting, is often not used in the concessions context. In any case, the idea is to identify interested firms and build a list from that source. It is likely that many airports may have a strong sense of those firms that are likely to be interested in seeking concession opportunities. Their information comes from a number of sources, such as past experience with firms that have run concessions or sought concession contracts or leases, knowledge about the universe of firms in certain areas of retail and food and beverage service that tend to be interested in participating in airport concessions, and attendance lists from informational and outreach meetings about upcoming concessions opportunities. While these sources do not represent bidders lists in the traditional sense, they appear feasible to develop and can provide a good source of availability data.

When the rule says that an airport can use the goal of another recipient as the basis for Step 1 of its goal-setting exercise, it should be noted that this concept is not necessarily limited to other airports in the same geographical area. For instance, suppose a large airport on the East Coast and a large airport on the West Coast both have a national market area for certain types of concessions. With appropriate adjustments for differences in local market areas and the airports' concession programs, these two airports might be able to use the same analysis in setting their goals.

Section 23.53 How Do Car Rental Companies Count ACDBE Participation Toward Their Goals?

Section 23.55 How Do Recipients Count ACDBE Participation Toward Goals for Items Other Than Car Rentals?

Section 23.53 addresses the issue of counting ACDBE participation for car rental companies, which is discussed at length under ''major issues'' above. Section 23.55 is the counting provision for other types of concessions, and it generally follows the counting provisions of Part 26. For example, when an ACDBE enters into a sub-concession agreement or lease with a non-ACDBE, the part of the work performed by the non-ACDBE is not counted toward goals. One exception to this pattern concerns regular dealers. Under Part 26, recipients may count toward goals only 60 percent of the value of goods purchased from DBE regular dealers. Under this section, however, recipients may count 100 percent of the value of items purchases from an ACDBE regular dealer. This difference is based on the greater role that goods and services purchases play in the concessions context and a lesser concern that overuse of goods and services purchases will distort opportunities for other contractors. In response to a question from a commenter, goods and services purchased from ACDBEs by management contractors would also count toward goals, assuming that the goods and services are used for the management contractor's operations at the airport. This section also includes a few provisions peculiar to the concessions context, such as a provision directing that so-called ''build out'' costs of a concession not be counted toward ACDBE goals.

We wish to emphasize the provision of this section concerning counting the participation of ACDBE participants in joint ventures. Credit may be counted only for the independent, distinct portion of the work performed by the ACDBE with its own forces.

It is very important to avoid overcounting the value of the ACDBE's participation. For example, suppose a joint venture asserts that the portion of its work performed by the ACDBE participant involves the performance of professional or back office services. The joint venture claims credit amounting to 30 percent of its gross receipts for this function. If the business sought similar legal, accounting, payroll, personnel administration, etc. services from an outside firm, would the fees paid the outside firm amount to around 30 percent of its gross receipts? If not, then it is likely the joint venture is overvaluing the contribution of the ACDBE participant, and the airport should not count all the DBE credit requested.

As a policy matter, we believe it is preferable for ACDBE joint venture participants to actually have a defined role in the revenue-generating activities of the business (*e.g.*, the joint venture runs four food service locations in the airport, and the ACDBE is directly responsible for one of them). There is a greater likelihood of confusion, counting, and other administrative difficulties, as well as of abuse, when ACDBE participation is claimed for joint ventures in which the ACDBE participant has only a vaguely defined role in the entity as a whole.

Section 23.57 What Happens if a Recipient Falls Short of Meeting Its Overall Goals?

Section 23.59 What Is the Role of the Statutory 10 Percent Goal in the ACDBE Program?

Section 23.61 Can Recipients Use Quotas or Set-Asides as Part of Their ACDBE Programs?

These three sections emphasize that recipients are not penalized for failing to meet their overall goals (*i.e.*, failure to ''hit the number''), that the statutory 10 percent goal is an aspirational goal that does not play an operational role in airports' ACDBE programs, and that the use of quotas and set-asides is forbidden. All three provisions are taken from Part 26 (except that the prohibition on the use of set-asides has been strengthened), where they have been part of the narrowly tailored approach to the DBE program that the Federal courts have approved.

Section 23.71 Does a Recipient Have To Change Existing Concession Agreements?

This section emphasizes that the changes in Part 23 do not require airports to change or abrogate existing concession agreements with private businesses. A few commenters had asked for reassurance on this point. However, airports must take advantage of opportunities that arise at the time of the renewal, modification, or extension of existing concession agreements to obtain a modified amount of ACDBE participation in the renewed or amended agreement.

Section 23.73 What Requirements Apply to Privately Owned or Leased Terminal Buildings?

This provision is virtually identical to the version in the 1997 and 2000 proposals. We did not receive any comments on it.

Section 23.75 Can Recipients Enter Into Long-Term, Exclusive Agreements With Concessionaires?

This provision continues the long-standing requirement that long-term, exclusive leases are prohibited, except where the airport obtains FAA approval. The section includes a procedure for obtaining such approval, including a list of information FAA needs before it can grant this approval. ACDBE participation is a key part of this information. Comments on the various proposed versions of this section generally favored requiring opportunities for DBE participation as part of a long-term, exclusive lease arrangement. Consistent with the

Department's prior proposals, only FAA approval under this section will be needed for long-term exclusive leases. DOT approval through an exemption process will no longer be required.

One airport suggested making 10 years rather than 5 years the criterion for a long-term exclusive lease subject to this section. We have not adopted this comment because doing so would reduce the degree of oversight FAA can exercise under the rule to make sure that long-term concession agreements include adequate ACDBE participation.

FAA is currently working on revised guidance concerning long-term exclusive lease issues. FAA will issue this guidance, on the DOT DBE web site among other places, as soon as it is ready.

Section 23.77 Does This Part Preempt Local Requirements?

This section restates the statutory provision that the regulation does not automatically preempt all local requirements. However, local laws, regulations, and policies may not directly conflict with this regulation, and airports would have to take steps to avoid situations where a local requirement conflicts with a Federal requirement. It should be noted also that this provision refers to substantive DBE and similar requirements of local entities, and it in no way avoids the need to comply with Federal requirements for confidentiality (*e.g.,* with respect to information submitted in response to PNW requirements).

A car rental trade association asked the Department to prohibit airports from having requirements involving such measures as bid preferences, preferences for the allocation of space, or good faith efforts pertaining to direct ownership arrangements. We have not adopted specific prohibitions, but have instead specified what is required of airports. Airports will be expected to comply with these Federal requirements and not impose any conflicting requirements.

The Department is concerned, however, that additional or more stringent local or state requirements that go beyond the provisions of Part 23 could implicate the Federal ACDBE program in matters of questionable constitutionality. We are adding a provision directing airports to attach copies of any provisions additional to those needed to carry out Part 23 requirements to their ACDBE program submissions. FAA will review these provisions, and FAA will not approve an ACDBE program if there are ''go-beyond'' provisions that are inconsistent with this rule. In any case, even where FAA has reviewed a state or local provision and determined that it does not conflict with Part 23, there should be a clear firewall between the ACDBE program and such additional state or local requirements. There must be a separate program document for them, and the Federal and state/local additional programs, respectively, must be administered in a clearly distinct manner.

Section 23.79 Does This Part Permit Recipients To Use Local Geographic Preferences?

The 2000 SNPRM proposed that, in some cases, airports could use local geographic preferences in selecting concessionaires if they obtained a program waiver from the FAA. On further reflection, the Department has decided that the disadvantages of local preferences that we noted in the SNPRM, such as the elimination of the benefits of wider competition for business opportunities and the possible loss of opportunities for DBEs who are not located in the locality served by an airport, are important enough to warrant prohibiting local preferences altogether. The ACDBE program is a national program, and at least some concession markets are national markets. In this context, a local preference program is out of place. It is also out of character with a narrowly tailored program, in that it would limit selections of ACDBEs to something less than their actual availability in the marketplace. Among commenters, one airport favored local preferences and a car rental trade association opposed them; there was not widespread interest or support for retaining local preferences, in any case.

Regulatory Analyses and Notices

This rule is nonsignificant for purposes of Executive Order 12866 and the Department of Transportation's Regulatory Policies and Procedures. While the rule is of considerable interest to the airport community and businesses that work on airports, it is essentially an update of a long standing, continuing program that does not break new policy ground in most areas. It does not impose significant new costs on airports or businesses. The rule does not have Federalism impacts sufficient to warrant the preparation of a Federalism Assessment.

The Department certifies that this rule will not have a significant economic effect on a substantial number of small entities. The rule clearly affects small entities: ACDBEs are, by definition, small businesses. However, the economic effect of the rule on these small entities is not likely to be significant. Until the Department takes action based on the accompanying SNPRM, there are no changes from the current rule with respect to business size standards. The personal net worth standard may affect some existing ACDBE owners, but these effects are significantly mitigated by ''grandfathering'' of existing contracts and, more importantly, by the exclusion of documented needs to hold assets to support business growth. In other respects, compared to the existing rule, the new rule is not expected to have noticeable incremental economic effects on small businesses.

A number of provisions of this rule involve information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA). With some modifications, these information collection requirements of the rule continue existing Part 23 requirements, major elements of the ACDBE program that airports and concessionaires have been implementing since at least 1992. Overall, the Department believes the overall burden of these requirements will remain the same or shrink. These requirements are the following:

- Firms applying for DBE certification must provide information (including PNW data) to recipients/uniform certification programs (UCPs) to allow them to make eligibility decisions. Currently certified firms must provide information to recipients/UCPs to allow them to review the firms' continuing eligibility.
- When firms bid on concession opportunities that have concession-specific goals, they must document their ACDBE participation and/or the good faith efforts they have made to meet the contract goals.
- Recipients must calculate overall goals and transmit them to the FAA for approval. There are two sets of overall goals: One for car rentals and one for non-car rental concessions. Many smaller airports will not have to submit overall goals.
- Recipients must have a revised ACDBE program approved by the FAA. This is a one-time requirement.
- Recipients must retain ACDBE data for three years and submit an annual report to the FAA.

The Department estimates that these program elements will result in a total of approximately 41,000 annual burden hours to recipients and contractors, plus an additional 44,000 burden hours in the first year for the revision and submission of ACDBE programs.

Both as the result of comments and what the Department learns as it implements the ACDBE program under Part 23, it is possible for the

Department's information needs and the way we meet them to change. Sometimes the way we collect information can be changed informally (*e.g.,* by guidance telling recipients they need not repeat information that does not change significantly from year to year). In other circumstances, a technical amendment to the regulation may be needed. In any case, the Department will remain sensitive to situations in which modifying information collection requirements becomes appropriate.

As required by the PRA, the Department has submitted an information collection approval request to OMB. You should direct comments to the Office of Information and Regulatory Affairs (OIRA), OMB, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Transportation. Because mail service to OIRA is very difficult because of security measures, it is preferable for interested persons to fax comments to OMB. The fax number for this purpose is 202–395–6974. You may also transmit copies of your comments to the Department's docket for this rulemaking.

The Department considers comments by the public on information collections for several purposes:

- Evaluating the necessity of information collections for the proper performance of the Department's functions, including whether the information has practical utility.
- Evaluating the accuracy of the Department's estimate of the burden of the information collections, including the validity of the methods and assumptions used.
- Enhancing the quality, usefulness, and clarity of the information to be collected.
- Minimizing the burden of the collection of information on respondents, including through the use of electronic and other methods.

The Department points out that all the information collection elements discussed in this section of the preamble have not only been part of the Department's ACDBE program for many years, but have also been the subject of extensive public comment following the 1993, 1997, and 2000 proposed rules on this subject. Among the many comments received in response to these notices were a number addressing administrative burden issues surrounding these program elements. In this final rule, the Department has responded to these comments.

OMB is required to make a decision concerning information collections within 30–60 days of the publication of this notice. Therefore, for best effect, comments should be received by DOT/OMB within 30 days of publication. Following receipt of OMB approval, the Department will publish a **Federal Register** notice containing the applicable OMB approval numbers.

There are a number of other statutes and Executive Orders that apply to the rulemaking process that the Department considers in all rulemakings. However, none of them are relevant to this rule. These include the Unfunded Mandates Reform Act (which does not apply to nondiscrimination/civil rights requirements), the National Environmental Policy Act, E.O. 12630 (concerning property rights), E.O. 12988 (concerning civil justice reform), and E.O. 13045 (protection of children from environmental risks).

Issued this 8th day of March, 2005, at Washington, DC.

Norman Y. Mineta,

Secretary of Transportation.

■ For the reasons stated in the preamble, the Department takes the following actions:

■ 1. Revise part 23 to read as follows:

PART 23—PARTICIPATION OF DISADVANTAGED BUSINESS ENTERPRISE IN AIRPORT CONCESSIONS

Subpart A—General

Sec.
23.1 What are the objectives of this part?
23.3 What do the terms used in this part mean?
23.5 To whom does this part apply?
23.7 How long do the provisions of this part remain in effect?
23.9 What are the nondiscrimination and assurance requirements of this part for recipients?
23.11 What compliance and enforcement provisions are used under this part?
23.13 How does the Department issue guidance, interpretations, exemptions, and waivers pertaining to this part?

Subpart B—ACDBE programs

23.21 Who must submit an ACDBE program to FAA, and when?
23.23 What administrative provisions must be in a recipient's ACDBE program?
23.25 What measures must recipients include in their ACDBE programs to ensure nondiscriminatory participation of ACDBEs in concessions?
23.27 What information does a recipient have to retain and report about implementation of its ACDBE program?
23.29 What monitoring and compliance procedures must recipients follow?

Subpart C—Certification of ACDBEs

23.31 What certification standards and procedures do recipients use to certify ACDBEs?
23.33 What size standards do recipients use to determine the eligibility of ACDBEs?
23.35 What is the personal net worth standard for disadvantaged owners of ACDBEs?
23.37 Are firms certified under 49 CFR part 26 eligible to participate as ACDBEs?
23.39 What other certification requirements apply in the case of ACDBEs?

Subpart D—Goals, Good Faith Efforts, and Counting

23.41 What is the basic overall goal requirement for recipients?
23.43 What are the consultation requirements in the development of recipients' overall goals?
23.45 What are the requirements for submitting overall goal information to the FAA?
23.47 What is the base for a recipient's goals for concessions other than car rentals?
23.49 What is the base for a recipient's goals for car rentals?
23.51 How are a recipient's overall goals expressed and calculated?
23.53 How do car rental companies count ACDBE participation toward their goals?
23.55 How do recipients count ACDBE participation toward goals for items other than car rentals?
23.57 What happens if a recipient falls short of meeting its overall goals?
23.59 What is the role of the statutory 10 percent goal in the ACDBE program?
23.61 Can recipients use quotas or set-asides as part of their their ACDBE programs?

Subpart E—Other Provisions

23.71 Does a recipient have to change existing concession agreements?
23.73 What requirements apply to privately-owned or leased terminal buildings?
23.75 Can recipients enter into long-term, exclusive agreements with concessionaires?
23.77 Does this part preempt local requirements?
23.79 Does this part permit recipients to use local geographic preferences?
Appendix A to Part 23—Uniform Report of ACDBE Participation

Authority: 49 U.S.C. 47107; 42 U.S.C. 2000d; 49 U.S.C. 322; Executive Order 12138.

Subpart A—General

§ 23.1 What are the objectives of this part?

This part seeks to achieve several objectives:

(a) To ensure nondiscrimination in the award and administration of opportunities for concessions by airports receiving DOT financial assistance;

(b) To create a level playing field on which ACDBEs can compete fairly for opportunities for concessions;

(c) To ensure that the Department's ACDBE program is narrowly tailored in accordance with applicable law;

(d) To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as ACDBEs;

(e) To help remove barriers to the participation of ACDBEs in opportunities for concessions at airports receiving DOT financial assistance; and

(f) To provide appropriate flexibility to airports receiving DOT financial assistance in establishing and providing opportunities for ACDBEs.

§ 23.3 What do the terms used in this part mean?

Administrator means the Administrator of the Federal Aviation Administration (FAA).

Affiliation has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121, except that the provisions of SBA regulations concerning affiliation in the context of joint ventures (13 CFR § 121.103(f)) do not apply to this part.

(1) Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:

(i) One concern controls or has the power to control the other; or

(ii) A third party or parties controls or has the power to control both; or

(iii) An identity of interest between or among parties exists such that affiliation may be found.

(2) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the ACDBE program.

Airport Concession Disadvantaged Business Enterprise (ACDBE) means a concession that is a for-profit small business concern —

(1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and

(2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

Alaska Native Corporation (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*)

Car dealership means an establishment primarily engaged in the retail sale of new and/or used automobiles. Car dealerships frequently maintain repair departments and carry stocks of replacement parts, tires, batteries, and automotive accessories. Such establishments also frequently sell pickup trucks and vans at retail. In the standard industrial classification system, car dealerships are categorized in NAICS code 441110.

Concession means one or more of the types of for-profit businesses listed in paragraph (1) or (2) of this definition:

(1) A business, located on an airport subject to this part, that is engaged in the sale of consumer goods or services to the public under an agreement with the recipient, another concessionaire, or the owner or lessee of a terminal, if other than the recipient.

(2) A business conducting one or more of the following covered activities, even if it does not maintain an office, store, or other business location on an airport subject to this part, as long as the activities take place on the airport: Management contracts and subcontracts, a web-based or other electronic business in a terminal or which passengers can access at the terminal, an advertising business that provides advertising displays or messages to the public on the airport, or a business that provides goods and services to concessionaires.

Example to paragraph (2): A supplier of goods or a management contractor maintains its office or primary place of business off the airport. However the supplier provides goods to a retail establishment in the airport; or the management contractor operates the parking facility on the airport. These businesses are considered concessions for purposes of this part.

(3) For purposes of this subpart, a business is not considered to be ''located on the airport'' solely because it picks up and/or delivers customers under a permit, license, or other agreement. For example, providers of taxi, limousine, car rental, or hotel services are not considered to be located on the airport just because they send shuttles onto airport grounds to pick up passengers or drop them off. A business is considered to be ''located on the airport,'' however, if it has an on-airport facility. Such facilities include in the case of a taxi operator, a dispatcher; in the case of a limousine, a booth selling tickets to the public; in the case of a car rental company, a counter at which its services are sold to the public or a ready return facility; and in the case of a hotel operator, a hotel located anywhere on airport property.

(4) Any business meeting the definition of concession is covered by this subpart, regardless of the name given to the agreement with the recipient, concessionaire, or airport terminal owner or lessee. A concession may be operated under various types of agreements, including but not limited to the following:

(i) Leases.

(ii) Subleases.

(iii) Permits.

(iv) Contracts or subcontracts.

(v) Other instruments or arrangements.

(5) The conduct of an aeronautical activity is not considered a concession for purposes of this subpart. Aeronautical activities include scheduled and non-scheduled air carriers, air taxis, air charters, and air couriers, in their normal passenger or freight carrying capacities; fixed base operators; flight schools; recreational service providers (*e.g.,* sky-diving, parachute-jumping, flying guides); and air tour services.

(6) Other examples of entities that do not meet the definition of a concession include flight kitchens and in-flight caterers servicing air carriers, government agencies, industrial plants, farm leases, individuals leasing hangar space, custodial and security contracts, telephone and electric service to the airport facility, holding companies, and skycap services under contract with an air carrier or airport.

Concessionaire means a firm that owns and controls a concession or a portion of a concession.

Department (DOT) means the U.S. Department of Transportation, including the Office of the Secretary and the Federal Aviation Administration (FAA).

Direct ownership arrangement means a joint venture, partnership, sublease, licensee, franchise, or other arrangement in which a firm owns and controls a concession.

Good faith efforts means efforts to achieve an ACDBE goal or other requirement of this part that, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to meet the program requirement.

Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, father-in-law, brother-in-law, sister-in-law, or registered domestic partner.

Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is

recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of ''tribally-owned concern'' in this section.

Joint venture means an association of an ACDBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the ACDBE is responsible for a distinct, clearly defined portion of the work of the contract and whose shares in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest. Joint venture entities are not certified as ACDBEs.

Large hub primary airport means a commercial service airport that has a number of passenger boardings equal to at least one percent of all passenger boardings in the United States.

Management contract or subcontract means an agreement with a recipient or another management contractor under which a firm directs or operates one or more business activities, the assets of which are owned, leased, or otherwise controlled by the recipient. The managing agent generally receives, as compensation, a flat fee or a percentage of the gross receipts or profit from the business activity. For purposes of this subpart, the business activity operated or directed by the managing agent must be other than an aeronautical activity, be located at an airport subject to this subpart, and be engaged in the sale of consumer goods or provision of services to the public.

Material amendment means a significant change to the basic rights or obligations of the parties to a concession agreement. Examples of material amendments include an extension to the term not provided for in the original agreement or a substantial increase in the scope of the concession privilege. Examples of nonmaterial amendments include a change in the name of the concessionaire or a change to the payment due dates.

Medium hub primary airport means a commercial service airport that has a number of passenger boardings equal to at least 0.25 percent of all passenger boardings in the United States but less than one percent of such passenger boardings.

Native Hawaiian means any individual whose ancestors were natives, prior to 1778, of the area that now comprises the State of Hawaii.

Native Hawaiian Organization means any community service organization serving Native Hawaiians in the State of Hawaii that is a not-for-profit organization chartered by the State of Hawaii, and is controlled by Native Hawaiians

Noncompliance means that a recipient has not correctly implemented the requirements of this part.

Nonhub primary airport means a commercial service airport that has more than 10,000 passenger boardings each year but less than 0.05 percent of all passenger boardings in the United States.

Part 26 means 49 CFR part 26, the Department of Transportation's disadvantaged business enterprise regulation for DOT-assisted contracts.

Personal net worth means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include the following: The individual's ownership interest in an ACDBE firm or a firm that is applying for ACDBE certification; the individual's equity in his or her primary place of residence; and other assets that the individual can document are necessary to obtain financing or a franchise agreement for the initiation or expansion of his or her ACDBE firm (or have in fact been encumbered to support existing financing for the individual's ACDBE business), to a maximum of $3 million. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

Primary airport means a commercial service airport that the Secretary determines to have more than 10,000 passengers enplaned annually.

Primary industry classification means the North American Industrial Classification System (NAICS) code designation that best describes the primary business of a firm. The NAICS Manual is available through the National Technical Information Service (NTIS) of the U.S. Department of Commerce (Springfield, VA, 22261). NTIS also makes materials available through its Web site (*http://www.ntis.gov/naics*).

Primary recipient means a recipient to which DOT financial assistance is extended through the programs of the FAA and which passes some or all of it on to another recipient.

Principal place of business means the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for ACDBE program purposes.

Race-conscious means a measure or program that is focused specifically on assisting only ACDBEs, including women-owned ACDBEs. For the purposes of this part, race-conscious measures include gender-conscious measures.

Race-neutral means a measure or program that is, or can be, used to assist all small businesses, without making distinctions or classifications on the basis of race or gender.

Secretary means the Secretary of Transportation or his/her designee.

Set-aside means a contracting practice restricting eligibility for the competitive award of a contract solely to ACDBE firms.

Small Business Administration or *SBA* means the United States Small Business Administration.

Small business concern means a for-profit business that does not exceed the size standards of § 23.23 of this part.

Small hub airport means a publicly owned commercial service airport that has a number of passenger boardings equal to at least 0.05 percent of all passenger boardings in the United States but less than 0.25 percent of such passenger boardings.

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is—

(1) Any individual determined by a recipient to be a socially and economically disadvantaged individual on a case-by-case basis.

(2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

(i) ''Black Americans,'' which includes persons having origins in any of the Black racial groups of Africa;

(ii) ''Hispanic Americans,'' which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(iii) ''Native Americans,'' which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

(iv) ''Asian-Pacific Americans,'' which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands,

Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;

(v) ''Subcontinent Asian Americans,'' which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

(vi) Women;

(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

Recipient means any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA.

Tribally-owned concern means any concern at least 51 percent owned by an Indian tribe as defined in this section.

You refers to a recipient, unless a statement in the text of this part or the context requires otherwise (*i.e.*, ''You must do XYZ'' means that recipients must do XYZ).

§ 23.5 To whom does this part apply?

If you are a recipient that has received a grant for airport development at any time after January 1988 that was authorized under Title 49 of the United States Code, this part applies to you.

§ 23.7 How long do the provisions of this part remain in effect?

Unless extended by the Department, the provisions of this rule will terminate and become inoperative on April 21, 2010.

§ 23.9 What are the nondiscrimination and assurance requirements of this part for recipients?

(a) As a recipient, you must meet the non-discrimination requirements provided in part 26, § 26.7 with respect to the award and performance of any concession agreement, management contract or subcontract, purchase or lease agreement, or other agreement covered by this subpart.

(b) You must also take all necessary and reasonable steps to ensure nondiscrimination in the award and administration of contracts and agreements covered by this part.

(c) You must include the following assurances in all concession agreements and management contracts you execute with any firm after April 21, 2005:

(1) ''This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR part 23.

(2) ''The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR part 23, that it enters and cause those businesses to similarly include the statements in further agreements.''

§ 23.11 What compliance and enforcement provisions are used under this part?

The compliance and enforcement provisions of part 26 (§§ 26.101 and 26.105 through 26.107) apply to this part in the same way that they apply to FAA recipients and programs under part 26.

§ 23.13 How does the Department issue guidance, interpretations, exemptions, and waivers pertaining to this part?

(a) Only guidance and interpretations (including interpretations set forth in certification appeal decisions) consistent with this part 23 and issued after April 21, 2005 have definitive, binding effect in implementing the provisions of this part and constitute the official position of the Department of Transportation.

(b) Written interpretations and guidance are valid and binding, and constitute the official position of the Department of Transportation, only if they are issued over the signature of the Secretary of Transportation or if they contain the following statement:

The General Counsel of the Department of Transportation has reviewed this document and approved it as consistent with the language and intent of 49 CFR part 23.

(c) You may apply for an exemption from any provision of this part. To apply, you must request the exemption in writing from the Office of the Secretary of Transportation or the FAA. The Secretary will grant the request only if it documents special or exceptional circumstances, not likely to be generally applicable, and not contemplated in connection with the rulemaking that established this part, that make your compliance with a specific provision of this part impractical. You must agree to take any steps that the Department specifies to comply with the intent of the provision from which an exemption is granted. The Secretary will issue a written response to all exemption requests.

(d) You can apply for a waiver of any provision of subpart B or D of this part including, but not limited to, any provisions regarding administrative requirements, overall goals, contract goals or good faith efforts. Program waivers are for the purpose of authorizing you to operate an ACDBE program that achieves the objectives of this part by means that may differ from one or more of the requirements of subpart B or D of this part. To receive a program waiver, you must follow these procedures:

(1) You must apply through the FAA. The application must include a specific program proposal and address how you will meet the criteria of paragraph (d)(2) of this section. Before submitting your application, you must have had public participation in developing your proposal, including consultation with the ACDBE community and at least one public hearing. Your application must include a summary of the public participation process and the information gathered through it.

(2) Your application must show that—

(i) There is a reasonable basis to conclude that you could achieve a level of ACDBE participation consistent with the objectives of this part using different or innovative means other than those that are provided in subpart B or D of this part;

(ii) Conditions at your airport are appropriate for implementing the proposal;

(iii) Your proposal would prevent discrimination against any individual or group in access to concession opportunities or other benefits of the program; and

(iv) Your proposal is consistent with applicable law and FAA program requirements.

(3) The FAA Administrator has the authority to approve your application. If the Administrator grants your application, you may administer your ACDBE program as provided in your proposal, subject to the following conditions:

(i) ACDBE eligibility is determined as provided in subpart C of this part, and ACDBE participation is counted as provided in §§ 23.53 through 23.55.

(ii) Your level of ACDBE participation continues to be consistent with the objectives of this part;

(iii) There is a reasonable limitation on the duration of the your modified program; and

(iv) Any other conditions the Administrator makes on the grant of the waiver.

(4) The Administrator may end a program waiver at any time and require you to comply with this part's provisions. The Administrator may also extend the waiver, if he or she determines that all requirements of this section continue to be met. Any such extension shall be for no longer than

period originally set for the duration of the program waiver.

Subpart B—ACDBE Programs

§ 23.21 Who must submit an ACDBE program to FAA, and when?

(a) Except as provided in paragraph (e) of this section, if you are a primary airport that has or was required to have a concessions DBE program prior to April 21, 2005, you must submit a revisesd ACDBE program meeting the requirements of this part to the appropriate FAA regional office for approval.

(1) You must submit this revised program on the same schedule provided for your first submission of overall goals in § 23.45(a) of this part.

(2) Timely submission and FAA approval of your revised ACDBE program is a condition of eligibility for FAA financial assistance.

(3) Until your new ACDBE program is submitted and approved, you must continue to implement your concessions DBE program that was in effect before the effective date of this amendment to part 23, except with respect to any provision that is contrary to this part.

(b) If you are a primary airport that does not now have a DBE concessions program, and you apply for a grant of FAA funds for airport planning and development under 49 U.S.C. 47107 *et seq.*, you must submit an ACDBE program to the FAA at the time of your application. Timely submission and FAA approval of your ACDBE program are conditions of eligibility for FAA financial assistance.

(c) If you are the owner of more than one airport that is required to have an ACDBE program, you may implement one plan for all your locations. If you do so, you must establish a separate ACDBE goal for each location.

(d) If you make any significant changes to your ACDBE program at any time, you must provide the amended program to the FAA for approval before implementing the changes.

(e) If you are a non-primary airport, non-commercial service airport, a general aviation airport, reliever airport, or any other airport that does not have scheduled commercial service, you are not required to have an ACDBE program. However, you must take appropriate outreach steps to encourage available ACDBEs to participate as concessionaires whenever there is a concession opportunity.

§ 23.23 What administrative provisions must be in a recipient's ACDBE program?

(a) If, as a recipient that must have an ACDBE program, the program must include provisions for a policy statement, liaison officer, and directory, as provided in part 26, §§ 26.23, 26.25, and 26.31, as well as certification of ACDBEs as provided by Subpart C of this part. You must include a statement in your program committing you to operating your ACDBE program in a nondiscriminatory manner.

(b) You may combine your provisions for implementing these requirements under this part and part 26 (*e.g.*, a single policy statement can cover both Federally-assisted airport contracts and concessions; the same individual can act as the liaison officer for both part 23 and part 26 matters).

§ 23.25 What measures must recipients include in their ACDBE programs to ensure nondiscriminatory participation of ACDBEs in concessions?

(a) You must include in your ACDBE program a narrative description of the types of measures you intend to make to ensure nondiscriminatory participation of ACDBEs in concession and other covered activities.

(b) Your ACDBE program must provide for setting goals consistent with the requirements of Subpart D of this part.

(c) Your ACDBE program must provide for seeking ACDBE participation in all types of concession activities, rather than concentrating participation in one category or a few categories to the exclusion of others.

(d) Your ACDBE program must include race-neutral measures that you will take. You must maximize the use of race-neutral measures, obtaining as much as possible of the ACDBE participation needed to meet overall goals through such measures. These are responsibilities that you directly undertake as a recipient, in addition to the efforts that concessionaires make, to obtain ACDBE participation. The following are examples of race-neutral measures you can implement:

(1) Locating and identifying ACDBEs and other small businesses who may be interested in participating as concessionaires under this part;

(2) Notifying ACDBEs of concession opportunities and encouraging them to compete, when appropriate;

(3) When practical, structuring concession activities so as to encourage and facilitate the participation of ACDBEs

(4) Providing technical assistance to ACDBEs in overcoming limitations, such as inability to obtain bonding or financing;

(5) Ensuring that competitors for concession opportunities are informed during pre-solicitation meetings about how the recipient's ACDBE program will affect the procurement process;

(6) Providing information concerning the availability of ACDBE firms to competitors to assist them in obtaining ACDBE participation; and

(7) Establishing a business development program (*see* part 26, § 26.35); technical assistance program; or taking other steps to foster ACDBE participation in concessions.

(e) Your ACDBE program must also provide for the use of race-conscious measures when race-neutral measures, standing alone, are not projected to be sufficient to meet an overall goal. The following are examples of race-conscious measures you can implement:

(1) Establishing concession-specific goals for particular concession opportunities.

(i) If the objective of the concession-specific goal is to obtain ACDBE participation through a direct ownership arrangement with a ACDBE, calculate the goal as a percentage of the total estimated annual gross receipts from the concession.

(ii) If the goal applies to purchases and/or leases of goods and services, calculate the goal by dividing the estimated dollar value of such purchases and/or leases from ACDBEs by the total estimated dollar value of all purchases to be made by the concessionaire.

(iii) To be eligible to be awarded the concession, competitors must make good faith efforts to meet this goal. A competitor may do so either by obtaining enough ACDBE participation to meet the goal or by documenting that it made sufficient good faith efforts to do so.

(iv) The administrative procedures applicable to contract goals in part 26, § 26.51–53, apply with respect to concession-specific goals.

(2) Negotiation with a potential concessionaire to include ACDBE participation, through direct ownership arrangements or measures, in the operation of the concession.

(3) With the prior approval of FAA, other methods that take a competitor's ability to provide ACDBE participation into account in awarding a concession.

(f) Your ACDBE program must require businesses subject to ACDBE goals at the airport (except car rental companies) to make good faith efforts to explore all available options to meet goals, to the maximum extent practicable, through direct ownership arrangements with DBEs.

(g) As provided in § 23.61 of this part, you must not use set-asides and quotas as means of obtaining ACDBE participation.

§ 23.27 What information does a recipient have to retain and report about implementation of its ACDBE program?

(a) As a recipient, you must retain sufficient basic information about your program implementation, your certification of ACDBEs, and the award and performance of agreements and contracts to enable the FAA to determine your compliance with this part. You must retain this data for a minimum of three years following the end of the concession agreement or other covered contract.

(b) Beginning March 1, 2006, you must submit an annual report on ACDBE participation using the form found in appendix A to this part. You must submit the report to the appropriate FAA Regional Civil Rights Office.

§ 23.29 What monitoring and compliance procedures must recipients follow?

As a recipient, you must implement appropriate mechanisms to ensure compliance with the requirements of this part by all participants in the program. You must include in your concession program the specific provisions to be inserted into concession agreements and management contracts, the enforcement mechanisms, and other means you use to ensure compliance. These provisions must include a monitoring and enforcement mechanism to verify that the work committed to ACDBEs is actually performed by the ACDBEs. Your program must describe in detail the level of effort and resources devoted to monitoring and enforcement.

Subpart C—Certification and Eligibility of ACDBEs

§ 23.31 What certification standards and procedures do recipients use to certify ACDBEs?

(a) As a recipient, you must use, except as provided in this subpart, the procedures and standards of part 26, §§ 26.61–91 for certification of ACDBEs to participate in your concessions program. Your ACDBE program must incorporate the use of these standards and procedures and must provide that certification decisions for ACDBEs will be made by the Unified Certification Program (UCP) in your state (*see* part 26, § 26.81).

(b) The UCP's directory of eligible DBEs must specify whether a firm is certified as a DBE for purposes of part 26, an ACDBE for purposes of part 23, or both.

(c) As an airport or UCP, you must review the eligibility of currently certified ACDBE firms to make sure that they meet the eligibility standards of this part.

(1) You must complete these reviews as soon as possible, but in no case later than April 21, 2006 or three years from the anniversary date of each firm's most recent certification, whichever is later.

(2) You must direct all currently certified ACDBEs to submit to you by April 21, 2006, a personal net worth statement, a certification of disadvantage, and an affidavit of no change.

§ 23.33 What size standards do recipients use to determine the eligibility of ACDBEs?

(a) As a recipient, you must, except as provided in paragraph (b) of this section, treat a firm as a small business eligible to be certified as an ACDBE if its gross receipts, averaged over the firm's previous three fiscal years, do not exceed $30 million.

(b) The following types of businesses have size standards that differ from the standard set forth in paragraph (a) of this section:

(1) Banks and financial institutions: $275 million in assets;

(2) Car rental companies: $40 million average annual gross receipts over the firm's three previous fiscal years;

(3) Pay telephones: 1,500 employees.

§ 23.35 What is the personal net worth standard for disadvantaged owners of ACDBEs?

The personal net worth standard used in determining eligibility for purposes of this part is $750,000. Any individual who has a personal net worth exceeding this amount is not a socially and economically disadvantaged individual for purposes of this part, even if the individual is a member of a group otherwise presumed to be disadvantaged.

§ 23.37 Are firms certified under 49 CFR part 26 eligible to participate as ACDBEs?

(a) You must presume that a firm that is certified as a DBE under part 26 is eligible to participate as an ACDBE. By meeting the size, disadvantage (including personal net worth), ownership and control standards of part 26, the firm will have also met the eligibility standards for part 23.

(b) However, before certifying such a firm, you must ensure that the disadvantaged owners of a DBE certified under part 26 are able to control the firm with respect to its activity in the concessions program. In addition, you are not required to certify a part 26 DBE as a part 23 ACDBE if the firm does not do work relevant to the airport's concessions program.

§ 23.39 What other certification requirements apply in the case of ACDBEs?

(a) The provisions of part 26, §§ 26.83 (c)(2) through (c)(6) do not apply to certifications for purposes of this part. Instead, in determining whether a firm is an eligible ACDBE, you must take the following steps:

(1) Obtain the resumes or work histories of the principal owners of the firm and personally interview these individuals;

(2) Analyze the ownership of stock of the firm, if it is a corporation;

(3) Analyze the bonding and financial capacity of the firm;

(4) Determine the work history of the firm, including any concession contracts or other contracts it may have received;

(5) Obtain or compile a list of the licenses of the firm and its key personnel to perform the concession contracts or other contracts it wishes to receive;

(6) Obtain a statement from the firm of the type(s) of concession(s) it prefers to operate or the type(s) of other contract(s) it prefers to perform.

(b) In reviewing the affidavit required by part 26, § 26.83(j), you must ensure that the ACDBE firm meets the applicable size standard in § 23.33.

(c) For purposes of this part, the term prime contractor in part 26, § 26.87(i) includes a firm holding a prime contract with an airport concessionaire to provide goods or services to the concessionaire or a firm holding a prime concession agreement with a recipient.

(d) With respect to firms owned by Alaska Native Corporations (ANCs), the provisions of part 26, § 26.73(i) do not apply under this part. The eligibility of ANC-owned firms for purposes of this part is governed by § 26.73(h).

(e) When you remove a concessionaire's eligibility after the concessionaire has entered a concession agreement, because the firm exceeded the small business size standard or because an owner has exceeded the personal net worth standard, and the firm in all other respects remains an eligible DBE, you may continue to count the concessionaire's participation toward DBE goals during the remainder of the current concession agreement. However, you must not count the concessionaire's participation toward DBE goals beyond the termination date for the concession agreement in effect at the time of the decertification (*e.g.*, in a case where the agreement is renewed or extended, or an option for continued participation beyond the current term of the agreement is exercised).

(f) When UCPs are established in a state (see part 26, § 26.81), the UCP, rather than individual recipients,

certifies firms for the ACDBE concession program.

(g) You must use the Uniform Application Form found in appendix F to part 26. However, you must instruct applicants to take the following additional steps:

(1) In the space available in section 2(B)(7) of the form, the applicant must state that it is applying for certification as an ACDBE.

(2) With respect to section 4(C) of the form, the applicant must provide information on an attached page concerning the address/location, ownership/lease status, current value of property or lease, and fees/lease payments paid to the airport.

(3) The applicant need not complete section 4(I) and (J). However, the applicant must provide information on an attached page concerning any other airport concession businesses the applicant firm or any affiliate owns and/or operates, including name, location, type of concession, and start date of concession.

(h) Car rental companies and private terminal owners or lessees are not authorized to certify firms as ACDBEs. As a car rental company or private terminal owner or lessee, you must obtain ACDBE participation from firms which a recipient or UCPs have certified as ACDBEs.

(i) You must use the certification standards of this part to determine the ACDBE eligibility of firms that provide goods and services to concessionaires.

Subpart D—Goals, Good Faith Efforts, and Counting

§ 23.41 What is the basic overall goal requirement for recipients?

(a) If you are a recipient who must implement an ACDBE program, you must, except as provided in paragraph (b) of this section, establish two separate overall ACDBE goals. The first is for car rentals; the second is for concessions other than car rentals.

(b) If your annual car rental concession revenues, averaged over the three-years preceding the date on which you are required to submit overall goals, do not exceed $200,000, you are not required to submit a car rental overall goal. If your annual revenues for concessions other than car rentals, averaged over the three years preceding the date on which you are required to submit overall goals, do not exceed $200,000, you are not required to submit a non-car rental overall goal.

(c) Each overall goal must cover a three-year period. You must review your goals annually to make sure they continue to fit your circumstances appropriately. You must report to the FAA any significant adjustments that you make to your goal in the time before your next scheduled submission.

(d) Your goals established under this part must provide for participation by all certified ACDBEs and may not be subdivided into group-specific goals.

(e) If you fail to establish and implement goals as provided in this section, you are not in compliance with this part. If you establish and implement goals in a way different from that provided in this part, you are not in compliance with this part. If you fail to comply with this requirement, you are not eligible to receive FAA financial assistance.

§ 23.43 What are the consultation requirements in the development of recipients' overall goals?

(a) As a recipient, you must consult with stakeholders before submitting your overall goals to FAA.

(b) Stakeholders with whom you must consult include, but are not limited to, minority and women's business groups, community organizations, trade associations representing concessionaires currently located at the airport, as well as existing concessionaires themselves, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged businesses, the effects of discrimination on opportunities for ACDBEs, and the recipient's efforts to increase participation of ACDBEs.

§ 23.45 What are the requirements for submitting overall goal information to the FAA?

(a) You must submit your overall goals to the appropriate FAA Regional Civil Rights Office for approval. Your first set of overall goals meeting the requirements of this subpart are due on the following schedule:

(1) If you are a large or medium hub primary airport on April 21, 2005, by January 1, 2006. You must make your next submissions by October 1, 2008.

(2) If you are a small hub primary airport on April 21, 2005, by October 1, 2006.

(3) If you are a nonhub primary airport on April 21, 2005, by October 1, 2007.

(b) You must then submit new goals every three years after the date that applies to you.

(c) Timely submission and FAA approval of your overall goals is a condition of eligibility for FAA financial assistance.

(d) In the time before you make your first submission under paragraph (a) of this section, you must continue to use the overall goals that have been approved by the FAA before the effective date of this part.

(e) Your overall goal submission must include a description of the method used to calculate your goals and the data you relied on. You must "show your work" to enable the FAA to understand how you concluded your goals were appropriate. This means that you must provide to the FAA the data, calculations, assumptions, and reasoning used in establishing your goals.

(f) Your submission must include your projection of the portions of your overall goals you propose to meet through use of race-neutral and race-conscious means, respectively, and the basis for making this projection (*see* § 23.51(d)(5))

(g) FAA may approve or disapprove the way you calculated your goal, including your race-neutral/race-conscious "split," as part of its review of your plan or goal submission. Except as provided in paragraph (h) of this section, the FAA does not approve or disapprove the goal itself (*i.e.*, the number).

(h) If the FAA determines that your goals have not been correctly calculated or the justification is inadequate, the FAA may, after consulting with you, adjust your overall goal or race-conscious/race-neutral "split." The adjusted goal represents the FAA's determination of an appropriate overall goal for ACDBE participation in the recipient's concession program, based on relevant data and analysis. The adjusted goal is binding on you.

(i) If a new concession opportunity the estimated average annual gross revenues of which are anticipated to be $200,000 or greater arises at a time that falls between normal submission dates for overall goals, you must submit an appropriate adjustment to your overall goal to the FAA for approval at least six months before executing the concession agreement for the new concession opportunity.

§ 23.47 What is the base for a recipient's goal for concessions other than car rentals?

(a) As a recipient, the base for your goal includes the total gross receipts of concessions, except as otherwise provided in this section.

(b) This base does not include the gross receipts of car rental operations.

(c) The dollar amount of a management contract or subcontract with a non-ACDBE and the gross receipts of business activities to which a management or subcontract with a

non-ACDBE pertains are not added to this base.

(d) This base does not include any portion of a firm's estimated gross receipts that will not be generated from a concession.

Example to paragraph (d): A firm operates a restaurant in the airport terminal which serves the traveling public and, under the same lease agreement, provides in-flight catering service to air carriers. The projected gross receipts from the restaurant are included in the overall goal calculation, while the gross receipts to be earned by the in-flight catering services are not.

§ 23.49 What is the base for a recipient's goal for car rentals?

Except in the case where you use the alternative goal approach of § 23.51(c)(5)(ii), the base for your goal is the total gross receipts of car rental operations at your airport. You do not include gross receipts of other concessions in this base.

§ 23.51 How are a recipient's overall goals expressed and calculated?

(a) Your objective in setting a goal is to estimate the percentage of the base calculated under §§ 23.47–23.49 that would be performed by ACDBEs in the absence of discrimination and its effects.

(1) This percentage is the estimated ACDBE participation that would occur if there were a ''level playing field'' for firms to work as concessionaires for your airport.

(2) In conducting this goal setting process, you are determining the extent, if any, to which the firms in your market area have suffered discrimination or its effects in connection with concession opportunities or related business opportunities.

(3) You must complete the goal-setting process separately for each of the two overall goals identified in § 23.41 of this part.

(b)(1) Each overall concessions goal must be based on demonstrable evidence of the availability of ready, willing and able ACDBEs relative to all businesses ready, willing and able to participate in your ACDBE program (hereafter, the ''relative availability of ACDBEs'').

(2) You cannot simply rely on the 10 percent national aspirational goal, your previous overall goal, or past ACDBE participation rates in your program without reference to the relative availability of ACDBEs in your market.

(3) Your market area is defined by the geographical area in which the substantial majority of firms which seek to do concessions business with the airport are located and the geographical area in which the firms which receive the substantial majority of concessions-related revenues are located. Your market area may be different for different types of concessions.

(c) *Step 1.* You must begin your goal setting process by determining a base figure for the relative availability of ACDBEs. The following are examples of approaches that you may take toward determining a base figure. These examples are provided as a starting point for your goal setting process. Any percentage figure derived from one of these examples should be considered a basis from which you begin when examining the evidence available to you. These examples are not intended as an exhaustive list. Other methods or combinations of methods to determine a base figure may be used, subject to approval by the FAA.

(1) *Use DBE Directories and Census Bureau Data.* Determine the number of ready, willing and able ACDBEs in your market area from your ACDBE directory. Using the Census Bureau's County Business Pattern (CBP) data base, determine the number of all ready, willing and able businesses available in your market area that perform work in the same NAICS codes. (Information about the CBP data base may be obtained from the Census Bureau at their Web site, *http://www.census.gov/epcd/cbp/view/cbpview.html.*) Divide the number of ACDBEs by the number of all businesses to derive a base figure for the relative availability of ACDBEs in your market area.

(2) *Use an Active Participants List.* Determine the number of ACDBEs that have participated or attempted to participate in your airport concessions program in previous years. Determine the number of all businesses that have participated or attempted to participate in your airport concession program in previous years. Divide the number of ACDBEs who have participated or attempted to participate by the number for all businesses to derive a base figure for the relative availability of ACDBEs in your market area.

(3) *Use data from a disparity study.* Use a percentage figure derived from data in a valid, applicable disparity study.

(4) *Use the goal of another recipient.* If another airport or other DOT recipient in the same, or substantially similar, market has set an overall goal in compliance with this rule, you may use that goal as a base figure for your goal.

(5) *Alternative methods.* (i) You may use other methods to determine a base figure for your overall goal. Any methodology you choose must be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of ACDBEs in your market area.

(ii) In the case of a car rental goal, where it appears that all or most of the goal is likely to be met through the purchases by car rental companies of vehicles or other goods or services from ACDBEs, one permissible alternative is to structure the goal entirely in terms of purchases of goods and services. In this case, you would calculate your car rental overall goal by dividing the estimated dollar value of such purchases from ACDBEs by the total estimated dollar value of all purchases to be made by car rental companies.

(d) *Step 2.* Once you have calculated a base figure, you must examine all relevant evidence reasonably available in your jurisdiction to determine what adjustment, if any, is needed to the base figure in order to arrive at your overall goal.

(1) There are many types of evidence that must be considered when adjusting the base figure. These include, but are not limited to:

(i) The current capacity of ACDBEs to perform work in your concessions program, as measured by the volume of work ACDBEs have performed in recent years; and

(ii) Evidence from disparity studies conducted anywhere within your jurisdiction, to the extent it is not already accounted for in your base figure.

(2) If your base figure is the goal of another recipient, you must adjust it for differences in your market area and your concessions program.

(3) If available, you must consider evidence from related fields that affect the opportunities for ACDBEs to form, grow and compete. These include, but are not limited to:

(i) Statistical disparities in the ability of ACDBEs to get the financing, bonding and insurance required to participate in your program;

(ii) Data on employment, self-employment, education, training and union apprenticeship programs, to the extent you can relate it to the opportunities for ACDBEs to perform in your program.

(4) If you attempt to make an adjustment to your base figure to account for the continuing effects of past discrimination, or the effects of an ongoing ACDBE program, the adjustment must be based on demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.

(5) Among the information you submit with your overall goal (*see* 23.45(e)), you must include description

of the methodology you used to establish the goal, including your base figure and the evidence with which it was calculated, as well as the adjustments you made to the base figure and the evidence relied on for the adjustments. You should also include a summary listing of the relevant available evidence in your jurisdiction and an explanation of how you used that evidence to adjust your base figure. You must also include your projection of the portions of the overall goal you expect to meet through race-neutral and race-conscious measures, respectively (*see* §§ 26.51(c)).

(e) You are not required to obtain prior FAA concurrence with your overall goal (*i.e.*, with the number itself). However, if the FAA's review suggests that your overall goal has not been correctly calculated, or that your method for calculating goals is inadequate, the FAA may, after consulting with you, adjust your overall goal or require that you do so. The adjusted overall goal is binding on you.

(f) If you need additional time to collect data or take other steps to develop an approach to setting overall goals, you may request the approval of the FAA Administrator for an interim goal and/or goal-setting mechanism. Such a mechanism must:

(1) Reflect the relative availability of ACDBEs in your local market area to the maximum extent feasible given the data available to you; and

(2) Avoid imposing undue burdens on non-ACDBEs.

§ 23.53 How do car rental companies count ACDBE participation toward their goals?

(a) As a car rental company, you may, in meeting the goal the airport has set for you, include purchases or leases of vehicles from any vendor that is a certified ACDBE.

(b) As a car rental company, if you choose to meet the goal the airport has set for you by including purchases or leases of vehicles from an ACDBE vendor, you must also submit to the recipient documentation of the good faith efforts you have made to obtain ACDBE participation from other ACDBE providers of goods and services.

(c) While this part does not require you to obtain ACDBE participation through direct ownership arrangements, you may count such participation toward the goal the airport has set for you.

(d) The following special rules apply to counting participation related to car rental operations:

(1) Count the entire amount of the cost charged by an ACDBE for repairing vehicles, provided that it is reasonable and not excessive as compared with fees customarily allowed for similar services.

(2) Count the entire amount of the fee or commission charged by a ACDBE to manage a car rental concession under an agreement with the concessionaire toward ACDBE goals, provided that it is reasonable and not excessive as compared with fees customarily allowed for similar services.

(3) Do not count any portion of a fee paid by a manufacturer to a car dealership for reimbursement of work performed under the manufacturer's warranty.

(e) For other goods and services, count participation toward ACDBE goals as provided in part 26, § 26.55 and § 23.55 of this part. In the event of any conflict between these two sections, § 23.55 controls.

(f) If you have a national or regional contract, count a pro-rated share of the amount of that contract toward the goals of each airport covered by the contract. Use the proportion of your applicable gross receipts as the basis for making this pro-rated assignment of ACDBE participation.

Example to paragraph (f): Car Rental Company X signs a regional contract with an ACDBE car dealer to supply cars to all five airports in a state. The five airports each account for 20 percent of X's gross receipts in the state. Twenty percent of the value of the cars purchased through the ACDBE car dealer would count toward the goal of each airport.

§ 23.55 How do recipients count ACDBE participation toward goals for items other than car rentals?

(a) You count only ACDBE participation that results from a commercially useful function. For purposes of this part, the term commercially useful function has the same meaning as in part 26, § 26.55(c), except that the requirements of § 26.55(c)(3) do not apply to concessions.

(b) Count the total dollar value of gross receipts an ACDBE earns under a concession agreement and the total dollar value of a management contract or subcontract with an ACDBE toward the goal. However, if the ACDBE enters into a subconcession agreement or subcontract with a non-ACDBE, do not count any of the gross receipts earned by the non-ACDBE.

(c) When an ACDBE performs as a subconcessionaire or subcontractor for a non-ACDBE, count only the portion of the gross receipts earned by the ACDBE under its subagreement.

(d) When an ACDBE performs as a participant in a joint venture, count a portion of the gross receipts equal to the distinct, clearly defined portion of the work of the concession that the ACDBE performs with its own forces toward ACDBE goals.

(e) Count the entire amount of fees or commissions charged by an ACDBE firm for a *bona fide* service, provided that, as the recipient, you determine this amount to be reasonable and not excessive as compared with fees customarily allowed for similar services. Such services may include, but are not limited to, professional, technical, consultant, legal, security systems, advertising, building cleaning and maintenance, computer programming, or managerial.

(f) Count 100 percent of the cost of goods obtained from an ACDBE manufacturer. For purposes of this part, the term manufacturer has the same meaning as in part 26, § 26.55(e)(1)(ii).

(g) Count 100 percent of the cost of goods purchased or leased from a ACDBE regular dealer. For purposes of this part, the term ''regular dealer'' has the same meaning as in part 26, § 26.55(e)(2)(ii).

(h) Count credit toward ACDBE goals for goods purchased from an ACDBE which is neither a manufacturer nor a regular dealer as follows:

(1) Count the entire amount of fees or commissions charged for assistance in the procurement of the goods, provided that this amount is reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the goods themselves.

(2) Count the entire amount of fees or transportation charges for the delivery of goods required for a concession, provided that this amount is reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of goods themselves.

(i) If a firm has not been certified as an ACDBE in accordance with the standards in this part, do not count the firm's participation toward ACDBE goals.

(j) Do not count the work performed or gross receipts earned by a firm after its eligibility has been removed toward ACDBE goals. However, if an ACDBE firm certified on April 21, 2005 is decertified because one or more of its disadvantaged owners do not meet the personal net worth criterion or the firm exceeds business size standards of this part during the performance of a contract or other agreement, the firm's participation may continue to be counted toward ACDBE goals for the remainder of the term of the contract or other agreement (but not extensions or

renewals of such contracts or agreements).

(k) Do not count costs incurred in connection with the renovation, repair, or construction of a concession facility (sometimes referred to as the ''build-out'').

(l) Do not count the ACDBE participation of car rental companies toward your ACDBE achievements toward this goal.

§ 23.57 What happens if a recipient falls short of meeting its overall goals?

(a) You cannot be penalized, or treated by the Department as being in noncompliance with this part, simply because your ACDBE participation falls short of your overall goals. You can be penalized or treated as being in noncompliance only if you have failed to administer your ACDBE program in good faith.

(b) If your ACDBE participation falls short of your overall goals, FAA may require you to submit to the FAA a statement of the reasons why you were unable to meet it and the steps you are taking to meet your overall goals or to adjust them based on changed circumstances.

(c) In response to your submission, FAA may require you to implement appropriate remedial measures,

§ 23.59 What is the role of the statutory 10 percent goal in the ACDBE program?

(a) The statute authorizing the ACDBE program provides that, except to the extent the Secretary determines otherwise, not less than 10 percent of concession businesses are to be ACDBEs.

(b) This 10 percent goal is an aspirational goal at the national level, which the Department uses as a tool in evaluating and monitoring DBEs' opportunities to participate in airport concessions.

(c) The national 10 percent aspirational goal does not authorize or require recipients to set overall or concession-specific goals at the 10 percent level, or any other particular level, or to take any special administrative steps if their goals are above or below 10 percent.

§ 23.61 Can recipients use quotas or set-asides as part of their ACDBE programs?

You must not use quotas or set-asides for ACDBE participation in your program.

Subpart E—Other Provisions

§ 23.71 Does a recipient have to change existing concession agreements?

Nothing in this part requires you to modify or abrogate an existing concession agreement (one executed before April 21, 2005) during its term. When an extension or option to renew such an agreement is exercised, or when a material amendment is made, you must assess potential for ACDBE participation and may, if permitted by the agreement, use any means authorized by this part to obtain a modified amount of ACDBE participation in the renewed or amended agreement.

§ 23.73 What requirements apply to privately-owned or leased terminal buildings?

(a) If you are a recipient who is required to implement an ACDBE program on whose airport there is a privately-owned or leased terminal building that has concessions, or any portion of such a building, this section applies to you.

(b) You must pass through the applicable requirements of this part to the private terminal owner or lessee via your agreement with the owner or lessee or by other means. You must ensure that the terminal owner or lessee complies with the requirements of this part.

(c) If your airport is a primary airport, you must obtain from the terminal owner or lessee the goals and other elements of the ACDBE program required under this part. You must incorporate this information into your concession plan and submit it to the FAA in accordance with this part.

(d) If the terminal building is at a non-primary commercial service airport or general aviation airport or reliever airport, you must ensure that the owner complies with the requirements in § 23.21(e).

§ 23.75 Can recipients enter into long-term, exclusive agreements with concessionaires?

(a) Except as provided in paragraph (b) of this section, you must not enter into long-term, exclusive agreements for concessions. For purposes of this section, a long-term agreement is one having a term longer than five years.

(b) You may enter into a long-term, exclusive concession agreement only under the following conditions:

(1) Special local circumstances exist that make it important to enter such agreement, and

(2) The responsible FAA regional office approves your plan for meeting the standards of paragraph (c) of this section.

(c) In order to obtain FAA approval of a long-term-exclusive concession agreement, you must submit the following information to the FAA regional office:

(1) A description of the special local circumstances that warrant a long-term, exclusive agreement.

(2) A copy of the draft and final leasing and subleasing or other agreements. This long-term, exclusive agreement must provide that:

(i) A number of ACDBEs that reasonably reflects their availability in your market area, in the absence of discrimination, to do the types of work required will participate as concessionaires throughout the term of the agreement and account for at a percentage of the estimated annual gross receipts equivalent to a level set in accordance with §§ 23.47 through 23.49 of this part.

(ii) You will review the extent of ACDBE participation before the exercise of each renewal option to consider whether an increase or decrease in ACDBE participation is warranted.

(iii) An ACDBE concessionaire that is unable to perform successfully will be replaced by another ACDBE concessionaire, if the remaining term of the agreement makes this feasible. In the event that such action is not feasible, you will require the concessionaire to make good faith efforts during the remaining term of the agreement to encourage ACDBEs to compete for the purchases and/or leases of goods and services to be made by the concessionaire.

(3) Assurances that any ACDBE participant will be in an acceptable form, such as a sublease, joint venture, or partnership.

(4) Documentation that ACDBE participants are properly certified.

(5) A description of the type of business or businesses to be operated (*e.g.,* location, storage and delivery space, ''back-of-the-house facilities'' such as kitchens, window display space, advertising space, and other amenities that will increase the ACDBE's chance to succeed).

(6) Information on the investment required on the part of the ACDBE and any unusual management or financial arrangements between the prime concessionaire and ACDBE.

(7) Information on the estimated gross receipts and net profit to be earned by the ACDBE.

§ 23.77 Does this part preempt local requirements?

(a) In the event that a State or local law, regulation, or policy differs from the requirements of this part, the recipient must, as a condition of remaining eligible to receive Federal financial assistance from the DOT, take such steps as may be necessary to

comply with the requirements of this part.

(b) You must clearly identify any State or local law, regulation, or policy pertaining to minority, women's, or disadvantaged business enterprise concerning airport concessions that adds to, goes beyond, or imposes more stringent requirements than the provisions of this part. FAA will determine whether such a law, regulation, or policy conflicts with this part, in which case the requirements of this part will govern.

(c) If not deemed in conflict by the FAA, you must write and administer such a State or local law, policy, or regulation separately from the ACDBE program.

(d) You must provide copies of any such provisions and the legal authority supporting them to the FAA with your ACDBE program submission. FAA will not approve an ACDBE program if there are such provisions that conflict with the provisions of this part.

(e) However, nothing in this part preempts any State or local law, regulation, or policy enacted by the governing body of a recipient, or the authority of any State or local government or recipient to adopt or enforce any law, regulation, or policy relating to ACDBEs, as long as the law, regulation, or policy does not conflict with this part.

§ 23.79 Does this part permit recipients to use local geographic preferences?

No. As a recipient you must not use a local geographic preference. For purposes of this section, a local geographic preference is any requirement that gives an ACDBE located in one place (*e.g.,* your local area) an advantage over ACDBEs from other places in obtaining business as, or with, a concession at your airport.

Appendix A to Part 23—Uniform Report of ACDBE Participation

Instructions for Uniform Report of ACDBE Participation

1. Insert name of airport receiving FAA financial assistance and AIP number.

2. Provide the name and contact information (phone, fax, e-mail) for the person FAA should contact with questions about the report.

3a. Provide the annual reporting period to which the report pertains (*e.g.,* October 2005–September 2006).

3b. Provide the date on which the report is submitted to FAA.

4. This block and blocks 5 and 6 concern *non-car rental* goals and participation only. In this block, provide the overall non-car rental percentage goal and the race-conscious (RC) and race-neutral (RN) components of it. The RC and RN percentages should add up to the overall percentage goal.

5. For purposes of this block and blocks 6, 8, and 9, the participation categories listed at the left of the block are the following: ''Prime Concessions'' are concessions who have a direct relationship with the airport (*e.g.,* a company who has a lease agreement directly with the airport to operate a concession). A ''subconcession'' is a firm that has a sublease or other agreement with a prime concessionaire, rather than with the airport itself, to operate a concession at the airport. A ''management contract'' is an agreement between the airport and a firm to manage a portion of the airport's facilities or operations (*e.g.,* manage the parking facilities). ''Goods/services'' refers to those goods and services purchased by the airport itself or by concessionaires and management contractors from certified DBEs.

Block 5 concerns *all* non-car rental concession activity covered by 49 CFR part 23 during the reporting period, both new or continuing.

In Column A, enter the total concession gross revenues for concessionaires (prime and sub) and purchases of goods and services (ACDBE and non-ACDBE combined) at the airport. In Column B, enter the number of lease agreements, contracts, etc. in effect or taking place during the reporting period in each participation category for all concessionaires and purchases of goods and services (ACDBE and non-ACDBE combined).

Because, by statute, non-ACDBE management contracts do not count as part of the base for ACDBE goals, the cells for total management contract participation and ACDBE participation as a percentage of total management contracting dollars are not intended to be filled in blocks 5, 6, 8, and 9.

In Column C, enter the total gross revenues in each participation category (ACDBEs) only. In Column D, enter the number of lease agreements, contracts, etc., in effect or entered into during the reporting period in each participation category for all concessionaires and purchases of goods and services (ACDBEs only).

Columns E and F are subsets of Column C: break out the total gross revenues listed in Column C into the portions that are attributable to race-conscious and race-neutral measures, respectively. Column G is a percentage calculation. It answers the question, what percentage of the numbers in Column A is represented by the corresponding numbers in Column C?

6. The numbers in this Block concern only *new* non-car rental concession opportunities that arose during the current reporting period. In other words, the information requested in Block 6 is a subset of that requested in Block 5. Otherwise, this Block is filled out in the same way as Block 5.

7. Blocks 7–9 concern car rental goals and participation. In Block 7, provide the overall car rental percentage goal and the race-conscious (RC) and race-neutral (RN) components of it. The RC and RN percentages should add up to the overall percentage goal.

8. Block 8 is parallel to Block 5, except that it is for car rentals. The instructions for filling it out are the same as for Block 5.

9. Block 9 is parallel to Block 6, except that it is for car rentals. The information requested in Block 9 is a subset of that requested in Block 8. The instructions for filling it out are the same as for Block 6.

10. Block 10 instructs recipients to bring forward the cumulative ACDBE participation figures from Blocks 5 and 8, breaking down these figures by race and gender categories. Participation by non-minority women-owned firms should be listed in the ''non-minority women'' column. Participation by firms owned by minority women should be listed in the appropriate minority group column. The ''other'' column should be used to reflect participation by individuals who are not a member of a presumptively disadvantaged group who have been found disadvantaged on a case-by-case basis.

11. This block instructs recipients to attach five information items for each ACDBE firm participating in its program during the reporting period. If the firm's participation numbers are reflected in Blocks 5–6 and/or 8–9, the requested information about that firm should be attached in response to this item.

Uniform Report of ACDBE Participation

1. Name of Recipient and AIP Number:
2. Contact Information:
3a. Reporting Period:
3b. Date of Report:
4. Current Non-Car Rental ACDBE Goal: Race Conscious Goal ____% Race Neutral Goal ____% Overall Goal ____%

5. Non-car rental Cumulative ACDBE participation	A Total dollars (everyone)	B Total number (everyone)	C Total to ACDBEs (dollars)	D Total to ACDBEs (number)	E RC to ACDBEs (dollars)	F RN to ACDBEs (dollars)	G % of dollars to ACDBEs
Prime Concessions.							
Subconcessions.							
Management Contracts	XXXXXXX	XXXXXXX	.....	.....	.....	.....	XXXXXX
Goods/Services.							
Totals.							

6. Non-Car rental New ACDBE participation this period	A Total dollars (everyone)	B Total number (everyone)	C Total to ACDBEs (dollars)	D Total to ACDBEs (number)	E RC to ACDBEs (dollars)	F RN to ACDBEs (dollars)	G % of dollars to ACDBEs
Prime Concessions.							
Subconcessions.							
Management Contracts	XXXXXXX	XXXXXXX	.....	.....	.....	XXXXXX	.....
Goods/Services.							
Totals.							

7. Current Car Rental ACDBE Goal: Race Conscious Goal ____% Race Neutral Goal ____% Overall Goal ____%

8. Car rental Cumulative ACDBE participation	A Total dollars (everyone)	B Total number (everyone)	C Total to ACDBEs (dollars)	D Total to ACDBEs (number)	E RC to ACDBEs (dollars)	F RN to ACDBEs (dollars)	G % of dollars to ACDBEs
Prime Concessions.							
Subconcessions.							
Goods/Services.							
Totals.							

9. Car rental New ACDBE participation this period	A Total dollars (everyone)	B Total number (everyone)	C Total to ACDBEs (dollars)	D Total to ACDBEs (number)	E RC to ACDBEs (dollars)	F RN to ACDBEs (dollars)	G % of dollars to ACDBEs
Prime Concessions.							
Subconcessions.							
Goods/Services.							
Totals.							

10. Cumulative ACDBE participation by race/gender	A Black Americans	B Hispanic Americans	C Asian-Pacific Americans	D Asian-Indian Americans	E Native Americans	F Non-minority Women	G Other	H Totals
Car Rental.								
Non-Car Rental.								
Totals.								

11. On an attachment, list the following information for each ACDBE firm participating in your program during the period of this report: (1) Firm name; (2) Type of business; (3) Beginning and expiration dates of agreement, including options to renew; (4) Dates that material amendments have been or will be made to agreement (if known); (5) Estimated gross receipts for the firm during this reporting period.

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 23

[Docket No. OST–97–2550]

RIN 2105–AD51

Participation by Disadvantaged Business Enterprises in Airport Concessions

AGENCY: Office of the Secretary, DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: This SNPRM seeks further comment on the issue of business size standards for the Department of Transportation's airport concession disadvantaged business enterprise (ACDBE) program. It also requests comment on issues such as additional measures to combat fraud and abuse in the program and to provide additional flexibility for airports in implementing the program.

DATES: *Comment Closing Date:* Comments should be submitted to the docket by June 20, 2005. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent to Docket Clerk, Attn: Docket No. OST–97–2550, Department of Transportation, 400 7th Street, SW., Room PL401, Washington, DC 20590. For the convenience of persons wishing to review the docket, it is requested that comments be sent in triplicate. Persons wishing their comments to be acknowledged should enclose a stamped, self-addressed postcard with their comments. The docket clerk will date stamp the postcard and return it to the sender. Comments may be reviewed at the above address from 9 a.m. through 5:30 p.m. Monday through Friday. Commenters may also submit their comments electronically. Instructions for electronic submission may be found at the following web address: *http://dms.dot.gov/submit/.* The public may also review docketed comments electronically. The following web address provides instructions and access to the DOT electronic docket: *http://dms.dot.gov/search/.*

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, SW., Room 10424, Washington, DC 20590, phone numbers (202) 366–9310 (voice), (202) 366–9313 (fax), (202) 755–7687 (TTY), *bob.ashby@ost.dot.gov* (e-mail).

SUPPLEMENTARY INFORMATION: In today's **Federal Register**, the Department of Transportation published a final rule revising 49 CFR Part 23, the regulation governing the airport concessions disadvantaged business enterprise (ACDBE) program. This SNPRM seeks comment on the issue of business size standards to be used in Part 23 and also asks for comment on two other matters concerning implementation of the program on which we have not previously sought comment.

Business Size Standards

Size standards in this ACDBE regulation are important for a number of reasons. They implement the statutory requirement that participants be small businesses. They provide a means to ensure that participation in DBE programs is not necessarily of indefinite duration: if a firm grows to exceed size standards, it ceases to be eligible for the program. They are calibrated to help meet the objectives of the program, including permitting ACDBE firms to compete in the airport concessions market.

In Part 26, businesses seeking DBE certification must, by statute, meet SBA size standards and an additional statutory $17.42 million dollar cap on average annual gross receipts. These requirements do not apply to Part 23, since the ACDBE statute gives the Secretary discretion to set size standards for concessions. For most airport concessions, the size standard under current Part 23 is $30 million average annual gross receipts.

In the 2000 SNPRM proposing revisions to Part 23, the Department suggested adjusting the size standards for inflation (*e.g.*, from $30 million to approximately $33 million) and to create new size standards for management contractors ($5 million) and car dealers (500 employees). Many airport comments supported a size standard higher than $33 million, especially for advertising, but did not suggest an alternative. One ACDBE suggested using a higher figure or an employee number. One airport suggested trying to match size standards more precisely to the types of businesses involved, while another thought it was confusing not to apply the Part 26 $17.42 million dollar cap to concessions. A consultant asked for more detail, especially with respect to the affiliation rule.

For parking management, one airport suggested $12 million rather than $5 million, while another said there was confusion between how these two figures were meant to be applied. Three airports and a car rental trade association supported the 500-employee standard for car dealers, while another large airport said it was too high.

In December 2002, the Department responded to a petition from an airport advertising firm to alter the size standards further (67 FR 76327; December 2, 2002). The petitioner argued that because some types of concessionaires pay higher concession or lease fees to airports than others, size standards should be adjusted to equalize the situation of these different businesses. The NPRM proposed two options for equalizing the size standards to take differing concession fees into accounts, one of which would have increased the size standard significantly for most categories of businesses and the other of which would have meant smaller increases for some types of businesses and modest decreases for others.

The Department seeks additional comment on certain size standard issues. One of these is the ''equity'' issue raised in the December 2002 NPRM. The Department received 50 comments on this NPRM. Most were from airport operators. A sizeable majority of the airport comments supported the proposal, particularly the option that would have raised the size standards significantly. Four ACDBE firms and associations also commented in favor of the proposal. Supporters generally believed that the proposed change would create a ''level playing field'' among types of ACDBEs. Some airports, including most of the large airports that responded, opposed the proposal or thought further study would be necessary. A state DOT and an individual commenter also took this position. These commenters' reservations about the proposal centered on concerns that the proposal would make some size standards unreasonably high, lead to other inequities among types of businesses, or were based on inadequate or incomplete data.

After reviewing the comments and thinking further about the proposal, we have concluded that we should not adopt either of the specific options we proposed. One could raise the basic size standard too high, and the other could result in excluding some presently certified firms by lowering some current size standards. Both are based on data that pertains to several categories of firms at large airports, but we have no data about other categories of firms or practices at smaller airports. We are also concerned that facially very different size standards for different categories of business could lead to perceptions of unfairness and difficult administrative

or legal decisions about the category in which a particular firm belongs.

However, the evident differences in concession or lease fees among types of businesses do raise a fairness issue. One way of addressing this issue would be to keep the existing size standards but to subtract from a firm's gross receipts the concession or lease fees it pays to the airport for the privilege of doing business. For example, suppose a concessionaire has annual gross receipts of $30 million. It pays 20 percent of its gross receipts ($6 million) to the airport in concession fees. Consequently, for purposes of calculating whether the firm meets the size standard, the firm's receipts for that year would be valued at $24 million. The Department seeks comment on this approach.

We also seek further comment on adjusting the dollar size standard—which has remained in place since 1992—for inflation. In the 2000 SNPRM, as noted above, we proposed an inflationary adjustment to $33 million for most ACDBEs, a proposal to which commenters did not object. However, we now seek comment on a different calculation, using a method similar to the one we use for inflationary adjustments to Part 26 size standards. Using this method, we calculate that the adjusted standards would be $40.57 million (in place of the former $30 million standard for most businesses) and $54.1 million (in place of the former $40 million standard) for car rental companies.

In arriving at these numbers, the DOT used a Department of Commerce price index to make a current inflation adjustment. The Department of Commerce's Bureau of Economic Analysis prepares constant dollar estimates of state and local government purchases of goods and services by deflating current dollar estimates by suitable price indicies. These indicies include purchases of durable and non-durable goods, and other services. Using these price deflators enables the Department to adjust dollar figures for past years' inflation. Given the nature of DOT's ACDBE Program, adjusting the gross receipts cap in the same manner in which inflation adjustments are made to the costs of state and local government purchases of goods and services is simple, accurate and fair.

The inflation rate on purchases by state and local governments for the current year is calculated by dividing the price deflator for the fourth quarter of 2003 (109.546) by 1992's third quarter price deflator (80.997). The third quarter of 1992 is used because that is when the Department established the current size limitations. The result of the calculation is 1.35247, which represents an inflation rate of 35.25% from the third quarter of 1992 through the fourth quarter of 2003. Multiplying the $30,000,000 figure by 1.35247 equals $40,574,100, which will be rounded off to the nearest $10,000, or $40,570,000. Multiplying the $40,000,000 figure by 1.35247 equals $54,098,800, which will be rounded off to the nearest $10,000, or $54,100,000.

We also seek comment on the alternative of making the size standard of Part 23 equivalent to that of Part 26, for the reasons of enhancing the narrow tailoring of Part 23 and to avoid potential confusion from having two different size standards for different parts of the Department's overall DBE program. This alternative would rely on SBA size standards, and might or might not include the gross receipts cap that Congress imposed in the highway/transit program DBE provision (currently calculated as $17.42 million, and subject to periodic inflationary adjustments).

One additional idea on which the Department believes is that of creating an employee number-based size standard, in place of the current dollar-based standards. Such an approach could make ACDBE size standards simpler and fairer. For example, using an employee number-based standard would apparently moot the issue raised in the 2002 NPRM concerning concession fees paid to airports. Likewise, using an employee number-based standard would eliminate questions about the relationship between the income of businesses located on airports and similar businesses located elsewhere.

There is a relatively limited number of types of businesses that perform as ACDBEs, offering the possibility of creating a set of employee number standards specific to these types of businesses relatively readily. In any case, the task would have a narrower scope than the Small Business Administration's recent efforts to establish employee number standards for the full range of small businesses. We seek comment on whether pursuing such an approach is desirable and, if so, what reasonable employee number standards might be for ACDBEs. Is it likely that employee numbers of concession businesses differ from those in other contexts? For example, is it likely that a restaurant or specialty retail store on an airport concourse will have a different number of employees from the same type of restaurant or store in a shopping mall?

If an employee number-based standard were proposed for Part 23, would it make more sense to apply the standard on an airport-by-airport basis or to the total employee numbers of a company that served multiple airports? For example, suppose a chain of retail stores seeking ACDBE certification has locations at six airports, and each location employees 10 people. If the size standard for the business were 50 employees, should the certifying office look at this business as one company with 60 employees, exceeding the size standard, or six stores with 10 workers per store, each of which individually meets the standard?

Additional Provisions To Combat Fraud and Abuse

As noted in the preamble to the final Part 23 rule issued today, the Department's Office of Inspector General has focused considerable effort and attention on the need to prevent fraud and abuse in the ACDBE program. Parts 23 and 26 already contain a number of provisions designed to prevent fraud and abuse. For example, the ownership and control certification standards (§§ 26.69–26.71) include detailed instructions to UCPs and recipients on how to address eligibility issues. Are there additional specific provisions the Department should add to address particular issues affecting the ownership and control of types of businesses or business arrangements common in the ACDBE program?

Likewise, the certification process contains various safeguards against fraud and abuse. Applicants must attest, under penalty of perjury, to the accuracy and truthfulness of information on their applications (§ 26.83(c)(7)(ii)). Certified DBEs must inform the recipient within 30 days of material changes in their circumstances that may affect their continued eligibility (§ 26.83(i)). Certified DBEs must also provide the recipient an annual ''affidavit of no change'' affirming that there have not been changes in their circumstances that would call into question their continued eligibility (§ 26.83(j)). This affidavit specifically covers matters of business size and PNW. All these provisions apply to ACDBEs under Part 23 as well as other DBEs under Part 26.

The Department seeks comment on whether there is other information that ACDBEs should report that would enable airports and the Department to better monitor the eligibility of ACDBEs as well as the ongoing performance of ACDBEs in the concession business. For example, are there additional reports that airports should receive concerning the actual performance by ACDBEs of the work for which credit toward

ACDBE goals is being claimed? Should there be additional reporting responsibilities for ''prime'' concessionaires as well as ACDBEs themselves? Should ACDBEs be required to report on the specific commercially useful functions they are performing on a given contract? Should they report, on an annual basis, their number of employees, revenue dollars, and PNW to the airport, UCP, or the FAA?

Additional Flexibility

The exemption and program waiver processes of § 26.15 also apply to Part 23 and the ACDBE program. These provisions are designed to permit airports and other recipients to depart from the specific requirements of DBE regulations when circumstances warrant. The Department seeks comment on whether there should be any additional provisions, either applying generally to Part 23 or applying to specific portions of Part 23, to give greater flexibility to airports and other participants in meeting ACDBE requirements. For example, are there categories of airports that should be excepted from one or more requirements of the rule? Should the $200,000 concessions revenue threshold for submitting overall goals be raised? If airports consistently meet overall goals over a given period of years, should they be excused from future goal setting submissions, at least as long as DBE participation continued at the level of their recent goals? We will consider suggestions for such provisions.

With respect to flexibility in goal setting, the Department wishes to raise for further comment the idea of establishing car rental goals on a national basis for car rental companies that have a nationwide presence. Under this concept, modeled on the handling of goals for transit vehicle manufacturers under Part 26, a national-scope car rental company would establish a national goal for ACDBE participation in its airport business, using the goal setting provisions of Part 23 and obtaining FAA approval for the nationwide goal. Then the car rental company would submit to each airport a certification that it had such an FAA-approved nationwide goal. This approach would reduce administrative burdens both on airports—who would not have to calculate car rental goals at all for national-scope car rental companies—and on the car rental companies themselves. It would also recognize that the car rental market is, in large measure, a national market. Local airports would not be able to set locally-derived goals for national-scope car rental companies under this concept, however. We also seek comment on whether, if the Department adopts this concept, there are other types of business to which it might reasonably apply (*e.g.*, hotels).

Regulatory Analyses and Notices

This SNPRM is nonsignificant for purposes of Executive Order 12866 and the Department of Transportation's Regulatory Policies and Procedures. The SNPRM continues the discussion of size standards, one issue from today's broader, but also nonsignificant, final rule to implement the ACDBE program. While the resolution of size standards issue may help certain individual businesses and harm others, we do not anticipate any across-the-board significant economic impacts from the clarification and further development of size standards. The other issues raised in the SNPRM are administrative in nature and should not have significant impacts on any regulated parties. The rule does not have Federalism impacts sufficient to warrant the preparation of a Federalism Assessment.

The Department certifies that this rule will not have a significant economic effect on a substantial number of small entities. The rule clearly affects small entities: ACDBEs are, by definition, small businesses. However, as mentioned above, the economic effect of the matters discussed in the SNPRM on these small entities is not likely to be significant. In other respects, compared to the existing rule, the matters discussed in the SNPRM should not have noticeable incremental economic effects on small businesses.

There are a number of other statutes and Executive Orders that apply to the rulemaking process that the Department considers in all rulemakings. However, none of them are relevant to this SNPRM. These include the Unfunded Mandates Reform Act (which does not apply to nondiscrimination/civil rights requirements), the National Environmental Policy Act, E.O. 12630 (concerning property rights), E.O. 12988 (concerning civil justice reform), and E.O. 13045 (protection of children from environmental risks).

Issued this 8th Day of March, 2005, at Washington, DC.

Norman Y. Mineta,

Secretary of Transportation.

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